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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES ERMOVICK,)	No. 06-56191
)	
Plaintiff - Appellant,)	D.C. No. CV-05-06018-R
)	
v.)	MEMORANDUM*
)	
MITCHELL SILBERBERG AND)	
KNUPP LLP LONG TERM)	
DISABILITY FOR ALL)	
EMPLOYEES, an ERISA plan,)	
)	
Defendant - Appellee.)	
_____)	

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted April 7, 2008**
Pasadena, California

Before: PREGERSON, D.W. NELSON, and FERNANDEZ, Circuit Judges.

James Ermovick appeals the district court’s judgment in favor of Mitchell,
Silberberg and Knupp LLP Long Term Disability Plan (“the Plan”) upholding the

*This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

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

denial of long term disability benefits to Ermovick. We reverse and remand.

While Mitchell, Silberberg and Knupp LLP was the designated plan administrator, Prudential Insurance Company of America insured the Plan's benefits and performed the day-to-day administration of the Plan. It was Prudential that reviewed Ermovick's claim and ultimately denied long term disability benefits roughly seven months after first granting them.

It is agreed by the parties that the district court was required to conduct de novo review of Prudential's decision. The district court declared it was doing so, but went on to explain that it would review Prudential's decision to see if it was clearly erroneous. The court described that standard as "significantly deferential" and indicated that it "must support" Prudential's decision if reasonable minds could differ. That construction of the standard was plainly wrong, obnebulated the whole process, and failed to constitute "an independent and thorough inspection of [the] administrator's decision." Silver v. Executive Car Leasing Long-Term Disability Plan, 466 F.3d 727, 733 (9th Cir. 2006). The district court must "[fully] exercise [its] informed and independent judgment." Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan, 46 F.3d 938, 943 (9th Cir. 1995). Its failure to do so fatally undermines the district court's findings and conclusions,¹ and requires

¹No doubt, the error also led to the district court's: (a) failure to consider
(continued...)

reversal.²

Thus, we remand so that the district court can in the first instance properly review the evidence using a proper standard of review. That is a function that is “ordinarily committed . . . to trial courts, not appellate courts.” Kearney v. Standard Ins. Co., 175 F.3d 1084, 1095 n.5 (9th Cir. 1999) (en banc).

REVERSED and REMANDED.

¹(...continued)

more than a small portion (79 pages) of the record (678 pages), rather than completely examining it, see Silver, 466 F.3d at 734; (b) failure to address the fact that Prudential granted long term disability benefits and for no properly articulated reason terminated them seven months later; (c) failure to address the apparent lack of a true interactive process between Prudential and Ermovick, see Jebian v. Hewlett-Packard Co. Employee Benefits Org. Income Prot. Plan, 349 F.3d 1098, 1104 (9th Cir. 2003); Booton v. Lockheed Med. Benefit Plan, 110 F.3d 1461, 1463–65 (9th Cir. 1997); (d) failure to consider that after Prudential terminated the benefits, it changed its rationale for so doing, see Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 974 (9th Cir. 2006) (en banc); and (e) decision to adopt the Plan’s proposed findings and conclusions verbatim.

²Lamantia v. Voluntary Plan Adm’rs, Inc., 401 F.3d 1114, 1121 (9th Cir. 2005).