University of Baltimore Law Review

Volume 12
Issue 1 *Fall 1982*

Article 11

1982

Casenotes: Maritime Law — Doctrine of Interspousal Immunity Held Inapplicable within Federal Admiralty Jurisdiction. Byrd v. Byrd, 657 F.2d 615 (4th Cir. 1981)

Gail Rudie Cohn
University of Baltimore School of Law

MARITIME LAW — DOCTRINE OF INTERSPOUSAL IMMUNITY HELD INAPPLICABLE WITHIN FEDERAL ADMIRALTY JURISDICTION. *Byrd v. Byrd,* 657 F.2d 615 (4th Cir. 1981).

While on board her husband's pleasure boat in the waters off Virginia, Mrs. Byrd was injured when the deck chair in which she was seated fell from the flying bridge.[1] Claiming her injuries were a result of her husband's negligence in failing either to affix the chair properly to the deck or to provide guard rails around the bridge, Mrs. Byrd sued her husband in admiralty in the United States District Court for the Eastern District of Virginia. The district court ruled that state law controlled, and applying Virginia's doctrine of interspousal immunity,[2] dismissed the suit.[3] On appeal, the United States Court of Appeals for the Fourth Circuit held that the doctrine of interspousal immunity does not apply to tort actions within federal admiralty jurisdiction.[4] In so holding, the court preempted the state law of Virginia[5] and devised a new rule in admiralty.

The state-federal choice of law question in admiralty jurisdiction presented in *Byrd v. Byrd*[6] has its roots in the Constitution. While Article III extended federal judicial power to "all cases of admiralty and maritime jurisdiction,"[7] it did not indicate the source of the law to be applied. The Judiciary Act of 1789[8] implemented the constitutional grant of federal maritime power and included the "savings clause" which permits a suitor asserting an in personam admiralty claim to elect to sue in state court.[9] The Act did not stipulate, however, the source of the substantive law to be applied in state court cases. Nonetheless, in the landmark case of *De Lovio v. Boit,*[10] Justice Story established the adoption by the United States of the international general maritime law,[11] which may be altered or supplemented by Congress.[12]

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1. Byrd v. Byrd, 657 F.2d 615, 616 (4th Cir. 1981).
2. The doctrine of interspousal immunity is the common law rule prohibiting tort actions between spouses. *See generally* Note, *Litigation Between Husband and Wife,* 79 HARV. L. REV. 1650 (1966).
3. Byrd v. Byrd, 657 F.2d 615, 616 (4th Cir. 1981).
4. *Id.* at 621.
5. At the time suit was brought, Virginia utilized the doctrine of interspousal immunity in tort suits except in automobile cases and in wrongful death cases where one spouse had killed the other spouse. Counts v. Counts, 221 Va. 151, 266 S.E.2d 895 (1980). However, effective July 1, 1981 interspousal immunity in tort suits was abolished in Virginia. VA. CODE §§ 8.01-220.1 (1981).
6. 657 F.2d 615 (4th Cir. 1981).
7. U.S. CONST. art. III, § 2.
8. Judiciary Act of 1789, ch. 20, 1 Stat. 73 (1789).
9. This clause, which now appears at 28 U.S.C. § 1333 (1976), provides: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty and maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." *Id.*
10. 7 F. Cas. 418 (C.C.D. Mass. 1815) (No. 3,776). In *De Lovio,* Justice Story referred to the uniformity and international character of maritime law and stated that these principles were adopted by the Constitution.
11. Much of the maritime law today has no statutory warrant, but is derived from the corpus of maritime law assumed to be in existence at the time of the adoption of

A major principle of maritime law is uniformity, the objective being to ensure that maritime commerce is not hindered by a myriad of conflicting local, state, and national laws.[13] Yet, prior to the twentieth century, uniformity existed only within the federal system of admiralty courts. State courts exercising concurrent jurisdiction over diversity cases and over maritime cases under the "savings clause" were free to apply their own laws.[14]

In 1900, however, the United States Supreme Court began to impose restraints on the application of state law in maritime cases. In *Workman v. New York City,*[15] the Court held that local law could not be employed when the result would be to destroy or alter rights of parties subject to the jurisdiction of the admiralty courts.[16] This decision foreshadowed the holding in *Southern Pacific Co. v. Jensen*[17] which overturned precedent[18] in establishing the principle that maritime law must be applied in all courts, whether state or federal, in admiralty cases.[19] The Court in *Jensen* determined that the power to define the maritime law rested in Congress, and that in the absence of some controlling statute, the general maritime law as interpreted by the federal courts applied to admiralty matters.[20]

