UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-81648-Civ-MATTHEWMAN

IN THE MATTER OF THE COMPLAINT OF TYLER CHAVES, FOR EXONERATION FROM OR LIMITATION OF LIABILITY AS OWNERS OF A 23-FOOT 2005 PRO-LINE BOAT, HULL ID NO. PLCSP054H405

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ORDER GRANTING IN PART AND DENYING IN PART CLAIMANT PARTRIDGE'S MOTION FOR RECONSIDERATION REGARDING THE APPLICATION OF THE "PENNSYLVANIA RULE" [DE 116]

THIS CAUSE is before the Court upon Claimant Donald Partridge's ("Claimant Partridge") Motion for Reconsideration Regarding the Application of the "Pennsylvania Rule" ("Motion") [DE 116]. Petitioner Tyler Chaves ("Petitioner Chaves") has filed a response to the Motion [DE 122], and Clamant Partridge has replied [DE 123]. The Court has carefully considered the parties' written submissions, the record, and applicable law.

I. BACKGROUND

On February 1, 2024, the Court entered its Order Granting in Part and Denying in Part Claimant's Motion for Summary Judgment [DE 112]. In that Order, the Court generally explained the contents and application of the "Pennsylvania Rule." *Id.* at 11. The Court distinguished the cases relied on by Claimant Partridge in his motion for summary judgment and stated that "Claimant has not cited any Eleventh Circuit case law to support his position that the Pennsylvania Rule applies under the facts of this case." *Id.* at 11–12. The Court then discussed and quoted from *Matter of Hanson Marine Properties, Inc.*, No. 2:20-CV-958-SPC-KCD, 2022 WL 3716618 (M.D. Fla. Aug. 29, 2022), a case that the Court had independently researched and no party had cited. *Id.*

at 12. Next, the Court stated that it "agrees with the Middle District of Florida court that the Eleventh Circuit has not expressly extended the Pennsylvania Rule past allisions." *Id.* at 13. This Court further explained,

> While *Tassinari* did extend the Rule to a boat collision (and not just to allisions), that is persuasive rather than binding law, and the instant case does not even involve a boat collision, let alone an allision. Here, the Decedent was thrown from a vessel during a boating accident. More specifically, Decedent, who had been operating the vessel, turned the wheel of the boat over to her boyfriend, who was unqualified to navigate the vessel, in the open ocean, just before she was thrown out of the boat. This is simply not an allision under federal maritime law.
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> An allision involves a vessel striking a fixed object. *See Superior Constr. Co.*, 445 F.3d at 1336 n.1 (internal quotation marks, citations, and alterations omitted) (quoting Black's Law Dictionary (7th ed. 1999)). ("An *allision* is the sudden impact of a vessel with a stationary object such as an anchored vessel or a pier."). Where, as in the instant case, the propeller of a small pleasure boat strikes the fallen-overboard operator of that same boat, an allision has not occurred. No fixed object was struck by the vessel in the instant case; rather, the vessel struck the floating vessel operator Ms. Partridge. The application of the Pennsylvania Rule has been justified in the context of a navigational rule that was violated and which was actually intended to prevent allisions. *Hatt 65, LLC v. Kreitzberg*, 658 F.3d 1243, 1252 (11th Cir. 2011). Such justification does not apply to the facts of the instant case where no allision occurred. This case essentially involves a boat rental negligence matter. Under the facts of this specific case, it would be unfair and improper to apply the Pennsylvania Rule. Thus, the Pennsylvania Rule does not apply here, and the Court must complete its analysis of negligence per se without the burden shifting required by the Pennsylvania Rule.

Id. at 13–14.

II. MOTION, RESPONSE, AND REPLY

In his Motion, Claimant Partridge is requesting that the Court "reconsider its ruling in which it stated that the Pennsylvania Rule did not apply to the case because this case is not a collision case and the Eleventh Circuit has not extended the rule beyond collision cases. (D.E. 112 p. 13-14)." [DE 116 at 1]. According to Claimant Partridge, in his motion for summary judgment, he cited to *Pennzoil Producing Co. v. Offshore Exp., Inc.*, 943 F. 2d 1465 (5th Cir. 1991), and

Candies Towing Co., Inc., v. M/V B & C EASERMAN, 673 F. 2d 91 (5th Cir. 1982), "for the proposition that the PENNSYLVANIA RULE applies to non-collision cases." *Id.* Claimant Partridge explains that,

