. Petition for Review

93019-8

Court of Appeal Cause No.73032-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ELSADIG AHMED
Plaintiff

GLACIER FISH COMPANY
Defendant

PETITION FOR REVIEW

1-All facts for the trail on December 8-9-10-11,2014
2- All facts for the trail March 7-2016
3- For my lawyer
4- For my all witnesses testified in the trail(Lynne Wolk- Dr.Robert J .Kropp – William Berg deposition)
6- My jury
7- My medical in Washington
8- For my translator in the trail
9- For my medical in Dutch Harbor(July,16 -2010)
10 Yatte deposition
11- My injury report on June 22,2010
12-Report form Keith Pendleton in June,30-2010
13- My deposition
14- My translator with doctor(Dr. Kenneth R. Ttucker)
15-Report from Jeff Ive his report was not true I need original report because the company had changed all my documents I need original documents to show on the trail not the copies because my lawyer didn't do that

4-5-2016

b. The following witnesses **testified at trial for defendant.** I need reviewing for both (testified at trail and deposition)or comparing between them especially (Jeff Ive)

i. Jeff Ivie. deposition

4-5-2016

ii. Wes Tabaka. deposition

iii. Rune Bjornerem. deposition

iv. Keith Pendleton. deposition

v. Marc Vercruysse. deposition

vi. Jose Garza. deposition

viii. Renee Sage. deposition

v. Dr. Kenneth R. Ttucker deposition

ELSADIG AHMED

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206-571-3299

eahmed72@yahoo.com

4-5-2016

No 73032-1-1

* After the Surgery I Came to office looking for the job, and I met Renee Sage human resource of Company. She refused to give me any job. Why? I still looking for my job.

4-5-2016

T6/10
steam 6/2-6/9

6/1/2010
6/23/2010

No 73032-1-1

Master	Vagen, Olaf
First Mate	Rotset, Odd
Mate	Pendleton, Keith
Mate	Waddell, Harry
Bosun	Austnes, Lars
Bosun	DaCunha, Manuel
Deckhand	Nguyen, Sonny
Deckhand	Perry, Mark
Chief Engineer	Jones, Dennis off 6/22
Asst. Engineer	Scott, Jake
Second Asst. Engineer	Seidel, Eugene
Oiler	Alexy, Mike
Electrician	Dalnes, Peter
Maintenance Tech	Rodriguez, David off 6/22
Maintenance Tech	Howell, Glen off 6/22
Baader Tech	Leverenz,Matt
Baader Tech	Szanewski, Andy
Baader Asst	Bednarek, Kris
Chief Steward	Hagstrom, Keith
First Cook	Edmonds, Ron
Asst. Cook	Douglas, Matt
Galley Helper	Lewis, Michaela
Galley Helper	Behrenmeir, Josh to factory
Housekeeper - new	Jones, Monica
Housekeeper	Ellis, Heather
Fact. Supervisor	Bjornerem, Rune
Fact. Foreman	Vercruysse, Marc
Fact. Foreman	Garza, Joe
Quality Assurance	Garza, Trish
Quality Assurance	Martin, Tami
Surimi Tech	Mach, Toan
Surimi Tech	Savov, Sava
Tech Supervisor	Kjorsvik, Ron
Processor- Combi	Simpson, Jon
Processor- Combi	McCallum, Brian
Processor- Combi	Garcia-Barrazza, Miguel
Freezer Foreman	Tabaka, Wes
Freezer Foreman	Medvec, Tom → this pearson I worked w/ Matt him the time I got injury
Processor	Adamski, Jerry
Processor	Ahmed, Elsadig
Processor	X Ali, Nizar sombre in freezer knows about injury
Processor	Bah, Ibrahima

4-5-2016

Processor		Burklund, Earl
Processor		Cabrera, Sylvia
Processor		Castaneda, Veronica
Processor		Cherenet, Tebebe
Processor		Datuin, Danilo
Processor	X	Diallo, Abdul - always in freezer
Processor	must interview X	Dioumassy, Yatte always in freezer
Processor		Douangkhamchanh, Vanh
Processor		Doumbia, Ibrahima off 6/23
Processor		Famulski, Waldemar
Processor		Fernandez, Ronaldo
Processor		Flores, Alexis
Processor		Fuentes, Jose
Processor		Garcia, Juan
Processor		Golis, Eugene
Processor		Hernandez, Ramiro
Processor		Herrera, Felipe
Processor		Huynh, Xe
Processor		Johnson, Arthur
Processor	X	Kabba, Musa always
Processor		Karimu, Mohamadou
Processor		Kebe, Serigne
Processor		Keju, Johnny
Processor		Keys, Granville
Processor		Konate, Mamadou
Processor - new		Livingston, Adam
Processor		Malang, Siegfried
Processor		Manuel, Markgil
Processor		Martin, Titus
Processor		Marynowski, Marian
Processor		Mbugua, Stephen
Processor		Mencia, Danely
Processor		Mencia, Jose
Processor		Mitchell, Jay
Processor		Nguyen, Dang
Processor		Nguyen, Son
Processor		Nguyen, Tien
Processor		Niang, Djiby
Processor		Njuguna, Thomas
Processor		Panganiban, Frank
Processor		Pietras, Dariusz
Processor		Radoc, Blair
Processor		Rafanan, Romeo
Processor		Reg, Catalino
Processor		Rhule, Michael
Processor	not employed X	Sow, Mamadou always
Processor		Suwannapetch, Rong

