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Eni US Operating Co. v. Transocean: The Fifth Circuit Throws the Implicit Finding Rule Overboard

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I. INTRODUCTION

An initial victory at trial is not always the end of the road in multi-million-dollar contract litigation, especially those cases with complex and nuanced underlying facts. Theoretically, a favorable ruling at trial is a victory that should be celebrated. However, for Transocean Offshore Deepwater Drilling (Transocean), the world’s second-largest offshore drilling contractor, a favorable ruling at trial in the United States District Court for the Southern District of Texas served only to draw attention to the fact that the trial court’s opinion was factually deficient and the road would continue to wind.¹ The case arose when Eni US Operating Company (Eni), the U.S. subsidiary of an Italian oil and gas corporation with operations in over sixty-seven countries and more than 30,000 employees, alleged that Transocean had breached their contractual obligation by failing to comply with good oilfield practice during their course of business together.² The trial court found in favor of Transocean, holding that Transocean was not in breach of the contract, but the court did not specifically outline which evidence served as the factual basis of its evaluation of the good oilfield practice claim.³

The Fifth Circuit charted new territory for itself in the noted case by expressly requiring that trial courts meet the standard codified in Rule 52(a) of the Federal Rules of Civil Procedure by setting out in their opinions at least enough of their underlying factual conclusions to allow appellate courts to determine the basis of trial court decisions.⁴ In *Eni US*

1. *Eni US Operating Co. v. Transocean Offshore Deepwater Drilling, Inc.*, 919 F.3d 931, 2019 AMC 1080 (5th Cir. 2019).

2. *Id.* at 933-34, 2019 AMC at 1082-83.

3. *Id.* at 934-35, 2019 AMC at 1083-85.

4. *Id.* at 936, 2019 AMC at 1086-87.

Operating Co. v. Transocean, the United States Court of Appeals for the Fifth Circuit *held* that since the lower court failed to lay out sufficient underlying facts to allow the Fifth Circuit to determine the basis of its decision that the standard for good oilfield practice had been met during the parties' contractual relationship, the case should be remanded back to the lower court for additional factual inquiry, denying the argument that the Fifth Circuit could inquire into the facts for itself under its implicit finding rule. *Eni US Operating Co. v. Transocean Offshore Deepwater Drilling, Inc.*, 919 F.3d 931, 937-38, 2019 AMC 1080, 1088-89 (5th Cir. 2018).

II. HISTORICAL BACKGROUND

Rule 52(a) of the Federal Rules of Civil Procedure was enacted in 1938 as part of the original set of rules promulgated by the United States Supreme Court.⁵ Since its original enactment, the rule has outlined the requirements for trial courts in their fact-finding duties.⁶ Part A of the rule requires that trial courts include a sufficiently thorough description of the factual conclusions underlying their decisions such that appellate courts are able to understand the basis of the trial court's decision upon appellate review.⁷ This concept is known as the basis-of-decision requirement and is extremely important in federal jurisprudence since it applies to every trial court decision, regardless of circumstances.⁸ Federal circuit courts, including the Fifth Circuit, embraced the basis-of-decision requirement in the decades following the enactment of Rule 52.⁹ The Fifth Circuit is unique in that an alternate doctrine had evolved through its case law with a more relaxed approach to the Rule 52(a) basis-of-decision requirement.¹⁰

The Fifth Circuit's basis-of-decision jurisprudence was joined in the 1970s by an alternate doctrine known as the implicit finding rule.¹¹ Under the implicit finding rule, when lower courts fail to outline specific facts such that the reviewing appellate court cannot determine what facts and

5. FED. R. CIV. P. 52(a).

6. *Id.*

7. *Id.*

8. *Id.*

9. *See Gulf King Shrimp Co. v. Wirtz*, 407 F.2d 508 (5th Cir. 1969) (reiterating Rule 52's basis-of-decision requirement); *Featherstone v. Barash*, 345 F.2d 246 (10th Cir. 1965) (setting out the basis-of-decision requirement in the oil and gas context); *Carr v. Yokohama Specie Bank Ltd.*, of S.F., 200 F.2d 251, 1953 AMC 442 (9th Cir. 1952) (applying the basis-of-decision requirement in international maritime law).

10. *See Gilbert v. Sterrett*, 509 F.2d 1389 (5th Cir. 1975).

