

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10413
Summary Calendar

WELDON D. FERGUSON; GLORIA J. FERGUSON;
THE WELDON D. FERGUSON AND GLORIA J.
FERGUSON 1990 TRUST,

Plaintiffs-Appellees,

versus

SECURITY LIFE OF DENVER INSURANCE COMPANY, ET AL.,

Defendants,

SECURITY LIFE OF DENVER INSURANCE COMPANY,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Texas, Dallas
USDC No. 3:97-CV-2106-R

November 5, 1998

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Gloria and Weldon Ferguson filed suit against Security Life of Denver Insurance Company ("Security") in the 192nd Judicial District for Dallas County, Texas, alleging that Security defrauded them. After filing suit, the Fergusons filed several amended petitions. Essentially, their complaint was that they were induced

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

to buy an insurance policy based on false representations regarding the number of years that they would have to make interest payments. In their third amended petition, the Fergusons listed Robertson, Security's sales agent who allegedly made the false statements, as a defendant. Security removed the case to federal district court. The district court held that because Robertson was a party to the suit, the case should be remanded for lack of diversity. In the state proceeding, Security elicited information in discovery that called into doubt the veracity of claims made in the third amended petition about Robertson. On the basis of this information, the state court concluded that Robertson should not be a party and permitted Security to remove a second time. In federal district court, Security filed a motion for Fed.R.Civ.P. 11 sanctions based on representations made in the third amended petition and the Fergusons filed a motion to remand the case. The district court denied Security's motion and remanded the case to state court. Security appeals the order denying a request for sanctions under rule 11.

In Edwards v. General Motors Corporation, 153 F.3d 242 (5th Cir. 1998), we recently revisited the issue of whether rule 11 sanctions can be assessed against conduct that takes place in a state court. They cannot. We held that, "[t]o uphold sanctions under rule 11, we must be able to point to some federal filing in which the sanctioned attorney violated the rule." Id. at 245. We further stated that an attorney cannot be sanctioned for a "failure to withdraw pleadings filed in state court that would have violated rule 11 had they been filed in federal court." Id.

In this case, Security takes issue solely with representations made by the Fergusons' lawyer in the third amended petition. Because that petition was filed in the 192nd Judicial District for Dallas County and not in federal court, rule 11 sanctions are not available. As Security has offered no evidence of conduct in the federal district court that merits rule 11 sanctions, the district court correctly concluded that Security's motion should be denied. The judgment of the district court is therefore

A F F I R M E D.