Someone else named MUSA - not always in freezer

These people worked same in freezer during of load in that time I got injury and signed for my lawyer to be my witnesses and my lawyer didn't bring them. I need testify them

maybe Archie Stern

4-5-2016

Processor	Sylla, Chekina
Processor	Traore, Adame
Processor	Tshibangu, Dido
Processor	Tu, Tam
Processor	Vu, Trung
Processor	Woldemariam, Fekadu
Processor	Ypsilanti, Irene fly 6/9
Processor-NSEDC	Fahey, Laura
Processor-NSEDC	Miller, Frank
Processor-NSEDC	Nickoli, Todd
Processor-NSEDC - new	Takak, Patrick off 6/23
Nissui Tech	Ikemura, Nobuo
Nissui Tech	Ishioka, Takaki
Observer	Jackson, Ted
Observer	Duffey, Laura

These people worked same in freezer during of load in that time I got injury and signed for my lawyer to be my witnesses and my lawyer didn't bring them.

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No 730321-1-1

4-5-2016

1. My lawyer was not representing me well in front of the court

2. my lawyer refused to call all the witnesses I work with in the freezer hold only one and did not call him to come in the court.

3. my lawyer did not provide me a translator and used defendant's interpreter.

4. My lawyer called Jeff Ivie as a witness and never was I told about him. I only saw his name on the court decision as my witness.

5. I still have problem for frostbites on my fingers and carpal tunnel pain and numbness.

1-27-2015

4-5-2016

73032-1-I

4-5-2016

Defendant filed a motion for continuance of the trial date on June 24, 2014. (Mitchell Dec. at ¶4.) On July 7, 2014, the parties entered into a Stipulation moving the trial date to December 1, 2014, which was signed by the Court on July 11, 2014. (Ex. 3 to the Mitchell Dec.)

The original deadline for filing a Jury Demand was June 9, 2014. (Ex. 2 to the Mitchell Dec.) The Stipulation prepared by defendant's counsel and signed by plaintiff's counsel set the new deadline for filing the Jury Demand as August 25, 2014. On November 6, 2014, defendant filed a jury demand and paid the filing fee. (Ex. 4 to the Mitchell Dec.)

III. STATEMENT OF ISSUES

Whether defendant's untimely filed jury demand should be stricken and this case tried to the Bench?

IV. EVIDENCE RELIED UPON

1. The Declaration of Wayne Mitchell in Support of Plaintiff's Motion to Strike Untimely Jury Demand.

V. AUTHORITIES AND ANALYSIS

A. The Jury Demand Filed by Defendant Was Untimely.

Filing of a jury demand in King County Superior Court is controlled by both the Civil Rules (CR) and the local rules of court (KCLCR). CR 38(b) states:

> At or prior to the time the case is called to be set for trial, any party may demand a trial by jury of any issue triable of right by jury by serving upon the other parties a demand therefor in writing, by filing a demand with the clerk, and by paying the jury fee required by law.

4-5-2016

The rule also addresses the consequences of failing to properly file a jury demand.

> The failure of a party to serve a demand as required by this rule [illegible]

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ELSADIG AHMED, an individual, Appellant, v. GLACIER FISH COMPANY, LLC, a Washington business entity, Respondent.	No. 73032-1-I DIVISION ONE UNPUBLISHED OPINION FILED: March 7, 2016

APPELWICK, J. — Ahmed was injured while working for Glacier Fish Company, his former employer. Ahmed sued Glacier alleging violations of the Jones Act, 46 U.S.C. § 30104. The trial court dismissed Ahmed's lawsuit. We affirm.

FACTS

Elsadig Ahmed immigrated to the United States from Darfur, Sudan. In 2010, Ahmed went to Alaska to work for Glacier Fish Company. In June 2010, Ahmed was working as a fish processor on one of Glacier's vessels.

