

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5637
Summary Calendar

ROBERT LOZA, Individually and
as representative of the Estate
of and community survivor of
the Estate of Esperanza Loza,
deceased,

Plaintiff-Appellant,

VERSUS

MASSACHUSETTS MUTUAL LIFE INSURANCE,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(SA-91-CV-376)

(December 22, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Robert Loza appeals an adverse summary judgment that benefits were not due under his deceased wife's expired life insurance policy. We **AFFIRM**.

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Esperanza Loza worked as a district manager for Parklane Hosiery Company until January 15, 1986; and her benefits included \$100,000 group life insurance coverage with Massachusetts Mutual Life Insurance Company. Although Mrs. Loza was terminated on January 15, Parklane continued to pay her full salary and insurance benefits until February 28. Mrs. Loza died on March 25, 1986. On several occasions, Mr. Loza was advised by Parklane and Massachusetts Mutual that Mrs. Loza did not have coverage when she died.

The policy read, in pertinent part:

Part IV -- DISCONTINUANCE OF THE PERSONAL INSURANCE OF AN EMPLOYEE

1. Except as may be provided to the contrary in this Part, an employee's Personal Insurance under any Part of this policy shall cease on the first to occur of the following dates:

* * *

- f. The *date of termination* of the employee's employment. *Termination of employment*, for the purpose of this section, and for no other purpose, means *cessation of active work as an employee* in a class of employees eligible for insurance hereunder....

* * *

Section V -- PRIVILEGE OF CONVERTING TO AN INDIVIDUAL POLICY OF LIFE INSURANCE

1. An insured employee shall be entitled to have an individual policy of life insurance, without disability benefits, issued to him without evidence of insurability upon written application and

the payment of the first premium to Massachusetts Mutual *within thirty-one days after the date of*

- a. *discontinuance of his Personal Group Life Insurance due to termination of his employment*

* * *

- 4. The maximum amount of insurance which an employee is entitled to convert by reason of this Section shall be payable under this Part in the event of his death during the thirty-one day period during which the conversion privilege may be exercised.

(Emphasis added.)

Loza filed suit against Massachusetts Mutual in Texas state court in February 1991 seeking, *inter alia*, \$100,000, representing the death benefit of the policy. Massachusetts Mutual removed to federal court, where it was granted summary judgment on the grounds: that the "clear and unambiguous" policy language required Mrs. Loza to exercise her conversion option within 31 days of January 15, 1986; and that the claim was barred by Texas's four year statute of limitations for breach of contract actions, because Mr. Loza knew as early as the spring of 1986 that Massachusetts Mutual would take the position that there was no coverage.

II.

On appeal, Loza contends that summary judgment was improper because 1) interpretation of the insurance contract's conversion provision created a genuine issue of material fact and 2) the district court erred in calculating the date at which his cause of action accrued. When properly calculated, he claims, the action

was filed well within the limitations period. We agree with the district court's holding that the language of the policy was clear and unambiguous and that, pursuant to that language, she was not covered at the time of her death. Therefore, even if Mr. Loza filed his claim within the limitations period, adverse summary judgment was proper on the merits of the case. Accordingly, we need not determine whether he filed his claim within the limitations period.

An appeal from the grant of summary judgment, of course, requires this court to conduct a *de novo* review of the record before the district court. *E.g.*, ***Sheline v. Dun & Bradstreet***, 948 F.2d 174 (5th Cir. 1991). And, summary judgment is appropriate, *inter alia*, where, as here, the only question before the court is a legal one. ***Id.*** The only matter before the district court in this case was interpretation of the life insurance contract. Contract interpretation, and the preliminary issue of whether the contract is ambiguous present purely legal questions. ***National Union Fire Ins. Co. v. Kasler Corp.***, 906 F.2d 196, 198 (5th Cir. 1990). Because this is a diversity action, we interpret the insurance contract according to Texas law. *E.g.*, ***Erie R.R. Co. v. Tompkins***, 304 U.S. 64 (1938).

Texas law requires that insurance contracts be liberally construed in favor of the insured, but only when the contract is ambiguous. "Where no ambiguity exists, it is the duty of the court to enforce the policy in accordance with its plain meaning." ***Kasler***, 906 F.2d at 198 (citing ***Puckett v. U.S. Fire Ins. Co.***, 678

S.W.2d 936, 938 (Tex. 1984)). Mrs. Loza's policy clearly stated that coverage ceased on the "date of termination of the employee's employment". In his Original Petition, her husband admitted that Mrs. Loza was "terminated from employment with Parklane Hosiery" on January 15, 1986. Furthermore, the policy itself defined termination as "cessation of active work as an employee". Loza does not even attempt to establish that his wife continued active work for Parklane after January 15. Instead, he contends that because Mrs. Loza was paid until February 28, her option to convert the insurance policy to a personal one did not kick in until that date. Therefore, he asserts, under paragraph 4 of Section V., providing maximum coverage for 31 days after the conversion option becomes available, Mrs. Loza was automatically covered for 31 days after February 28, despite the fact that she did not exercise her conversion option. Under this calculation, coverage would have been in effect on March 25.

We cannot agree with this position. The conversion provision states that the option may be exercised "within thirty-one days after the date of ... discontinuance of [the] Personal Group Life Insurance due to termination of ... employment". As stated above, the policy expressly and plainly defines "termination", which, in this case would be January 15. A provision which discontinues coverage upon termination is valid under Texas law. ***Bliss v. Equitable Life Assurance Society***, 620 F.2d 65, 69 (5th Cir. 1980). Parklane could not change the contractual provisions simply by promising Mrs. Loza six more weeks of insurance coverage and paying

the premiums for that period of time: "The mere fact that premiums were paid and received by the insurance company covering a period of time extending beyond the termination of employment under the terms of [the] policy does not have the legal effect of extending policy coverage". **Massey v. Aztec Life Ins. Co.**, 532 S.W.2d 702, 706 (Tex. App. -- Fort Worth 1976, no writ). In sum, we hold that Mrs. Loza's conversion option became effective on January 15, 1986. She was automatically covered for 31 days thereafter. But, because she did not exercise that option, she had no coverage on March 25, the date of her death.

III.

Accordingly, the judgment is

AFFIRMED.