

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10460
Summary Calendar

TRANSPORTATION INSURANCE COMPANY,

Plaintiff-Appellant,

versus

JOHN L. HEIMAN and
JOYCE HEIMAN,

Defendants-Appellees.

Appeal from the United States District Court for
the Northern District of Texas
(3:93-CV-1830-T)

(October 24, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

A declaratory judgment action was filed by Transportation Insurance Company ("Transportation") seeking construction of a policy. The district court dismissed the case based on the abstention doctrine. Transportation appeals the dismissal. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

Transportation entered into a professional liability insurance contract with Garner & Garner, Inc. ("Garner"). Heiman brought suit against Garner in state court for professional malpractice. Transportation obtained a declaratory judgment from the United States District Court stating that it owed no duty to defend or indemnify Garner against Heiman's allegations because the allegations stemmed from investment advice, not accounting services.

Heiman amended the state court pleading to allege that Garner was negligent in the performance of accounting services. Transportation responded to a demand by Garner for unconditional defense in the amended state court action by offering a limited defense under a reservation of rights. Garner refused. Garner subsequently entered into a settlement agreement with Heiman. Heiman demanded payment of the judgment from Transportation and Transportation denied liability.

Transportation filed a new declaratory judgment action in the federal district court before refusing to pay the state court judgment. Heiman subsequently filed a writ of garnishment against Transportation in the state court and then filed a motion to stay or dismiss the federal action. The federal judge dismissed the action.

DISCUSSION

A district court has discretion in deciding a declaratory judgment action, but the court may not dismiss these actions "on

the basis of whim or personal disinclination." Travelers Ins. Co. v. Louisiana Farm Bureau Fed'n, Inc., 996 F.2d 774, 778 (5th Cir. 1993). The appropriate standard of review is abuse of discretion. Granite State Insurance Co. v. Tandy Corporation, 986 F.2d 94, 96 (5th Cir. 1992), cert. dismissed, 113 S.Ct. 1836 (1993).

In this case, the district court considered the purposes of the Declaratory Judgment Act and the factors relevant to the abstention doctrine. After doing so, the court concluded that the case should be dismissed because: 1) the matters in controversy could be fully adjudicated in state court; 2) substantial action had not been taken in the federal suit; and 3) the federal suit was filed in anticipation of the state proceeding. The facts indicate that the controversy can be fully adjudicated in state court. At the time of dismissal, the federal action had only progressed through the preliminary pleading stages with minimal discovery. Heiman had won a judgment in state court and indicated that he considered Transportation responsible for its payment. Therefore, the district court's assumption that Travelers filed the federal court action in anticipation of the state court proceeding is not without basis.

The district court did not abuse its discretion "by failing to individualize its decision by addressing the facts of this case in light of the [] abstention factors and the goals of the Declaratory Judgment Act." Travelers, 996 F.2d at 779. In

addition, the district court's dismissal of this case was not based on "whim or personal disinclination." Id. at 778.

AFFIRMED.