On June 23, 2010, while the vessel was docked, Ahmed was working in the vessel's freezer hold where boxes of processed fish are stacked and stored before they are unloaded at the dock. After working several hours in the freezer, Ahmed complained to the shift supervisor about pain and numbness in his fingers. The

supervisor told Ahmed to go see the ship's medical officer. The medical officer, Jeff Ivie, examined Ahmed's hands, observed blood circulation in his fingers, and saw no signs of frost bite. Ivie gave Ahmed ibuprofen for pain and inflammation. And, he instructed Ahmed not to work in the freezer and instead to work on the pier. But, according to Ahmed, after working several hours on the pier, Marcus Vercruysse, the new shift supervisor, ordered Ahmed to return to the freezer.

On June 30, 2010, Ahmed again complained about his hands to a different medic. The complaint was recorded in the ship's medical log and the complaint was reported to two supervisors.

On July 16, 2010, again while the vessel was docked, Ahmed made a third complaint about his hands. Ivie drove Ahmed to a clinic. The clinic diagnosed Ahmed with " 'frostbite to fingertips.' " Ahmed did not return to the vessel for the rest of the 2010 season. But, he continued to seek treatment for his hands. Ahmed visited U.S. Healthworks in Seattle. On October 13, 2010, the treating physician informed Ahmed that he could return to work.

Ahmed then worked for Glacier in 2011 and 2012 as a candler, removing bones and other defects from fish on an assembly line. Next, Ahmed worked at a shipyard in June 2012. As a result of this work, Ahmed began to suffer from carpal tunnel syndrome in both wrists. Glacier paid for Ahmed's carpal tunnel medical treatments, and Ahmed reached maximum cure for the syndrome.

On June 19, 2013, Ahmed filed a lawsuit against Glacier for his injuries, alleging negligence and unseaworthiness under the Jones Act and general

maritime law. On December 8, 2014, the matter proceeded to a bench trial. At trial, Ahmed testified and called five other witnesses. Due to a lack of evidence, the trial court dismissed Ahmed's unseaworthiness claim after the conclusion of his case. Glacier then called seven witnesses to testify.

On December 29, 2014, the trial court entered findings of fact, conclusions of law, and an order dismissing Ahmed's remaining negligence claim under the Jones Act. The trial court concluded that Ahmed did not carry his burden of proving that Glacier acted negligently.

On January 27, 2015, Ahmed filed a notice of appeal. His notice of appeal noted that he, "seeks review by the designated appellate court of Findings of Fact." In Section A of his notice of appeal, Ahmed listed the witnesses who testified at trial. Section B was entitled "Findings of Fact" and read, "2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14." Section C was entitled "conclusions of law" and read, "1, 2, 3, 4, 5, 6, 7, 8, 9." Ahmed also attached a signed document that read as follows:

> 1. My lawyer was not representing me well in front of the court[.]
>
> 2. [M]y lawyer refused to call all the witnesses I work with in the freezer hold only one and did not call him to come in the court.
>
> 3. [M]y lawyer did not provide me a translator and used defendant's interpreter.
>
> 4. My lawyer called Jeff Ivie as a witness and never was I told about him. I only saw his name on the court decision as my witness.
>
> 5. I still have problem for frostbites on my fingers and carpal tunnel pain and numbness.

DISCUSSION

Ahmed's opening brief to this court is a verbatim copy of his trial brief submitted below. While Ahmed's opening brief makes arguments and provides legal authority supporting his negligence allegations against Glacier, it does not identify any errors made by the trial court in reaching its decision. RAP 10.3(a)(4) states that an appellant's brief should contain a separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error. And, RAP 10.3(g) requires an appellant to make a separate assignment of error for each finding of fact he or she contends was improperly made with references to the finding by number. This court will only review a claimed error, which is included in an assignment of error or disclosed in the associated issue. Id. But, in appropriate circumstances, this court will waive technical violations of RAP 10.3(g) where the appellant's brief makes the nature of the challenge clear and includes the challenged findings in the text. Harris v. Urell, 133 Wn. App. 130, 137, 135 P.3d 530 (2006).

Here, Ahmed identified findings of fact by number in his notice of appeal, but he did not indicate why he was challenging those findings. And, there are no assignments of error in either his opening brief or his reply brief. Ahmed does, however, appear to challenge one finding of fact and a related conclusion of law in his reply brief. Specifically, Ahmed challenges the trial court's finding that he failed to prove that Vercruysse ordered him to go back to the freezer after Ivie had instructed him not to work there. And, he challenges the trial court's conclusion of

law that Glacier did not act negligently under the Jones Act with respect to any preinjury training or post-injury practices.

In a bench trial where the court has weighed the evidence, this court's review is limited to determining whether substantial evidence supports the trial court's findings of fact and whether the findings of fact support the trial court's conclusions of law.[1] Day v. Santorsola, 118 Wn. App. 746, 755, 76 P.2d 1190 (2003). The unchallenged findings of fact are verities on appeal. Moreman v. Butcher, 126 Wn.2d 36, 39, 891 P.2d 725 (1995).

