IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2429
Conference Calendar

ELAINE GOOD STEPHENS,

Plaintiff-Appellant,

versus

THE TRAVELERS COMPANIES,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-1945
- - - - - - - - - - -
(September 20, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

Elaine Good-Stephens argues the allegations set forth in her ERISA complaint and does not address the fact that her lawsuit was summarily dismissed. Although Stephens' brief does not discuss any legal issues regarding the dismissal of her suit or summary judgment, under the liberal construction of pleadings accorded pro se litigants under Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), summary judgment is the only issue "arguably presented to [this Court] for review."

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Searcy v. Houston Lighting & Power Co., 907 F.2d 562, 564 (5th Cir.), cert. denied, 498 U.S. 970 (1990).

Travelers filed a Rule 12(b)(6) motion to dismiss and, alternatively, a Rule 56 motion for summary judgment. The district court granted the motion to dismiss "[a]fter reviewing the record and the applicable law." The Order of Dismissal was more properly a grant of summary judgment because the district court considered matters outside of the pleadings when ruling. See Rule 12(b); Washington v. Allstate Ins. Co., 901 F.2d 1281, 1284 (5th Cir. 1990).

This Court reviews the district court's grant of summary judgment de novo. Topalian v. Ehrman, 954 F.2d 1125, 1131 (5th Cir.), cert. denied, 113 S. Ct. 82 (1992). Summary judgment under Rule 56 is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the nonmoving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). If the moving party meets the initial burden of establishing that there is no genuine issue, the burden shifts to the nonmoving party to set forth specific facts showing the existence of a genuine issue for trial. Id. at 323-24; Rule 56(e). The mere allegation of a factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-50, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

The parties did not dispute that the health care plan under which Stephens seeks benefits is an employee benefit plan governed by ERISA. See 29 U.S.C. § 1002(1)(3). Remedies for a claim for medical benefits under an ERISA plan are preempted by the exclusive civil enforcement provision of ERISA. 29 U.S.C. § 1132(a); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 54, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987); Medina v. Anthem Life Ins. Co., 983 F.2d 29, 30-32 (5th Cir.), cert. denied, 114 S. Ct. 66 (1993). Failure to exhaust an ERISA health benefit plan's administrative procedures by filing the proper documentation of a medical claim precludes the institution of suit. Denton v. First Nat'l Bank, 765 F.2d 1295, 1297 (5th Cir. 1985); Medina, 983 F.2d at 33 & n.2.

Travelers submitted proper summary judgment evidence, Nancy Heaton's affidavit which stated that Stephens had failed to provide the proper documentation to Travelers to enable her to make a determination concerning her benefits for chiropractic treatment. Stephens did not offer any evidence to rebut this affidavit and thus did not meet her burden of setting forth specific facts showing the existence of a genuine issue for trial. See Catrett, 477 U.S. at 323-24; Rule 56(e). Therefore, suit was premature because Stephens had not complied with the prerequisite of exhausting administrative procedures. See Medina, 983 F.2d at 33 & n.2. Summary judgment was proper.

We affirm, although on summary judgment grounds as opposed to Rule 12(b)(6) grounds. See Bickford v. Int'l Speedway Corp., 654 F.2d 1028, 1031 (5th Cir. 1981) (reversal is inappropriate if

ruling of district court can be affirmed on any grounds, regardless whether those grounds are used by the district court).

AFFIRMED.