

MOORHEAD v. MITSUBISHI AIRCRAFT INTERNATIONAL, INC.
828 F.2d 278 (5th Cir. 1987)

WISDOM, CIRCUIT JUDGE:

[In a wrongful death action stemming from a plane crash killing all four passengers, the pilot's (Baker) estate challenges the admission into evidence of the pilot's training records.]

This was a bench trial. During the trial, the United States offered as evidence some of Baker's training records from a flight school refresher course and the deposition of Carlos Agüero, one of the three course instructors. Among other things, this evidence indicates that Agüero gave Baker low marks in handling emergency situations during a flight simulator test, considered him weak in aircraft knowledge and instrument flying, and (thinking Baker was not himself a professional pilot) recommended that Baker hire a professional pilot to fly with him. Before the trial began, Baker's estate challenged this evidence as inadmissible under Fed. R. Evid. 404 and, at the trial's outset, the district court ruled the evidence admissible. This was erroneous, and would be grounds for reversal were this a jury trial. It is not, however, grounds for reversal here.

Under Fed. R. Evid. 404, evidence of Baker's past conduct is not admissible to prove that he acted in conformity with that conduct on the afternoon of this crash, but it is admissible to rebut evidence of Baker's past good conduct as a pilot offered in his defense. The contested evidence has no probative value other than to prove action in conformity with Baker's past conduct. Because the district court ruled the evidence admissible before any other evidence was presented, there was no reason to believe Baker's estate would put into issue Baker's character as a pilot. Indeed, by ruling as it did when it did, the trial court gave Baker's estate little choice but to introduce evidence of Baker's good conduct as a pilot; it cannot fairly be said that Baker's estate put the subject into issue.

[*]So that there maybe no misunderstanding, the court will state that this option has no applicability to F. R. Ev. 404(b), which does apply to civil cases.

Thus, strict application of Fed. R. Evid. 404 should exclude this evidence. But, as this court stated in *Null v. Wainwright*, "[s]trict evidentiary rules of admissibility are generally relaxed in bench trials, as appellate courts assume that trial judges rely upon properly admitted and relevant evidence." The district court did not rely upon this evidence in making its three pilot negligence findings. Nor do we find it necessary to rely upon it in affirming two of those findings.... In short, we have no reason to think the district court's verdict would have been different had the evidence of Baker's refresher course performance not been introduced.

Thus, strict application of Fed. R. Evid. 404 should exclude this evidence. But, as this court stated in *Null v. Wainwright*, "[s]trict evidentiary rules of admissibility are generally relaxed in bench trials, as appellate courts assume that trial judges rely upon properly admitted and relevant evidence." The district court did not rely upon this evidence in making its three pilot negligence findings. Nor do we find it necessary to rely upon it in affirming two of those findings.... In short, we have no reason to think the district court's verdict would have been different had the evidence of Baker's refresher course performance not been introduced.