IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ONICA GRAZETTE,

Appellant,

v. Case No. 5D18-821

MAGICAL CRUISE COMPANY LIMITED, D/B/A DISNEY CRUISE LINE,

Appellee.

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Opinion filed October 11, 2019

Appeal from the Circuit Court
for Brevard County,
Tonya B. Rainwater, Judge.

Paul B. Feltman, of Alvarez, Feltman & Da Silva, PL, Coral Gables, for Appellant.

Richard J. McAlpin and Kassandra Doyle Taylor, of McAlpin Conroy, P.A., Miami, for Appellee.

HIGBEE, H.L., Associate Judge.

Onica Grazette ("Grazette") appeals the final summary judgment entered in favor of Magical Cruise Company Limited, d/b/a Disney Cruise Line ("Disney"), based on Disney's statute of limitations defense. For the following reasons, we reverse the judgment as to one aspect of Grazette's claim but otherwise affirm.

Grazette worked aboard Disney's cruise ships as a custodial hostess from October 2011 through January 2015. During this time, she worked four contracts and was medically debarked during her fifth. Two months into her first contract, aboard the *Disney Wonder*, Grazette bent over to lift heavy luggage and felt a "pop" in her lower back. She experienced an immediate sharp pain, but the pain went away after she sat down for a few minutes. She was able to finish out the rest of her shift and did not report the incident or go to the medical center.

Over the next two weeks, Grazette continuously worked, pain-free, until December 29, 2011, when she went to the ship's medical center and told the doctor that she bent over while vacuuming and could not stand upright afterward. She informed the doctor about the pop in her back two weeks prior, and the doctor diagnosed her with mechanical back pain in the coccyx region. She was debarked, and her contract aboard the *Disney Wonder* ended shortly thereafter. After debarking, she went home to Trinidad and received and completed treatment. Grazette said she was pain-free at that time and thought she could return to work without any restrictions.

During her second, third, and fourth contracts, Grazette went to the ships' medical centers on numerous occasions, sometimes for back pain and other times for medical issues unrelated to back pain. On November 22, 2014, during her fifth contract, Grazette went to the medical center after she fell and hit her back against a ladder by her bunk bed. She had multiple follow up visits and went shoreside for an MRI on January 17, 2015, which revealed that she had an L5-S1 disc herniation. She was medically debarked on January 20, 2015, and never worked onboard a Disney ship again.

When Grazette returned home in January 2015, she received chiropractic treatment until September 2015, when Disney referred her to a neurosurgeon where she underwent a conservative treatment plan. This plan included rest, medication, physical therapy, and injections. By December 2016, she still had not reached maximum medical improvement ("MMI").

In October 2016, two months prior to her final visit with the neurosurgeon, Grazette filed a four-count complaint against Disney, asserting: (1) Jones Act negligence; (2) unseaworthiness; (3) failure to provide maintenance and cure; and (4) failure to provide prompt, proper, and adequate medical treatment. She alleged that, while working on the *Disney Wonder*, she felt pain in her lower back but was continuously sent back to work in the same job with the same job requirements and without a proper diagnosis or treatment, and that she did not receive a proper diagnosis until January 17, 2015.

Since Grazette alleged that her injuries accrued while she was working on the *Disney Wonder*, but the complaint was not filed until October 2016, Disney asserted in its answer that all four claims were thus time-barred by maritime tort law's three-year statute of limitations. After conducting discovery, Disney then moved for summary judgment. In her response in opposition, Grazette argued that there were genuine issues of material fact and that the claims were not time-barred.[1] She argued that the statute of limitations

[1] Grazette also moved to amend her complaint, citing newly discovered evidence wherein she sought to change the injury from one aboard the *Disney Wonder* to the one aboard the *Fantasy* when she fell out of the bunk bed in 2014. However, this issue was not properly preserved as it was never set for hearing and was never brought to the court's attention at any point after filing. *See Hernandez v. Kissimmee Police Dep't*, 901 So. 2d 420, 421 (Fla. 5th DCA 2005). Furthermore, an amendment would have been futile because the amendment would have directly contradicted Grazette's sworn testimony that the back pain was caused by a specific incident relating to luggage in 2011. *See ABC Liquors, Inc. v. Centimark Corp.*, 967 So. 2d 1053, 1057 (Fla. 5th DCA 2007).

did not begin to run until there was notice of a medical injury and a relationship between the injury and the job, and she asserted that the earliest it began to run would have been January 17, 2015.