As to the extent the general maritime law could be modified by state legislation, the *Jensen* Court held that any local legislation contravening the essential purposes of maritime law or interfering with its goals of consistency and uniformity was invalid.[21] A further limitation on state legislation was established in *Chelentis v. Luckenbach S.S. Co.*[22] which rejected the argument that the common law courts could create rights in the maritime field when no federal legislation or general maritime principle furnished relief.[23]

The *Workman, Jensen,* and *Chelentis* cases firmly established the requirement of complete uniformity in the maritime law. This de-

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the Constitution. G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY § 1-16 (2d ed. 1975).

12. Panama R.R. v. Johnson, 264 U.S. 375 (1924).
13. *See* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY §§ 1-1 to 1-19 (2d ed. 1975).
14. Currie, *Federalism and the Admiralty: "The Devil's Own Mess,"* 1960 SUP. CT. REV. 158, 160-61.
15. 179 U.S. 552 (1900) (municipally owned fire boat negligently collided with another vessel).
16. *Id.* at 558.
17. 244 U.S. 205, 217 (1917) (state's workman's compensation statute unconstitutional as applied to injured longshoreman).
18. *E.g.,* The Hamilton, 207 U.S. 398 (1907) (state statute enforceable in a federal admiralty court); Belden v. Chase, 150 U.S. 674 (1893) (application of land-based rules of damage distribution in collision case).
19. Southern Pacific Co. v. Jensen, 244 U.S. 205, 216 (1917).
20. *Id.*
21. *Id.*
22. 247 U.S. 372 (1918).
23. *Id.* at 384.

mand, however, was not met by the results of the cases that followed,[24] for the permissible extent of state supplementation of maritime law had not been clearly defined by the courts.[25] Uniformity required only the invalidation of state law that materially conflicted with the maritime law.[26] Moreover, in the areas that were not covered by the general maritime law and in which there were no applicable federal statutes the question remained whether to apply state law or to create an admiralty rule.[27] In this context, the Supreme Court in *Kermarec v. Compagnie Generale Transatlantique*[28] fashioned a rule to determine a shipowner's liability to the injured guest of a crew member, perceiving the declaration of the maritime law to be its function.[29] In contrast, the Court in *Wilburn Boat Co. v. Fireman's Fund Insurance Co.*,[30] in the absence of a controlling federal rule, turned to state law to determine the effect of a harmless breach of warranty in a policy of maritime insurance.[31]

Grounded on the premise that issues which are primarily a state concern should be adjudicated by state law, the rationale of the Supreme Court in *Wilburn* reflects the current maritime choice-of-law philosophy. This philosophy embodies the concept that the demand for uniformity is not inflexible and does not preclude the weighing of state and national interests in determining the source of law to be applied in maritime actions. Rather, when there is an overlapping of federal and state interests, the process is one of accomodation. The result, as articulated in *Kossick v. United Fruit Co.*,[32] is that when the interference with uniformity is sufficient to outweigh the relevant state interests, state law will not be applied.[33]

The consideration of the federal interest in uniformity was the ba-

24. *Compare* Just v. Chambers, 312 U.S. 383 (1941) (application of Florida statute under which an action for personal injuries survived the death of the tort-feasor upheld although the maritime law did not recognize survival actions) *with* Robins Dry Dock & Repair Co. v. Dahl, 266 U.S. 449 (1925) (New York statute imposing an absolute duty to provide a safe place to work rejected by Supreme Court on ground that state law can neither impair nor enlarge the duties imposed by general maritime law).

25. Stevens, *Erie v. Tompkins and The Uniform General Maritime Law,* 64 HARV. L. REV. 246, 256 (1950).

26. *Id.*

27. *See, e.g.,* Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959); Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310 (1955).

28. 358 U.S. 625 (1959).

29. *Id.* at 632.

30. 348 U.S. 310 (1955).

31. The relevant Texas statutes made recovery under a passenger carriage warranty available only if the breach contributed causally to the loss. *See* Wilburn Boat Co. v. Fireman's Fund Ins. Co., 201 F.2d 833 (5th Cir. 1953), *rev'd and remanded,* 348 U.S. 310 (1955).

32. 365 U.S. 731 (1961).

