

Royal Caribbean Cruises, Ltd v. Rigby

Court of Appeal of Florida, Third District

September 12, 2012, Opinion Filed

No. 3D10-483

Reporter

96 So. 3d 1146; 2012 Fla. App. LEXIS 15238; 37 Fla. L. Weekly D 2209; 2012 WL 3964978

Royal Caribbean Cruises, Ltd., Appellant, vs. Jean Rigby, Appellee.

Subsequent History: Released for Publication September 28, 2012.

Prior History: **[**1]** An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Gisela Cardonne Ely, Judge. Lower Tribunal No. 09-49821.

Core Terms

maintenance and cure, trial court, surgery, injunction, evidentiary hearing, hotel, terminate, maximum, knee, benefits, modifying, shoulder, ship, motion calendar, left knee, two weeks, per day, interlocutory, complaints, pre-trial, temporary, dollars, therapy, rehabilitation, expedited, severance, arranged, maritime, hernia, paying

Case Summary

Procedural Posture

Appellant maritime employer sought review of an order of the Circuit Court for Miami-Dade County, Florida, that modified a pretrial order requiring maintenance and cure benefits to appellee seaman.

Overview

Although the seaman had previously received maintenance and cure (MC), it had been discontinued after a physician determined the seaman had reached MMI. The seaman sought additional MC after an examination by another doctor. In July 2009, the trial court granted the seaman's emergency motion for MC, ordering the employer to pay the MC for a ten day period during which the employer was to investigate the seaman's complaints and send him for a medical evaluation. No evidentiary hearing was held, although further continuation of MC was to be determined after a

hearing. The employer paid the emergency MC, continuing to pay for it after the ten day period elapsed. The employer did not appeal from the July 2009 order. It appealed only after the trial court entered its order reducing the amount of MC. As the trial court had already determined that the seaman was entitled to renewed MC, the appellate court affirmed the reduction order. As the employer failed to appeal the July 2009 order, its remedy was in the trial court, not the appellate court.

Outcome

The appellate court affirmed.

LexisNexis® Headnotes

Admiralty & Maritime Law > Maritime Workers' Claims > Maintenance & Cure > General Overview

HN1 In an ordinary case, maintenance and cure cannot be ordered over objection without an evidentiary hearing.

Counsel: Horr, Novak & Skipp, and David J. Horr, Stephanie H. Wylie and Abigail Lewis-Fishkin, for appellant.

Luis A. Perez; Russo Appellate Firm and Susan S. Lerner, for appellee.

Judges: Before SHEPHERD and SALTER, JJ., and SCHWARTZ, Senior Judge. SCHWARTZ, Senior Judge, concurs. SHEPHERD, J., dissenting.

Opinion by: SALTER

Opinion

[*1146] SALTER, J.

Royal Caribbean Cruises, Ltd. appeals an order modifying the pretrial maintenance and cure benefits for an injured seaman, Jean Rigby. Inasmuch as the trial court had already determined Rigby's entitlement to renewed maintenance and cure benefits in an order that was not appealed by Royal Caribbean,¹ we affirm [*1147] the trial court's ruling. The trial court's order and this opinion are without prejudice to Royal Caribbean's right to seek a subsequent termination or further reduction of maintenance and cure benefits (and an evidentiary hearing to demonstrate the propriety of that relief).

Rigby's original medical complaint in 2006 was for an inguinal hernia. After medical treatment aboard ship, he was allowed to return to his home country of Nicaragua for surgery. Following post-surgical rehabilitation, in March 2007 Rigby was found fit for duty and at maximum medical improvement (MMI). Royal Caribbean provided maintenance and cure from Rigby's departure from Royal Caribbean's vessel through the date of MMI. At around that time, however, Rigby also complained of, and was treated for, a fracture of the left patella.² Royal Caribbean paid for surgery to Rigby's left knee and postoperative physical therapy.

Rigby also claimed injury to his right shoulder. Royal Caribbean paid for diagnostic tests, but the doctor pronounced Rigby fit for duty and at MMI for this condition in September 2007. After further therapy for Rigby's knee, the doctor determined that Rigby had reached MMI regarding his knee in January 2008. At that point, Royal Caribbean discontinued maintenance and cure benefits.

