STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2024 CA 0913

Mot
CHH

CALVIN M. COSTANZA

VERSUS

BPE Edwards, J, concurring w/ reasons

FLORIDA MARINE TRANSPORTERS, LLC, PBC MANAGEMENT, LLC, AND HOUSTON CASUALTY COMPANY

Judgment Rendered: APR 17 2025

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 2017-12934, Division A

The Honorable Raymond S. Childress, Judge Presiding

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* * * * * * * *

BEFORE: THERIOT, HESTER, AND EDWARDS, JJ.

THERIOT, J.

In this toxic tort case filed under the Jones Act and general maritime law, the plaintiff appeals from the dismissal of his claims with prejudice following a trial on the merits. For the reasons set forth herein, we affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Calvin M. Costanza, worked for Florida Marine Transporters, L.L.C. ("FMT") from February 5, 2011 until March 30, 2012. While employed by FMT, Costanza worked initially as a deckhand, then a tankerman-in-training, and then a tankerman. While working as a tankerman-in-training and as a tankerman, Costanza assisted in loading and unloading various materials on to and off of barges. In this role, Costanza alleges that he was exposed to benzene. After leaving his employment with FMT in March of 2012, Costanza went to work for another company, AccuTRANS, as a shore tankerman in order to be closer to home. He was still working in this capacity at AccuTRANS in January of 2015, when he was diagnosed with Hodgkin's Lymphoma. Costanza underwent approximately six months of treatment with chemotherapy and radiation, and following treatment, he returned to work for AccuTRANS. However, after less than six months of being in remission, Costanza relapsed. He was treated aggressively with chemotherapy and radiation and ultimately underwent a stem cell transplant. After the stem cell transplant, he remained in complete remission, but was unable to return to the type of manual labor he had previously performed.

On June 27, 2017, Costanza filed a petition for damages under the Jones Act and general maritime law against FMT, PBC Management, L.L.C., and FMT's insurer, Houston Casualty Company[1] (collectively "FMT"), alleging that he contracted Hodgkin's Lymphoma as a direct result of his exposure to toxic and carcinogenic substances in the course and scope of his employment with FMT.

[1] PBC Management, L.L.C. and Houston Casualty Company were not named as defendants in Costanza's original petition, but were added by supplemental and amending petitions filed on October 24, 2017 and October 30, 2017.

Costanza alleged that this exposure was due to FMT's negligence and the unseaworthiness of its vessels and/or the vessels on which FMT assigned him to work. Costanza later supplemented and amended his petition on December 23, 2019 to add an additional claim for his fear of developing cancer in the future as a result of his "regular and repeated exposure to concentrations of toxic carcinogenic substances."[2]

A bench trial was held on July 11-14, 2022, following which the parties submitted deposition testimony in lieu of live testimony and post-trial memoranda and the trial court took the matter under advisement. In a judgment dated January 9, 2023, the trial court found that Costanza failed to meet his burden of proof on causation and dismissed all of Costanza's claims with prejudice. In written reasons for judgment, the trial court explained that it found the opinions of FMT's expert witnesses, Dr. Allison Stock and Dr. Thomas Cosgriff, that there is no causal relationship between benzene exposure and Hodgkin's Lymphoma, to be more convincing than the opinion of Costanza's expert witness, Dr. Patricia Williams, that benzene exposure can cause Hodgkin's Lymphoma. Costanza filed a motion for new trial, which the trial court denied following a hearing.

Costanza appealed, assigning the following trial court errors:

1. The trial court erred when it failed to apply the Jones Act "featherweight" standard for causation.

2. The trial court erred when it failed to address Plaintiff's unseaworthiness claim.

3. The trial court erred when it ruled that Plaintiff had not met its burden of establishing general and specific causation between exposure to benzene and other toxic chemicals and Hodgkin['s] Lymphoma.