> While both of these cases are Fifth Circuit cases, the undersigned respectfully submits that both of those cases cite the case of *Reyes v. Vantage Steamship Co.*, 609 F. 2d 140 (5th Cir. 1980). *Reyes* was a personal injury case where the Fifth Circuit applied the PENNSYLVANIA RULE to a non-collision case. *Reyes* is also a Fifth Circuit case which was decided before the creation of the Eleventh Circuit. Therefore, it is binding precedent on the Eleventh Circuit pursuant to *Bonner v. City of Prichard, Ala.*, 661 F. 2d 1206 (11th Cir. 1981). In *Bonner* the Eleventh Circuit stated: "We hold that the decisions of the United States Court of Appeals for the Fifth Circuit (the "former Fifth" or the "old Fifth"), as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, shall be binding as precedent in the Eleventh Circuit, for this court, the district courts, and the bankruptcy courts in the circuit." Therefore, since the Eleventh Circuit has not ruled one way or the other as to the application of the PENNSYLVANIA RULE to non-collision cases, *Reyes* is binding, controlling precedent. In *Reyes*, the Fifth Circuit analyzed a case where a crewmember died after jumping overboard (a non- collision case). A wrongful death claim was brought against the shipowner and the Court held that a safety violation for not having a proper rocket powered line-throwing appliance triggered the application of the PENNSYLVANIA RULE and the burden was on the shipowner to show that the safety violation could not have caused the drowning death. Claimant asserts that this man overboard case in which the PENNSYLVANIA RULE was applied by the Fifth Circuit is binding and respectfully requests the Court reconsider its ruling on the issue and find that the rule of the Pennsylvania does in fact apply to the instant case.

Id. at 1–2. Claimant Partridge further asserts that, "[t]he PENNSYLVANIA RULE is fully applicable to this case pursuant to the binding precedent held in the *Reyes* case," and "[s]ince the Court has already ruled that Chaves has violated two Florida Boating Safety Statutes (D.E. 112), the burden of proving that the violations could not have been a cause of the Lindsey Partridge's death shifts to Chaves." *Id.* at 2. Finally, Claimant Partridge asks the Court to "reconsider its ruling that the PENNSYLVANIA RULE is not the rule of law to be filed in the Eleventh Circuit under *Reyes* until the Eleventh Circuit decides that it should no longer be the law in this circuit." *Id.*

In response, Petitioner Chaves contends that Claimant Partridge is attempting to "use reconsideration as a vehicle to present new arguments that were available when the parties briefed their respective positions, and before the parties argued their positions before the Court." [DE 122 at 3]. Petitioner Chaves argues that "there was no change in the controlling law since this issue was originally argued and ruled on"; "no new evidence has become available that did not already exist at the time of argument (locating existing caselaw after the first decision is not unearthing new evidence)"; and "there is no clear error on the part of the Court in deciding this issue." *Id.* He further asserts that "no manifest injustice has occurred in deciding that the Pennsylvania Rule does not apply to this matter." *Id.* Petitioner Chaves concludes that "Claimant simply failed to argue the point that is now being made after a ruling for the first time, and Claimant failed to provide the Court with legal authority that has existed well before the parties engaged in motion practice on the subject issue." *Id.* at 4.

In reply, Claimant Partridge argues that, in his previously filed motion for summary judgment, "the case of *Candies Towing Co., Inc., v. M/V B & C EASERMAN*, 673 F. 2d 91 (5th Cir. 1982), was cited for the application of The Pennsylvania Rule applying to this instant case (D.E. 40, p.7). *Candies Towing, supra*, cites to *Reyes v. Vantage Steamship Co.*, 558 F. 2d 238 (5th Cir. 1977)[1] in the body of the case." [DE 123 at 1]. Thus, Claimant Partridge claims that he is now "simply noting to the Court that *Reyes, supra*, is binding precedent as being a case from the 'former Fifth Circuit' under *Bonner v. City of Prichard, Alabama*, 661 f. 2d 1206 (11th Cir. 1981)." *Id.* According to Claimant Partridge, he is making no new argument "about the application of the rule of *The Pennsylvania* to this case," but he is asserting that "the Court should rule blocking

[1] This citation as cited by Claimant Partridge in his papers is incorrect.

application of *The Pennsylvania* rule on a procedural ground that should fail." *Id.* at 1–2. Claimant Partridge explains that "[t]he rule of *The Pennsylvania* will come up at trial of this case and the parties should be able to know the Court's position on the application of the burden shifting doctrine before trial." *Id.* at 2. Thus, he requests that the Court "reconsider the denial of the application of *The Pennsylvania* rule to this case in light of the binding precedent of the Former Fifth Circuit." *Id.*