In December 2008, however, Rigby was examined by a Miami physician. That physician performed a right shoulder arthroscopy on Rigby in April 2009. Thereafter, Rigby sued Royal Caribbean in the trial court for two counts under the Jones Act, unseaworthiness, and

further maintenance and cure. On July 6, 2009,³ the trial court granted Rigby's emergency motion for maintenance and cure for a period of ten days during which " [Royal Caribbean] shall investigate [Rigby's] medical complaints and send him for a medical evaluation" The order further stated that the continuation of maintenance, and the additional relief sought in Rigby's motion, would be deferred until further hearing after the evaluation of the plaintiff. Royal Caribbean provided the maintenance (lodging in Miami) specified [*4] in the order for the ten-day period and did not terminate it while seeking termination of its duty to do so. Royal Caribbean did not appeal that order.

The January 2010 order sought to be reviewed here only reduced the maintenance and cure obligation of Royal Caribbean, modifying the obligation to provide motel accommodations in Coral Gables to a fixed per diem amount (\$25.00) consistent with Rigby's return to Nicaragua. After unsuccessfully seeking clarification or reconsideration of the modification order in February 2010, Royal Caribbean commenced this appeal.

Analysis

This is an unusual record. Royal Caribbean is correct that **HN1** in an ordinary case, maintenance and cure cannot be ordered over objection without an evidentiary hearing. [Rio Miami Corp. v. Balbuena, 756 So. 2d 258 \[*1148\] \(Fla. 3d DCA 2000\)](#). In this case, however, such a ruling was entered at the outset of the lawsuit and Royal Caribbean did not appeal. Indeed, after the initial ten-day period specified in that initial order, Royal Caribbean continued [*5] to provide maintenance and cure to Rigby. While to a maritime company this may seem to be punishment for a good deed, to an appellate court the failure to appeal the initial (albeit summary) maintenance and cure ruling seems to have shifted the burden to the maritime company to prove MMI (and to present any other evidence supporting termination of

¹ The initial post-complaint order granting Rigby's motion for maintenance and cure was entered July 23, 2009. Instead of appealing that order, Royal Caribbean elected to move [*2] to sever the maintenance and cure claim for trial (a motion denied October 1, 2009) and then to terminate the relief granted in the July 23, 2009 order. The order modifying the maintenance and cure to be provided Rigby, and denying Royal Caribbean's motion to terminate maintenance and cure pending trial, was entered January 20, 2010, and is the subject of this appeal. Royal Caribbean did not present evidence at the hearing on its motion to terminate maintenance and cure.

² Rigby's injuries occurred aboard ship while attempting to manually lift heavy garbage bins of food [*3] waste and other debris.

³ The trial court's oral ruling was not reduced to a signed order until July 23, 2009, but Royal Caribbean did not await the written ruling before providing maintenance and cure to Rigby.

the benefits) at an evidentiary hearing. Whether Rigby has attained MMI after the July 2009 order is a disputed factual issue requiring an evidentiary hearing. [Langmead v. Admiral Cruises, Inc., 610 So. 2d 565, 567 \(Fla. 3d DCA 1992\)](#).

The true gravamen of Royal Caribbean's claims below and here is delay. The maintenance and cure benefits as modifies—\$25 per day versus the cost of a motel room in Coral Gables—were actually reduced in the subsequent order.⁴ Royal Caribbean is frustrated that it has not been granted severance and an expedited trial on the maintenance and cure claim separately, or on all claims, and that Rigby's presence in Nicaragua portends further delays. Motions to expedite, requests for a short evidentiary hearing, and motions for assignment of the case to a senior or backup judge, are among the traditional and available **[**6]** means of addressing such concerns.

Royal Caribbean's initial brief accuses the trial court of "wrongfully entering a pre-trial order summarily adjudicating the merits of Rigby's maintenance and cure claim." That may or may not be so, but that July 2009 order was not appealed. Royal Caribbean's remedy is thus in the trial court, not this court.

Affirmed.

SCHWARTZ, Senior Judge, concurs

Dissent by: SHEPHERD

Dissent

SHEPHERD, J., dissenting.