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[2] FMT filed an exception raising the objection of prescription with regard to Costanza's fear of future cancer claim. FMT urged that Costanza's claim for fear of contracting cancer caused by exposure to hazardous material during his employment with FMT expired three years from the last date of employment with FMT, i.e., March 30, 2015, and therefore his Fourth Supplemental and Amending Petition, filed seven years after he ceased employment with FMT, was untimely. Costanza opposed the exception, urging that while FMT is correct that a three-year prescriptive period applies to his claim under 46 U.S.C. §30106, this new claim relates back to the filing of his original petition in 2017. The trial court set the rule to show cause on FMT's exception of prescription for hearing on the trial date, July 11, 2022.

4. The trial court erred when it ruled that the methodology employed by Dr. [Allison] Stock was far superior to and more convincing than that employed by Dr. Patricia Williams.

5. The trial court erred when it gave greater weight to the testimony of the defense expert, Dr. Thomas Cosgriff[,] who never treated the Plaintiff, rather than Plaintiff['s] own treating physician, Dr. Burke Brooks.

6. The trial court erred in failing to award damages on Plaintiff's claim of contracting Hodgkin['s] Lymphoma as a result of exposure to benzene while employed as a Jones Act seaman with [FMT].

7. The trial court erred in opining that Plaintiff's fear of cancer claim was not related to his exposure to benzene and its failure to award damages as there was ample expert testimony linking exposure to benzene and cancer.

8. The trial court erred in denying Plaintiff's Motion for a New Trial as the Judgment of the trial court was clearly contrary to the law and evidence presented at trial.

DISCUSSION

Hodgkin's Lymphoma Claims

Costanza raised a number of assignments of error (Nos. 1-6) on appeal relating to the trial court's dismissal of his Hodgkin's Lymphoma claims based on his failure "to meet his burden of proof on both general and specific causation."

Proof of causation in toxic tort cases has two components, general and specific. *Bradford v. CITGO Petroleum Corp.*, 2017-296, p. 6 (La.App. 3 Cir. 1/10/18), 237 So.3d 648, 659, *writ denied*, 2018-0272 (La. 5/11/18), 241 So.3d 314. General causation refers to whether a substance is capable of causing a particular injury or condition in the general population, while specific causation refers to whether a substance caused a particular individual's injury. *Knight v. Kirby Inland Marine Inc.*, 482 F.3d 347, 351 (5th Cir. 2007). Evidence concerning specific causation in toxic tort cases is admissible only as a follow-up to admissible general-causation evidence. *Id.* Thus, there is a two-step process in examining the admissibility of causation evidence in toxic tort cases. First, the trial court must

determine whether there is general causation. Second, if it concludes that there is admissible general-causation evidence, the trial court must determine whether there is admissible specific-causation evidence. *Id.*

Jones Act negligence and unseaworthiness under general maritime law are two distinct causes of action, each involving separate standards of proof and causation. *Cormier v. Cliff's Drilling Co.*, 93-1260 (La.App. 3 Cir. 5/4/94), 640 So.2d 552, 555; see also *Parfait v. Transocean Offshore, Inc.*, 2004-1271, pp. 12-13 (La.App. 4 Cir. 8/10/07), 992 So.2d 465, 474, *writ denied*, 2007-1831 (La. 9/21/07), 964 So.2d 347.

The Jones Act provides a seaman a cause of action for injuries sustained in the course and scope of employment as a result of his employer's negligence. See 46 U.S.C. §30104; *Tisdale v. Marquette Transportation Co., LLC*, No. 22-237, 2024 WL 2023041, at *2 (E.D. La. May 7, 2024). Pursuant to the Jones Act, an employer has a continuing duty to provide a reasonably safe place to work and to use ordinary care to maintain the vessel in a reasonably safe condition. *Soudelier v. PBC Mgmt. Inc.*, 2021-744, pp. 4-5 (La.App. 5 Cir. 12/21/22), 355 So.3d 135, 140, *writ denied*, 2023-00084 (La. 3/28/23), 358 So.3d 516.