III. RELEVANT LAW

It appears that Claimant Partridge is moving for reconsideration pursuant Federal Rule of Civil Procedure 60(b), though he failed to cite any rule in his Motion. The "purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Z.K. Marine Inc. v. M/V Archigetis*, 808 F.Supp. 1561, 1563 (S.D. Fla. 1992). Thus, federal courts have delineated three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. *Degirmenci v. Sapphire-Fort Lauderdale, LLLP*, 693 F. Supp. 2d 1325, 1352 (S.D. Fla. 2010) (citing *Offices Togolais Des Phosphates v. Mulberry Phosphates, Inc.*, 62 F.Supp.2d 1316, 1331 (M.D. Fla. 1999); *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994)).

In order to prevail on a motion to reconsider, "the moving party 'must demonstrate why the court should reconsider its prior decision and set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.'" *Instituto de Prevision Militar v. Lehman Bros.*, 485 F. Supp. 2d 1340, 1343 (S.D. Fla. 2007) (quoting *Socialist Workers Party v. Leahy*, 957 F. Supp. 1262, 1263 (S.D. Fla. 1997)). "A motion to reconsider should not be used as a vehicle 'to

relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.'" *Morales v. Charlotte Corr. Inst.*, No. 18-22787-CV, 2023 WL 5593375, at *2 (S.D. Fla. May 4, 2023) (citing *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005)).

IV. ANALYSIS

First, the Court notes that Claimant Partridge failed to cite any rule in his Motion [DE 116], failed to explain why he did not previously cite *Reyes v. Vantage Steamship Co.,* 609 F.2d 140 (5th Cir. 1980), in his prior summary judgment papers or at oral argument, and failed to correctly characterize the *Pennzoil* case he relies upon. On these bases alone, the Court could readily deny his Motion. Nonetheless, to the extent that Claimant Partridge's Motion [DE 116] asks this Court to reconsider its prior Order [DE 112] based on Claimant Partridge's belated citation to *Reyes*, the Court will grant such partial relief and reconsider and clarify its prior Order [DE 112]. Although Claimant Partridge fails to meet his heavy burden regarding reconsideration, the Court will use this opportunity to clarify and make certain that the Court's ruling is crystal clear as to why the Pennsylvania Rule does not apply to the facts of the instant case.

Second, the Court's statement in its prior Order [DE 112] that, in his motion for summary judgment briefs, Claimant Partridge failed to cite any Eleventh Circuit case law that supports his position that the Pennsylvania Rule applies under the facts of this case remains true and correct. Moreover, Claimant Partridge also failed to cite any Eleventh Circuit case law that supports his position at the lengthy oral argument hearing held on January 25, 2024.

Third, Claimant Partridge did rely on *Pennzoil Producing Co. v. Offshore Exp., Inc.*, 943 F. 2d 1465 (5th Cir. 1991), for the premise that "[t]he rule of The Pennsylvania does not only apply

to maritime collisions." [DE 40 at 7]. And, of course, the Court agreed. [DE 112 at 11]. Nonetheless, despite Claimant Partridge's representation in his Motion[2] that *Pennzoil* cites to *Reyes*, 609 F. 2d 140, a case that is binding precedent in the Eleventh Circuit, *Pennzoil* does not, in fact, cite to *Reyes*. It is quite surprising that Claimant Partridge would make such a misrepresentation in his Motion.

Fourth, in his motion for summary judgment, Claimant Partridge only relied on *Candies Towing Co., Inc., v. M/V B & C EASERMAN*, 673 F. 2d 91 (5th Cir. 1982), for the propositions that, "[i]f that party is to escape liability for the loss, it must prove not just that its violation probably was not, but in fact could not have been a cause of the collision" and "the rule of The Pennsylvania 'constitutes an evidentiary rule reversing the burden of proof.'" [DE 40 at 7]. Thus, even though *Candies Towing* does cite to *Reyes*, Claimant Partridge did not actually cite *Candies Towing* to establish that the Pennsylvania Rule applies in contexts other than maritime collisions. He cited that case in a wholly different context. Thus, Claimant Partridge's entire argument in his Motion [DE 116] is specious and misses the mark.

