UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-9530
Summary Calendar

MARLENE S. COONEY and
DALE H. COONEY,

Plaintiffs-Appellants,

VERSUS

SOUTH CENTRAL BELL TELEPHONE COMPANY, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
CA 91 CV 3870 L

July 20, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

FACTS

South Central Bell Telephone Company (Bell) employed Appellant Dale H. Cooney as an installer-repairman. In August 1990 Cooney underwent a bilateral laminectomy and discectomy, and he submitted a claim for benefits under the Bell South Sickness and Accident Disability Benefit Plan (the Plan). The Plan provides that the Employee Benefit Committee (the EBC) has the authority to grant or

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

deny Plan benefits.

The Benefits Administrator, Linda Scruggs, approved Cooney's claim for benefits through October 3, 1990. Cooney's personal physician submitted a report to Linda Scruggs on September 24, 1990, in which he concluded "[i]t is my hope in three to four weeks that [Cooney] can return to a light duty job for several weeks before he resumes his previous occupation." Linda Scruggs and Doctor Bradley Dennis, a physician employed by Bell to review medical records at the request of the Benefits Administrator and render an opinion based on those records, concluded that Cooney could return to work in a light capacity.

On October 3, Scruggs informed Cooney that he should return to work the following day or lose his Plan benefits. Cooney returned to work on October 4, 1990. The following day he suffered a herniated disc, and subsequently underwent a repeat laminectomy and diskectomy.

Cooney and his wife filed suit against Bell, Dr. Bradley Dennis, and Linda Scruggs seeking to recover damages for negligence and intentional tort. The district court granted summary judgment in favor of defendants, holding that plaintiffs' intentional tort claim is unsubstantiated and their negligence claim is preempted by ERISA under this Court's decision in Corcoran v. United Healthcare Inc., et al, 965 F.2d 1321 (5th Cir. 1992). Cooney and his wife appeal the grant of summary judgment in favor of Dr. Bradley Dennis.

DISCUSSION

We review the granting of summary judgment using the same standard of review as the district court. Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989). We must "review the facts drawing all inferences most favorable to the party opposing the motion." Reid v. State Farm Mut. Auto. Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986). 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. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); see Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

Appellants claimed that Dr. Dennis intentionally forced or coerced him into returning to work, and that he negligently determined that Mr. Cooney was able to return to work.

Appellants original brief describes their state law claim against Dr. Dennis as one "for damages sustained because of the negligence and/or malpractice of Dr. Dennis, who **as a physician**, reviewed Dale Cooney's medical records and **opined** that Cooney could return to work." (emphasis in original). They do not refer to the intentional tort claim. That claim is raised in a cursory manner in their reply brief. Appellants have abandoned their intentional tort claim by failing to brief it in their initial brief on appeal. United Paperworks Int'l Corp., 908 F.2d 1252, 1255 (5th Cir. 1990); Piney Woods Country Life Sch. v. Shell Oil Co., 905 F.2d 840, 854 (5th Cir. 1990).

Appellants' negligent malpractice claim against Dr. Dennis is properly characterized as a claim by a Plan beneficiary against a

doctor who is employed by South Central Bell to provide medical opinions to the Employee Benefit Committee, which administers Plan benefits. In Corcoran v. United Healthcare Inc., et al., 965 F.2d 1321 (5th Cir. 1992), this Court held that an ERISA plan beneficiary's negligence action based on medical decisions made by an ERISA plan administrator is preempted by ERISA.

Appellants urge that Dr. Dennis is not a Plan administrator because his medical opinions are so "peripheral" to the Plan administration that they are not preempted by ERISA. We disagree. The record reveals that at the time he rendered his opinion regarding Mr. Cooney, Dr. Dennis was employed by Bell as its Medical Director. His duty was "to review medical records at the request of the Benefits Administrator and render an opinion based on those records." Based on this opinion, Mr. Cooney's request for additional benefits was denied. Dr. Dennis's involvement was far from peripheral; it was an essential element of the Plan's administration. This is precisely the type of case that we held in Corcoran is preempted by ERISA.

CONCLUSION

For the foregoing reasons, the district court's grant of summary judgment in favor of Dr. Dennis is AFFIRMED.