This is an appeal of an order requiring Royal Caribbean Cruises, Ltd. to pay a seaman indefinite maintenance benefits of twenty-five dollars per day and the cost of rehabilitation, based upon a request made, without supporting evidence, during a motion calendar. The

majority opines that because it failed to appeal a prior interlocutory injunction, also obtained without supporting evidence, requiring it to provide the seaman with temporary housing in Miami, Royal Caribbean is barred from challenging the current order. Because **[**7]** the Florida Rules of Appellate Procedure authorize but do not compel a party to appeal from an interlocutory injunction, and the award of maintenance and cure was unsupported by evidence, I respectfully dissent.

FACTUAL BACKGROUND

The seaman in this case, Jean Rigby, signed aboard Royal Caribbean's Majesty of the Seas on July 7, 2006. On approximately November 22, 2006, Rigby developed right groin pain that was burning in nature, which he attributed to lifting weighty shipboard containers during the course of duty.⁵ He initially saw a shipboard **[*1149]** doctor, who told him he had a hernia. Consistent with its obligation under general maritime law, *see supra* note 1, Royal Caribbean arranged for Rigby to be evaluated by a shoreside specialist, who diagnosed him with a right inguinal hernia and recommended surgery to repair it. Rigby elected to undergo the surgery and recovery in his home country, Nicaragua. Royal Caribbean then arranged for Rigby to disembark and return home for further care. In Nicaragua, Royal Caribbean provided Rigby with maintenance, and arranged and paid for Rigby to undergo a right-inguinal hemiorrhaphy. The surgery was performed on December 15, 2006, approximately one week **[**8]** after his disembarkation from the ship. His treating physicians in Nicaragua opined that he reached maximum medical improvement for his hernia injury on March 2, 2007.

On February 28, 2007, during his final evaluation for the inguinal injury, Rigby complained of pain in his left knee. Royal Caribbean continued paying maintenance, and arranged and paid for an evaluation and treatment with Dr. Luis Gutierrez Quant, an orthopedic physician. Dr. Gutierrez Quant diagnosed Rigby with a fracture of the left patella. **[**9]** Royal Caribbean paid for Rigby to

⁴ Royal Caribbean apparently has accepted the benefit of the trial court's order relieving Royal Caribbean of providing the Coral Gables motel room to Rigby. Its claims of ambush and prejudice (by obtaining an improvement in daily cost) are not compelling.

⁵ The cause of the injury is of no moment to this case. Short of culpable negligence on the part of the seaman, a ship owner has an absolute duty under general maritime law to provide maintenance and cure while the seaman is in the employ of the ship "irrespective of whether the illness or injury is suffered in the course of the seaman's employment." *See Vella v. Ford Motor Co., 421 U.S. 1, 4, 95 S. Ct. 1381, 43 L. Ed. 2d 682 (1975)*; *see also Duarte v. Royal Caribbean Cruises, Ltd., 761 So. 2d 367 (Fla. 3d DCA 2000)* (holding ship owner responsible for paying maintenance and cure for aggravation and enhancement of shipboard injuries caused by automobile accident while seaman was ashore receiving maintenance and cure).

undergo surgery to the left knee, as well as postoperative physical therapy. Royal Caribbean paid maintenance during this period as well.

During the course of the therapy on the left knee, Rigby began complaining of right-shoulder pain. In response, Royal Caribbean arranged for a further evaluation by Dr. Gutierrez Quant. Diagnostic tests prescribed by Dr. Gutierrez Quant, including X-rays and an ultrasound of the shoulder, were normal. On September 3, 2007, Dr. Gutierrez Quant found Rigby was fit for duty and had reached maximum medical improvement with respect to his shoulder. Thereafter, Dr. Gutierrez Quant opined that Rigby reached maximum medical improvement for his left knee on January 22, 2008. In total, Royal Caribbean continuously paid maintenance and cure for Rigby from late November 2006 to January 22, 2008.

On December 12, 2008,⁶ plaintiff's counsel brought Rigby to Miami for examination of the same three complaints for which he was treated in Nicaragua. Rigby's Miami physician, Dr. Richard Rosecwaig, determined Rigby needed further treatment for his shoulder and knee and, after several months of therapy in Miami for both conditions, Dr. **[**10]** Rosecwaig performed arthroscopic surgery on Rigby's right shoulder on April 16, 2009.

