UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-8693
Summary Calendar

FREDERICK C. FERMIN,

Plaintiff-Appellant,

VERSUS

MUTUAL OF OMAHA INSURANCE CO.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
A 92 CV 3

June 3, 1993

Before JOLLY, DUHÉ and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Frederick C. Fermin ("Fermin"), appearing pro se, appeals the summary judgment granted in favor of Appellee, Mutual of Omaha Insurance Company ("Mutual"). We affirm.

I.

The material facts are not in dispute; indeed, all relevant factual information is contained in the agreed pretrial order. R. vol II, at 252. Consequently, this matter is well suited for summary disposition. Fed. R. Civ. P. 56(c).

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[1] 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

II.

Appellant is the named insured on a group hospitalization plan underwritten by the Appellee. This insurance coverage provides a fixed cash indemnity for each day the insured is hospitalized. Fermin seeks indemnification pursuant to this policy for two periods of hospitalization which occurred in 1989 and 1991. It is agreed that "During both of those confinements, [Fermin] was confined in that part of the institution which was primarily operated or engaged in the care of alcoholics." R. vol II, at 252.

Mutual denied Fermin's request for indemnification payments because of two clauses in the policy. Under the section styled "DEFINITIONS," the policy states: "In no event shall the term 'hospital' mean an institution or that part of an institution which is used principally as a clinic, convalescent home, rest home, nursing home or home for the aged, drug addicts or alcoholics." R. vol. II, at 268. Also, under the heading "EXCLUSIONS AND LIMITATIONS," the policy specifically excludes from coverage hospital confinements for the treatment of alcoholism. Id.

After Mutual denied Fermin's requests for payment, he sued in district court. The matter was referred to a magistrate, who denied Fermin's motion for summary judgment, granting instead the summary judgment request filed by the Appellee. Fermin now alleges numerous points of error in this ruling.

III.

Summary judgment is appropriate if there is no dispute as to any material fact, and the moving party is entitled to judgment as

a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317 (1986). We review the facts in the light most favorable to the party opposing the motion. Reid v. State Farm Mut. Auto. Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986).

IV.

The policy clearly does not provide for indemnity payments for hospital confinements arising out of treatment for alcoholism. Fermin initially argued that Tex. Ins. Code Ann. art. 3.51-9 (Vernon Supp. 1992) worked to modify this exclusion. This statute does have the express purpose of providing Texas citizens "with benefits for the care and treatment of chemical dependency ...." Id. at § 1. However, the statute expressly excludes from its reach "all health insurance policies that only provide cash indemnity for hospital or other confinement benefits[.]" Id. This provision does not compromise the exclusion found in the policy at issue.

The Appellant now contends that the laws of the District of Columbia are to be applied to the policy dispute. This argument was advanced only after summary judgment was entered, and despite the fact that Appellant alleged only violations of Texas law in his Complaint. Texas law governs the instant dispute, and was correctly applied in this matter. See Tex. Ins. Code Ann. art. 21.42 (Vernon 1981).[2]

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[2] Tex. Ins. Code Ann. art. 21.42 provides:

> Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance,

V.

After a review of the record, we conclude that Appellant's other points or error are without merit. The decision of the magistrate judge granting summary judgment in favor of the Appellee is AFFIRMED.

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and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed and the premiums payable without this State, or at the home office of the company or corporation issuing the same.