Unseaworthiness is a distinct concept from negligence. *Soudelier*, 2021-744 at p. 10, 355 So.3d at 143. Under the general maritime law, an owner of a vessel has an absolute duty to furnish a seaworthy vessel, and a breach of that duty gives rise to a claim for general damages. *Vendetto v. Sonat Offshore Drilling Co.*, 97-3103, p. 14 (La. 1/20/99), 725 So.2d 474, 481. To state a cause of action for unseaworthiness, the plaintiff must allege an injury caused by a defective condition of the ship, its equipment, or its appurtenances. Members of the crew of a vessel are also warranted as seaworthy, and there may be liability for negligent orders, or for utilizing an understaffed or ill-trained crew. *Soudelier*, 2021-744, pp. 10-11, 355 So.3d at 143.

The legal standard regarding the level of causation under the Jones Act is different than that required for other torts and under the general maritime law, such as for unseaworthiness. Under the Jones Act, a seaman is only required to prove that the employer's negligence was "a" cause of his injury, regardless of how slight; whereas, under the general maritime law, a seaman is required to prove the traditional tort proximate cause standard. *Torrejon v. Mobil Oil Co.*, 2003-1426, p. 20 (La.App. 4 Cir. 6/2/04), 876 So.2d 877, 891, *writ denied*, 2004-1660 (La. 9/24/04), 882 So.2d 1125. The more stringent standard in an unseaworthiness claim puts the burden on the plaintiff to prove that the unseaworthy condition played a substantial part in bringing about or actually causing the injury and that the injury was either a direct result or a reasonably probable consequence of the unseaworthiness. *Soudelier*, 2021-744 at p. 11, 355 So.3d at 143. However, to establish causation under the Jones Act, a plaintiff bears only a "featherweight" burden of proof. Under this standard, a seaman may recover under the Jones Act if his employer's negligence contributed to his injury, even in the slightest degree. *Tisdale*, 2024 WL 2023041, at *2; see also *Underwood v. Parker Towing Co., Inc.*, No. 21-30531, 2022 WL 1553527, at *2 (5th Cir. May 17, 2022). Nevertheless, the Jones Act plaintiff still bears the burden of proving a causal connection between the damages claimed and the accident even if the damages are only the aggravation of a pre-existing injury and even if a seamen's burden to prove causation is "slight." See *Bancroft v. Mitchell Offshore Marine, LLC*, 2009-1067, p. 3 (La.App. 3 Cir. 5/19/10), 44 So.3d 711, 714, *writ denied*, 2010-2336 (La. 12/10/10), 51 So.3d 730, and *writ denied*, 2010-2358 (La. 12/10/10), 51 So.3d 733.

To support his claim that a cause of his Hodgkin's Lymphoma was occupational exposure to benzene at FMT, Costanza offered the expert testimony of Patricia Williams, Ph.D., who was accepted by the trial court as an expert in the field of toxicology. Dr. Williams testified that in her profession as an

ecotoxicologist, she looks at "how chemicals will affect various cells, tissues, and organ systems of the body." Dr. Williams testified that in preparing her opinion in this matter, she researched benzene exposure and Hodgkin's Lymphoma and interviewed Costanza on three occasions. In these interviews, Dr. Williams gathered information from Costanza about his workplace environmental exposures, the onset of his symptoms, and his diagnosis and treatment, including his relapse. In addition to Costanza's reports of his workplace exposure, Dr. Williams also relied on exposure data provided by Costanza's industrial hygienist, Mike Harris. According to Dr. Williams, Costanza reported a workplace exposure at FMT that she considered to be a "very high acute exposure," which was "extremely important to the toxicology of this case" because such an exposure to benzene would overwhelm the body's cellular-defense mechanisms. Dr. Williams testified regarding a number of studies or articles that, according to Dr. Williams, suggested that an association exists between benzene exposure and Hodgkin's Lymphoma. Citing these sources, Dr. Williams concluded that benzene exposure can cause Hodgkin's Lymphoma. Furthermore, she testified that while she could not rule out other things that could have caused Costanza's Hodgkin's Lymphoma, based on the significant exposures reported by Costanza, she believed that his Hodgkin's Lymphoma could have been caused, in whole or in part, by occupational benzene exposure at FMT. She opined that Costanza's occupational exposure to benzene at FMT "in concentrations known to cause adverse health effects" played a "significant role" in causing his Hodgkin's Lymphoma. On cross examination, Dr. Williams was asked about the methodology employed in reaching her expert opinions and about other cases in which her opinions had been called into question or rejected, including one toxic tort case in which her expert testimony was excluded because of a failure to "provide dose calculations and evidence of Plaintiff's level of exposure" and to "rule out other potential causes of the medical