On July 2, 2009, after Royal Caribbean rejected plaintiff's demands for reinstatement of maintenance and cure, Rigby filed a four-count complaint against Royal Caribbean for: (1) maintenance and cure; (2) Jones Act negligence; (3) Jones Act negligent failure to treat; and (4) unseaworthiness. In an attached Emergency Motion for Maintenance and Cure, Rigby asserted that after six months living in the United States courtesy of the "generosity of others," **[*1150]** he was being thrown out of his Miami hotel and was about to

become homeless. Four days after Rigby filed his complaint, the trial judge held a telephonic hearing from her car on the emergency motion and, without taking any evidence, ordered Royal Caribbean to "house [Rigby] at the Best Western ChateauBleau Hotel in Coral Gables for ten days," and, in the **[**11]** meanwhile, "investigate plaintiff's medical complaints and send him for an independent medical examination." The order encapsulating the results of the July 6, 2009,⁷ hearing further stated: "The continuation of the plaintiff's maintenance, and the additional relief sought by plaintiff's motion, is deferred at this time until further hearing by the Court, after the evaluation of the plaintiff." The next hearing on the matter occurred at a motion calendar on July 23, 2009, during which the trial court was presented with the report of an independent medical examination conducted by Dr. Jerry Sher on July 13, 2009. Dr. Sher concluded Rigby "has likely reached maximum medical improvement with regard to his orthopedic complaints [and] additional surgery to the right knee⁸ is unlikely to yield any significant gains given the diffuse nature of his symptoms." Despite Dr. Sher's opinion concerning future surgery, Plaintiff's counsel announced at the hearing that Rigby was scheduled for additional left-knee surgery in two weeks. The trial court was perturbed that the "further hearing" ordered on July 6 had been placed on her **[**12]** ten-minute motion calendar. Nevertheless, because the surgery was scheduled within two weeks, the trial court ordered Royal Caribbean to keep Rigby in the hotel until his surgery and once again deferred the issue of maintenance. In turn, Plaintiff's counsel promised to get an evidentiary hearing date to resolve the matter.⁹

[*1151] Surgery on Rigby's knee did not occur until August 27, 2009. When considerably more than two weeks passed without an evidentiary hearing (during

⁶ This was approximately eleven months after Dr. Gutierrez Quant found Rigby had reached maximum medical improvement with respect to his knee; fifteen months after Rigby was found fit for duty with respect to the shoulder; and twenty-one months after reaching maximum medical improvement from the hernia.

⁷ The written order on this ruling was not entered until July 23, 2009.

⁸ The reference to the "right knee" here appears to be a scrivener's error. The report, which is four pages long, makes reference only to Rigby's left knee in multiple places, including the section recounting the details of the doctor's physical examination.

⁹ The order entered on July 23, 2009, simply memorialized the court's July 6, 2009, ruling. Thus, the rulings made at the July 23, 2009, hearing were not reduced to writing, and as such were not appealable. See [Rivera v. Dade Cnty., 485 So. 2d 17, 17 \(Fla. 3d DCA 1986\)](#) (stating "this court lacks jurisdiction to review orders which have not been reduced to writing"). The following occurred when the trial court was provided with Dr. Sher's report:

THE COURT: . . . So what do you want me to do with this report?

Richard Rusak

which Royal Caribbean continued to pay Rigby's hotel expenses), Royal Caribbean moved to sever and expedite the maintenance and cure claim for trial. At the October 1, 2009, hearing on this motion, with Plaintiff's counsel now objecting to both a severance and an evidentiary hearing because counsel had caused the entire case to be set on the court's February 1 trial calendar, Royal Caribbean's **[**15]** motion was denied. The trial court stated: "I am not dealing with anything else in this case until trial unless you need me for something. You pay or not pay at your own peril."