11. *Id.* at 1392.

evidence underpinned the lower court's holding, the appellate court may inquire into the evidentiary record from the trial and then assume those facts so long as they are consistent with the lower court's ultimate holding.¹² This doctrine relies on the logic that underlying facts consistent with the ultimate judicial decision are implied by the trial court's holding. The implicit finding rule originated in *Gilbert v. Sterrett*, a gerrymandering case decided by the Fifth Circuit in 1975.¹³

In that case, a divided Fifth Circuit upheld the decision of a federal district court that found no evidence of racial discrimination in the redistricting at issue but failed to specifically identify the underlying facts and evidence that led the court to this legal conclusion.¹⁴ Judge Godbold's dissent in *Gilbert* highlighted the issue in question for appellate courts evaluating lower court decisions without a solid factual basis: "[A]ppellate judges . . . are forced to try to divine what evidence the trial court considered and whether it had in view the correct governing law."¹⁵ Over Judge Godbold's dissent, the majority pieced together specific items of evidence that had been submitted to the trial court, even going so far as to attach the specific evidence they found relevant to the inquiry as an appendix to their opinion, and the majority then proceeded to independently determine that, based on that particular evidence, there was no reversible error in the lower court's decision.¹⁶ In the decades following that decision, the Fifth Circuit has reiterated its willingness to step in and fact find when lower courts fail to state sufficient factual findings to afford a reasonable basis for their decisions.¹⁷

As recently as 2009, the Fifth Circuit has entertained the implicit finding doctrine.¹⁸ In *Becker v. Tidewater Inc.*, the Fifth Circuit independently inquired into whether an insurance company was required to defend an individual where the trial court failed to rule directly on the issue.¹⁹ Theoretically, under Rule 52(a), the trial court should have

12. *Id.* at 1393.

13. *Id.*

14. *Id.* at 1394.

15. *Id.* at 1398 (Godbold, J., dissenting).

16. *Id.* at 1394 (majority opinion).

17. *See Transfirst Holdings, Inc. v. Magliarditi*, 574 Fed. App'x 345 (5th Cir. 2014) (applying the implicit finding rule where the lower court's factual basis for a finding of fraud was unclear); *Becker v. Tidewater, Inc.*, 586 F.3d 358, 2010 AMC 945 (5th Cir. 2009) (applying the implicit finding rule in a maritime indemnity context); *Century Marine Inc. v. United States*, 153 F.3d 225, 1999 AMC 608 (5th Cir. 1998) (applying the implicit finding rule where a maritime contractor sought additional compensation for extra work under a government contract).

18. *See Becker v. Tidewater, Inc.*, 586 F.3d 358, 2010 AMC 945 (5th Cir. 2009).

19. *Id.* at 363, 2010 AMC at 947.

evaluated the insurance policy and other relevant evidence to undertake a determination and subsequent discussion of which underlying fact evidence was used to form the basis of that legal determination.²⁰ Since the lower court in fact did not rule on that issue at all, the Fifth Circuit sifted through evidence themselves and subsequently determined that though the trial court did not issue a ruling on the matter, the evidentiary record and ultimate holding supported the contention that the insurer was not required to defend the individual.²¹

III. THE COURT'S DECISION

In the noted case, the Fifth Circuit expressly jettisoned the implicit finding rule in favor of a strict interpretation of Rule 52(a)'s requirement that trial courts must lay out enough of the facts underpinning their decisions to allow appellate courts to understand the basis of the lower court's decision.²² The Fifth Circuit began "with the basics," by first discussing Rule 52(a) of the Federal Rules of Civil Procedure.²³ The court then went on to discuss the fact that the implicit finding rule is inherently inconsistent with the requirements of Rule 52(a) and that subverting the requirement that trial courts should be as complete as possible in their discussion of facts underlying their decisions would not benefit the courts' jurisprudence.²⁴ Additionally, the court discussed the fact that the dynamics of the implicit finding rule stretch the role of the appellate court out of their intended scope.²⁵

The Fifth Circuit began their analysis in the noted case by discussing Rule 52(a) of the Federal Rules of Civil Procedure, which mandates that trial courts document the facts they found during trial in their opinions with enough specificity that appellate courts are able to determine which particular facts formed the basis of the trial court's decision on that issue.²⁶ Rule 52 requires that lower courts specifically discuss the facts they found at trial to support their decisions because trial courts are in a much better position to evaluate the credibility of witness testimony, physical evidence, and other evidentiary material.²⁷ The role of appellate courts

20. See FED. R. CIV. P. 52(a).

21. *Becker*, 586 F.3d at 375, 2010 AMC at 967.

22. *Eni US Operating Co. v. Transocean Offshore Deepwater Drilling, Inc.*, 919 F.3d 931, 936, 2019 AMC 1080, 1086-87 (5th Cir. 2018).

