STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED
May 13, 2011
released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

DANNY FISCHER AND BRITTANEY FISCHER,
Plaintiffs Below, Appellants

vs.) No. 35677 (Cabell County No. 07-C-1100)

SWVA, INC., ET AL.,
Defendants Below, Appellees

MEMORANDUM DECISION

Following a denial of his request for benefits under his employer-sponsored health care plan and an adverse final decision upon administrative review, appellant Danny Fischer (hereinafter "Mr. Fischer") and his daughter, Brittaney Fischer (hereinafter "Brittaney"), filed the instant action in the Circuit Court of Cabell County. By order entered December 30, 2009, the Circuit Court granted summary judgment in favor of Mr. Fischer's employer, appellee SWVA, Inc. (hereinafter "SWVA"), and its health care plan, co-appellee SWVA, Inc. Employee Health Care Plan (hereinafter "the Plan"). The circuit court ruled that the Plan's ninety-day judicial review limitations period, within which Mr. Fischer was required to commence litigation against the Plan if he wished to obtain judicial review of the Plan's final decision, complied with ERISA[1] requirements for employer-sponsored health care plans. The circuit court further concluded that, because the Plan's limitations period was valid and enforceable, it applied to bar the Fischers' lawsuit as untimely filed. Upon a review of the parties' arguments, the designated record, and the pertinent authorities, we affirm the order entered December 30, 2009, by the Circuit Court of Cabell County. In summary, the circuit court did not err by ruling that the Fischers' cause of action was barred by the Plan's ninety-day limitations period as untimely. We further find this matter to be proper for disposition pursuant to Rule 21 of the West Virginia Revised Rules of Appellate Procedure insofar as no new or significant issues of law are presented by this case.

The chronology of events giving rise to the instant proceeding is not disputed. On January 26, 2006, Mr. Fischer's minor daughter, Brittaney, was injured while riding as a

[1]"ERISA" is an acronym for the "Employee Retirement Income Security Act of 1974," which is codified at 29 U.S.C. § 1001, *et seq.*

passenger in a motor vehicle operated by Steven Vanperson (hereinafter referred to as "Mr. Vanperson"). As a result of the accident, Brittaney sustained numerous injuries, for which she has received treatment and incurred approximately $250,000 in health care costs.

At the time of this accident, Mr. Fischer was a steel worker employed by SWVA. Through his union membership and the union's collective bargaining agreement with SWVA, health care insurance was provided to Mr. Fischer through the Plan. Pursuant to the Plan document defining the scope of such insurance, coverage is not provided for injuries sustained as a result of a third-party's negligence. However, the Plan document nevertheless provides coverage for injuries caused by a third-party if there is a reasonable opportunity for recovery from that third-party. At the time of the subject accident, Mr. Vanperson had motor vehicle insurance coverage in the minimum limits allowed by the State of Ohio, where he resided. Additionally, Mr. Fischer's policy of motor vehicle insurance provided underinsured motorists coverage. Thus, the Fischers filed suit against Mr. Vanperson seeking benefits from both Mr. Vanperson's and Mr. Fischer's insurance policies.

Mr. Fischer also submitted a claim to the Plan seeking benefits for Brittaney's medical care. The Plan denied Mr. Fischer's claim because he did not provide sufficient information suggestive of a "reasonable recovery" from Mr. Vanperson, the third-party responsible for Brittaney's injuries. Mr. Fischer retained counsel, submitted the information that the Plan required, and requested the Plan to review its previous denial of his claim. Upon review of Mr. Fischer's claim, the Plan again denied benefits, by decision dated November 29, 2006, explaining that the claim lacked evidence that a "reasonable recovery" could be had from Mr. Vanperson. The parties do not dispute that the Plan's November 29th decision was in the nature of a final decision as contemplated by ERISA. *See generally* 29 U.S.C. § 1133(2) (1974); 29 C.F.R. § 2560.503-1(j) (2001).

Pursuant to the Plan document, a participant may seek judicial review of the Plan's final decision on review if he/she files suit within ninety days of the Plan's final decision:

> No action at law or in equity will be brought to recover on the Plan until . . . you have exhausted the appeal procedures as described [in the Plan document] . . . . No legal action concerning the denial of benefits under this Plan may be commenced or maintained against the Plan or the Employer more than ninety (90) days after your receipt of notice of a decision on review of your appeal[.]

