

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

GOLDEN RULE INSURANCE COMPANY, et al.,

Appellants,

v.

R.S., et al.,

Respondents.

DOCKET NUMBER WD72578

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 19, 2012

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable W. Stephen Nixon, Judge

JUDGES

Division Three: Mitchell, P.J., and Smart and Witt, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

GOLDEN RULE INSURANCE)
COMPANY, et al.,)
)
Appellants,) **OPINION FILED:**
v.) **June 19, 2012**
)
R.S., et al.,)
)
Respondents.)

WD72578

Jackson County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and
James M. Smart, Jr., and Gary D. Witt, Judges

Appellants, Golden Rule Insurance Company and PacifiCare Life and Health Insurance Company, appeal the trial court's judgment in favor of the insureds on the insurers' contract claims for rescission and termination of their respective insurance contracts.

Golden Rule argues that the insureds' policies automatically terminated 90 days after coverage began because the insureds had and maintained other individual coverage on the effective date of Golden Rule's policy in violation of the terms of the contracts. Golden Rule alternatively argues that the insureds' contracts should be rescinded based upon fraudulent conduct of the insureds in connection with claims filed. PacifiCare also urges rescission based upon fraudulent conduct by the insureds in obtaining their policies. We reverse in part and affirm in part.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Division Three holds:

Golden Rule's policy is ambiguous with respect to whether an insured is allowed to have and maintain other group or group-type coverage more than 90 days after the effective date of the Golden Rule policy; thus, reading the policy in a light favorable to an insured indicates that

an insured is permitted to have and maintain other group coverage more than 90 days beyond the effective date of the Golden Rule policy.

- (1) The insureds, however, did not have other group or group-type coverage. Rather, they had other individual coverage, and Golden Rule's policy is unambiguous regarding its prohibition of other individual coverage more than 90 days beyond the Golden Rule policy's effective date. Thus, Golden Rule is entitled to termination of the contract, and the trial court erred in ruling in favor of the insureds.
- (2) PacifiCare is not entitled to rescission because the insureds did not engage in fraudulent conduct when indicating that they were residents of California at the time they applied for PacifiCare's policy. Although the insureds maintained a home in Missouri, the trial court properly determined that the insureds maintained dual residency in both Missouri and California. Thus, their representations on their PacifiCare applications that they were residents of California were not fraudulent.

Opinion by: Karen King Mitchell, Presiding Judge

June 19, 2012

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