23. *Id.* at 935, 2019 AMC at 1085.

24. *Id.* at 936, 2019 AMC at 1086.

25. *Id.*

26. *Id.* at 935, 2019 AMC at 1085.

27. *Id.*

does not lend itself to the evaluation of evidence to determine facts since those courts are physically and temporally removed from the trial.²⁸ The Fifth Circuit reasoned that fact finding is better left to the trial court in a manner consistent with the Federal Rules of Civil Procedure.²⁹ The Fifth Circuit then moved on to discuss the evolution of its jurisprudence in this area, specifically the implicit finding doctrine, which entered the court's Rule 52 jurisprudence in the 1970s, and that doctrine's incompatibility with Rule 52(a).³⁰

The court began the discussion of the implicit finding rule with the rule's historical development and potential policy implications.³¹ The court noted the birth of the implicit finding rule in a case from 1975 where a divided Fifth Circuit held that even if trial courts fail to document sufficient factual findings for appellate courts to understand the basis of their decisions, appellate courts may independently review the evidentiary record and fact find for themselves, as long as the facts they adopt are consistent with the trial court's ultimate holding.³² The Fifth Circuit discussed the fact that the lower standard for trial court fact finding espoused in the implicit finding rule is inherently incompatible with the basis-of-decision requirement set forth in Rule 52(a).³³ After pointing out the implicit finding rule's incompatibility with the Federal Rules of Civil Procedure, the Fifth Circuit highlighted that the policy underpinnings of the basis-of-decision requirement are also in conflict with the implicit finding rule.³⁴ Requiring trial courts to discuss factual findings underlying their decisions is beneficial for several reasons. Primarily, it allows for appellate courts to clearly evaluate whether the legal conclusions drawn from the specific factual evidence evaluated by trial courts were accurate and equitable.³⁵ Additionally, the basis-of-decision requirement benefits parties who are completely uninvolved in the litigation by providing a more detailed and comprehensive precedent for parties and for other courts to look to in arguing and deciding future cases.³⁶ The Fifth Circuit also pointed out that the basis-of-decision standard is much more

28. *Id.*

29. *Id.*

30. *Id.* at 936, 2019 AMC at 1086.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *See id.*

consistent with the dedicated roles of the trial court in its fact finding capacity and the appellate court in its reviewing capacity.³⁷

The Fifth Circuit pointed out in the noted case that as recently as 2009, the circuit has upheld the validity of the implicit finding rule, reiterating the proposition from *Becker* that “if a trial judge fails to make a specific finding on a particular fact, the reviewing court may assume that the court impliedly made a finding consistent with its general holding so long as the implied finding is supported by the evidence.”³⁸ This is the contention that Transocean made in the noted case.³⁹ The dispute arose from a contractual dispute between the parties.⁴⁰ The plaintiff, Eni, sued Transocean for breach of a contract for a five-year lease on an offshore oil rig.⁴¹ The rig, *Deepwater Pathfinder*, was initially fitted with a refurbished blowout preventer.⁴² The blowout preventer is one of the most crucial safety mechanisms on the entire oil rig.⁴³ Throughout the course of the lease, the blowout preventer and other machinery on and associated with the *Deepwater Pathfinder* malfunctioned.⁴⁴ After months of malfunctions, repair attempts, and the rig sitting idle for extended periods of time, Eni and Transocean parted ways, and this litigation ensued.⁴⁵ The contract in question required that Transocean comply with both the contract’s express requirements and with a standard of good oilfield practice.⁴⁶ The lower court held that both of those standards were met but did not discuss in its opinion any of the facts it found in its analysis of the good oilfield practice claim.⁴⁷ On appeal, Eni argued that the trial court’s decision should be set aside because the trial court failed to lay out sufficient facts to enable the Fifth Circuit to determine which factual evidence the lower court found to be the basis of its decision that Transocean acted in compliance with good oilfield practice.⁴⁸ On the contrary, Transocean argued that under the Fifth Circuit’s implicit finding rule, the Fifth Circuit had the option to assume that, since the lower court’s overall decision was that Transocean did not

37. *Id.*

38. *Id.* (quoting *Becker v. Tidewater, Inc.*, 586 F.3d 358, 371 n.9, 2010 AMC 945, 960 n.9 (5th Cir. 2009)).

39. *Id.*

40. *Id.* at 933-34, 2019 AMC at 1082-83.

41. *Id.* at 933, 2019 AMC at 1082.

42. *Id.*

43. *Id.* at 933 n.1, 2019 AMC at 1082 n.1.

