IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-2877

KATHRYN E. VAUTHRIN,

Plaintiff-Appellant,

versus

PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-92-1446)

(February 7, 1994)

Before JOHNSON, GARWOOD, and JOLLY, Circuit Judges.

PER CURIAM:*

Plaintiff-appellant Kathryn E. Vauthrin sued defendant-appellee Prudential Insurance Company ("Prudential") for breach of the duty of good faith and fair dealing, and for negligent infliction of emotional distress when blood tests completed as a part of her application for insurance revealed that she was infected with the Human Immunodeficiency Virus ("HIV"). The district court, however, dismissed Vauthrin's suit for failure to

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

state a claim upon which relief could be granted. Because we find that Vauthrin's complaint failed to state a claim, we affirm the district court's dismissal of the suit.

I

In early February 1990, Vauthrin met with a local insurance agent for Prudential, James E. Walker ("Agent Walker"), to apply for a retirement income policy and a life insurance policy.[1] As part of the application process, Agent Walker informed Vauthrin that she would need to undergo a blood test. On February 20, after Vauthrin paid $100, a registered nurse came to Vauthrin's home to draw blood for testing. Vauthrin provided written consent to the disclosure of the blood test results to Prudential and its affiliates; however, she never signed the separate authorization form required before an HIV test would be performed.

On March 20, Vauthrin received a letter from Prudential in which the company declined to insure her "because of abnormalities found in the blood study." After receiving the letter, Vauthrin contacted Agent Walker and asked him whether she had AIDS; Walker told her that she did not. Vauthrin then wrote Prudential requesting that a report of the blood tests be sent to her physician. On April 14, she received a letter stating that Prudential was assembling the information and would "write soon."

[1]Because we are reviewing the district court's grant of a Rule 12(b)(6) motion for dismissal for failure to state a claim, we accept as true the facts as set out by Vauthrin's complaint filed with the district court. See Doe v. State of Louisiana, 2 F.3d 1412, 1413 (5th Cir. 1993).

Four days later, Vauthrin received a notice tacked to her front door requesting her to contact the Brazoria County Health Department. Vauthrin again called Agent Walker and his supervisor, a Mr. Colson, who assured her that the Health Department notice had no connection to the blood tests conducted by Prudential because Prudential did not, as a matter of practice, give medical reports to the Health Department. On April 19, Vauthrin met with representatives from the Health Department who informed her that the department received a report from Prudential that Vauthrin had tested positive for HIV. The Health Department then drew a sample Vauthrin's blood to conduct another test to confirm the results of the earlier test. After her meeting with the Health Department representatives, Vauthrin again contacted Agent Walker who told her that the problem was not HIV, but rather "elevated liver enzymes." On April 24, Prudential sent Vauthrin's file to her physician, who then informed Vauthrin that she had indeed tested positive for HIV. The next day, the Health Department informed Vauthrin that the blood tests it conducted also indicated that she had HIV. On April 26, Vauthrin was admitted to the psychiatric ward of John Sealy Hospital in Galveston.

II

Two years later, in April 1992, Vauthrin filed suit against Prudential in Texas state court. Vauthrin's complaint alleged that Agent Walker's repeated denials that she had tested positive for HIV, and Prudential's failure to promptly notify her of the

positive test results amounted to negligent infliction of emotional distress and a breach of the duty of good faith and fair dealing. As a result of Prudential's actions, Vauthrin sought $2,003,379.60 in actual damages and $1 million in exemplary damages. Prudential removed the action to federal district court diversity of citizenship grounds, and then moved to dismiss Vauthrin's suit under Federal Rule of Civil Procedure 12(b)(6) on the grounds that her complaint failed to state a claim upon which relief could be granted. The district court granted this motion, entering judgment in favor of Prudential. Vauthrin now appeals.

III

Vauthrin contends that the district court erred in dismissing her lawsuit because, she argues, her complaint did in fact state two causes of action upon which relief could be granted--breach of the duty of good faith and fair dealing, and negligent infliction of mental anguish. We review de novo the district court's decision to grant dismissal pursuant to Rule 12(b)(6). Benton v. United States, 960 F.2d 19, 21 (5th Cir. 1992); see also Burzynski v. Aetna Life Ins. Co., 967 F.2d 1063, 1067 (5th Cir. 1992)(holding that de novo review is appropriate when the dismissal is based on the district court's interpretation of state law). We take the allegations of the complaint to be true, and we will not affirm the dismissal unless it appears beyond doubt that the plaintiff cannot prove any set of facts in support of her claim that would entitle

her to relief. Doe v. State of Louisiana, 2 F.3d 1412, 1416 (5th Cir. 1993); Benton v. United States, 960 F.2d at 21.

