

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-5134

September Term, 2001

Texas Gray Panthers, Individually and on behalf
of all others similarly situated, et al.,
Appellants

Filed On: May 17, 2002 [678242]

v.

Tommy G. Thompson, Secretary of Health and
Human Services and Kenneth S. Apfel,
Commissioner of the Social Security Administration,
Appellees

Appeal from the United States District Court for the District of Columbia
(No. 99cv01557)

Before: SENTELLE, RANDOLPH and GARLAND, *Circuit Judges*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia and was briefed and argued by counsel. Appellants appeal from the District Court's grant of summary judgment in favor of the Secretary assigning error both as to the substance of the judgment and as to the failure of the District Court to rule on a discovery motion under F. R. Civ. P. 56(f) pending at the time of the grant of the judgment. It appears from the record that the motion was made while the case was assigned to a district judge who unfortunately died during the pendency of the action. After the reassignment of the case, no ruling was entered on the motion until after the entry of summary judgment when it was dismissed as moot. While we do not intend to suggest a result, it does appear that appellants were entitled to a ruling on the discovery motion before the entry of judgment. We are therefore vacating the judgment entered in favor of the defendant appellee, and returning the case to the District Court for disposition of the Rule 56(f) motion, and such further proceedings as may then be necessary.

01-5134

Page Two

It is therefore ORDERED, ADJUDGED and DECREED that the District Court's grant of summary judgment is vacated, and this case is remanded for further proceedings consistent with this judgment.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

Michael C. McGrail

Deputy Clerk