Both parties admitted evidence at trial about the encounter between Ahmed and Vercruysse. At trial, Ahmed testified that after Ivie instructed him to work on the pier instead of in the freezer, Vercruysse, a supervisor who had just come on shift, ordered Ahmed to return to the freezer. In support of his assertion, Ahmed submitted the deposition testimony of Yatte Dioumassy, another processor on the vessel. At trial, Vercruysse testified for Glacier. Vercruysse testified that he never told Ahmed that he needed to go back into the freezer hold after he had been medically examined. He further testified that when one of the mates or the captains makes an assessment that a person should not perform a particular job, he does

[1] An issue raised and argued for the first time in a reply brief is too late to warrant consideration. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). But, it is in the discretion of an appellate court to decide an issue regardless of which brief addresses it. Boyd v. Davis, 127 Wn.2d 256, 265, 897 P.2d 1239 (1995). We choose to exercise our discretion and consider Ahmed's challenge to the finding of fact and conclusion of law noted in his reply brief.

not defy their orders. And, Wes Tabaka, at the time a "freezer boss"[2] on Glacier's ship, testified that he did not recall working with Ahmed in the freezer hold, but remembered working with him out on the docks.

After reviewing this evidence, the trial court noted that Dioumassy's deposition testimony stated that Dioumassy saw Ahmed in the freezer and that Ahmed said the foreman asked him to go there.[3] Notwithstanding this testimony, the trial court found that Dioumassy's deposition testimony lacked specificity as to the date and time of when Dioumassy saw Ahmed in the freezer hold such that his testimony did not necessarily rebut Vercruysse's account. Consequently, the trial court found that Ahmed did not meet his burden of proof on that issue.

On appeal, Ahmed again relies on Dioumassy's testimony. And, Ahmed contends that if the attorneys had specifically asked Dioumassy about the date and time of his encounter with Ahmed in the freezer, Dioumassy would have been able to answer, confirming Ahmed's account of the events. To the extent Ahmed is arguing that the trial court's finding is unsupported by substantial evidence because Dioumassy's deposition testimony calls Vercuysse's testimony into question, we cannot review that argument. See Morse v. Antonellis, 149 Wn.2d 572, 574, 70 P.3d 125 (2003) (noting that credibility determinations are solely for the trier of fact and cannot be reviewed on appeal).

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[2] A freezer boss makes sure that everything is running smoothly so that the factory can keep running efficiently. Freezer bosses go through additional safety training and have responsibilities regarding overseeing the crew's safety.

[3] Excerpts of Dioumassy's deposition are in the record, but the portion of the deposition referenced by the trial court—page 20—is not in the record.

Vercuysse testified that he did not order Ahmed to return to the freezer. Tabaka testified that he did not work with Ahmed in the freezer. Apparently, the trial court was unpersuaded that this testimony was not credible. We conclude that substantial evidence supports the trial court's finding of fact that Ahmed failed to prove that Vercuysse ordered him to return to the freezer after he was treated by Ivie.[4] And, to the extent Ahmed is arguing that his attorney was ineffective by not asking Dioumassy the appropriate follow-up questions during his deposition, this lawsuit is not the appropriate forum to raise the efficacy of his legal representation.

Ahmed does not explicitly cite or challenge other specific findings of fact or conclusions of law, and the nature of his arguments based on other findings or conclusions is not clear from his briefs. As such, his other arguments are not properly before us. See RAP 10.3(g); Harris, 133 Wn. App. at 138 (technical violations of RAP 10.3(g) may be waved where the brief makes the nature of the challenge clear and included challenged findings in text). But, even if we were to consider Ahmed's other arguments, and those issues attached to Ahmed's notice of appeal, they constitute challenges to the efficacy of his legal representation—

[4] Ahmed also challenges the trial court's conclusion of law that Glacier did not act negligently under the Jones Act with respect to any preinjury training or post injury practices. He argues that Yatte's deposition disproves that conclusion. But, our review of conclusions of law is limited to whether the findings of fact support the conclusion. Here, Ahmed does not argue that the conclusion of law is unsupported by the factual findings. And, to the extent that he argues Yatte's deposition undercuts the factual findings supporting the trial court's conclusion, his argument lacks the proper specificity for our review. See RAP 10.3(a)(6) (stating that argument must be supported with references to relevant parts of the record).

not challenges to the actions of the trial court in his case against Glacier. Therefore, those issues are not properly raised before this court.

But, Ahmed makes two arguments framed as challenges to his legal representation that could also relate to an error made by the trial court. First, Ahmed asserts that he did not have an adequate translator at trial and that he had difficulty understanding the translators. Secondly, he notes that he did not have the benefit of a jury trial. Because inadequate interpreter services and the wrongful denial of a jury demand have the capability of resulting from an erroneous decision of the trial court, in an abundance of caution, we will consider those two issues.[5]

First, Ahmed argues that he did not have an adequate interpreter for trial. He claims both that he did not have an interpreter for the entire trial as he should have and that he was unable to understand the interpreter that was provided to him.

