

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4592
Summary Calendar

JOSEPH MARTIN TATE and DIANE TATE,
Plaintiffs-Appellants,

v.

METROPOLITAN LIFE INSURANCE CO.,
Defendant

MOBIL OIL CORP.,
Defendant-Appellee

Appeal from the United States District Court
for the Western District of Louisiana
(CA-90-705)

(November 19, 1992)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Joseph Tate and his wife, Diane Tate, appeal from the district court's entry of summary judgment against them. Finding that there are no genuine issues of material fact and that the

*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Tates are not entitled to any relief as a matter of law, we affirm.

I.

Mobil Oil Corporation ("Mobil") hired Joseph Tate in 1981. Tate enrolled in an employee medical plan ("the plan"), which included health insurance coverage underwritten by Metropolitan Life Insurance Company ("Metropolitan Life"). It is undisputed that the plan is governed by the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. It is also undisputed that Mobil has been the administrator of the plan during the time period relevant to this case.

In 1982, Joseph Tate married his first wife, Gloria Tate, whom he listed as a dependant under the plan. While he was still employed by Mobil, Tate divorced his first wife. Thereafter, in March 1986, Tate was injured in the course of employment. Following the accident, he received short-term disability benefits from Mobil until September 1986, when it became apparent that Tate could not return to work. From September 1986 until April 1989, Tate received long-term disability benefits from Mobil. Tate remained enrolled in Mobil's plan throughout this three-year period.

In January 1989, Tate married his second wife, Diane Tate. This action arose when Diane Tate sought to recover benefits under Mobil's plan. The Tates claim that by virtue of Joseph Tate's continued enrollment under the plan and his status as a

recipient of long-term disability payments, Diane Tate became a covered dependant who was entitled to benefits. Mobil denied Diane Tate's claim for such benefits and this action ensued.

The Tates originally instituted this action in Louisiana state court in March 1990. Because the Tates' claim was governed by ERISA, the defendants removed the case to federal district court. Following the removal, the parties agreed to dismiss Metropolitan Life as a co-defendant.

Mobil then moved for summary judgment. Mobil submitted the affidavit of Jane Loughlin, a company executive in charge of setting policy for Mobil's Corporate Compensation and Benefits Department. Mobil also offered a copy of the plan, together with pertinent policy statements issued to employees that interpreted the plan, which Loughlin discussed in her affidavit. Mobil contended that Diane Tate was not covered under the plan because it extended coverage only to dependents who were listed at the time Tate began to receive his long-term disability benefits in September 1986. The Tates argued that Diane Tate qualified as a "dependent spouse" under the plan. The district court granted summary judgment for Mobil, and the Tates filed a timely notice of appeal.²

² Tate filed a separate ERISA action against Mobil seeking to recover proceeds from an Employee Savings Plan. The federal district court entered summary judgment against the Tates. See Tate v. Mobil Oil Corp., Civil Action No. 87-2223 (W.D. La. February 7, 1991). That action is not part of this appeal.

II.

In numerous cases, this Court has set forth the relevant principles governing summary judgment. In Sims v. Monumental General Ins. Co., 960 F.2d 478, 479 (5th Cir. 1992), we stated:

Summary judgment is appropriate if the record discloses `that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' In reviewing the summary judgment, we apply the same standard of review as did the district court. The pleadings, depositions, admissions, . . . together with affidavits, must demonstrate that no genuine issue of material fact remains. To that end we must 'review the facts drawing all inferences most favorable to the party opposing the motion.' If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.

See also Fed. R. Civ. P. 56. Thus, we must determine (i) whether there is any genuine issue of material fact, and (ii) whether, as a matter of law, Mobil is entitled to a judgment in their favor.

A. Are there any genuine issues of material fact?

The Tates argue that there are such genuine issues, which preclude summary judgment. Specifically, they contend that the version of the plan submitted by Mobil to the court below is not the version that covers Joseph Tate. As plaintiffs in this action, the Tates bear the burden of providing the applicable plan which governs the disputed claim. Not only have the Tates not done so, but also Mobil has offered copies of various documents which, the district court held, governed the Tates' claim.

