

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 60012
Summary Calendar

BARBARA T. FACIANE,
Plaintiff-Appellant,

VERSUS

MONTICELLO INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA-1:92-362(R)(R))

(July 21, 1994)

Before GARWOOD, SMITH, and BARKSDALE, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

In this diversity case, the plaintiff, Barbara Faciane, challenges a summary judgment for defendant Monticello Insurance Company ("Monticello"), finding no liability for fire coverage on her home because the insurance policy expired a few hours before the fire in question. Finding no error, we affirm.

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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

The application for the policy was signed at 3:00 p.m. on June 11, 1990. The application form signed by Faciane states the "policy period" as "from: 6/11/90 to: 6/11/91 effective 12:01 a.m. standard time"; the declaration page that is made part of the policy states the policy period as "from: 6-11-90 to: 6-11-91 12:01 a.m. standard time at the residence premises."

On May 1, 1991, Pauline McDill, an employee of Monticello, mailed Faciane a notice of non-renewal informing Faciane that the policy would not be renewed upon its expiration. The notice contained the following information filled out on boxes on the form: "Effective: 12:01 a.m." and "Date 6-11-91 pm." The fire occurred at 2:51 p.m. on June 11, 1991.

II.

Faciane argues that summary judgment is inappropriate because she was not permitted further discovery and because there is an ambiguity in the contract. We reject both contentions.

A.

Faciane did not make an adequate request for further discovery. In response to the summary judgment motion, she stated only that discovery was not complete and that the motion was premature. She did not purport to move pursuant to FED. R. CIV. P. 56(f), but, even if we construe the statement as a request

under that rule, it contains none of the specificity required thereby. Faciane makes no showing of what discovery is required or of why she needs it.

B.

Faciane presented no evidence, in the form of affidavits, depositions, or otherwise, in opposition to summary judgment. She now claims that the insurance agent led her to understand that the policy would run until 3:00 p.m. on June 11, 1991, instead of 12:01 a.m. on that date. She provided no summary judgment evidence to support that assertion, however, and the afore-said documentation plainly supports only one interpretation: that the policy expired at 12:01 a.m.

Finally, Faciane relies upon the fact that the notice of non-renewal shows, in the box for a date, "6-11-91 pm." She argues that this means that the expiration was 3:00 p.m., as the policy was for one year and its application was signed at 3:00 p.m. Again, there is no summary judgment evidence that this is what the non-renewal notice means, and it is undisputed that, as Monticello explains, the "pm" after the date is only the initials of its employee, Paulette McDill. Moreover, the cancellation notice plainly shows that the non-renewal was "effective: 12:01 a.m."

C.

In summary, the policy expired, by its own terms, at

12:01 a.m. on June 11, 1991. The district court explained its reasons for denying summary judgment in a persuasive, fourteen-page opinion. For the reasons set forth above and also essentially for the reasons set forth by the district court in its opinion, the summary judgment is AFFIRMED.