> It is the declared policy of this state under RCW 2.43.010
>
> > to secure the rights, constitutional or otherwise, of persons who, because of a non-English speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.
>
> "Non-English speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language. RCW 2.43.020(4).

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[5] Ahmed argued that he did not have a proper interpreter in the arguments attached to his notice of appeal. But, he first noted that he did not have the benefit of a jury trial in his reply brief. An issue raised and argued for the first time in a reply brief is generally too late to warrant consideration. Cowiche Canyon, 118 Wn.2d at 809. But, we exercise our discretion and consider Ahmed's argument to confirm that any errors regarding the jury demand made in Ahmed's case are not attributable to the trial court. See Boyd, 127 Wn.2d at 265.

The right to an interpreter in the civil context is not as well established as in the criminal context. But, because the statute on its face applies to any non-English speaking person involved in a "legal proceeding," we apply to the civil setting the same basic right to an interpreter and standard of review for the trial court's decision whether to appoint one. Id.; see, e.g., In re Marriage of Olson, 69 Wn. App. 621, 624, 850 P.2d 527 (1993) (noting that the appointment of an interpreter in a civil dissolution matter is within the discretion of the trial court and finding that a hearing-impaired party was not entitled to an interpreter because his need for one was not made apparent to the trial judge and his impairment was accommodated to the extent required).

Here, prior to trial beginning, Ahmed's attorney informed the trial court that Ahmed would require an Arabic interpreter. The trial court then stated to counsel, "Your client, Mr. Ahmed, is not requiring that an interpreter be present the entire trial, just when he's testifying." Ahmed's attorney clarified that the court's understanding was correct. The trial court noted, "I just don't want any issues coming back later on that [Ahmed] didn't have a fair hearing." Ahmed's counsel replied that Ahmed would not need an interpreter for the majority of his testimony and that the interpreter was necessary for only technical issues that Ahmed could not understand or articulate. The court then stated, "I just don't want any issues coming back later on saying that, you know, we requested an interpreter should have been present the whole proceedings, when it's hard to get one." Neither

party objected at that point or noted interest in having an interpreter throughout the entire proceeding.

Ahmed was the first witness to testify at trial. An interpreter was present during Ahmed's testimony. Ahmed began his testimony on direct examination by speaking in English. After several minutes of testimony, the court told Ahmed's attorney that he should begin using the interpreter, because Ahmed began using technical terms. The interpreter clarified that he would interpret everything from that point onward during Ahmed's testimony. Still, Ahmed attempted to use English and the court had to encourage Ahmed to speak in Arabic. At one point, counsel for Glacier noted that both Ahmed and the interpreter were both speaking English and that counsel was able to understand Ahmed. Later, the court again advised Ahmed's attorney that Ahmed should use the interpreter. After Ahmed testified, the interpreter was present in the courtroom during Ivie's testimony. But, he was dismissed because he was not needed. Later, Ahmed returned to testify on rebuttal. Ahmed's counsel noted that, "He feels comfortable doing it given the subject matter without [an] interpreter."

Based on this record, there is no evidence that Ahmed requested interpretation services and that the request for an interpreter was denied. In fact, the trial court encouraged Ahmed to use the interpreter and he resisted. Moreover, based on this record, it is not evident that Ahmed is considered a "non-English speaking person" requiring an interpreter under the statute. RCW 2.43.020(4).

Therefore, we conclude that any potential error regarding a lack of interpretation services at trial is not attributable to the trial court's abuse of discretion.

Ahmed also notes that he did not have a jury trial, implying that he wanted a jury trial. Ahmed's original complaint included a jury demand. On November 6, 2014, Glacier filed a jury demand. Glacier noted that it had not filed a jury demand up until that point, because it relied on Ahmed's request for a jury demand in his initial complaint. Glacier stated that it learned from Ahmed on November 6 that he failed to pay the jury fee and that he no longer wanted a jury trial. Therefore, Glacier attempted to pay the jury fee and demanded a trial by jury. On November 12, 2014, Ahmed filed a motion to strike an untimely jury demand, arguing that Glacier waived its right to a jury trial under CR 38 and King County Local Civil Rule (KCLCR) 38.

CR 38(b) outlines how a party must make a demand for a jury. The rule provides that the party must serve upon the other party a demand in writing, by filing the demand with the clerk, and by paying the jury fee required by law. Id. CR 38(d) states that the failure of a party to serve a demand as required by the rule and to pay the jury fee constitutes a waiver by the party of trial by jury. KCLCR 38 provides that the demand for a jury must be contained in a separate document and that the demand must be filed and served no later than the final date to change trial designated in the case schedule.