Based on the effective dates on the faces of the various documents, and specific language in the plan stating that it applied to "[e]very [e]mployee employed by [Mobil]," we likewise believe that the documents offered were the ones in effect when Joseph Tate's employment with Mobil ceased in September 1986. Because Tate has not alleged that the documents submitted by Loughlin were fraudulent -- but instead simply argues that they are inapplicable and that some other medical plan applied to him -- the district court's legal conclusion that the documents applied to Tate was proper for purposes for summary judgment. Furthermore, the Tates have not explained how the purported "other" plan differs from the plan submitted by Jane Loughlin in her affidavit. Because the Tates failed during discovery to provide a copy of the alleged "other" plan, their bare allegation that a different plan governs Diane Tate's claim is insufficient to prevent summary judgment.³

The Tates attempt to controvert Jane Loughlin's affidavit by in effect alleging that she is incredible. In this regard, we note that Rule 56(e) provides that, in a motion for summary judgment, "[s]upporting . . . affidavits shall be made on

³ We note that even if there were in fact some prior version of the plan whose provisions were different from the plan submitted by Loughlin, that prior plan would not control. As we recently held in Vasseur v. Halliburton Co., 950 F.2d 1002, 1006 (5th Cir. 1992), under ERISA, an employee benefit plan such as that provided by Mobil need not be "maintain[ed] . . . at a particular level. . . . ERISA permits an employer to decrease or increase benefits." Because any provisions of a prior plan did not "vest," id., the Tates have no ERISA action based on any prior plan.

personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." In her affidavit, Loughlin states her employment position, her job responsibilities, and the plan's relevant provisions. Copies of the plan and the plan summaries are attached to the affidavit. Besides making the bare allegation, the Tates have not demonstrated how Loughlin is incredible. Therefore, it was proper for the district court to rely on her affidavit. Cf. Duplantis v. Shell Offshore, Inc., 948 F.2d 187, 191 (5th Cir. 1991) ("no indication that Robert is qualified to render opinions on such matters"). Accordingly, there are no genuine issues of material fact.

B. Is Mobil entitled to judgment as a matter of law?

We next must ascertain whether the provisions of the plan submitted by Mobil clearly define the rights and liabilities of the parties in the manner determined by the district court.⁴ We initially observe that according to the plan's own terms, Mobil, as administrator, has the discretion to interpret the plan's provisions. "The text of the Plan shall control . . . Any interpretation of the Plan by Counsel for the Company shall be conclusive as between an employer-corporation and its Employees and . . . may be relied upon by all parties in interest." The

⁴ For the benefit of the parties we will specifically cite the provisions of the plan, plan summaries, or insurance policy guides to which we refer.

Plan, Art. X, § 5 (emphasis in original). Furthermore, Mobil's determination of claims are final and binding on all parties. The Plan, Art. X, § 4(b).

The plan specifically addresses the situation where employment ceases as a result of a long-term disability and a former employee's dependents seek benefits:

All coverage of an Employee including . . . his Dependent Coverage, shall automatically cease on the last day of the calendar month in which the date of termination of the Employee's employment occurs, except that . . . the coverage of an Employee or former Employee may be continued . . . during periods the Employee qualifies for benefits under the Long Term Disability Plan.

The Plan, Art. VI, § 1 (emphasis in original). In policy guides and summary descriptions of the plan, Mobil has interpreted "continued coverage" as limiting dependent coverage to those dependents covered at the time that the policy holder is eligible for long term benefits. See "MED 730 POLICY" § VIII ("overview" of Plan) (07/31/86) ("The only spouse eligible for coverage is the spouse of record at the time the participant . . . is placed on [long-term disability]. If the participant marries or remarries at a later date, the spouse of such marriage is not eligible for coverage.").⁵ See also Comprehensive Medical Plan (a "descriptive summary of the Plan"), § 19, at CM-33 (May 1981) ("Medical coverage . . . is available for your spouse and your eligible unmarried children if they are covered at the time you

⁵ Note that this policy statement was issued two months before Joseph Tate was placed on long-term disability status in September 1986.

become entitled to Long Term Disability Benefits."); Comprehensive Medical Plan & Mobil Dental Plan, § 9 ("summary plan description") (July 1987) (same). Under Mobil's interpretation of the plan, Diane Tate was never eligible for benefits since it is undisputed that Joseph Tate began to receive long term disability benefits in 1986 and that Joseph and Diane married in 1989.

A court must give substantial deference to an administrator's interpretation of an employee benefits plan governed by ERISA when the plan expressly gives the administrator discretion to interpret it. See Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989); see also Jordan v. Cameron Iron Works, Inc., 900 F.2d 53, 55 (5th Cir.) cert. denied, 111 S. Ct. 344 (1990). This deference entails a two-part test: whether the interpretation is legally correct and, if not, whether the "interpretation constitutes an abuse of discretion." Jordan, 900 F.2d at 56.

In view of the language of the plan's relevant provision, see Art. VI, § 1, it is clear that Mobil's interpretation is legally correct. In particular, Mobil has not ignored any determinative language in the plan itself that would have required Mobil to afford Diane Tate any benefits as a dependant under her husband's coverage. The plan's language reasonably permits the interpretation given by Mobil in the overview and plan summaries. Mobil, thus, did not abuse its discretion in interpreting the plan as it did.

III.

Because there are no genuine issues of material fact and because -- as a matter of law -- Diane Tate was not entitled to any benefits under Mobil's employee benefits plan, we AFFIRM the district court's entry of summary judgment for Mobil.