On December 21, 2009, Royal Caribbean learned from Plaintiff's counsel Rigby had returned to Nicaragua and would not be available either for his scheduled pre-trial deposition or the February trial. Recognizing that for some unknown period it had been paying for an unoccupied hotel room,¹⁰ Royal Caribbean filed a motion to terminate its obligation to house the plaintiff in the United States. At the January 20, 2010, hearing on the motion, the trial court terminated Royal Caribbean's obligation to pay Rigby's Coral Gables hotel room, but, without any evidence, ordered Royal Caribbean to pay Rigby maintenance at a rate of twenty-five dollars (US)

[PLAINTIFF'S COUNSEL]: I want you to hold an evidentiary hearing, as the law requires. I want the Court . . . **[**13]** . to continue the defendant's obligation, which is not predicated, Your Honor, on any fault or concepts of negligence or unseaworthiness, until this man reaches maximum medical improvement.

THE COURT: It says he did.

[PLAINTIFF'S COUNSEL]: That's a doctor selected by the defendant after an 18-month delay of not sending him to anybody. He's here in Miami. He's treating with Doctor Rosencwaig, he's scheduled for knee surgery in two weeks, he has not reached MMI.

THE COURT: I'm not doing this on motion calendar. Keep paying the two weeks, let him have his surgery, and I'll deal with it after that. We are not talking about a million dollars, anyway.

[DEFENDANT'S COUNSEL]: Judge, just to clarify, the defendant's position is that he's not entitled to surgery to be paid by us.

THE COURT: I didn't say you are going to pay for the surgery. I just said keep him in the hotel. It can't be that much for two weeks until his surgery. I'll deal with it after.

....

THE COURT: [Defense counsel], you brought this man back to the United States without court order. Your office probably paid for his return. I went out of my way to make sure that I gave him the IME and the ten days of maintenance; okay? So that **[**14]** report, the way I'm reading it, is that the defense says he reaches MMI. At this point, I'm not going to order any more than the hotel payment. You need to continue to pay it and then I'll deal with it at an evidentiary hearing at a later date, but not today.

....

THE COURT: The continuation of the plaintiff's maintenance and additional relief is deferred until further hearing by the Court....

And I need to ask both of you not to do this, and particularly the plaintiff, on motion calendar, because I don't have the ability to deal with major serious issues on motion calendar.

[PLAINTIFF'S COUNSEL]: I'm sorry, Your Honor. We'll get an evidentiary hearing date.

¹⁰ The last evidence in the record of Rigby's presence in the United States was November 13, 2009, his last appointment with Dr. Rozencwaig. Rigby's room charge at the Best Western ChateauBleau Hotel in Coral Gables was sixty-five dollars per day.

per day and furnish plaintiff post-surgical rehabilitation. The primarily hand-written order reads in pertinent part:

ORDERED AND ADJUDGED that said Motion be, and the same is hereby [g]ranted in part. [Defendant] shall no longer be required to pay for Plaintiff's housing in Miami. [Defendant] shall pay Plaintiff's maintenance at a rate of \$25 (US)/day and furnish Plaintiff **[**16]** post-surgical rehabilitation as necessary. Plaintiff shall provide [Defendant] with all recent medical and physical therapy records to the extent they exist.

Thereafter, Royal Caribbean unsuccessfully moved for reconsideration, asking the trial court to reconsider its order or, in the alternative, reduce the maintenance rate to twelve dollars per day, based on a sworn affidavit stating that twelve dollars per day is what Royal Caribbean currently pays for maintenance for crewmembers in Nicaragua.¹¹

DISCUSSION

The beginning of legal wisdom in this case is to recognize the July 6, 2009, order, which required Royal Caribbean to **[*1152]** house Rigby for ten days while the defendant investigated Plaintiff's medical **[**17]** complaints, and is the order the majority says operates to bar appellate relief here as an interlocutory or temporary injunction. See *Camji v. Helmsley*, 602 So. 2d 617, 618 (Fla. 3d DCA 1992) ("The very purpose of a temporary injunction is to preserve the status quo in order to prevent irreparable harm from occurring before a dispute is resolved."); Black's Law Dictionary 855 (9th ed. 2009) (defining a preliminary injunction as one "issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case"). Like any interlocutory order, a temporary injunction is dissolvable or modifiable at any time during the course of the litigation. See, e.g., *AC Holdings 2006, Inc. v. McCarty*, 985 So. 2d 1123, 1125 (Fla. 3d DCA 2008); *Bettez v. City of Miami*, 510 So. 2d 1242, 1243 (Fla. 3d DCA 1987). For this reason, *Florida Rule of Appellate Procedure 9.130(a)(3)(B)* authorizes, but does not obligate, an adversely affected party to

