

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8699  
Summary Calendar

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FREDERICK C. FERMIN,

Plaintiff-Appellant,

VERSUS

NATIONAL HOME LIFE ASSURANCE COMPANY, Etc.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
A 92 CA 004

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March 31, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Frederick Fermin appeals a summary judgment denying him insurance benefits. Finding no error, we affirm, essentially for the reasons stated by the magistrate judge.

Although it is he who filed this action in federal district court, Fermin now claims, on appeal, that the district court never had jurisdiction. Plainly, however, there is diversity

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 Pursuant to that rule, the court has determined that this opinion should not be published.

jurisdiction under 28 U.S.C. § 1332. Fermin is a resident of Texas, while the defendant, National Home Life Assurance Company, is a Missouri insurance company with principal place of business in Pennsylvania. The amount in controversy exceeds \$50,000.

In a thirty-page order filed December 7, 1992, the magistrate judge, to whom this matter was referred by consent pursuant to 28 U.S.C. § 636(c), denied all relief. In the main, the magistrate judge concluded that "[u]nder the group policy, the term 'hospital' is defined to exclude an institution or part of an institution which is used principally as a clinic for drug addicts or alcoholics." As Fermin received his care at such a facility, the magistrate judge correctly held that the company did not breach its contract by denying benefits.

We have reviewed the detailed order in regard to the other points raised on appeal and have reviewed the magistrate judge's order filed December 10, 1992, to set aside certain other orders, and the magistrate judge's order filed December 15, 1992, denying Fermin's motion for new trial. Based upon all three of the magistrate judge's orders and our review of the record and the law, we AFFIRM the summary judgment.