44. *Id.* at 934, 2019 AMC at 1082-83.

45. *Id.*

46. *Id.* at 935, 2019 AMC at 1084.

47. *Id.*, 2019 AMC at 1084-85.

48. *Id.*

breach the contract, the implicit finding that the good oilfield practice standard was met could be accepted at face value by the appellate court as long as evidence consistent with that finding could be found in the evidentiary record from the trial.⁴⁹

The Fifth Circuit pointed out that the factual findings that would be required for an inquiry into a claim for breach of good oilfield practice were not discussed in the lower court's opinion at all.⁵⁰ Factual inquiries in determining the good oilfield practice claim would include a root cause analysis of the failure of the equipment at issue in the contract in addition to an inquiry into whether the subsequent repairs that took place were appropriately selected and executed.⁵¹ Instead, the trial court simply stated that the standard for good oilfield practice had been met, and therefore, that particular term of the contract was not breached.⁵² Under the implicit finding rule, the Fifth Circuit would have been able to sift through the evidence presented during the original trial and assume that, if the evidence presented was consistent with the court's ultimate finding of no breach of contract, then the good oilfield practice standard was met.⁵³ However, the Fifth Circuit in the noted case expressly denounced this practice and retired the implicit finding rule.⁵⁴ The court instead reiterated the fact that the lower court failed to meet the standards of Rule 52(a) and ultimately remanded for further fact finding by the trial court.⁵⁵ The Fifth Circuit also noted the perils of allowing appellate courts the freedom afforded them by the implicit finding doctrine.⁵⁶

The requirements of Rule 52(a) are important for many reasons, notably because the basis-of-decision doctrine promotes jurisprudence that is comprehensive and detailed.⁵⁷ More detailed and fact-specific discussion in a trial court opinion renders the opinion more valuable as precedent for later decisions. The basis-of-decision requirement is also crucial because it keeps the appellate court from usurping its appellate role and entering into fact-finding missions that are outside the intended scope of appellate review.⁵⁸ In the noted case, the Fifth Circuit recognized that

49. *Id.* at 936, 2019 AMC at 1086.

50. *Id.* at 936-37, 2019 AMC at 1087-88.

51. *Id.* at 937, 2019 AMC at 1087.

52. *Id.*

53. *See id.* at 936, 2019 AMC at 1086.

54. *Id.*

55. *Id.* at 937, 2019 AMC at 1088-89.

56. *Id.*, 2019 AMC at 1088.

57. *Id.*

58. *See id.*

the particular case was one where a comprehensive analysis by the trial court of the good oilfield practice issue would be of benefit to both the parties involved and others who would view the case as precedent in subsequent cases.⁵⁹ In the application of the implicit finding rule, the Fifth Circuit identified that the court would have to become the fact finder by either sifting through evidence to determine what the trial court might have based its decision on, or, possibly even worse, by just not looking at any underlying evidence or facts at all and taking the lower court's ultimate decision at face value. Either option would be an inappropriate overreach by the Fifth Circuit.⁶⁰ Clearly, the Fifth Circuit in the noted case saw the perils of the implicit finding rule.⁶¹ Accordingly, the court then went on to order that the case be remanded to the lower court to further inquire into whether Transocean actually complied with good oilfield practice standards.⁶²

IV. ANALYSIS

In determining that the implicit finding rule should be retired from the Fifth Circuit's jurisprudence, the court first looked to the case that initially brought the doctrine into Fifth Circuit precedent, *Gilbert v. Sterrett*.⁶³ The dissent in *Gilbert* vehemently (and rightly) disagreed with the majority's "salvage effort," pointing out that the majority barely seemed to understand its own incoherent logic.⁶⁴ Though he agreed with the ultimate conclusion that there was no reversible error, Judge Godbold rightfully saw that the case at the very least needed to be remanded for further factual determination.⁶⁵ Clearly, *Gilbert* was wrongly decided, likely in the face of strong political pressure to put the gerrymandering case to rest. The Fifth Circuit in the noted case also pointed out that the opinion was decided in the face of Supreme Court jurisprudence that was directly on point.⁶⁶ Unfortunately, the *Gilbert* decision came at a cost to the voters in that case and to countless parties in the cases following *Gilbert* that cited it for its implicit finding doctrine. In the noted case, the

59. *Id.* at 936-37, 2019 AMC at 1087-88.

60. *Id.* at 937, 2019 AMC at 1088.

61. *Id.*

62. *Id.*, 2019 AMC at 1088-89.

63. *Gilbert v. Sterrett*, 509 F.2d 1389 (5th Cir. 1975).