condition on a scientific basis." Dr. Williams defended her methodology and explained that in those cases, she was simply being harassed by Daubert hearings and had "nothing but a clear record." According to Dr. Williams, the real problem in those cases was not her methodology or her expert opinions, but rather was unethical behavior, attorneys who were incompetent or lied to the judge, or judges who simply "copied and pasted . . . false information" or did not "pay attention to the proper methodology."

Costanza also offered the deposition testimony of his treating physician, Dr. Burke Brooks, Jr., in lieu of live testimony at trial. Dr. Brooks, a hematologist/oncologist, treated Costanza's Hodgkin's Lymphoma until the time of his relapse, at which time he recommended that Costanza go to M.D. Anderson, where he eventually underwent a stem cell transplant. Dr. Brooks testified that he had not researched the causes of Hodgkin's Lymphoma and did not have an opinion on what caused Costanza's disease because it was outside of his specialty. Dr. Brooks testified that he was aware of some of the risk factors for the disease, such as family history of the disease or a history of exposure to the Epstein-Barr virus, as well as the fact that the disease is more common in younger people, but he was not aware of any association between benzene exposure and Hodgkin's Lymphoma and would defer to the opinion of a toxicologist on the issue of causation.

FMT's expert witness, Dr. Allison Stock, was accepted by the court as an expert in toxicology and epidemiology. Dr. Stock testified that in her career, she has evaluated human health impacts from chemical exposures, asbestos exposures, and cancers in the environmental workplace, and in particular, she performed a benzene study that included studying the cancers that could be related to benzene exposure. In addition, Dr. Stock testified that she studied the causes of Hodgkin's Lymphoma in her Ph.D. courses and has continued to learn about Hodgkin's

Lymphoma and its causes throughout her career. Dr. Stock explained that there are a number of known risk factors for Hodgkin's Lymphoma, such as being young, being a white male, having a family history of the disease, and having a weakened immune system from certain viral exposures, such as the Epstein-Barr virus. Although there was no evidence that Costanza has a family history of Hodgkin's Lymphoma or any history of exposure to the Epstein-Barr virus, Dr. Stock testified that it is not necessary to have all of the risk factors in order to develop the disease, and Costanza has the two strongest risk factors for Hodgkin's Lymphoma, i.e., being young and being a white male. Furthermore, she noted that exposure to benzene, petrochemical products, or other environmental conditions is not considered to be a risk factor for development of Hodgkin's Lymphoma. Dr. Stock testified at length concerning a number of studies performed on workers exposed to benzene to varying degrees and for various lengths of time, none of which found any association between benzene exposure and Hodgkin's Lymphoma. Dr. Stock disagreed with Dr. Williams' opinion that an association exists between benzene exposure and Hodgkin's Lymphoma, explaining that Dr. Williams erroneously lumped cases of Non-Hodgkin's Lymphoma together with Hodgkin's Lymphoma in order to arrive at a suggestion that there was an association between benzene exposure and Hodgkin's Lymphoma, despite the fact that Non-Hodgkin's Lymphoma and Hodgkin's Lymphoma are two distinct forms of lymphoma with very different etiologies. Dr. Stock found nothing in any of the studies relied upon by Dr. Williams to suggest that Costanza's Hodgkin's Lymphoma was related to any occupational exposure. In addition, Dr. Stock testified that large regulatory agencies have also concluded that benzene exposure and Hodgkin's Lymphoma are not associated with each other. Dr. Stock's expert opinion, which she testified was based on "lots of data" and the biological mechanism of what benzene actually

does to the bone marrow, was that there is no basis for an association between benzene exposure and Hodgkin's Lymphoma.