A

First, Vauthrin contends that Prudential breached the duty of good faith and fair dealing. Prudential, however, argues that it was bound by no such duty. Under Texas law, the duty of good faith and fair dealing can arise out of three types of relationships between the parties: a "fiduciary relationship," a "special relationship," or a "confidential relationship." Crim Truck & Tractor Co. v. Navistar Int'l Transportation Corp., 823 S.W.2d 591, 593-94 (Tex. 1992). Vauthrin does not argue, and correctly so, that a fiduciary relationship existed between herself and Prudential. Instead, she contends that a "special relationship" was created through her application for insurance, in which she consented to medical testing and tendered a check to cover the cost of such testing. She further argues that a "confidential relationship" was created when "personal medical information of the most sensitive nature is disclosed."

Vauthrin's relationship with Prudential is not a "special relationship" as defined by Texas law. Texas courts have imposed a duty of good faith and fair dealing on "special relationships" in which there exists an imbalance of bargaining power. See, e.g., Arnold v. National County Mut. Fire Ins. Co., 725 S.W.2d 165, 167 (Tex. 1987). However, Texas courts have been reluctant to find the existence of a "special relationship" in nearly all instances with

one exception: those relationships created by insurance contracts between insureds and insurers. See Id. (recognizing that an insurer has a duty to deal fairly and in good faith with its insured in the processing and payment of claims); Viles v. Security Nat'l Ins. Co., 788 S.W.2d 566, 567 (Tex. 1990)(holding that insurer owes insured the duty of good faith and fair dealing); Aranda v. Insurance Co. of N. Am., 748 S.W.2d 210, 212 (Tex. 1988)(establishing that a compensation carrier owes the duty of good faith and fair dealing to employees who file claims); see also Houston Cable TV, Inc. v. Inwood West Civic Assn, 839 S.W.2d 497, 504 (Tex. App.--Houston [14th Dist.] 1992, jmt. set aside, 860 S.W.2d 72 (Tex. 1993)(noting that courts are reluctant to extend the duty of good faith and fair dealing in situations other than those where an insured seeks payment of a claim from the insurer). In this case, Vauthrin is not insured by Prudential; rather, she has merely applied for insurance coverage. As the district court concluded, no Texas cases have found a "special relationship" between an applicant for insurance and an insurer. Because no insurance contract yet existed between Prudential and Vauthrin, the relationship between the two cannot be characterized a "special relationship" giving rise to the duty of good faith and fair dealing.

Vauthrin also contends that her relationship with Prudential was a "confidential relationship" giving rise to the duty of good faith and fair dealing because she provided Prudential with

sensitive personal medical information during the application process. Under Texas law,

> A fiduciary relation is not limited to cases of trustee and cestui que trust, guardian and ward, attorney and client, nor other recognized legal relations, but it exists in all cases in which influence has been acquired and abused, in which confidence has been reposed and betrayed, and the origin of the confidence is immaterial, and may be moral, social, or domestic, or merely personal.

Texas Bank & Trust Co. v. Moore, 595 S.W.2d 502, 507 (Tex. 1980). This fiduciary-like relationship, which arises out of those relationships that fail to meet the technical requirements of a true fiduciary relationship, has been termed "confidential relationships." Crim Truck & Tractor Co. v. Navistar Int'l Transp. Corp., 823 S.W.2d 591, 594 (Tex. 1992). Once a confidential relationship has been found to exist, at a very minimum, the parties owe one another a duty of good faith and fair dealing. Id.

