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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRANSAMERICA LIFE INSURANCE
COMPANY,

Plaintiff-Appellee,

v.

ANGELINA D. SLEE; et al.,

Defendants-Appellants.

No. 21-35093

D.C. No. 2:19-cv-01536-JLR

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Submitted February 9, 2022**
Seattle, Washington

Before: BYBEE, BEA, and CHRISTEN, Circuit Judges.

The district court granted summary judgment in favor of Transamerica Life Insurance Company. The district court adopted the Magistrate Judge's report and recommendation, which determined that "the policy language unambiguously

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

requires the insured to be in a nursing home licensed by the state in order to be entitled to benefits, that [the Sleys] failed to prove their [assisted living facilities (ALFs)] met this requirement, and that Transamerica reasonably exercised its discretion in determining the ALFs did not ‘substantially comply’ with the policy definition of ‘nursing home.’” From this determination, the Magistrate Judge determined that the Sleys’s Counterclaims failed as a matter of law. We affirm the district court’s judgment.

The Sleys’s long-term care insurance policies provide that an insured can qualify for benefits in one of three ways: where treatment is (1) “Medically Necessary;” (2) required due to a “Cognitive Impairment;” or (3) required “because of [the insured’s] inability to perform at least 2 of the 6 Activities of Daily Living.” Once an insured has qualified for benefits, the Policy includes a “Nursing Home Benefit,” which pays “the actual charges for confinement in a *Nursing Home*, up to the Maximum Daily Nursing Home Benefit shown in the Schedule for each day of a Nursing Home stay.” To “qualify for the Nursing Home Benefit,” three conditions must be met: “(1) [The insured’s] Physician must certify that [the insured’s] treatment is Medically Appropriate; and (2) the care or services must be provided in a *Nursing Home*; and (3) the charges must be incurred while th[e] Policy is in force.”

Under Washington contract law, if the “terms are defined in a policy, then the term must be interpreted in accordance with that policy definition,” unless the policy violates public policy or a statute. *Kitsap v. Allstate Ins. Co.*, 136 Wash. 2d 567, 576 (Wash. 1998) (en banc); see *Findlay v. United Pacific Ins. Co.*, 129 Wash. 2d 368, 379 (Wash. 1996) (en banc) (“We have repeatedly held that an insurer, as a private contractor, is ordinarily permitted to limit its liability unless to do so would be inconsistent with public policy. When such public policy exists, it will ordinarily be found in a regulatory statute.”).

The Sles contend that the policy’s definition of nursing home violates Washington law, and that Transamerica must adopt the broader definition of nursing home found in the Washington code. Under their reading, that broader definition would include the ALFs to which the Sles were admitted. And from that definition, the rest of the Sles’s arguments flow, *i.e.*, that Transamerica improperly denied coverage.

Nothing in the contract is inconsistent with Washington law. The policies expressly define a “nursing home,” among other requirements, as “[a] facility, or that part of a facility which: is licensed by the state as a nursing home.” The code distinguishes between nursing homes and ALFs. See Wash. Rev. Code § 18.51 et seq. (regulating nursing homes); Wash. Rev. Code § 18.20 et seq. (regulating

assisted living facilities). Under the Washington code, ALFs are not permitted to act as nursing homes. *See* Wash. Rev. Code § 18.20.160 (“No person operating a[] [licensed ALF] . . . shall admit to or retain in the [ALF] any aged person requiring nursing or medical care of a type provided by institutions licensed under chapter[] 18.51 [Nursing Homes.]”). Thus, the core of the Sles’s argument—that the policy’s definition of “nursing home” is contrary to Washington law—is incorrect.

Because we agree that the district court correctly interpreted the statutes and the insurance policy, we agree that the Sles’s counterclaims fail as a matter of law.

The district court’s judgment is affirmed.

AFFIRMED