FMT also offered the testimony of Dr. Thomas Cosgriff, M.D., who was accepted by the court as an expert in the fields of hematology and oncology. Dr. Cosgriff testified that he has treated many patients with Hodgkin's Lymphoma in his forty-year career[3] and has published a paper on Hodgkin's Lymphoma. Dr. Cosgriff testified that although he has had patients who were diagnosed with Non-Hodgkin's Lymphoma and reported a history of exposure to petrochemical products, including benzene, he has never had a patient with Hodgkin's Lymphoma who reported a history of such exposure. Dr. Cosgriff testified that updated studies on Hodgkin's Lymphoma, which he reviewed in preparation for his testimony in this matter, found no association between exposure to petrochemical products and Hodgkin's Lymphoma. Further, Dr. Cosgriff's expert opinion as a hematologist/oncologist was that there is no evidence that Hodgkin's Lymphoma is related to any chemical exposure.

In its reasons for judgment, the trial court explained that it concluded that the methodology employed by Dr. Stock was far superior to, and more convincing than, that employed by Dr. Williams. Specifically, the trial court noted:

> Dr. Williams confirmed that none of the textbooks that toxicologists teach from recognize a causal association between benzene and Hodgkin['s] Lymphoma, nor does the International Agency for Research on Cancer. Dr. Williams relied upon the same literature which was found in [*Knight*][4] [another case involving benzene and other toxic chemical exposure and a litigant who was diagnosed with Hodgkin's Lymphoma] to be unreliable and not relevant.

The trial court also found Dr. Cosgriff's testimony that he has seen no evidence suggesting a causal relationship between benzene exposure and Hodgkin's Lymphoma to be convincing. The trial court explained that based on the

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[3] Dr. Cosgriff testified that while Hodgkin's Lymphoma is relatively uncommon, he has "probably seen more Hodgkin's patients than most hematologists/oncologists" due to the fact that he spent twenty years of his forty-year career as an Army physician, the Army has a lot of young people, and young people are more likely to get Hodgkin's Lymphoma.

[4] *Knight*, 482 F.3d 347.

"convincing testimony of Dr. Stock and Dr. Cosgriff," it "cannot conclude that this particular substance is capable of causing Hodgkin['s] Lymphoma."

Costanza argues on appeal that the trial court erred in finding that Dr. Stock's methodology was far superior to and more convincing than the methodology employed by Dr. Williams and in giving greater weight to the testimony of FMT's expert, Dr. Cosgriff, who never treated Costanza, than to Costanza's treating physician, Dr. Brooks.

A factfinder is free to accept or reject in whole or in part any opinion expressed by an expert. The effect and weight to be given to expert testimony is within the factfinder's broad discretion. The factfinder may accept or reject any expert's view, even to the point of substituting its own common sense and judgment for that of an expert witness where, in the factfinder's opinion, such substitution appears warranted by the evidence as a whole. This decision will not be disturbed on appeal absent a finding that the factfinder abused its broad discretion. *Naquin v. Church Mut. Ins. Co.*, 2024-0303, p. 23-24 (La.App. 1 Cir. 12/30/24), --- So.3d ---, ---.

Furthermore, while Costanza is correct that a treating physician's opinion is generally given more weight than a non-treating physician's, the reason for the preference of a treating physician's testimony is that the treating physician is more likely to know the patient's symptoms and complaints due to repeated examinations and sustained observations. *Ponthier v. Vulcan Foundry, Inc.*, 95-1343, pp. 3-4 (La.App. 1 Cir. 2/23/96), 668 So.2d 1315, 1317; *Wells v. Allstate Insurance Co.*, 510 So.2d 763, 768 (La.App. 1 Cir. 6/23/87), *writ denied*, 514 So.2d 463 (La. 1987). The treating physician's testimony is not irrefutable, as the trier of fact is required to weigh the testimony of all medical witnesses. *Giavotella v. Mitchell*, 2019-0100, p. 28 (La.App. 1 Cir. 10/24/19), 289 So.3d 1058, 1078, *writ denied*, 2019-01855 (La. 1/22/20), 291 So.3d 1044. The weight to be given to