Here, the amended case schedule specified that the last date for filing the jury demand was August 25, 2014. No separate document containing a jury

demand was filed nor was the jury fee paid before that date. Based on this information, on November 20, 2014, the trial court struck the jury demand and concluded that the case would be a bench trial. On this record, it is clear both that Ahmed's counsel actively sought a bench trial instead of a jury trial and that the trial court properly concluded that the parties had waived their rights to a jury trial. Therefore, if there is any error attributable to the trial proceeding as a bench trial, the error is not as a result of an action taken by the trial court.

Finally, in response to Ahmed's opening brief, Glacier argues that the issues Ahmed raises on appeal are frivolous. Glacier cites to RAP 18.9(a) and notes that an appellate court may on its own initiative order a party who files a frivolous appeal to pay terms or compensatory damages to any party harmed by its actions. Glacier argues that Ahmed's appeal is frivolous, because Ahmed only critiques his legal representation and restates the fact that he is injured without referencing Glacier's negligence. Glacier also argues that the appeal is frivolous, because Ahmed's opening brief provides no support of the issues for review, no citations to legal authority supporting that the trial court erred in its factual findings or misapplied the law, and makes no reference to relevant parts of the record proving such errors.

Under RAP 18.9(a), we may award sanctions, such as a grant of attorney fees and costs to an opposing party, when a party brings a frivolous appeal. Granville Condo. Homeowners Ass'n v. Kuehner, 177 Wn. App. 543, 557, 312 P.3d 702 (2013). Even assuming Ahmed's appeal is frivolous, we must then decide

whether to exercise our discretion to award fees to Glacier. See RAP 18.9(a). We decline to do so.

We affirm.

WE CONCUR:

Sub 73

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11

FILED

KING CO SUPERIOR CT
BARBARA MINER
Director & Superior CT Clerk
Seattle WA

13-2-23510-2

Rcpt. Date	Acct. Date	Time
01/27/2015	01/27/2015	04:03 PM

Receipt/Item #	Tran-Code	Docket-Code
2015-07-00700/01	1116	$APF

Cashier: APG

Paid By: AHMED, ELSADIG
Transaction Amount: $298.00

FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

DO NOT SENT TO COURT INDICATED HEREIN

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

Elsadig Ahmed

Plaintiff/Petitioner,

vs.

Glacier Fish Company, LLC.

Defendant/Respondent.

NO. 13-2-23510-2 [ ] SEA
[ ] KNT

NOTICE OF APPEAL to court OF APEALS

is attached.

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SUPERIOR COURT OF WASHINGTON FOR
(king)COUNTY

(ELSADIG AHMED), Plaintiff, v. (GLACIER FISH COMPANY,LLC), Defendant.	)	No. (13-2-23510-2)SEA NOTICE OF APPEAL TO COURT OF APPEALS

(ELSADIG AHMED), (plaintiff), seeks review by the designated appellate court of Findings of Fact

A. witnesses

a. The following witnesses testified at trial for plaintiff.

ii. Jeff Ivie .

vi. Dr William Berg

b. The following witnesses testified at trial for defendant.

i. Jeff Ivie.

ii. Wes Tabaka.

iii. Rune Bjornerem.

iv. Keith Pendleton.

v. Marc Vercruysse.

vi. Jose Garza.

viii. Renee Sage.

v. Dr. Kenneth R. Ttucker.

B. Findings of Fact

2,3,4,5,6,7,8,9,10,11,13,14

C . conclusions of law

1,2,3,4,5,6,7,8,9.
entered on (December 29-2014)

1-27-2015

Signature
ELSADIG AHMED
PLAINTIFF ,PRO SE

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(206-571-3299)
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COPY SENT TO COURT INDICATED HEREIN

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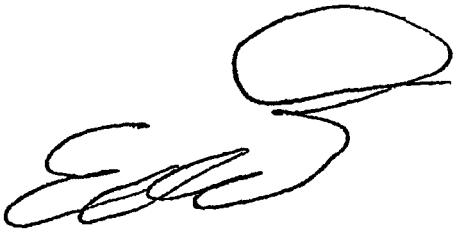
1. My lawyer was not representing me well in front of the court

2. my lawyer refused to call all the witnesses I work with in the freezer hold only one and did not call him to come in the court .

3. my lawyer did not provide me a translator and used defendant's interpreter .

4. My lawyer called Jeff Ivie as a witness and never was I told about him. I only saw his name on the court decision as my witness.

5. I still have problem for frostbites on my fingers and carpal tunnel pain and numbness .



1-27-2015

THE HONORABLE SAMUEL S. CHUNG

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

ELSADIG AHMED, Plaintiff, v. GLACIER FISH COMPANY, LLC., a Washington Limited Liability Company, Defendant.	NO. 13-2-23510-2 SEA **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF DISMISSAL** **Clerk's Action Required**

This matter came for a bench trial from December 8, 2014 through December 11, 2014. Plaintiff Elsadig Ahmed ("Ahmed") proceeded on two claims against Defendant Glacier Fish Company, Llc., ("Glacier") a Washington Limited Liability Company, for negligence under the Jones Act, 46 USC § 30104 et. seq., and the common law "unseaworthiness" claim. Due to lack of evidence, this Court dismissed Ahmed's unseaworthiness claim after the conclusion of his case.

