

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

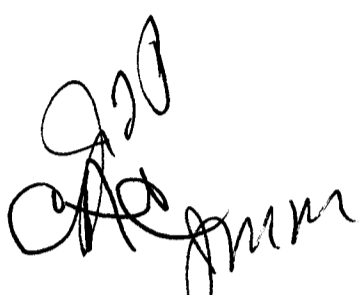
FIRST CIRCUIT

NO. 2016 CA 1339

STEPHEN LEDET

VERSUS

PARKER DRILLING OFFSHORE USA, L.L.C., CAPTAIN JOHN DOE  
AND M/V MS CISSY



**Judgment rendered April 12, 2017.**

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Appealed from the  
16th Judicial District Court  
in and for the Parish of St. Mary, Louisiana  
Trial Court No. 125341  
Honorable Lori A. Landry, Judge

\* \* \* \* \*

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\* \* \* \* \*

**BEFORE: PETTIGREW AND McDONALD, JJ., AND CALLOWAY,<sup>1</sup> J. Pro Tem.**

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<sup>1</sup> Judge Curtis A. Calloway, retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

**PETTIGREW, J.**

This action for personal injury damages arises out of an incident between a large commercial vessel and a small recreational boat that occurred on December 4, 2011, in the Intracoastal Waterway, near the Atchafalaya River. The particular area of this waterway in which the incident took place is located in or near Berwick, Louisiana. The plaintiff, individually and on behalf of his minor son, both guest passengers in the small recreational boat, appeal a March 15, 2016 judgment granting summary judgment in favor of the defendants and dismissing plaintiffs' claims with prejudice, finding the plaintiffs failed to prove that any duty owed by the commercial vessel was breached, thus the defendants were not negligent and are not liable for the plaintiffs' injuries. After a thorough and *de novo* review of the record, we find the defendants' summary judgment was improperly granted, reverse the judgment, and remand.

**FACTS AND PROCEDURAL HISTORY**

On December 4, 2011, Stephen Ledet and his minor son, Zander Ledet, were passengers on a small 16-foot aluminum center-console recreational boat being operated by Stephen's brother, Kent Ledet (the Ledet vessel), on the Intracoastal Waterway near Berwick, Louisiana. At the same time, the M/V Miss Cissy, a 46.5-foot passenger vessel (crew boat) owned by Parker Drilling Offshore USA, LLC (PDO) and operated by its employee, Captain Richard Rowe (Rowe), was on the same waterway, near the same location and ahead of the Ledet vessel. Both vessels were travelling in an easterly direction. The weather was sunny and clear, and Kent Ledet testified that he first saw the Miss Cissy ahead of him from approximately 200 yards away. Based on the undisputed evidence presented, at that point in time, the Miss Cissy was either idling or going very slow and up to 8 knots per hour, and the Ledet vessel was going 20-30 miles per hour. The Ledet vessel eventually caught up to the Miss Cissy's stern (rear), and as it neared a public boat launch, known as the Jesse Fontenot Boat Launch, the Ledet vessel began to slow down and veer in a northerly diagonal path in order to reach the boat launch from behind the Miss Cissy.

According to Kent Ledet, he intended to pass the Miss Cissy on its port (left side), which was closer to the boat launch in order to reach it. However, at approximately the same time, the Miss Cissy suddenly accelerated its engine and created large swells and wakes. The Ledet vessel, still behind but now within 25-30 yards from the stern of the Miss Cissy, and approximately 300 feet from the boat launch, was, according to Kent Ledet, unable to stop or to avoid the wakes. According to Kent Ledet, he had "no choice but to cross the back wake" created by the Miss Cissy, which caused his boat to toss and slam against the water. Kent Ledet further testified that he was able to stop and avoid encountering the wake from the bow of the Miss Cissy, adding that had he encountered that wake as well, his boat would have sunk. However, as a result of the encounter with the stern wake created by the Miss Cissy, the plaintiffs were thrown around in the Ledet vessel and sustained alleged physical and mental injuries.