take an interlocutory appeal from orders which "grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions." See *Saul v. Basse*, 399 So. 2d 130, 133 (Fla. 2d DCA 1981) ("[F]ailure **[**18]** to utilize the right to take an interlocutory appeal does not restrict the scope of appellate review when the final order is appealed."). Thus, the majority's res judicata-like assertion that "[i]nasmuch as the trial court had already determined Rigby's entitlement to renewed maintenance and cure benefits in an order that was not appealed by Royal Caribbean, [it must] by law affirm the trial court's ruling," see majority op. at 2, is legally unsupportable.

Moreover, it is axiomatic that a court may "alter the decree to adapt it to such changed conditions or set it aside altogether . . . where there is a change in the controlling facts on which an injunction rests." See *Jackson Grain Co. v. Lee*, 150 Fla. 232, 7 So. 2d 143, 146 (Fla. 1942) (quoting 28 Am. Jur. pp. 494, 495). Here, there clearly was a change in the controlling facts because Rigby had returned to Nicaragua. Moreover, the second condition of the prior injunction had occurred. Royal Caribbean had investigated Rigby's medical complaints, received a medical opinion that further surgery was unnecessary, and determined Rigby was not entitled to further maintenance and cure. Thus, upon Royal Caribbean's motion, the trial court properly terminated **[**19]** the injunction to pay for the hotel room. Unfortunately, the trial court did not confine her ruling to ending Royal Caribbean's obligation to pay for the hotel room, but ordered Royal Caribbean to pay Rigby's maintenance and cure.¹² In so doing, the trial court erred.

Without evidence, the trial court could not convert the injunction for temporary relief to an order that not only set an indefinite maintenance amount, but also, for the first time, ordered Royal Caribbean to pay rehabilitation from a knee operation, the need for which was still in

¹¹ I belabor the recitation of the factual and litigation history pertinent to this case only to show this is not an "unusual record," and that a mere peek at the law is all that is necessary to appreciate why the order under review should be reversed.

¹² The obligation of a ship owner to pay maintenance and the obligation of a shipowner to pay cure represent two different obligations. "Maintenance is a per diem subsistence allowance . . . intended to encompass the reasonable cost of food and lodging comparable to that received aboard the vessel." *Costa Crociere S.p.A. v. Rose*, 939 F. Supp. 1538, 1548 (S.D. Fla. 1996). Cure refers to medical treatment. *Id.*

dispute.¹³ Just months earlier, the trial court correctly declined to make Royal Caribbean [*1153] financially responsible for both maintenance and cure without proof, and ordered the issue be set for an evidentiary hearing.¹⁴ See [Buchanan v. Sullivan, 620 So. 2d 1301 \(Fla. 4th DCA 1993\)](#) [**20] (reversing an injunction granted without evidence); [Zuckerman v. Prof'l Writers of Fla., Inc., 398 So. 2d 870 \(Fla. 4th DCA 1981\)](#).