A. Witnesses

a. The following witnesses testified at trial for Plaintiff:

i. Elsadig Ahmed
ii. Jeff Ivie
iii. Lynne Wolk
iv. Dr. Robert J. Kropp
v. Yatte Dioumassy (via deposition)
vi. Dr. William Berg (via deposition)

b. The following witnesses testified for Defendant:

i. Jeff Ivie
ii. Wes Tabaka
iii. Rune Bjornerem
iv. Keith Pendleton, Jr.
v. Marc Vercruysse
vi. Jose Garza
vii. Dr. Kenneth R. Tucker

B. FINDINGS OF FACT

1. Plaintiff Elsadig Ahmed ("Ahmed") is a recent immigrant/refugee from Darfur, Sudan. After arriving in the US, he settled in Iowa working on various minimum wage jobs including janitorial work. After hearing about opportunities in the fishing industry, he went to Alaska. He found work as a fish processor for two companies for several fishing seasons before being hired by Defendant Glacier in 2010.

2. In June, 2010, Ahmed was working as a processor on Glacier's factory trawler vessel, F/V Pacific Glacier. Specifically, on June 23, 2010, Ahmed worked in the vessel's freezer hold, where boxes of processed fish are stacked and stored before they are unloaded at the dock.

3. For workers in the freezer hold, Glacier made protective equipment available, and required the workers to dress properly, including wearing proper boots and gloves. Usually, workers purchased the equipment prior to boarding the vessel or they acquired them at the vessel store.

4. Evidence produced at trial showed that Glacier held safety meetings before each trip. At these meetings, managers/supervisors instructed crewmembers to leave the freezer hold and warm up if they become cold during an offload. Workers were told to change their gloves and to make sure their hands and feet are warm during the offloads.

5. On or about June 23, after working several hours in the freezer, Ahmed complained to the shift supervisor about pain and numbness in his fingers. The supervisor told Ahmed to go see the medic, ship's medical officer on the ship's bridge.

6. Jeff Ivie, a second mate of the vessel, was the ship's medic. Ivie received the required training and was qualified by the Coast Guard to serve as a medic. The vessel also has doctors available online or via telephone.

7. According to Ivie, when Ahmed came to see him, he examined Ahmed's hands. He observed blood circulation in the fingers and that there was no signs of any discoloration or blisters indicating frost bites. Ivie gave Ahmed three tabs of 800 mg. ibuprofen for pain and inflammation of his fingers. He also instructed Ahmed to not to work in the freezer and instead to work on the pier. Ship's medical log, Exh. 14, supports Ivie's testimony.[1]

8. Pursuant to Ivie's directives, Ahmed worked several hours on the pier assisting in the unloading of the cargo. Then, according to Ahmed, Marc Vercruysse, the new shift supervisor, ordered Ahmed to return to the freezer for Ahmed's second shift. Ship's crew work two 8 hour shifts for a total of 16 hours with a break in between.

9. Vercruysse testified at trial and denied that he ordered Ahmed to return to

[1] Ahmed testified that Ivie did not even touch or feel his hands. This testimony does not seem credible in light of Ivie's detailed notes in the medical log.

the freezer. According to Vercruysse, the ship's crew, including supervisors must follow instructions from the medical officer. Another witness, Wes Tabaka, who was the "freezer boss" testified that he did not see Ahmed in the freezer.

10. In support of his assertion that Vercruysse ordered him back to the freezer, Ahmed submitted the deposition testimony of Yatte Dioumassey, another processor on the vessel. However, Dioumassey's testimony on page 20 of his deposition simply states that he saw Ahmed in the freezer and that "[Ahmed] said the foreman asked me to go." This testimony is too general regarding any specificity such as the date and time. Overall, the Court does not find that Ahmed met his burden of proof on this key issue.[2]

11. On June 30, 2010, Ahmed, who had not been working outside the freezer hold since June 23, complained again about his hands to a different medic, Keith Pendleton. This complaint was recorded in the ship's medical log, and Pendleton reported this by email to supervisors, Rune Bjornerem and Cyndie Thompson. Exh. 33.

12. On July 16, 2010, Ahmed made a third complaint about his hands to Jeff Ivie who then drove Ahmed to the clinic in Dutch Harbor. The clinic diagnosed Ahmed with "frostbite to fingertips." Chart notes from that visit state that Ahmed may not work in the freezer because he has an "increased risk of *repeat* frostbite" (emphasis added).

