

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1719
Summary Calendar

MUTUAL OF OMAHA INSURANCE
COMPANY,

Plaintiff/Counter-
Defendant-Appellee,

versus

LONNIE D. CLARK,

Defendant/Counter-
Plaintiff-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(5:92-CV-69-C)

(January 6, 1994)

Before POLITZ, Chief Judge, JONES and EMILIO M. GARZA, Circuit
Judges.

PER CURIAM:*

Lonnie Clark appeals an adverse judgment in the bench trial of
the action by Mutual of Omaha Insurance Company for rescission of
the disability income policy issued to Clark. 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should not be published.

Mutual issued Clark an insurance policy which, in the event of disability, would pay Clark nearly \$6,000 a month. Clark represented that he had no other disability coverage. In fact Clark had secured at least 11 other disability income insurance policies from several different insurers prior to or shortly after applying for the subject policy with Mutual which provided monthly disability benefits exceeding \$80,000. Upon discovery of Clark's substantial misrepresentation, Mutual petitioned for judicial rescission of the disability policy and secured a favorable judgment. Clark timely appealed.

Clark presents three points of error. First, he claims that the court *a` quo* entered a default judgment against him without affording notice as required by Fed.R.Civ.P. 55. This suggestion is meritless. No default judgment was entered in this case nor was one sought. Judgment against Clark came after a bench trial.

Second, Clark maintains that the trial court erred in allowing his attorney to withdraw five weeks before trial. Assertions of error regarding withdrawal of counsel are reviewed for abuse of discretion.¹ Clark's attorney moved for withdrawal citing several instances of Clark's refusal of cooperation. On the facts of this case, the court did not abuse its discretion in granting this motion.

Third, Clark argues that the trial court committed error by

¹**Wynn v. Eriksson**, 889 F.2d 644 (5th Cir. 1989).

taking judicial notice of testimony presented in a related case.² This argument is frivolous. Clark stipulated that testimony in that matter could be used freely in the instant case. Even if he had not so stipulated through his then counsel of record, the district court was entitled to take judicial notice of the testimony.³

Finding Clark's suggestions of error baseless, we AFFIRM.

²**New England Mutual Life Insurance Co., et al. v. Clark**, No. 5-92-CV-0026.

³**See Kinnett Dairies, Inc. v. Farrow**, 580 F.2d 1260 (5th Cir. 1978).