

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60803

WOLLIE STAPP,

Plaintiff-Appellant,

v.

COMMERCIAL LIFE INSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
(1:93-CV-295-D-D)

(May 31, 1995)

Before REAVLEY, KING, and WIENER, Circuit Judges.

PER CURIAM:*

Wollie Stapp sought to collect the proceeds from an accidental death and dismemberment insurance policy covering himself and his deceased wife, Nancy Stapp. The insurance company, Commercial Life Insurance Company ("Commercial Life"), initially refused to pay the benefits under the policy, arguing that Mrs. Stapp did not die from an accident, directly and independently of all other causes. Mr. Stapp filed suit, and

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

following some initial discovery in the case, Commercial Life decided to pay the claim. Subsequently, Commercial Life moved for summary judgment. The district court granted the motion, and Mr. Stapp appeals. We affirm.

I. BACKGROUND

In late March of 1990, Commercial Life issued a group insurance policy to First Columbus National Bank ("First Columbus"). The policy provided accidental death and dismemberment benefits to persons holding First Columbus's First Club checking accounts. Under the policy, benefits of up to \$25,000 per account were available; the actual benefits payable for any claim were computed by dividing \$25,000 by the number of persons on the account.¹ Under the terms of the policy, for the benefits to be available, "[t]he loss must result directly and independently of all other causes from accidental bodily injury which occurs while this policy is in force as to the Insured"

Wollie and Nancy Stapp held a First Club checking account at First Columbus and thus were covered by the Commercial Life policy. On August 31, 1990, Mrs. Stapp fell, injuring her pelvic

¹ The policy stated:

If more than one individual has signed a signature card, the amount of insurance shall be determined by the number of people insured. That is, the amount of Principal Sum is divided by the number of signatures on the signature card except for those names specifically excluded.

bone. Less than two weeks later, on September 10, 1990, Mrs. Stapp died.² The death certificate, prepared by Mrs. Stapp's attending physician, Dr. Thomas D. Wooldridge, listed the "immediate cause of death" as "pulmonary embolus" and noted "renal failure" and "depression" as "other significant conditions . . . contributing to death but not resulting in the underlying cause [of death]." The death certificate did not make any mention of an accident.

In March of 1993, First Columbus, on behalf of Stapp, submitted a claim for the policy benefits along with a copy of the death certificate to Commercial Life. Not long afterward, Commercial Life received a letter from Dr. Wooldridge stating, in part, that:

Nancy Stapp was a patient of mine in 1990 in the hospital. She had been followed by me for some time previously. The patient had fallen at home and had struck her head and then was admitted for a work up of nausea, vomiting and her dizziness. She had a CT scan, however, that did not show any acute changes but there was some chronic atrophy. . . . The cause of her death is not completely clear but possibly could have been related to the fall earlier. This was not diagnostic as per the CT scan.

After receiving the claim, Commercial Life began an investigation, "obtaining medical records from all health care providers, physicians, clinics, hospitals, and Mrs. Stapp's physician, Dr. Wooldridge." Further, Commercial Life received "medical records pertaining to Mrs. Stapp from the Nephrology,

² Before Mrs. Stapp's death she was not in good health; she had received a kidney transplant several years prior to her death and had suffered from various ailments and injuries in the following years.

and Hypertension Associates, from Dr. Tom Wooldridge, and North Mississippi Medical Center."

One of the requests that Commercial Life sent to Dr. Wooldridge was an "attending physician's statement." On May, 7, 1993, Dr. Wooldridge signed the form, and, although the rest of the form was completed, a space on the form for the attending physician to indicate the date of the accident was left blank. On the same form, Dr. Wooldridge listed the primary cause of death as "pulmonary embolus" and noted the secondary cause of death as "disseminated cryptococcoses." Additionally, when asked to describe the "precise location, nature of injuries and their extent," Dr. Wooldridge entered:

Medullary cystic disease with renal failure
Renal transplant with progressive renal failure
Psychiatric problems Cryptococcosis.

On June 14, 1991, Commercial Life denied Stapp's claim for benefits, stating that "[b]ased on medical reports we have received from North Mississippi Medical Center and Dr. Wooldridge, we have concluded [Mrs. Stapp] did not die from an accident directly and independently of all other causes, and have no alternative but to deny this claim." Commercial Life further informed Stapp that if he "disagree[d] with our determination, [he] may appeal this claim . . . within 60 days of receipt of this notice. If you wish, you may submit additional information as well as your comments and views of the issues, in writing, and may examine pertinent documents."