33. *Id.* at 738. In *Kossick* the Supreme Court held that the application of the New York statute of frauds to the maritime contract at issue would substantially disturb the uniformity of maritime law. *Id.* at 742.

sis of the decision in *Byrd v. Byrd,*[34] where the Fourth Circuit decided to establish a federal admiralty rule governing interspousal immunity rather than to apply state law. After observing the unsettled status of the doctrine of interspousal immunity among the states,[35] the *Byrd* court concluded that reference to state law in deciding maritime tort suits between husbands and wives would impair uniformity. Additionally, the court indicated that the application of state law in the instant case, which would result in dismissal of the suit, would operate to defeat the federal right of recovery afforded to all who are injured by negligence in the operation of a boat.[36]

Once the *Byrd* court created the foundation to support its decision to create a maritime rule relevant to interspousal immunity, it easily determined what that rule should be. The two mainstays of the doctrine of interspousal immunity, the concept of husband and wife as one flesh, and the preservation of familial harmony, were dismissed as no longer applicable.[37] The court noted further that adoption of the doctrine of interspousal immunity when the trend is toward its abolition would be anomalous.[38] Thus the court held that marriage between plaintiff and defendant does not create an immunity barring recovery for torts within federal admiralty jurisdiction.[39]

The decision in *Byrd v. Byrd*[40] is consistent with established principles relevant to the choice-of-law problem in admiralty cases. Holding that state law may not apply when it defeats a federal right of recovery or detracts from the uniformity of maritime law, *Byrd* reaf-

34. 657 F.2d 615 (4th Cir. 1981).

35. *Id.* at 618.

36. *Id.*; *see also* St. Hilaire Moye v. Henderson, 496 F.2d 973, 980-81 (8th Cir. 1974) (Arkansas statute limiting recovery for social guest on boats held not applicable because it would defeat federal right of recovery).

37. Byrd v. Byrd, 657 F.2d 615, 621 (4th Cir. 1981). The Married Woman's Property Acts, enacted in the mid-nineteenth century, gave a married woman a separate legal identity and started a continuing trend away from the strictness of common law immunity and the idea that husband and wife were one. *See, e.g.,* MD. ANN. CODE art. 45, §§ 1-20 (1981 & Supp. 1982); TENN. CODE ANN. §§ 36-601 to 36-605 (1977). In regard to domestic harmony, a number of jurisdictions have reasoned that the bringing of a tort action between spouses indicates that such harmony has already been disrupted, and that the alternative remedies of criminal prosecution and divorce would be equally disruptive. Klein v. Klein, 58 Cal. 2d 692, 376 P.2d 70, 26 Cal. Rptr. 102 (1962); Self v. Self, 58 Cal. 2d 683, 376 P.2d 64, 26 Cal. Rptr. 97 (1962).

An additional theory advanced in support of the doctrine of interspousal immunity includes the possibility of collusion between husband and wife when the injury is covered by insurance. Comment, *Toward Abolition of Interspousal Tort Immunity,* 36 MONT. L. REV. 251, 257 (1975). Judge Murnaghan, writing for the court in *Byrd,* stated that rather than increasing the probability of collusion, the presence of insurance decreases the probability of interference with familial harmony. Byrd v. Byrd, 657 F.2d 615, 621 (4th Cir. 1981).

38. Byrd v. Byrd, 657 F.2d 615, 621 (4th Cir. 1981).

39. *Id.*

40. 657 F.2d 615 (4th Cir. 1981).

firms the rule of *Southern Pacific Co. v. Jensen*,[41] *Chelentis v. Luckenbach S.S. Co.*,[42] and their progeny.

If the *Byrd* holding may be criticized, it is on the basis of the court's balancing of the state and federal interests present in the case. The fact that an event may occur on navigable waters does not deprive a state of its legitimate concern over matters affecting its residents. The federal interest weighs more heavily regarding commercial and mercantile matters than personal injuries.[43] The true question in *Byrd* is whether tort claims arising out of pleasure craft operation on state territorial waters need be decided under maritime law.[44] In turn, the source of that problem is the fact that in maritime cases the primary determinant of admiralty jurisdiction is the locality of the tort; that is, whether the event occurred on navigable or nonnavigable waters.[45]

The *Byrd* court itself raises the question of whether locality alone is a sufficient justification for the extension of admiralty jurisdiction over tort claims involving pleasure craft.[46] This point suggests that if such a suit may not warrant admiralty jurisdiction, it also may not warrant the creation of a new admiralty rule, particularly when the court could have reached the same result by applying state law.[47]