13. Ahmed did not return to the vessel for the rest of the 2010 season. But he continued to seek treatment for his hands including at US Healthworks in Seattle. October 13, 2010 notes from this clinic states that the treating physician told Ahmed that "he can return to work, although he may disagree." Exh. 5. Indeed, Ahmed did work for

[2] To the extent that the testimony was offered to establish the truth of the matter asserted, the statement attributable to Ahmed would constitute inadmissible hearsay.

Glacier in 2011 and 2012 working as a candler, a job consisting of removing bones and other defects from the fish on a lighted assembly line.

14. Ahmed suffered carpal tunnel syndrome on both wrists following work during a shipyard period in June, 2012. Ahmed has reached maximum cure for the carpel tunnel syndrome, and Glacier has paid all maintenance and costs relating to the medical treatments.

15. Glacier paid Ahmed $76,267.96 for his work in 2012. He has not worked in the fishing industry since.

C. CONCLUSIONS OF LAW

1. Although brought in Washington State Court, all substantive aspects of Ahmed's claims are governed by federal admiralty law. Chicago Rock Island, & Pacific Railway Co. v. Devine, 239 U.S. 52, 36 S.Ct. 27, 60 L.Ed. 140 (1915).

2. The elements of a Jones Act claim are duty, breach, notice and causation. Ribitzki v. Canmar Reading & Bates, 111 F.3d 658, 662 (9th Cir. 1997). The quantum of evidence necessary to support a finding of Jones Act negligence is less than that required for common law negligence, Ward v. American Hawaii Cruises, Inc., 719 F.Supp. 915, 917 (D.Haw.1988). But it must still be proven by a preponderance of the evidence. In re Hechinger, 890 F.2d 202, 208 (9th Cir. 1989), cert. denied, 498 U.S. 848, 111 S. Ct. 136,112 L. Ed. 2d 103 (1990). An injury alone does not create Jones Act liability; the plaintiff must show that the employer's conduct fell below the required standard of care. Gautreaux v. Scurlock Marine Inc., 107 F.3d 331, 335 (5th Cir. 1997).

3. Employer is not liable when an injury arises solely from the ordinary and normal activities or risk of seaman's work in the absence of proof that the complained

injury was caused by employer's negligence. An employer simply is not required to protect (indeed cannot protect) employees from all types of injuries. Schouweiler v. Western Towboat Co., 2007 U.S. Dist. Lexis 95217 (W.D. Wa 2007).

4. On June 23, 2010, Ahmed claimed his fingers began to bother him after performing normal processor duties in the freezer hold. At the time, Ahmed was wearing gloves and glove liners. When Ahmed initially complained of cold hands, he was evaluated by the vessel's medic, who did not see signs of frost bite but still ordered him not to work in the freezer. As stated above, this Court does not find that Ahmed's supervisor, Vercruysse ordered him back to the freezer. Evidence show that Ahmed did not work in the freezer again.

5. When Ahmed continued to complain of his hands bothering him, he was taken to the Dutch Harbor clinic for evaluation who told him that he could continue to work but not in the freezer hold. Ahmed did not return to work in 2010 after this clinic visit.

6. Although the standard for negligence is lower under the Jones Act, the Court does not find that Glacier acted negligently with respect to any pre injury training or post injury, i.e., after Ahmed complained about his cold hands. While undoubtedly cold, Ahmed testified that he wore gloves, liners, freezer suit and boots at all times as required. Glacier's witnesses testified that they provided training before every voyage and allowed crewmembers to warm up. There was no admitted evidence that Glacier prevented crewmembers from leaving the freezer to warm up as needed.

7. The Court finds that at the time of the injury allegedly on June 23, 2010, Plaintiff Ahmed was relatively experienced seaman having worked in fishing trawlers in

Alaska for several years including at other companies. He had worked in the freezer hold and was familiar with the ship's operations including offloading of its cargo. He was aware of the risks of working in the obvious cold environment.

8. The Court does not find that Ahmed carried his legal burden that Glacier acted negligently in caring for him. When Glacier first learned of Ahmed's complaint, Glacier's medic inspected his hands for signs of frostbite. When the medic noted no signs of frostbite or injury, Glacier acted reasonably by ordering him not to return to his offloading duties in the freezer hold. Glacier acted reasonably by finding substitute work on the dock during offloads and at the candling table during regular fishing operations. All of the medical provider opined that Ahmed can return to work, except in the freezer hold, an accommodation Glacier provided.

9. ACCORDINGLY, the Court finds in favor of Defendant Glacier and against Plaintiff Ahmed, and dismisses Ahmed claim for negligence under the Jones Act. The clerk is hereby directed to enter judgment in favor of Defendant Glacier.

SO ORDERED,

Dated this 24th day of December, 2014.

Honorable Samuel Chung
KING COUNTY SUPERIOR COURT JUDGE