



Court of Appeals of Michigan.

Joanne OLIVER, Individually and as Personal Representative of the Estate of Thomas W. Oliver, deceased, Plaintiff-Appellant,

v.

NATIONAL GYPSUM COMPANY, CEMENT DIVISION, Defendant-Appellee.

Docket No. 118112.

Submitted June 22, 1990, at Detroit.

Decided March 5, 1991, at 9:05 a.m.

Released for Publication May 6, 1991.

Decedent's widow, individually and as personal representative of decedent's estate, brought action against decedent's employer under Jones Act and general maritime law, alleging that crew member's death resulted from continual exposure to cement dust in work environment. The Wayne Circuit Court, [Robert J. Colombo, Jr.](#), J., granted employer's motion for summary disposition, and widow appealed. The Court of Appeals held that: (1) widow's cause of action for Jones Act claim accrued no later than crew member's last date of employment; (2) three-year statute of limitations applicable to maritime tort claims for unseaworthiness was applicable, although widow's cause of action might have accrued prior to its enactment, where complaint was not filed within three years of effective date of statute; and (3) maintenance and cure claim was barred by laches.

Affirmed.

West Headnotes

[\[1\]](#) Seamen [348](#) [29\(5.6\)](#)

[348](#) Seamen

[348k29](#) Personal Injuries

[348k29\(5.6\)](#) k. Limitations and Laches. [Most](#)

[Cited Cases](#)

Three-year statute of limitations provided under Federal Employers' Liability Act is applicable to claims brought pursuant to Jones Act. Jones Act, [46 U.S.C.A.App. § 688](#); Federal Employers' Liability Act, § 6, [45 U.S.C.A. § 56](#).

[\[2\]](#) Limitation of Actions [241](#) [95\(5\)](#)

[241](#) Limitation of Actions

[241II](#) Computation of Period of Limitation

[241II\(F\)](#) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action

[241k95](#) Ignorance of Cause of Action

[241k95\(4\)](#) Injuries to the Person

[241k95\(5\)](#) k. Diseases; Drugs. [Most](#)

[Cited Cases](#)

Crew member's widow's cause of action under Jones Act, which alleged that crew member's death resulted from continual exposure to cement dust in work environment, accrued, for limitations purposes, no later than crew member's last day of employment, where crew member began to complain of chest and breathing problems, and started to drink heavily to alleviate discomfort, prior to that date, and had once been exposed on the job to extremely high levels of cement dust that required immediate medical treatment. Jones Act, [46 U.S.C.A.App. § 688](#); Federal Employers' Liability Act, § 6, [45 U.S.C.A. § 56](#).

[\[3\]](#) Limitation of Actions [241](#) [6\(1\)](#)

[241](#) Limitation of Actions

[241I](#) Statutes of Limitation

[241I\(A\)](#) Nature, Validity, and Construction in General

[241k6](#) Retroactive Operation

[241k6\(1\)](#) k. In General. [Most Cited Cases](#)

Three-year statute of limitations applicable to maritime tort claims for unseaworthiness could be applied to deceased crew member's widow's claim, even though cause of action might have accrued prior to enactment of statute of limitations, where widow's complaint was not filed within three years of that effective date. 46 U.S.C.A. § 763a.

[\[4\]](#) [Seamen 348](#)  [11\(1\)](#)

[348](#) Seamen

[348k11](#) Medical Treatment and Maintenance of Disabled Seamen

[348k11\(1\)](#) k. In General. [Most Cited Cases](#)

Claim for “maintenance and cure” is not predicated upon fault or negligence of shipowner, or unseaworthiness of vessel, but is contractual in nature, arising out of employment relationship, and seeks damages in form of subsistence payments, reimbursement for medical expenses, and unearned wages.

[\[5\]](#) [Seamen 348](#)  [11\(9\)](#)

[348](#) Seamen

[348k11](#) Medical Treatment and Maintenance of Disabled Seamen

[348k11\(9\)](#) k. Actions. [Most Cited Cases](#)

State and federal limitations periods for maritime tort claims are inapplicable to claims for maintenance and cure. 46 U.S.C.A. § 763a; [M.C.L.A. § 600.5805\(8\)](#).

[\[6\]](#) [Seamen 348](#)  [11\(9\)](#)

[348](#) Seamen

[348k11](#) Medical Treatment and Maintenance of Disabled Seamen

[348k11\(9\)](#) k. Actions. [Most Cited Cases](#)

Doctrine of laches is utilized to judge timeliness of maintenance and cure claims.

[\[7\]](#) [Seamen 348](#)  [11\(9\)](#)

[348](#) Seamen

[348k11](#) Medical Treatment and Maintenance of Disabled Seamen

[348k11\(9\)](#) k. Actions. [Most Cited Cases](#)

Statute of limitations for maritime tort claims for unseaworthiness may be used as standard to evaluate laches defense to claim for maintenance and cure. 46 U.S.C.A. § 763a.