64. *Id.* at 1396.

65. *Id.*

66. *Eni*, 919 F.3d at 936 n.4, 2018 AMC at 1086 n.4 (noting that *Gilbert* was decided in contravention of the Supreme Court of the United States' holding in *Kelley v. Everglades Drainage District*, 319 U.S. 415, 420 (1943)).

Fifth Circuit realized this injustice and decided to right the ship with regard to the basis-of-decision requirement by remanding the case back to the district court for further factual determination.⁶⁷

In the noted case, the Fifth Circuit pointed out that the only factual finding regarding the good oilfield practice term in the contract was that the term “good oilfield practice” itself was not defined in the contract, but the district court concluded that Transocean nevertheless followed good oilfield practice.⁶⁸ The Fifth Circuit rightly pointed out that there were a significant amount of underlying facts missing from the lower court’s opinion.⁶⁹ The good oilfield practice evaluation would require inquiry into the cause of the malfunctions on the *Deepwater Pathfinder*.⁷⁰ Additionally, the court would need to analyze the efforts made by Transocean to repair the *Deepwater Pathfinder* during the course of their business together.⁷¹ The underlying facts on this topic were complex and nuanced, as the *Deepwater Pathfinder* had numerous and varied mechanical issues, and there was an extensive dispute as to the reasonableness and propriety of the repair measures undertaken by Transocean.⁷² The court considered an enormous amount of evidence regarding those two questions of what went wrong and how it was repaired.⁷³ The offshore oil rig *Deepwater Pathfinder*, the object of the lease between the parties, had issues with the blowout preventer and other crucial elements that caused it to be out of service for extensive periods of time.⁷⁴ Additionally, there was some evidence that the parties had at least agreed that issues with the functionality of the rig were foreseeable and had agreed beforehand to certain contractual terms and rates for different levels of functionality of the *Pathfinder*.⁷⁵ Because of the complexity of the rig itself and the extensive dealings between the parties during the course of the lease of the *Deepwater Pathfinder* with regard to its malfunctions and subsequent repairs, the analysis of the good oilfield practice standard should have included a rich factual analysis of the history between the parties. Certainly, the intricate analysis of good oilfield practice could not have

67. See *id.* at 937, 2019 AMC at 1088-89.

68. *Id.* at 935, 2019 AMC at 1084.

69. *Id.*, 2019 AMC at 1085.

70. *Id.* at 937, 2019 AMC at 1087.

71. *Id.*

72. *Id.* at 933-34, 2019 AMC at 1082-83.

73. *Id.*

74. *Id.*

75. *Id.* at 941, 2019 AMC at 1095.

been done away with by just mentioning that the term was undefined in the parties' written integration.⁷⁶

Maritime and oil and gas practitioners should beware of the Fifth Circuit's decision in the noted case, lest they end up like Eni, sparing no expense on a trial and then having nothing to show for it but an order for remand and an obligation to retry the case. The damages in this case soared into the hundreds of millions of dollars, with attorney's fees in the tens of millions.⁷⁷ Certainly the relief that Eni felt after trial in the Southern District of Texas must have been short-lived. This case sends a message to maritime practitioners that they would be wise to think twice about sending complex industry issues like good oilfield practice to trial and should consider taking another glance at a potential settlement.

V. CONCLUSION

By remanding the case back to the trial court, the Fifth Circuit cleansed their jurisprudence of the implicit finding rule once and for all.⁷⁸ In addition to vindicating Judge Godbold, who saw decades ago just what an injustice the implicit finding rule was to the plaintiffs in *Gilbert*, the decision in the noted case realigns the Fifth Circuit's standards for trial courts with the factual burden that was originally intended by the Supreme Court when it enacted Rule 52.⁷⁹ It is truly unfortunate that it took so many decades for the Fifth Circuit to reach such an obvious conclusion. Parties would be well served to realize that although the Fifth Circuit has historically cut some slack for appellate review of bare-bones trial court opinions where evidence was abundant and the court was in the mood for a fact-finding expedition, this practice is likely to halt in cases following the *Eni* opinion.

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76. *Id.* at 935, 2019 AMC at 1084.

77. *Id.* at 941, 2019 AMC at 1094; *Eni US Operating Co. v. Transocean Offshore Deepwater Drilling Inc.*, No. 4:13-CV-03354, 2018 U.S. Dist. LEXIS 83464 (S.D. Tex. May 16, 2018).

78. *Eni*, 919 F.3d at 936, 2019 AMC at 1086.

79. *See id.* at 936 & n.4, 2019 AMC at 1086 & n.4.

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