the testimony of experts is largely dependent upon their qualifications and the facts upon which their opinions are based, and the trial court is not bound to accept the testimony of an expert whose testimony is presumptively given more weight if he finds the opinion is less credible than that of other experts. *Ponthier*, 95-1343 at p. 4, 668 So.2d at 1317. The proper inquiry is whether, based on the totality of the record, the factfinder was manifestly erroneous in accepting the expert testimony presented by Dr. Cosgriff over that presented by Dr. Brooks, Costanza's treating physician. See *Giavotella*, 2019-0100 at p. 28, 289 So.3d at 1078. Notably, Dr. Brooks testified that he was not aware of any association between benzene exposure and Hodgkin's Lymphoma and would defer to the opinion of a toxicologist on the issue of causation, as it was outside of his specialty. Thus, in addition to the fact that the trial court found Dr. Cosgriff's testimony on causation to be convincing, since Dr. Brooks testified that causation was outside of his specialty and declined to give an opinion on what caused Costanza's disease, we cannot say that the trial court erred in relying on the testimony of a non-treating physician.

Following our review of the record in its entirety, although we may have weighed the evidence differently, we cannot say the trial court erred in finding the testimony of FMT's experts to be more credible than Costanza's experts. These assignments of error (Nos. 4 and 5) have no merit.

Costanza also argues that the trial court erred in failing to apply the "featherweight" standard for causation.

As previously discussed herein, while a Jones Act plaintiff need only prove a causal link between his injury and his employer's negligence by slight evidence, i.e., the featherweight standard, he still bears the burden of proving a causal connection. *Bancroft*, 2009-1067 at p. 3, 44 So.3d at 714. In this case, the trial court rejected the opinion of Costanza's expert witness that a causal connection

exists between benzene exposure and Hodgkin's Lymphoma and accepted the opinion of FMT's experts that there is no evidence that benzene exposure can cause Hodgkin's Lymphoma. With no credible evidence before the court that exposure to benzene can cause Hodgkin's Lymphoma and that it was a cause of Costanza's disease, it was not error for the trial court to conclude that Costanza failed to carry his burden of proof, despite the fact that his burden to prove causation was "slight." This assignment of error (No. 1) is without merit.

In assignment of error number three, Costanza argues that the trial court erred in finding that he failed to carry his burden of proving both general and specific causation.

A factfinder's determination regarding causation is a factual question that should not be reversed on appeal absent manifest error. *Moore v. Germania Select Ins. Co.*, 2023-0946, p. 3 (La.App. 1 Cir. 5/31/24), 391 So.3d 59, 62-63; *Gavagan v. United States*, 955 F.2d 1016, 1019 (5th Cir. 1992); see also *Soudelier*, 21-744, p. 6, 355 So.3d at 140 (state courts are to apply Louisiana's manifest error standard of review in general maritime and Jones Act cases). Under the manifest error standard, the appellate court does not decide whether the factfinder was right or wrong; rather, it must consider the entire record to determine whether a reasonable factual basis exists for the factual finding, and whether the finding is manifestly erroneous or clearly wrong. *Moore*, 2023-0946 at p. 3, 391 So.3d at 63. Reasonable persons frequently can and do disagree regarding causation in particular cases, but where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Moore*, 2023-0946 at pp. 3-4, 391 So.3d at 63. Further, when findings are based on determinations regarding witness credibility, the manifest error standard demands great deference to the factfinder's findings, for only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the

listener's understanding and belief in what is said. Accordingly, for the reviewing court, the issue to be resolved is not whether the factfinder was wrong, but whether the factfinder's conclusions were reasonable in light of the record viewed in its entirety. *Moore*, 2023-0946 at p. 4, 391 So.3d at 63.