Here, Rigby's entitlement to further maintenance and cure was in dispute, and should have been tried. The order awarding maintenance and cure without a trial flies in the face of settled law in this District that a seaman is not entitled to a pre-trial order for payment of maintenance and cure before a trial on the merits on disputed issues. See [Rio Miami Corp. v. Balbuena, 756 So. 2d 258 \(Fla. 3d DCA 2000\)](#); [Langmead v. Admiral Cruises, Inc., 610 So. 2d 565 \(Fla. 3d DCA 1992\)](#); see also [Rose, 939 F. Supp. at 1548](#) (settling dispute between physicians as to whether seaman reached maximum medical improvement at bench trial on claim for maintenance and cure). The principle is one which generally is accepted. [**21] See [Blake v. Cairns, No. C-03-4500 MJJ, 2004 U.S. Dist. LEXIS 16837, 2004 WL 1857255, at *1 \(N.D. Cal. 2004\)](#) ("Generally, [a] suit for maintenance and cure presents questions of fact. It should not be disposed of by summary judgment **nor should payment be decreed on motion.**") (emphasis added) (citing Martin J. Norris, *The Law of Seaman*, Vol. 2, § 26.21 (4th ed. 1985)); [Carline v. Cap. Marine Supply, Inc., 81 F.R.D. 710 \(E.D. La. 1979\)](#) (denying seaman's motion for preliminary injunction to compel employer to pay maintenance and cure); [Billiot v. Toups Marine Transp., Inc., 465 F. Supp. 1265, 1269 \(E.D. La. 1979\)](#) ("[A]n injured seaman does not have the right to injunctive relief on the issue of payment of maintenance, and . . . an employer has the right to dispute, in good faith, the rate of maintenance to be paid."); [Sanfilippo v. Rosa S., Inc., No. 85-3915-Mc, 1985 U.S. Dist. LEXIS 13020, 1985 WL 4565, at *2 \(D. Mass. 1985\)](#) ("[U]nless the seaman can show that there are no material facts in dispute and that he is entitled to summary judgment on the claim, he cannot obtain a pre-trial order for payment."); [Claudio v. Sinclair Ref. Co., 126 F. Supp. 154, 154 \(E.D.N.Y. 1954\)](#) ("There is no authority for [an order for immediate payment of maintenance] [**22] by way of a summary proceeding or motion, excepting

where there is no genuine issue of material fact . . ."); [Guerra v. Arctic Storm, Inc., No. C04-1010L, 2004 U.S. Dist. LEXIS 24388, 2004 WL 3007097 \(W.D. Wash. 2004\)](#) (holding that seaman was not entitled to summary judgment for payment of maintenance and cure where disputed issues of fact existed); *but see* [Nuzum v. Dritsik Fisheries, Inc., No. A93-0057CV, 1995 U.S. Dist. LEXIS 10823, 1995 WL 455801 \(D. Alaska 1995\)](#) (granting pre-trial motion to reinstate maintenance and cure where there existed conflicting opinions concerning seaman's fitness to return to work at the time maritime employer ceased maintenance and cure payments); [Sefcik v. Ocean Pride Alaska, Inc., 844 F. Supp. 1372, 1373-74 \(D. Alaska 1993\)](#) (granting motion to reinstate maintenance and cure where "questions of fact [concerning whether plaintiff had reached maximum medical improvement] did not arise after the time plaintiff filed his motion to reinstate maintenance and cure").

Applying these principles of law to the facts of this case requires reversal of the order before us. Moreover, because the order under review rests on purely legal matters, it is subject to full, or de novo, review before this court. See [Operation Rescue v. Women's Health Ctr., Inc., 626 So. 2d 664, 670 \(Fla. 1993\)](#) [**23] ("To the extent it [*1154] rests on purely legal matters, an order imposing an injunction is subject to full, or de novo, review on appeal."), *aff'd in part, rev'd in part on other grounds sub nom. Madsen v. Women's Health Ctr., Inc., 512 U.S. 753, 114 S. Ct. 2516, 129 L. Ed. 2d 593 (1994)*.

CONCLUSION

I am sure the trial judge meant well. One also could not be faulted for detecting a tinge of sympathy for the seaman in the opinion of the majority. However, our legal system requires more than heartfelt sympathy. The solution to a seaman's claim that he needs immediate payment of maintenance and cure in this case lies in his own hands. He either may sue separately for maintenance and cure, or, having filed one suit, ask for severance of the maintenance claim and an expedited trial of it by the court. See [Tate v. Am. Tugs, Inc., 634 F. 2d 869, 871 \(5th Cir. 1981\)](#). The seaman in this case is not satisfied to pursue either of these

¹³ The majority fails to explain how a temporary order for short term maintenance bars review of a later order, the one now before us, which for the first time compels payment of cure.

¹⁴ More accurately, the trial court should have asked the parties to either set the entire case for an expedited jury trial, or a bench trial on only the maintenance and cure claim.

well-travelled routes. I would reverse the order compensating him while he waits.