[\[8\]](#) [Seamen 348](#)  [11\(9\)](#)

[348](#) Seamen

[348k11](#) Medical Treatment and Maintenance of Disabled Seamen

[348k11\(9\)](#) k. Actions. [Most Cited Cases](#)

Deceased crew member's widow's claim for maintenance and cure was barred by laches, where more than three years elapsed between accrual of cause of action and filing of complaint, and widow offered no good reason for excessive delay.

[\[9\]](#) [Appeal and Error 30](#)  [854\(2\)](#)

[30](#) Appeal and Error

[30XVI](#) Review

[30XVI\(A\)](#) Scope, Standards, and Extent, in General

[30k851](#) Theory and Grounds of Decision of

Lower Court

[30k854](#) Reasons for Decision

[30k854\(2\)](#) k. Review of Correct Decision Based on Erroneous Reasoning in General.
[Most Cited Cases](#)

Court of Appeals will not reverse where trial court reaches correct result for wrong reason.

****313 *611** O'Bryan Law Center, P.C. by [Dennis M. O'Bryan](#) and [Howard M. Cohen](#), Birmingham, for plaintiff-appellant.

Ray, Robinson, Hanninen & Carle by [Sandra Maurer Kelly](#) and [Douglas R. Denny](#), Cleveland, Ohio, and Hill Lewis by [Richard C. Sanders](#) and [James M. Dworman](#), Detroit, for defendant-appellee.

***612** Before DANHOF, C.J., and CYNAR and BRENNAN, JJ.

PER CURIAM.

Plaintiff Joanne Oliver brought this action against defendant National Gypsum Company, Cement Division, alleging a claim for the wrongful death of her husband, Thomas W. Oliver, under the Jones Act, [46 U.S.C.App. § 688](#), and general maritime law. Following a hearing, the Wayne Circuit Court granted defendant's motion for summary disposition, pursuant to [MCR 2.116\(C\)\(7\) and \(10\)](#), and entered an order dismissing plaintiff's complaint. Plaintiff appeals as of right. We affirm.

Plaintiff's decedent was employed by defendant from June 15, 1959, to November 2, 1981, as a crew member on defendant's ships. On January 11, 1985, Mr. Oliver died from a combination of liver destruction, a heart attack, and kidney failure. Plaintiff alleged in her complaint that Mr. Oliver's death was the result of his continual exposure to cement dust in his work environment. However, by plaintiff's own admission, her husband was a smoker, and, from 1980

until his death, he drank heavily, with his consumption reaching as much as a gallon of straight whiskey per day.

In her complaint, filed on March 1, 1988, plaintiff alleged three causes of action available when a seaman is injured in the course of serving on a ship: maintenance and cure, unseaworthiness of the vessel, and negligence under the Jones Act, [46 U.S.C.App. § 688](#).

The trial court granted summary disposition in favor of defendant, finding in part that there was insufficient causation as a matter of law. The court found that the expert evidence testimony established "at best" that the discomfort associated ***613** with Mr. Oliver's chronic obstructive pulmonary disease (i.e., a slight obstruction of his airways caused by his smoking, or exposure to cement dust, or both) induced him to seek relief in excessive alcohol consumption, and that it was the drinking which ****314** caused his death. The trial court also found that plaintiff's Jones Act and maintenance and cure claims were barred by the applicable statutes of limitations, and that the claim for unseaworthiness was barred by laches.

In [Szopko v. Kinsman Marine Transit Co.](#), [426 Mich. 653, 657-658, 397 N.W.2d 171 \(1986\)](#), our Supreme Court noted:

In general, a seaman has three basic theories of recovery: unseaworthiness of a vessel, maintenance and cure, and an action for damages under the Jones Act, 46 USC 688.

A seaman who becomes ill or injured while "in the service of the ship" is entitled to "maintenance and cure" ("cure" from the Latin noun *cura*, care, healing). Recovery is in the form of a per diem living allowance and payment of medical costs. Recovery is not based on fault and is analogous to workers' compensation....

A seaman may also sue on the basis of the vessel's "unseaworthiness," since a shipowner has an absolute, nondelegable duty to furnish a vessel that is reasonably safe for its intended purposes....

* * * * *

The Jones Act states that "[a]ny seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury...." The parties agree that there are two basic elements in a Jones Act claim. First, the injury must have occurred "in the course of ... employment." Second, the injury must have been caused in some way by the defendant's negligence.