On October 31, 2012, Stephen Ledet, individually and on behalf of his minor son, (hereinafter referred to collectively as the plaintiffs) filed a petition for damages, naming as defendants PDO, "Captain John Doe" (later identified as Richard Rowe) and the M/V Miss Cissy, seeking to recover damages for their injuries.<sup>2</sup> The petition alleged PDO and Rowe allowed the Miss Cissy to travel in an unreasonable and unsafe manner and provided facts to support the allegations based on general negligence principles under both federal and state law. The plaintiffs further alleged the defendants' actions were willful and reckless, constituted gross negligence, and exhibited "callous and grave disregard" for the rights of the plaintiffs and others in the vicinity of the incident site; thus, entitling plaintiffs to recover exemplary and punitive damages under Louisiana law and general maritime law.

PDO answered the petition and subsequently filed a third party demand, naming as defendants, Kent Ledet and his insurer, "ABC Insurance Company." The third party demand alleged (among other theories of recovery irrelevant to the issues herein) that

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<sup>2</sup> The plaintiffs subsequently filed a first supplemental and amending petition to identify and name Captain Richard Rowe as the PDO employee operating the Miss Cissy at the time of the incident.

the incident was caused by the sole negligence of Kent Ledet in operating his recreational vessel in a negligent manner, including travelling at an unreasonable and unsafe speed, voluntarily encountering an alleged wake while attempting to overtake the Miss Cissy, failing to reduce its speed while attempting to overtake the Miss Cissy, failing to maintain a proper outlook, and failing to exercise reasonable care under the circumstances.<sup>3</sup> Rowe also filed an answer to the plaintiffs' petition and a cross claim against Kent Ledet, alleging that the incident and the resulting injuries were caused solely by Kent Ledet's negligence in operating the Ledet vessel. In the alternative, both PDO and Captain Rowe alleged that the incident was caused by the contributory negligence of Kent Ledet in the operation of the Ledet vessel and in attempting to overtake the Miss Cissy, and maintained that comparative fault principles applied.

Following discovery, PDO and Rowe filed a joint motion for summary judgment on October 20, 2015. A hearing on the motion was held on March 3, 2016, and judgment was rendered and signed on March 15, 2016, granting the motion for summary judgment in favor of the defendants, and dismissing the plaintiffs' claims with prejudice. A motion for new trial/reconsideration was fax filed by the plaintiffs on March 24, 2016, and was denied by the district court on April 5, 2016. The plaintiffs then appealed the March 15, 2016 judgment.

### **SUMMARY JUDGMENT<sup>4</sup>**

After adequate discovery, a motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, admitted for purposes of the motion, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B)(2) and (C)(1). The summary judgment procedure is expressly favored

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<sup>3</sup> In its answer to the first supplemental and amending petition, PDO asserted that the plaintiffs' injuries were preexisting; thus, not caused by the incident.

<sup>4</sup> Louisiana Code of Civil Procedure art. 966 was amended by 2015 La. Acts, No. 422, §1, effective January 1, 2016. Section 2 provides, "The provisions of this Act shall not apply to any motion for summary judgment pending adjudication or appeal on the effective date of this Act." Since the motion for summary judgment at issue in this matter was filed on October 20, 2015, and was pending adjudication as of January 1, 2016, we apply the prior version of Article 966.

in the law and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. See La. C.C.P. art. 966(A)(2) and (3).

The mover bears the burden of proving that he is entitled to summary judgment. However, if the mover will not bear the burden of proof at trial on the subject matter of the motion, he need only demonstrate the absence of factual support for one or more essential elements of his opponent's claim, action, or defense. La. C.C.P. art. 966(C)(2). If the moving party does so, then the nonmoving party must produce factual support sufficient to satisfy his evidentiary burden at trial. La. C.C.P. art. 966(C)(2). If the nonmoving party fails to make this requisite showing, there is no genuine issue of material fact, and summary judgment should be granted. See La. C.C.P. art. 966(C)(2). If, however, the mover fails in his burden to show an absence of factual support for one or more of the elements of the adverse party's claim, the burden never shifts to the adverse party, and the mover is not entitled to summary judgment. **Kasem v. State Farm Fire & Cas. Co.**, 2016-0217 (La. App. 1 Cir. 2/10/17), \_\_\_ So.3d \_\_\_, 2017 WL 570804.

