

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CW 2087

FRANK DUNNING, JR.

VERSUS

STATE OF LOUISIANA THROUGH THE DEPARTMENT
OF TRANSPORTATION AND DEVELOPMENT

Judgment rendered

SEP 20 2011

On Supervisory Writ from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 537,208
Honorable Todd Hernandez, Judge

DANIEL A. CLAITOR
NEIL D. SWEENEY
BATON ROUGE, LOUISIANA

ATTORNEYS FOR
PLAINTIFF-RESPONDENT
FRANK DUNNING, JR.

HON. JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL
BATON ROUGE, LOUISIANA
AND
HENRY S. PROVOSTY
LENA D. GIANGROSSO
SPECIAL ASST. ATTORNEYS GENERAL
NEW ORLEANS, LOUISIANA

ATTORNEYS FOR
DEFENDANT-RELATOR
STATE OF LOUISIANA
THROUGH THE DEPARTMENT
OF TRANSPORTATION
AND DEVELOPMENT

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

*JEK by TMT
JTP by TMT
TMT*

PER CURIAM

Frank Dunning Jr., plaintiff herein, filed a petition for damages on October 17, 2005, seeking relief under the Jones Act and general maritime law for injuries he allegedly sustained as a deckhand and/or crew member for the State of Louisiana through the Department of Transportation and Development (State) aboard the M/V St. Francisville on May 6, 2005. Specifically, Dunning alleges he was negligently injured in the course and scope of his employment when a cable snapped causing the closing gate of the ferry to strike him in the head and upper body, requiring medical treatment. In response to the lawsuit filed against it, the State filed a peremptory exception raising the objection of no cause of action asserting that the Louisiana Workers' Compensation Act (LWCA), La. R.S. 23:1021 *et seq.*, provides plaintiff's exclusive remedy. After a hearing, the trial court denied the State's objection of no cause of action, finding that plaintiff, a State employee, is also a seaman and entitled under La. R.S. 23:1035.2 to seek recovery under the Jones Act and general maritime law. The State now seeks supervisory review of that ruling.

The State contends Article XII, Section 10 of the Louisiana Constitution, limits suits against the State. Specifically, the State argues that reading Article XII, Section 10 *in para materia*, it is clear that while Section (A) is a waiver of sovereign immunity for claims for personal injury, that waiver is a limited waiver, subject to the limitations set forth in Section (C). The State submits the waiver is not boundless, and the legislature, specifically authorized to limit suits against the State, has done so via the LWCA.

Recently, however, the Louisiana Supreme Court in ***Fulmer v. State, Dept. of Wildlife and Fisheries***, 2010-2779 (La. 7/1/11), ___ So.3d ___ found that nothing in the plain language of the LWCA indicates the legislature's intent to limit the State's liability to suits under the Jones Act brought by a State employee. The court found that La. R.S. 23:1035.2 specifically excludes from compensation coverage "any employee" who is covered by the Jones Act. ***Fulmer***, 2010-2779 at 8, ___ So.3d ___. Louisiana Revised Statute 23:1035.2 states, "No compensation shall be payable in respect to the

disability or death of any employee covered by the Federal Employer's Liability Act, the Longshoremen's and Harbor Worker's Compensation Act, or any of its extensions, or the Jones Act."

When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. La. C.C. art. 9. Louisiana Revised Statute 23:1035.2 is a clear statement indicating that if "any employee," not only a private employee, is covered by the Jones Act, the LWCA does not provide compensation.

As such, the claims against the State under the Jones Act brought by plaintiff, a State-employed seaman, are not prohibited under the LWCA or the Louisiana Constitution. The trial court did not err in finding that plaintiff stated a valid cause of action against the State under the Jones Act.

WRIT DENIED.