Stapp did not appeal to Commercial Life; instead, on September 8, 1993, Stapp filed suit against Commercial Life in Mississippi state court, claiming that Commercial Life had improperly denied his claim and seeking actual and punitive damages. Commercial Life then removed the case to federal court.

Pursuant to discovery in the case, in December of 1993, Commercial Life received an additional letter from Dr. Wooldridge. In this letter, dated September 22, 1993 (after the suit was filed), Dr. Wooldridge stated that he "believe[d] the patient [Mrs. Stapp] died as a result of the pulmonary embolus which was caused by pelvic vein thrombosis which was precipitated by the fall and previous trauma to her pelvic region." A few months later, in February of 1994, Commercial Life paid Stapp the benefit amount plus interest from the date of the original claim.

After paying the claim, Commercial Life sought summary judgment in the district court. Although Stapp agreed that the policy benefits had been paid, he argued that Commercial Life's initial denial of the claim warranted awards of extra-contractual and punitive damages. The district court disagreed, and it granted Commercial Life's motion for summary judgment, concluding that "a reasonable juror could not find that defendant lacked an arguable reason to deny the claim or that defendant acted with malice." Stapp appeals.

II. STANDARD OF REVIEW

We review the granting of summary judgment de novo, applying the same criteria used by the district court in its initial examination of the issue. Norman v. Apache Corp., 19 F.3d 1017, 1021 (5th Cir. 1994); Conkling v. Turner, 18 F.3d 1285, 1295 (5th Cir. 1994).

III. DISCUSSION

A. Punitive Damage Claims

Stapp argues that the district court erred in granting summary judgment on his punitive damage and extra-contractual claims.³ Under Mississippi law, the rules surrounding the availability of punitive damages are well settled. As the Mississippi Supreme Court has noted, "Mississippi law does not favor punitive damages; they are considered an extraordinary remedy and are allowed with caution and within narrow limits." Life & Casualty Ins. Co. v. Bristow, 529 So.2d 620, 622 (Miss. 1988) (en banc) (internal quotation omitted), cert. denied, 488 U.S. 1009 (1989); accord Employers Mut. Casualty Co. v. Tompkins, 490 So.2d 897, 903 (Miss. 1986). This disfavor of punitive damages is manifest in the context of insurance litigation, where the Mississippi Supreme Court has stated that "any plaintiff asking for punitive damages or any special or extraordinary damages based on bad faith of an insurance company has a heavy

³ Stapp agrees that Commercial Life has "paid all of the benefits due under the policy," and he does not contest the district court's grant of summary judgment on that claim.

burden.'" Bristow, 529 So.2d at 622 (citing Blue Cross/Blue Shield v. Campbell, 466 So.2d 833, 842 (Miss. 1984)).

Nevertheless, in some circumstances, a plaintiff claiming a bad faith denial of insurance benefits may recover punitive damages, for the Mississippi Supreme Court has noted that it "will not hesitate condemning an insurance company refusing to pay a claim when there is no legal reason for it to deny the claim." Campbell, 466 So.2d at 841. Accordingly, under Mississippi law, "before punitive damages may be recovered from an insurer, the insured must prove by a preponderance of the evidence that the insurer acted with (1) malice, or (2) gross negligence or reckless disregard for the rights of others.'" Hans Constr. Co. v. Phoenix Assurance Co., 995 F.2d 53, 55 (5th Cir. 1993) (quoting Universal Life Ins. Co. v. Veasley, 610 So.2d 290, (Miss. 1992)); accord Bristow, 529 So.2d at 622; Tompkins, 490 So.2d at 903. More importantly, "[i]f the insurer has a legitimate or arguable reason for denying coverage, punitive damages are unavailable." Hans Constr. Co., 995 F.2d at 55; accord Strickland v. Motors Ins. Corp., 970 F.2d 132, 137 (5th Cir. 1992), cert. denied, 113 S. Ct. 1272 (1993); Bristow, 529 So.2d at 622; Tompkins, 490 So.2d at 902.⁴

⁴ Mississippi courts have defined an arguable reason as "nothing more than an expression indicating the act or acts of the alleged tortfeasor do not rise to heightened level of an independent tort.'" Universal Life Ins. Co. v. Veasley, 610 So.2d 290, 293 (Miss. 1992) (quoting Pioneer Life Ins. Co. v. Moss, 513 So.2d 927, 930 (Miss. 1987)).

