

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-31287

JOSEPH CURLEY BABINEAUX, Etc., Et Al.,

Plaintiffs,

JOSEPH CURLEY BABINEAUX, Individually
& on behalf of Bradley Babineaux on
behalf of Brandon Babineaux on behalf
of Billy Babineaux on behalf of David
Babineaux,

Plaintiff-Appellant,

v.

M & W TANK CONSTRUCTION CO, INC.; ET AL.,

Defendants,

M & W TANK CONSTRUCTION CO., INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(98-CV-1209)

November 2, 1999

Before GARWOOD, SMITH and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellant Joseph Curley Babineaux ("Babineaux") appeals from the determination of the district court denying remand and granting summary judgment to appellee M&W Tank Construction, Inc.

* Pursuant to 5th Cir. Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. Rule 47.5.4.

("M&W") for the reason that Babineaux had failed to raise a genuine issue of material fact sufficient to establish the intentional tort exception to the Louisiana Worker's Compensation Act, La. R.S. 23:1032. For the reasons stated by the district court in its memorandum ruling of September 10, 1998, we agree that Babineaux cannot recover against M&W. See also Reeves v. Structural Preservation Sys., 731 So. 2d 208, 212 (La. 1999). Denial of remand and granting summary judgment were therefore proper.

Appellee M-I Drilling Fluids, LLC. ("M-I") intervened to argue that Babineaux is covered by the Longshore and Harbor Workers' Compensation Act, and that it provides his exclusive remedy against his employer. We observe, however, that the district court neither considered nor issued a judgment in these matters. Inasmuch as we consider this case under a Federal Rule of Civil Procedure 54(b) certification of a final order for immediate appeal, we have no jurisdiction to consider M-I's claims because, obviously, the district court certified no final judgment with respect to these issues.

AFFIRMED