Following our review of the record in its entirety, we cannot say that the trial court erred in concluding, based on the expert testimony of Dr. Stock and Dr. Cosgriff, that Costanza failed to prove that exposure to benzene can cause Hodgkin's Lymphoma (general causation) or that it caused his Hodgkin's Lymphoma (specific causation). This assignment of error (No. 3) also lacks merit.[5]

In assignment of error number two, Costanza argues that the trial court erred in failing to address his unseaworthiness claim. Silence in a judgment as to any issue, claim, or demand placed before the trial court is deemed a rejection of the claim and the relief sought is presumed to be denied. *Hagen v. Hagen*, 2023-0242, p. 11 n.5 (La.App. 1 Cir. 9/15/23), 376 So.3d 159, 168 n.5. Further, the trial court judgment dismissed "any and all claims of the Plaintiff filed against the Defendants," which includes Costanza's unseaworthiness claims, and the trial court's reasons for judgment explains that "[b]ecause the court has determined that plaintiff has failed to meet his burden of [proving] general and specific causation, the court finds in favor of FMT, dismissing plaintiff's claim, pretermitting the question of unseaworthiness and or negligence." Since in an unseaworthiness claim, Costanza still bears the burden of proving causation (by a more stringent standard of proof than in a Jones Act claim), once the trial court found that Costanza failed to prove general or specific causation, his unseaworthiness claim necessarily fails. This assignment of error (No. 2) lacks merit.

[5] Since we have determined that the trial court did not err in concluding that Costanza failed to carry his burden of proof on his Hodgkin's Lymphoma claims, we pretermit discussion of Costanza's assignment of error (No. 6), in which he argues that the trial court erred in failing to award damages for these claims.

Fear of Cancer Claims

Costanza also argues on appeal that the trial court erred in failing to award damages for his fear of cancer claims.[6] Although the trial court found that Costanza failed to prove that his alleged occupational exposure at FMT can cause Hodgkin's Lymphoma, and we have upheld this finding, Costanza argues that since benzene exposure can cause a host of other cancers besides Hodgkin's Lymphoma, and since Costanza testified at trial that he feared a future diagnosis of some other sort of cancer as a result of his occupational exposure to benzene, it was error for the trial court to dismiss his claims for fear of cancer.

A civil action for damages for personal injury or death arising out of a maritime tort must be brought within three years after the cause of action arose. 46 U.S.C. 30106; *Clay v. Union Carbide Corp.*, 828 F.2d 1103, 1105 (5th Cir. 1987). Costanza's original petition, filed June 27, 2017, sought damages arising from Costanza's development of cancer. Costanza's fear of future cancer claim, which was first raised on December 23, 2019 in his Fourth Supplemental and Amending Petition, sought "damages due to Costanza's fear of future cancer due to plaintiff's exposure to hazardous materials and vapors during his employment with defendant."

Costanza testified that he knew that he was being exposed to various chemicals during his employment at FMT, and although his occupational exposure at FMT ended, at the latest, on March 30, 2012, his last date of employment with FMT, he did not assert a claim for fear of developing any other type of cancer in the future until December 23, 2019.

Costanza's Fourth Supplemental and Amending Petition was filed over seven years after his employment with FMT terminated. He argues that his claim

[6] Although the trial court did not specifically discuss Costanza's fear of cancer claims in its judgment or reasons for judgment, silence in a judgment as to any claim before the trial court is considered a denial of that claim. *Caronna v. Outdoor Living, LLC*, 2023-1048, p. 17 n.8 (La.App. 1 Cir. 12/30/24), --- So.3d ---, n.8. Further, the trial court explained at the hearing on Costanza's motion for new trial that a denial of Costanza's fear of cancer claims was encompassed in its ruling dismissing Costanza's suit.

