

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20271

YOLANDA SANCHEZ,

Plaintiff-Counter
Defendant-Appellant,

versus

FARMERS NEW WORLD LIFE INSURANCE COMPANY,

Defendant-Counter
Plaintiff-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-92-3960)

(June 7, 1995)

Before REAVLEY, KING, and WIENER, Circuit Judges.

PER CURIAM:*

Under Texas law, in order to succeed in a cause of action for failure to pay an insurance claim, a plaintiff must prove, inter alia, "the occurrence of loss within the coverage of the policy." Southern County Mut. Ins. Co. v. Dekle, 593 S.W.2d 131, 133 (Tex. Civ. App. 1979, no writ). In the context of a life insurance policy, this requires proof of death, i.e., the loss. Accordingly,

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Yolanda Sanchez bore the burden of proving that her husband had, in fact, died. The district court concluded that Sanchez had failed to prove that her husband was dead. We review that determination for clear error. Sanchez's principal argument on appeal focuses on the district court's decision to accord "very close to nil" evidentiary weight to the accident report, the death certificate and the autopsy report. We note that the district court did admit those documents into evidence. It was then up to the district court, as the trier of fact, to determine the credibility to be accorded those documents. The decision to afford them little weight is supported by the record. Clearly, Sanchez's identification of the body was a major factor in the issuance of the death certificate, although it was not the only factor. The district court's conclusion that most of Sanchez's testimony was not credible would therefore also undermine the credibility of the Mexican death certificate. The deficiencies in the evidentiary trail in Mexico are chronicled in the district court's findings of fact and conclusions of law. We are unable to say that the district court's conclusions with respect to the credibility of Sanchez or of the Mexican documents are clearly erroneous.

Accordingly, the judgment of the district court is AFFIRMED.