#### **APPLICABLE LAW**

The elements of a maritime negligence cause of action are essentially the same as land-based negligence. The plaintiff must demonstrate: (1) that the defendant owed the plaintiff a duty, (2) that the defendant breached that duty, (3) that the plaintiff sustained injury, and (4) that a causal connection exists between the defendant's conduct and plaintiff's injury. **Dunaway v. Louisiana Wildlife & Fisheries Comm'n**, 2008-1494 (La. App. 1 Cir. 2/13/09), 6 So.3d 228, 233. In light of the limited finding on which the grant of summary judgment in this case is based, only the first two of these elements -- duty and breach -- are relevant to the issues on appeal. In order to establish those two elements, the plaintiffs must ultimately prove by a preponderance of the evidence that the operator of the defendant vessel owed the plaintiffs a duty, and that the duty owed was breached by defendants' failure to exercise the reasonable care that an ordinary reasonable and prudent person would have used under similar circumstances.

Applying general negligence standards, whether a vessel is responsible for damages caused by swells depends on the facts and circumstances of each particular case. The law is well established that all moving vessels owe a duty of reasonable care to appreciate the reasonable effect of its wake and to take reasonable precautions to avoid creating unusual swells that may injure others. **Gregg v. Weeks Marine, Inc.**, 2000 WL 798493 at \*4 (E.D. La. 6/21/2000).

### ANALYSIS

In order to be entitled to summary judgment, the defendants/movers on the motion had to show lack of factual support for any element of the plaintiffs' case. As noted earlier, the elements at issue herein are whether the Miss Cissy and Rowe owed the plaintiffs a duty and whether that duty was breached.

Plaintiffs' allegations in their petition and statements in their memorandum in opposition to summary judgment include allegations that defendants also breached duties owed and imposed by certain Federal Inland Navigation Rules.<sup>5</sup> The Federal Inland Navigation Rules are the "rules of the road" for proper navigation based on long-standing principles and were intended to establish the standard of good and prudent seamanship as a guide to prevent collisions in inland waterways. A review of the rules reveals that they are a codification of negligence principles in the specific context of waterway navigation, but also require, generally, the reasonable exercise of due care.<sup>6</sup> See

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<sup>5</sup> Plaintiffs cite to 33 U.S.C. §§ 2001-2038 for the codification of the Inland Rules. The statutory Federal Inland Navigation Rules were repealed, and those Rules were promulgated as Part 83 Subchapter E. Inland Navigation Rules, of Title 33 of the Code of Federal Regulations. See Pub. L. 108-293, Title III, § 303(a), Aug. 9, 2004, 118 Stat. 1042 (33 U.S.C. § 2071).

<sup>6</sup> For example, Federal Inland Navigation Rule 2 states that "[n]othing in these Rules shall exonerate any vessel, or the owner, master, or crew thereof, from the consequences ... of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the practical circumstances of the case." 33 C.F.R. § 83.02(a). This general rule requiring the exercise of reasonable care is further extended by Federal Inland Navigation Rule 5, known commonly as the "look-out" rule, that requires every vessel at all times to "maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision." 33 C.F.R. § 83.05. Other more specific Rules and authorities that may be implicated in this case, by the allegations and arguments of the parties, include: Rule 13, 33 C.F.R. § 83.13 (overtaking); Rule 15, 33 C.F.R. § 83.15 (crossing); Rule 6, 33 C.F.R. § 83.06 (safe speed); Rule 9, 33 C.F.R. § 83.09 (narrow channels); 33 C.F.R. § 83.34 (signal required to overtake); La. R.S. 34:851.27 (no-wake zones); St. Mary Parish Code of Ordinances Art. XIII Sec. 17-75; and Berwick Code of Ordinances Article IX Sec. 14-180 – 14-185.

**Slatten, LLC v. Royal Caribbean Cruises Ltd.**, 2014 WL 4186781, at \*4 (E.D. La. 8/22/2014), *citing* 2 Thomas J. Schoenbaum, Admiralty and Maritime Law § 14-2 (5<sup>th</sup> Ed. 2013).