The instant matter is before this court as a review of a motion for summary judgment. In conducting our de novo review of the propriety of the grant of summary judgment, we initially examine the applicable law to ascertain the material factual issues. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); King v. Chide, 974 F.2d 653, 655-56 (5th Cir. 1992). We then review the evidence bearing on those issues, viewing the facts and inferences drawn from that evidence in the light most favorable to the nonmoving party. Lemelle v. Universal Mfg. Corp., 18 F.3d 1268, 1272 (5th Cir. 1994); FDIC v. Dawson, 4 F.3d 1303, 1306 (5th Cir. 1993), cert. denied, 114 S. Ct. 2673 (1994). After this process, summary judgment 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 moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

Additionally, Rule 56(c) of the Federal Rules of Civil Procedure prescribes that the party moving for summary judgment bears the initial burden of informing the district court of the basis for its motion and of identifying the portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Norman v. Apache Corp., 19 F.3d 1017, 1023 (5th Cir. 1994). If the moving party meets its burden, the burden then shifts to the nonmoving party to establish the existence of a

genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 585-87 (1986); Norman, 19 F.3d at 1023. Notably, the nonmoving party cannot carry its burden by simply showing that there is some metaphysical doubt as to the material facts. Matsushita, 475 U.S. at 586. If, however, "the evidence is such that a reasonable jury could return a verdict for the non-moving party," summary judgment will not lie. Anderson, 477 U.S. at 248.

In the instant case, Commercial Life clearly had a reasonably arguable basis for denying Stapp's claim. The death certificate submitted with the claim did not indicate that the cause of death was an accident; on the contrary, it stated that a "pulmonary embolus" was the "immediate cause of death" and made no reference to Mrs. Stapp's fall. Moreover, in his initial communication to Commercial Life, Dr. Wooldridge, Mrs. Stapp's attending physician, acknowledged that Mrs. Stapp's death "possibly could have been related to the fall," but he also specifically noted that "[t]his was not diagnostic as per the CT scan." Further, in response to an inquiry by Commercial Life regarding the circumstances surrounding Mrs. Stapp's death, Dr. Wooldridge again failed to indicate that the fall was the cause of death. Instead, when asked to list the "precise location, nature of injuries and their extent," Dr. Wooldridge described, "Medullary cystic disease with renal failure," "Renal transplant with progressive renal failure," "Psychiatric problems," "Cryptococcoses." Only after Stapp sued Commercial Life did Dr.

Wooldridge (or any other physician) indicate that Mrs. Stapp's fall caused her death. Before that time, it is clear that Commercial Life had a reasonably arguable basis to believe that Mrs. Stapp did not die directly and independently from her fall, and we conclude no reasonable fact-finder could conclude otherwise.⁵

⁵ There is no question that under Mississippi law, the determination of whether Commercial Life had a legitimate or arguable reason for denying the claim is a question of law to be decided by the court. See Bristow, 529 So.2d at 622-23. When a claim is brought in federal court, however, the situation is different. As we have noted, "the relationship between the judge and jury in a federal civil proceeding is a matter of federal, not state, law." Jones v. Benefit Trust Life Ins. Co., 800 F.2d 1397, 1400 (5th Cir. 1986) (per curiam); accord In re Air Crash Disaster, 821 F.2d 1147, 1159 (5th Cir. 1987) (en banc), vacated on other grounds, 490 U.S. 1032 (1989). Consequently, in Jones, we rejected the argument that the district court determine whether an insurance company had a reasonably arguable basis for denying an insurance claim. Jones, 800 F.2d at 1400. Instead, we stated that federal law governed the relationship between the judge and the jury and applied the federal standard, noting that "the standard does not change because the case is in federal court on the basis of diversity jurisdiction." Id.; see also In re Air Crash Disaster, 821 F.2d at 1159 (noting that we have refused to apply the Mississippi rule in diversity cases).