"The statute of limitations for maritime torts is governed by 46 U.S.C. § 30106," which holds that "'a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose.'" *Pretus v. Diamond Offshore Drilling, Inc.*, 571 F.3d 478, 481 (5th Cir. 2009). "The Jones Act, 46 U.S.C. § 30104 . . . , adopts the same statute of limitations applicable to suits under the Federal Employees' Liability Act ('FELA'), 45 U.S.C. § 56, which is three years." *Id.* Here, there is no dispute that the federal maritime law applies and that the statute of limitations is three years. Instead, the dispute is when the causes of action actually accrued.

Grazette's complaint specifically stated that she was injured aboard the *Disney Wonder*, on which she had not worked since 2012, and she testified during her deposition that there was a specific incident when she hurt her back in 2011. At the summary judgment hearing, Grazette argued under a continuing tort theory and an aggravation theory that the claim did not accrue until her 2015 diagnosis. Grazette, however, admitted that the incident that started her back pain occurred two weeks prior to December 29, 2011. The trial court granted Disney's motion for summary judgment.

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of law." *Gabriel v. Disney Cruise Line*, 93 So. 3d 1121, 1123 (Fla. 5th DCA 2012) (quoting *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000)). "The burden of proving the nonexistence of any genuine issue of material fact is on the moving party." *Id.* "The evidence contained

in the record, including any supporting affidavits, must be viewed in the light most favorable to the non-moving party." *Id.* "If the slightest doubt exists, then summary judgment must be reversed." *Id.*

Despite the allegations in the complaint and her sworn testimony to the contrary, Grazette contends that her maritime claims were not time-barred because, under the discovery rule, she did not discover her injury until her diagnosis in January 2015. Whether the court should apply the discovery rule is a pure question of law which this Court reviews de novo. *White v. Mercury Marine, Div. of Brunswick, Inc.*, 129 F.3d 1428, 1430 (11th Cir. 1997).

The discovery rule "applies to pure latent injury cases, cases in which the plaintiff fails to discover either the injury or its cause until long after the negligent act occurred." *Foland v. Seacor Marine, Inc.*, No. 94-30228, 1994 WL 652535, at *2 (5th Cir. Nov. 4, 1994). On the other hand, the discovery rule is an exception to the general "time of event" rule, which "is one in which the plaintiff has sustained both immediate and latent injuries caused by a noticeable, traumatic occurrence." *Albertson v. T.J. Stevenson & Co.*, 749 F.2d 223, 231 (5th Cir. 1984). Here, the undisputed facts reflect that Grazette's injury was not purely latent and that she had a "noticeable, traumatic occurrence" in December 2011. Because she was aware in 2011 of both the injury and the cause, the causes of action accrued under the time of event rule in 2011 when the injury occurred. Therefore, her claims for negligence under the Jones Act, unseaworthiness, and failure to provide prompt, proper, and adequate medical treatment are time-barred as she did not file her complaint until 2016, two years after the statute of limitations had run. *See Hicks v. Hines*

Inc., 826 F.2d 1543, 1547 (6th Cir. 1987). Accordingly, summary judgment was proper on these claims.

We reverse, however, as to Grazette's claim for maintenance and cure damages. "Under general maritime law, a seaman has the right to receive compensation for food, lodging, and medical services resulting from illnesses or injuries suffered while working aboard a ship." *Gabriel*, 93 So. 3d at 1123. "The duty to provide said compensation, i.e., maintenance and cure, continues during a seaman's recuperative period until 'maximum medical recovery,' or MMI, is reached." *Id.* Claims for maintenance and cure are deemed to have accrued when the seaman becomes incapacitated to do a seaman's work, *Spencer v. Grand River Navigation Co.*, 644 F. App'x 559, 565 (6th Cir. 2016), and continues until the seaman reaches MMI. *Vaughan v. Atkinson*, 369 U.S. 527, 531 (1962).

Here, there is an issue of fact as to when Grazette became incapacitated to do seaman's work since she was medically debarked on two separate occasions. After the first disembarkment, which occurred shortly after she sustained the back injury in 2011, her contract terminated, she was sent home to Trinidad for treatment, and she received maintenance and cure payments from Disney, but she ultimately returned to do seaman's work several months later. After the second disembarkment in 2015, she was deemed unfit and unable to physically do seaman's work. Because there is a dispute of material fact as to when Grazette became incapacitated, we reverse only as to that claim.

AFFIRMED in part; REVERSED in part; and REMANDED for further proceedings.

LAMBERT, J., and JACOBUS, B.W., Senior Judge, concur.