

The Supreme Court of the State of Louisiana

RICHARD AND JUDITH WILLIAMS

No. 2022-C-01637

VS.

UNITED STATES FIRE INSURANCE, ET AL.

IN RE: United States Fire Insurance Company - Applicant Defendant; Trip Mate, Inc. - Applicant Defendant; Applying For Writ Of Certiorari, Parish of Rapides, 9th Judicial District Court Number(s) 268,548, Court of Appeal, Third Circuit, Number(s) CA2200071;

February 14, 2023

Writ application granted. See per curiam.

JB
ML
JLW
JDH
SJC
JTG
WJC
PDG

Supreme Court of Louisiana
February 14, 2023

Katio Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-C-01637

RICHARD AND JUDITH WILLIAMS

VS.

UNITED STATES FIRE INSURANCE, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Rapides

PER CURIAM.

This case is before the Court on a grant of summary judgment in plaintiffs' favor on several issues. First, the lower courts determined that the insurance policy at issue, a "Travel Protection Policy" issued by United States Fire Insurance Company ("USFIC") is a health and accident policy. Second, the lower courts determined that the plaintiffs are entitled to coverage under USFIC's policy; such a finding necessarily required a determination that all conditions triggering coverage under the policy were met. Third, the lower courts determined that USFIC (or Trip Mate, identified by the court of appeal as USFIC's adjuster) failed to timely pay the plaintiffs' claim under the policy. Lastly, the lower courts awarded both general damages and penalties under La. R.S. 22:1821 A.

This Court recently reiterated the well-settled law regarding motions for summary judgment:

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. LSA-C.C.P. art. 966(B)(2). As such, a motion for summary judgment should only be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to any material fact and the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(A)(3). A genuine issue is one about which reasonable persons could disagree. *Hines v. Garrett*, 04-0806 (La. 6/25/04), 876 So.2d 764, rehearing denied, 04-0806 (La. 9/24/04),

882 So.2d 1134. Only if reasonable persons could reach only one conclusion is summary judgment on that issue appropriate. A fact is “material” if it is one that would matter at a trial on the merits. *Suire v. Lafayette City-Parish Consol. Gov’t*, 04-1459, 04-1460, 04-1466 (La. 4/12/05), 907 So.2d 37.

King v. Town of Clarks, 2021-01897, pp. 1-2 (La. 2/22/22), 345 So. 3d 422. Based on the foregoing principles and the record before us, we find that the lower courts erred in granting summary judgment in this case.

At the outset, we note that the lower courts erred as a matter of law in their determination that the USFIC policy is a health and accident policy. Health and accident insurance is defined by La. R.S. 22:47 (2)(a) as “insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement, or expense resulting from sickness or old age. . . .”

Travel insurance, on other hand, is defined by La. R.S. 22:1352 (12) to have “the same meaning as in R.S. 22:1782.1.”¹ Under La. R.S. 22:1782.1 (3) (a):

“Travel insurance” . . . means insurance coverage for personal risks incident to planned travel, including but not limited to the following:

- (i) Interruption or cancellation of a trip or event.
- (ii) Loss of baggage or personal effects.
- (iii) Damages to accommodations or rental vehicles.
- (iv) Sickness, accident, disability, or death occurring during travel.

A review of the USFIC policy reflects that it provides numerous coverages: trip interruption; travel delay; accident and sickness medical expense; emergency medical evacuation; medical repatriation and return of remains; non-medical emergency evacuation; air flight only accidental death and dismemberment; baggage

¹ “Travel insurance” also includes a “Travel protection plan.” La. R.S. 22:1352 (13) (a).

and personal effects; and baggage delay. Where, as here, coverage for medical treatment is incidental to other coverages provided by an insurance policy, it will not be transformed into a health and accident policy.² Thus, although the USFIC policy includes coverage for certain medical expenses under its “accident and sickness medical expense” coverage, and “medical repatriation,” it is clearly a travel insurance policy and not a health and accident policy.

Based on our finding that USFIC’s policy is a travel insurance policy, we further find that, as a matter of law, the lower courts erred in awarding statutory penalties. While we express no opinion as to whether the plaintiffs proved that USFIC and/or Trip Mate failed to timely pay a claim under the facts of this matter which would subject them to statutory penalties, it is patently obvious that the penalty provision of La. R.S. 22:1821 A is inapplicable in this matter. As that statute plainly states, it only applies to “claims arising under the terms of health and accident contracts. . . .” *Id.*

As concerns the remaining issues in this case, including whether plaintiffs complied with the terms of the policy such that coverage was triggered for medical repatriation, whether the plaintiffs timely and properly submitted a claim under the policy, and whether USFIC and/or Trip Mate may be liable for any other penalties, these are issues of fact for which summary judgment was inappropriate. We therefore reverse the judgments of the lower courts and remand this matter to the trial court for further proceedings consistent with this per curiam.

² See, e.g., *Carmouche v. Riverside Life Ins. Co.*, 459 So. 2d 1353, 1354 (La. App. 3 Cir. 1984) (life insurance policy providing coverage for disability is not a health and accident policy); *Tarpley v. Consol. Am. Life Ins. Co.*, 386 So. 2d 1067 (La. App. 3 Cir. 1980) (although a life insurance policy provided coverage for total, permanent disability, it is not a health and accident policy); *Woodard v. Prudential Ins. Co. of Am.*, 350 So. 2d 948 (La. App. 2 Cir. 1977) (policy which provided payment of loans in one lump sum to a credit union to discharge the borrower’s indebtedness in the event the borrower became totally and permanently disabled is not a health and accident policy); *Johnson v. State Farm Mut. Auto. Ins. Co.*, 342 So. 2d 664, 668-69 (La. 1977) (although an automobile insurance policy provided for total disability benefits, “the policy...is not health and accident insurance...but, rather, vehicle insurance”); *Miles v. Cent. Nat. Ins. Co. of Omaha*, 163 So. 2d 838 (La. App. 4 Cir. 1964) (although automobile insurance policy contained a medical payments provision, it is not a health and accident policy).