In the proceedings below, the district court cited our decision in Dunn v. State Farm Fire & Casualty Co., 927 F.2d 869, 873 (5th Cir. 1991), where we stated that "[w]hether [an insurer] had an arguable reason to deny [the insured's] claim is an issue of law for the court" and, contrary to Jones, applied Mississippi law. We recognize that these cases seem to create some confusion about who should decide whether an insurer had a reasonably arguable basis for denying a claim. The instant case, however, is not the vehicle to address any such confusion. This case is before us on review of the grant of summary judgment, and we apply the well-settled standard for the evaluation of a motion for summary judgment. Moreover, it is clear that the district court applied the standard articulated in Jones. As the court stated:

At the summary judgment stage on the issue of punitive damages, the plaintiff has the burden to show that there exists evidence from which a reasonable jury

Stapp also argues that Commercial Life failed to investigate the claim adequately. This contention is without merit. It is undisputed that Commercial Life reviewed Mrs. Stapp's death certificate and the letter from Dr. Wooldridge sent when Stapp made his claim under the policy. Moreover, Commercial Life solicited Mrs. Stapp's other medical records as well as more information from Dr. Wooldridge. "It is well settled that an insurance company is entitled to rely upon information from the insured's doctor in making its decision about benefits." Bristow, 529 So.2d at 623-24. That is what Commercial Life did in the instant case, and Stapp presented no competent summary judgment evidence to the contrary. Simply put, Commercial Life's conduct did not "rise to the heightened level of an independent tort," and accordingly, the district court did not err in concluding that no reasonable juror "could . . . find that [Commercial Life] lacked an arguable reason to deny the claim."

As noted above, under Mississippi law, punitive damages are proper upon a showing that Commercial Life acted with malice or with gross and reckless disregard for Stapp's rights. See Hans Constr. Co., 995 F.2d at 55; Bristow, 529 So.2d at 622; Tompkins,

could find (a) that the defendant lacked a reasonably arguable basis to deny plaintiff's claim, and (b) that defendant acted with malice or such disregard as would evidence a reckless disregard for the rights of the plaintiff. (emphasis added).

Since we determine that no reasonable fact-finder could determine that Commercial Life lacked a reasonably arguable basis for denying the claim, summary judgment is proper regardless of who would make that determination were the case to proceed to trial.

490 So.2d at 903. Here, no such showing could be made. Commercial Life investigated the claim, and then it denied the claim, relying on the statements of Dr. Wooldridge. Commercial Life invited Stapp to submit further information if he felt the denial of the claim was improper; Stapp instead filed a lawsuit. After receiving additional information from Dr. Wooldridge, prepared after litigation had commenced, Commercial Life paid Stapp his benefits. Simply put, there is no evidence from which a reasonable juror could conclude that Commercial Life acted with malice or with gross and reckless disregard for Stapp's rights.

B. Extra-contractual Damages Claims

Stapp also argues that the district court erred in granting summary judgment on his claim for extra-contractual damages. We disagree. Recently, the Mississippi Supreme Court affirmed an award of extra-contractual damages to an insured for losses "caused by the anxiety resulting from delay [in the payment of a claim] without an arguable reason." See Veasley, 610 So.2d at 296 (emphasis added); see also Hans Constr. Co., 995 F.2d at 55-56 (discussing Veasley). The court noted that:

Applying the familiar tort law principal that one is liable for the full measure of the reasonably foreseeable consequences of her actions, it is entirely foreseeable by an insurer that the failure to pay a valid claim through the negligence of its employees should cause some adverse result to the one entitled to payment. . . . Additional inconvenience and expense, attorneys fees and the like should be expected in an effort to have the oversight corrected. It is no more than just that the injured party be compensated for these injuries.

Veasley, 610 So.2d at 295. In interpreting Veasley, we have observed that its "holding . . . appears to be limited to damages for mental anguish occasioned by failure to pay an insurance claim in those instances when the insurer lacks even an arguable basis for denial." Hans Constr. Co., 995 F.2d at 55. Accordingly, applying Veasley, we have held that Mississippi law "allow[s] extra-contractual damages for failure to pay on an insurance policy only when there is no arguable reason for such failure. An arguable reason, therefore, shields the insurance company from liability for both punitive damages and extra-contractual damages." Id. at 56. In the instant case, as we discuss above, we find that no reasonable juror could find that Commercial Life lacked an arguable basis for denying coverage. Accordingly, the district court did not err in granting summary judgment in favor of Commercial Life on Stapp's claim for extra-contractual damages.

IV. CONCLUSION

For the foregoing reasons, we AFFIRM the decision of the district court.