Fifth, the Court notes that Claimant Partridge has not made any argument in his Motion regarding *Matter of Hanson Marine Properties, Inc.*, No. 2:20-CV-958-SPC-KCD, 2022 WL 3716618 (M.D. Fla. Aug. 29, 2022), or the well-reasoned analysis and findings made the by the court in that case. He has not argued the case is distinguishable, or inapplicable, or legally flawed. Thus, any such arguments have been waived. It is surprising that Claimant Partridge would wholly ignore a very recent, factually similar case from the Middle District of Florida which is persuasive. This is especially so because, like the facts in *Hanson*, the instant case involves a layperson

[2] *See* Claimant Partridge's Motion, DE 116 at 1.

operating a recreational vessel when Lindsey Partridge fell overboard. The fall was not caused by a collision or an allision. As in *Hanson*, the Court finds that the Eleventh Circuit has never extended the Pennsylvania Rule to such facts, and further, that doing so would "set the Pennsylvania Rule too far adrift from its moorings." *Hanson*, 2022 WL 3716618 at * 4.

Sixth, the Court's finding that the Pennsylvania Rule does not apply in this case was extremely fact-specific. The Court previously explained this case "essentially involves a boat rental negligence matter. Under the facts of this specific case, it would be unfair and improper to apply the Pennsylvania Rule. Thus, the Pennsylvania Rule does not apply here, and the Court must complete its analysis of negligence per se without the burden shifting required by the Pennsylvania Rule." [DE 112 at 13–14]. And Claimant Partridge has in no way opposed this fact-specific finding in his Motion or even tried to argue that it was incorrect.

Seventh, even though it is not required to do so under this procedural posture, the Court has carefully reviewed *Reyes*, 609 F. 2d 140, a 1980 case out of the Fifth Circuit. The Court does this to ensure clarity of the record, to fairly consider this issue, and to provide guidance to the parties going forward in this case. The Court agrees with Claimant Partridge that *Reyes* is considered binding law in this circuit pursuant to *Bonner v. City of Prichard, Ala.*, 661 F. 2d 1206 (11th Cir. 1981). However, *Reyes* is distinguishable because it dealt with an employer/shipowner who operated a floating dram shop which sold large amounts of alcohol to the crew and a seaman falling overboard in a Jones Act case. It further involved application of the maritime rescue doctrine to a Jones Act seaman who jumped off his employer's vessel while intoxicated. Much of the case analyzed the employer's obligation to rescue a seaman in light of the employer's ". . . exceptional obligation to care for the well-being of the crew." 609 F.2d at 142 (citing *Harris v.*

Pennsylvania R. Co., 50 F.2d 866, 866 (4th Cir. 1931)). The case turned on the employer/shipowner's duty to rescue and its violation of Coast Guard regulations which required the ship to have a "rocket powered line throwing appliance." *Id.* at 143.

Thus, *Reyes* was a Jones Act case in which the Fifth Circuit approved application of the Pennsylvania Rule—combined with the "slight standard of causation"[3] in Jones Act cases—to a shipowner who failed to have rescue devices onboard his ship in violation of 46 C.F.R. § 94.95-20(a). The instant case is not a Jones Act case, and the decedent was not a seaman subject to the enhanced protections of the Jones Act. There is no duty to rescue issue in the instant case. Those are major factual distinctions. Moreover, no Eleventh Circuit case has ever cited *Reyes* for the premise that *Reyes* expanded the Pennsylvania Rule in this circuit. In fact, there is no Eleventh Circuit case that expands the Pennsylvania Rule to the facts of this non-Jones Act negligence case involving a rented pleasure boat where no collision or allision occurred. While this Court is very sympathetic to the tragic plight of Lindsey Partridge, and the suffering it has caused her family, the Court must follow the law as it exists and cannot create new law, which is precisely what the Court would be doing if it applied the Pennsylvania Rule to the facts of this case.

Based on the above analysis, Claimant Partridge has not established an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or prevent manifest injustice. In other words, while this Court has reconsidered and clarified its prior Order, Claimant Partridge has not demonstrated why the Court should change its prior decision, nor has Claimant Partridge set forth law of a strongly convincing nature to induce the court to reverse its

[3] As stated in *Reyes*: "Combining this slight standard of causation with the presumption of causation to which the plaintiff is here entitled means that on remand the shipowner must show that the ship's inaction and regulatory violations could not have been even a contributing cause of Reyes's death." 609 F.2d at 146 (citation omitted).

prior decision.

V. CONCLUSION

In light of the foregoing, it is hereby **ORDERED AND ADJUDGED** that Claimant Donald Partridge's Motion for Reconsideration Regarding the Application of the "Pennsylvania Rule" [DE 116] is **GRANTED IN PART AND DENIED IN PART**, as stated in this Order. That is, the Court has reconsidered and clarified its prior Order to the extent noted above but denies the Motion in all other respects.

DONE and ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 20th day of February, 2024.

WILLIAM MATTHEWMAN
United States Magistrate Judge