In analyzing the alleged liability of the defendants in this case, during the hearing on the motion for summary judgment, the district court focused primarily on the issue it determined to be the pivotal one in determining the defendants' alleged liability, *to wit*, whether the Ledet vessel was overtaking or attempting to overtake the Miss Cissy prior to the incident. Consequently, a majority of the parties' arguments, both at the district court, and before us on appeal, also focus on the facts concerning the overtaking. The district court ultimately found that the Ledet vessel was, in fact, overtaking, and granted summary judgment primarily on that basis.

It is undisputed that the Ledet vessel was behind and quickly approaching the Miss Cissy. The Ledet vessel was travelling at 25-30 mph, and the Miss Cissy was idling and then sped up to approximately 8 knots per hour. However, the actions of the Ledet vessel *vis a vis* the Miss Cissy are in dispute. According to the Ledet brothers, their vessel came upon the stern of the Miss Cissy at which time, Kent Ledet turned in a diagonal northerly direction, crossing to the rear of the Miss Cissy, in an attempt to pass the Miss Cissy on the port side to reach the boat launch. The defendants assert and the district court ultimately decided that the Ledet vessel was attempting to overtake the Miss Cissy, and when Kent Ledet realized he would not be able to do so, in order to reach the boat launch, he then suddenly attempted to cross the Miss Cissy from behind. We agree that these undisputed facts create a scenario seemingly ripe for an issue regarding an overtaking and/or crossing issue. However, as noted above, the facts asserted and the evidence reveal factual disputes, the resolution of which necessarily involves factual credibility determinations and weight given to the evidence.

In granting summary judgment in this matter, the district court had to weigh the credibility of Rowe against that of the Ledet brothers, whose testimony was also internally inconsistent. In a case similar to this matter, **Williams v. Shell Oil Co.**, 95-149 (La. App. 3 Cir. 5/31/95), 657 So.2d 382, writ denied, 95-1631 (La. 10/06/95), 661 So.2d 469,

the appellate court reviewed a judgment dismissing the plaintiffs' claims, after a trial on the merits (under the manifest error standard). The **Williams** case is also distinguishable, factually, in that the M/V at issue in that case was the vessel alleged to have been "overtaking" or "crossing," unlike the case before us where the alleged overtaking/crossing issue involves the small recreational boat. However, in determining whether the district court manifestly erred in its conclusion, the **Williams** court provided significant language relative to the type of inquiry the issue involves that is equally applicable here:

We note, however, that the trial court's application of law was based on the resolution of a factual question, to-wit: whether the situation involved a passing (overtaking) or a crossing. In other words, the particularly applicable law in this case [Rule 13, Rule 15 of the Federal Inland Navigation Rules] is dependent on the factfinder's conclusion with regard to whether a passing or a crossing occurred.

*Id.* at 386. Thus, because the issue before the district court in this matter was the same, we find the district court committed reversible error in resolving disputed factual issues in granting summary judgment.

We also note that the district court rendered judgment based only on the overtaking issue, albeit erroneously, and in so doing, the court failed to address or consider the numerous allegations of fact based on the other alleged rule violations and general negligence principles, including those listed in footnote six. Moreover, we note those allegations are largely based on facts that are disputed, the resolution of which require the application of the navigational rules and will likely require credibility determinations and the weighing of evidence, also improper on summary judgment.

### **CONCLUSION**

For the foregoing reasons, we find summary judgment was improperly granted. There remain in dispute numerous genuine issues of material fact necessary for a determination of whether the defendants failed to exercise reasonable care or otherwise breached a duty owed to the plaintiffs for which they can be held liable. This ruling is based on the limitation of summary judgment law and is no indication whether plaintiffs will prevail after a trial on the merits. However, a trial on the merits is necessary to the



solution of factual disputes material to the ultimate issue of liability in this matter.<sup>7</sup> Accordingly, the judgment of the district court is reversed and the case is remanded for further proceedings consistent herewith. Costs of this appeal are assessed to defendants, Parker Drilling Offshore USA, LLC and M/V Miss Cissy, and Richard Rowe.

**REVERSED AND REMANDED.**

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<sup>7</sup> Our ruling applies equally to the defendants' third party and cross claim alleging the negligence of Kent Ledet was the sole cause of the accident, or that issues of comparative fault should apply in the alternative; they too remain viable.