Alternatively, the need to formulate a new rule would have been obviated had the court viewed Mrs. Byrd's claim as a tort action for injury caused by the negligent operation of a boat, for the maritime rule providing for recovery by persons injured by such negligence could have been dispositive.[48] Mrs. Byrd's right to relief may also have been preserved if that rule were interpreted broadly, analogizing to

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41. 244 U.S. 205 (1917).
42. 247 U.S. 372 (1918).
43. *See* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY § 1-9, at 30 (2d ed. 1975).
44. *Compare* Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972) (Court required "maritime nexus" to justify admiralty jurisdiction) *and* Crosson v. Vance, 484 F.2d 840 (4th Cir. 1973) (court denied admiralty jurisdiction to a water-skier injured on Chesapeake Bay) *with* Foremost Ins. Co. v. Richardson, 102 S. Ct. 2654 (all operators of vessels on navigable waters, not just individuals actually engaged in commercial maritime activities, are subject to maritime law), reh'g denied, 103 S. Ct. 198 (1982) *and* Richards v. Blake Builders Supply Co., 528 F.2d 745 (4th Cir. 1975) (maritime law applied to pleasure craft operation); *see also* Comment, *Admiralty Jurisdiction Over Pleasure Craft Torts,* 36 MD. L. REV. 212 (1976).
45. *See* De Lovio v. Boit, 7 F. Cas. 418 (C.C.D. Mass. 1815) (No. 3,776). The *De Lovio* court held that admiralty jurisdiction in tort extended to all navigable waters. Navigable waters include the high seas, ports and harbors connected with the high seas, the Great Lakes, and all the rivers and lakes in the United States which are in fact navigable in interstate or foreign commerce, regardless of whether they come within state boundaries. *See* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY § 1-11, at 31-33 (2d ed. 1975).
46. Byrd v. Byrd, 657 F.2d 615, 617 n.4 (4th Cir. 1981).
47. Subsequent to the filing of the original suit, but prior to appeal, Virginia abolished interspousal immunity in tort suits. *Id.* at 617 n.5; *see also supra* note 5.
48. *See* St. Hilaire Moye v. Henderson, 496 F.2d 973 (8th Cir. 1974) (a federal right of recovery exists for injuries resulting from the negligent operation of a boat).

Remington v. Remington[49] where the words "any person" in the relevant federal statute were construed to include spouses.[50]

Although Maryland has modified its rule on interspousal immunity to the extent that the doctrine no longer applies to outrageous intentional torts,[51] it is unlikely that the decision in *Byrd* will act as an impetus to the abolition of the doctrine in this state. While *Byrd* represents abrogation of the doctrine at the federal level, Maryland case law demonstrates the resistance of the courts to the alteration of common law rules, even when the rationale for the rule has lost its validity and the application of the rule brings about harsh results.[52] This judicial reluctance can be explained by the court's traditional deference to the legislature.[53]

The holding in *Byrd* does not alter Maryland law, but ramifications of the decision in the state are foreseeable. The disposition of a suit brought in Maryland by one spouse against another based on a negligent tort will turn on whether the injury occurred on land or on navigable waters. This anomaly results from the limitation on the exercise of state law required by the policy of uniformity in maritime law and can be avoided by recognition of the concept that a conflict which is essentially local in nature does not require adjudication under federal admiralty law.

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49. 393 F. Supp. 898 (E.D. Pa. 1975).
50. The statute construed by the *Remington* court was section 2520 of the Omnibus Crime Control and Safe Streets Act of 1968 which provides: "Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter shall (1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications . . . ." 18 U.S.C. § 2520 (1976 & Supp. IV 1980).
51. Lusby v. Lusby, 283 Md. 334, 390 A.2d 77 (1978). *But cf.* Arch v. Arch, 11 Md. App. 395, 274 A.2d 646 (1971) (a wife cannot recover at law from her husband for a negligent tort, even if the parties are separated and have executed a separation agreement).
52. *See* Macy v. Heverin, 44 Md. App. 358, 408 A.2d 1067 (1979). The court in *Macy* refers to the "antediluvian dogma of sovereign immunity" as a "harsh doctrine" but notes that if the doctrine is to be changed, it must be by legislative action. *Id.* at 359 n.1, 408 A.2d at 1068 n.1.
53. *See id.*