In the past, those cases in which Texas courts have found "confidential relationships" have involved associations between parties that are far more extensive and involved than the relationship at issue in this case. In Texas Bank & Trust Co. v. Moore, 595 S.W.2d 502 (Tex. 1980), for example, the affiliation giving rise to the "confidential relationship" involved an ailing elderly woman and her nephew. Over the course of several years, while the woman was confined to a nursing home, the nephew managed her financial affairs and took control over certain funds. He had also been granted power of attorney, allowing him to withdraw funds from the woman's accounts. Once the woman died, the nephew

transferred many of the funds under his control into his own personal accounts. Although in the technical or formal sense, this relationship did not rise to the level of a fiduciary relationship, the court nevertheless held that a "confidential relationship" existed. The court reasoned that when the nephew accepted extensive responsibility over the woman's financial matters, he consented "to have his conduct towards the other measured by the standards of the finer loyalties exacted by courts of equity." Id. at 508; cf. Crim Truck & Tractor Co. v. Navistar Int'l Transp. Corp., 823 S.W.2d 591 (Tex. 1992)(holding that no confidential relationship existed notwithstanding the close franchisee/franchisor relationship that spanned many years).

In Vauthrin's case, the extent of her contact with Prudential was minimal. The two parties entered negotiations through which Vauthrin sought insurance coverage from Prudential. Standard procedures were followed, and standard information was exchanged. Although it is true that Vauthrin provided Prudential with sensitive personal medical information during the application process, this is insufficient to create a fiduciary-like "confidential relationship." Because the relationship between Prudential and Vauthrin did not rise to the level of "confidential relationship," Prudential owed no duty of good faith and fair dealing. Because Prudential did not owe Vauthrin any duty, the district court did not err in finding that the allegations in her

complaint failed to state a claim upon which relief could be granted.

B

Next, Vauthrin contends that the district court erred in dismissing her suit because, she argues, her complaint properly alleged that Prudential's conduct negligently inflicted mental anguish. Although Texas courts have recognized an independent cause of action for intentional infliction of emotional distress, see Twyman v. Twyman, 855 S.W.2d 619, 621-22 (Tex. 1993), Texas courts do not recognize an independent cause of action for negligent infliction of emotional distress. Boyles v. Kerr, 855 S.W.2d 593, 597 (Tex. 1993)(holding that "there is no general duty not to negligently inflict emotional distress"). A claimant may, however, recover mental anguish damages in connection with a defendant's breach of some other legal duty. Id. at 594. Therefore, we must determine whether Prudential breached some other legal duty owed Vauthrin.

In her Original Petition, Vauthrin alleged that "[t]he actions of [Prudential] in failing to notify [Vauthrin] promptly that she had a contagious disease and of [Agent Walker] in denying repeatedly that [Vauthrin] had a contagious disease, constitute negligence [sic] infliction of emotional distress to [Vauthrin]. . . ."[2] Prudential contends that it had no duty to

[2]In her brief on appeal, Vauthrin argues that Prudential violated article 21.21-4(c) of the Texas Insurance Code. However, Vauthrin did not allege in the proceedings below that Prudential

directly notify Vauthrin of the positive test results and that it followed the statutorily prescribed procedure for notifying an applicant of such results.

Under Texas law, an insurer may require an applicant for insurance coverage to take a HIV-related blood test. TEX. INS. CODE ANN. § 21.21-4(b) (Vernon Supp. 1993). If the result of the test is positive, the insurer must either notify the physician designated by the applicant on the consent form, or, if no physician is so designated, the insurer must notify the Texas Department of Health. TEX. INS. CODE ANN. § 21.21-4(f) (Vernon Supp. 1993).

In this case, although there is a dispute concerning whether Vauthrin signed the form authorizing Prudential to test her blood for HIV, it is undisputed that no physician was designated to receive positive test results. As a result, pursuant to the governing statutory procedure, Prudential submitted Vauthrin's test results to the Texas Department of Health, who in turn notified Vauthrin. Prudential was neither required nor authorized to contact Vauthrin. Because Prudential had no duty to notify Vauthrin, this allegation cannot support a claim for mental

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had violated this provision. As such, we will not consider this allegation today.

anguish.[3] As such, Vauthrin's complaint failed to state a claim upon which relief could be granted.

IV

For the foregoing reasons, the dismissal of Vauthrin's suit by the district court is

A F F I R M E D.

[3]Vauthrin also argues that Prudential violated article 21.21-2(2)(b)(1) of the Texas Insurance Code when Agent Walker repeatedly denied that Vauthrin suffered from a contagious disease. However, article 21.21-2, which prohibits knowing misrepresentation of pertinent facts in settlement of claims, presupposes that the insurer is dealing with an insured in the settlement of claims. Because Vauthrin was not an insured seeking to settle a claim, article 21.21-2 did not create in Prudential a duty owed to Vauthrin.