for fear of future cancer was timely because the petition related back to the filing of his original, timely filed petition. An amended complaint relates back to the date of the original petition when it "asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading." Fed.R.Civ.P. 15(c)(1)(B); see also *Prejean v. Industries Cleanup, Inc.*, 98-0948 (La. 12/1/98), 721 So.2d 1273, 1275 ("Where suit is begun in a state court on a federally created cause of action and there is a federal period of limitations applicable, state courts uniformly apply the federal period and, if they exist, the federal rules on tolling and other ancillary matters."). The jurisprudence imposes two distinct criteria for relation back: (1) the claim must arise from the same set of operative facts set out in the original petition, and (2) the opposing party must have been put on notice by the original petition of the claim alleged in the amended pleading. Both elements – same conduct and adequate notice – must be satisfied before relation back of new claims is permitted. An amended complaint that attempts to introduce a new legal theory based on facts different from those underlying the timely claims will not relate back. *Louisiana Wholesale Drug Co., Inc. v. Biovail Corp.*, 437 F.Supp. 2d 79, 86 (D.D.C. 2006), *aff'd sub nom., Meijer, Inc. v. Biovail Corp.*, 533 F.3d 857 (D.C. Cir. 2008).

Although Costanza's new claim for fear of cancer is factually related to his original claim that he developed Hodgkin's Lymphoma as a direct result of occupational exposure to benzene in that both claims arise from his alleged occupational exposure to benzene and other toxic chemicals while employed by FMT, his new claim introduced an entirely new legal theory from the original petition, i.e., a fear of contracting some other form of cancer in the future as a result of his occupational exposure. In addition, FMT was not put on notice by the original petition of the new claim alleged in Costanza's Fourth Supplemental and Amending Petition. As such, this new claim does not relate back to the filing of

the original petition. Accordingly, we find no error in the trial court's dismissal of Costanza's fear of cancer claim. This assignment of error (No. 7) lacks merit.

Motion for New Trial

Finally, Costanza argues that the trial court erred in denying his motion for new trial where the trial court's judgment was clearly contrary to the law and evidence presented at trial.

A new trial shall be granted upon contradictory motion of any party when the judgment appears clearly contrary to the law and evidence. La. C.C.P. art. 1972(1). Additionally, a new trial may be granted if there is good ground therefor. La. C.C.P. art. 1973. Louisiana jurisprudence is clear that a new trial should be ordered when the trial court, exercising its discretion, is convinced by its examination of the facts that the judgment would result in a miscarriage of justice. However, on appeal, the denial of a motion for new trial should not be reversed unless there has been an abuse of the trial court's discretion. *Pope v. Roberts*, 2013-1407, p. 8 (La.App. 1 Cir. 4/16/14), 144 So.3d 1059, 1065.

Costanza's motion for new trial urged that the trial court's ruling that Costanza failed to carry his burden of proving causation on his Hodgkin's Lymphoma claims and its denial of his claim for damages for fear of future cancer were both contrary to the law and evidence. After our review of the record and for reasons previously discussed, we find that the trial court did not abuse its discretion in denying Costanza's motion for new trial.

CONCLUSION

For the reasons set forth herein, we affirm the judgment of the trial court dismissing all of Calvin M. Costanza's claims with prejudice, as well as the judgment denying his motion for new trial. Costs of this appeal are assessed to plaintiff, Calvin M. Costanza.

AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

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2024 CA 0913

CALVIN M. COSTANZA

VERSUS

FLORIDA MARINE TRANSPORTERS, LLC, PBC MANAGEMENT, LLC, AND HOUSTON CASUALTY COMPANY

EDWARDS, J., *concurring*.

I write separately to note that Defendants' exception raising the objection of prescription was not expressly ruled on by the trial court and therefore was not assigned as error by Costanza on appeal. Appellate courts generally may not consider issues not addressed by the trial court. See **Burniac v. Costner**, 2018-1709 (La. App. 1 Cir. 5/31/19), 277 So.3d 1204, 1210. However, in opposition to Costanza's motion for new trial, Defendants argued the trial court correctly dismissed Costanza's fear of cancer claim because that claim was prescribed, and Costanza assigned the trial court's ruling on his motion for new trial as error on appeal. Accordingly, we may consider whether Costanza's fear of cancer claim is prescribed in this appeal.