*614 Each of the three theories of recovery is distinct and has its own body of interpretive case law. [Id. at 658, 397 N.W.2d 171.](#)

[1] The three-year statute of limitations provided under the Federal Employers' Liability Act is applicable to claims brought pursuant to the Jones Act. [45 U.S.C. § 56; Clay v. Union Carbide Corp., 828 F.2d 1103, 1105 \(CA 5, 1987\).](#) In dismissing plaintiff's Jones Act claim as time-barred, the trial court found that plaintiff's cause of action accrued in August or September of 1980, or no later than November 2, 1981, when Mr. Oliver's employment with defendant ended. We find no error in the trial court's ruling.

[2] In her deposition, plaintiff testified that in 1980 her husband began to complain of chest and breathing problems, and started to drink heavily to alleviate the discomfort. In December of 1981, he was hospitalized for treatment of acute alcoholism. Furthermore, plaintiff alleged before the court below that in an incident which occurred on September 8, 1980, Mr. Oliver was exposed to extremely high levels of cement dust and required immediate medical treatment. Under these facts, we agree with the trial court

that plaintiff's decedent knew or had a reasonable opportunity to discover the critical facts of his condition and its cause no later than his last day of employment and, therefore, plaintiff's cause of action accrued no later than that date. See [id. at 1106-1107.](#)

[3] Plaintiff's maritime tort claim for unseaworthiness is also barred by a three-year statute of limitations provided under 46 U.S.C. § 763a. [Reynolds v. Heartland Transportation, 849 F.2d 1074 \(CA 8, 1988\).](#) Even though plaintiff's cause of action may have accrued prior to the enactment of § 763a on October 6, 1980, the statute is still applicable because plaintiff's complaint was not filed within *615 three years of that effective date. [Id. at 1075; Clay, supra at 1105; but see Fordham v. Belcher Towing Co., 710 F.2d 709 \(CA 11, 1983\)](#) (laches, not § 763a, applied to a claim which accrued before October 6, 1980, however, the suit at issue there was filed prior to October 6, 1983).

We also find no error in the trial court's reliance on the equitable doctrine of laches in deciding to dismiss plaintiff's unseaworthiness claim. The court properly noted as factors in its decision: Mr. Oliver's intervening death, plaintiff's failure to show no prejudice to defendant, and plaintiff's failure to present a reasonable explanation for the delay in filing the lawsuit, using the three-year tort limitation period **315 as a guide. See [Reynolds, supra at 1075-1076; see also McKinney v. Waterman Steamship Corp., 739 F.Supp. 678, 681-682 \(D.Mass.1990\); and see Lothian v. Detroit, 414 Mich. 160, 165-170, 324 N.W.2d 9 \(1982\).](#)

With respect to plaintiff's claim for maintenance and cure, we find dismissal of that claim to have been proper, although the trial court's stated reason for doing so was incorrect.

[4][5][6][7] The trial court found the claim time-barred by the three-year statutory limitation

period for personal injury actions. [M.C.L. § 600.5805\(8\)](#); M.S.A. § 27A.5805(8). However, a claim for maintenance and cure is not predicated on the fault or negligence of the shipowner, or the unseaworthiness of the vessel. It is contractual in nature, arising out of the employment relationship, and seeks damages in the form of subsistence payments, reimbursement for medical expenses, and unearned wages. *McKinney*, *supra* at 681; [Reed v. American Steamship Co.](#), 682 F.Supp. 333, 335-336 (E.D.Mich.1988). Consequently, limitation periods for tort actions, under § 763a or state statutes, are inapplicable. Instead, the doctrine of laches is utilized to *616 judge the timeliness of maintenance and cure claims. *McKinney*, *supra* at 681-682; *Reed*, *supra* at 336-338; but see [Crisman v. Odeco, Inc.](#), 736 F.Supp. 712, 721 (E.D.La.1990) (maintenance and cure claims dismissed, without analysis, pursuant to § 763a). Still, because the occasion to assert a claim for maintenance and cure is a personal injury, and the claim is usually appended to Jones Act and unseaworthiness claims, it is appropriate to use the three-year limitation period of § 763a as a standard to evaluate a laches defense. *McKinney*, *supra* at 681-682.

[8][9] In this case, the trial court did not dismiss plaintiff's maintenance and cure claim on the basis of laches. However, we find that the record and the court's stated reasons for finding plaintiff's unseaworthiness claim barred by laches are sufficient to support dismissal of the maintenance and cure claim on the same basis. Significantly more than three years elapsed between the accrual of plaintiff's cause of action and the filing of the complaint, and plaintiff has offered no good reason for the excessive delay. See *McKinney*, *supra* at 684. This Court will not reverse where the trial court reaches the correct result for the wrong reason. [People v. Beckley](#), 161 Mich.App. 120, 131, 409 N.W.2d 759 (1987), *aff'd* 434 Mich. 691, 456 N.W.2d 391 (1990).

Affirmed.

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