Accordingly, the Plan's issuance of its decision on November 29th should have started the ninety-day limitations period for seeking judicial review. However, in its ruling, the Plan indicated that the limitations period would be tolled for ninety days to permit Mr. Fischer to

provide additional information demonstrating "a realistic opportunity for the Plan to obtain a reasonable recovery." Thus, the Plan set February 27, 2007, as the final submission date for additional information and stated that "**[i]f by that date the Plan has not received any such evidence, then the Plan's denial of M[r]. Fischer's appeal will hereby and automatically become final without further action of the Plan.**" (Emphasis in original).

Mr. Fischer did not submit any additional information in response to the Plan's November 29th decision. Therefore, pursuant to the terms of the Plan's November 29th ruling, the Plan's decision upon review of Mr. Fischer's claim became final on February 27, 2007. Accordingly, the ninety-day limitations period during which Mr. Fischer was permitted to seek judicial review of the Plan's final decision began to run on February 27, 2007, and ended on May 28, 2007. Mr. Fischer did not bring suit against the Plan on or before May 28, 2007.

Thereafter, on August 29, 2007, new counsel for Mr. Fischer requested the Plan to extend its judicial review limitations period. Mr. Fischer's attorney opined that "the deadline imposed by the Plan must be extended so as to allow for the conditions to be fulfilled which are, by Plan definition, imposed on establishing claim eligibility, *i.e.*, investigation of third party liability. Otherwise the claim limitations period would begin to run before the claim accrues." The Plan responded by reiterating that it previously had issued its final decision, which had denied benefits to Mr. Fischer for Brittaney's injuries based upon the lack of a "reasonable recovery" from the third-party tortfeasor, and that it now deemed his claim, from which he failed to seek judicial review by May 28, 2007, closed. Additional correspondence between Mr. Fischer's counsel and the Plan ensued. Ultimately, Mr. Fischer and his daughter filed the instant proceeding against SWVA and the Plan on December 17, 2007.

Following protracted litigation, SWVA and the Plan moved for summary judgment arguing that the Fischers' lawsuit was time-barred by operation of the Plan document's ninety-day judicial review limitations period. The Fischers opposed the motion and sought additional discovery, which discovery the circuit court granted, in part. Following discovery, the circuit court issued a letter decision informing the parties that it would grant summary judgment in favor of SWVA and the Plan. By order entered December 30, 2009, the circuit court granted summary judgment to SWVA and the Plan, concluding that the Plan is self-funded and that, as such, ERISA authorizes it to adopt its own limitations period, which was reasonable and which applied to bar Mr. Fischer's claim.[2]

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[2]Following the circuit court's order, the Fischers filed a motion to alter or amend the judgment pursuant to Rule 59(e) of the West Virginia Rules of Civil Procedure. Insofar as they withdrew their motion before the court had ruled upon it, the issues raised therein, to the

On appeal to this Court, the Fischers contend that the circuit court erred by granting the motion for summary judgment filed by SWVA and the Plan. "A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. pt. 3, *Aetna Cas. & Sur. Co. v. Federal Ins. Co. of New York*, 148 W. Va. 160, 133 S.E.2d 770 (1963). *Accord* Syl., *Hanks v. Beckley Newspapers Corp.*, 153 W. Va. 834, 172 S.E.2d 816 (1970). We review *de novo* a lower court's summary judgment award to determine if these criteria have been satisfied. *See* Syl. pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994).

At issue in this proceeding is whether Mr. Fischer's cause of action seeking judicial review of the Plan's final decision, which denied his claim for benefits, was untimely. The answer to this query lies in the Plan document that governs the health care coverage provided to Mr. Fischer by his employer and its application to the facts of this case.

According to the structure of SWVA's health care plan, the Plan is a self-funded plan. ERISA authorizes the Plan, as a self-funded plan, to adopt its own limitations periods, unlike fully-insured health care plans which are subject to limitations periods provided by state law. *See* 29 U.S.C. § 1144(b)(2) (2006); *FMC Corp. v. Holliday*, 498 U.S. 52, 111 S. Ct. 403, 112 L. Ed. 2d 356 (1990). The specific terms of the Plan's limitations period, as well as the other provisions of coverage set forth in the Plan document, are afforded great weight pursuant to the "plan documents rule." In short, this doctrine recognizes that the terms of a plan's documents are the complete and conclusive statement concerning the scope of coverage afforded by the plan, the manner of requesting benefits from the plan, and the procedure for challenging an adverse decision of the plan. *See Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 129 S. Ct. 865, 172 L. Ed. 2d 662 (2009); *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 115 S. Ct. 1223, 131 L. Ed. 2d 94 (1995).

In this case, the Plan document imposes a ninety-day limitations period within which a participant may seek judicial review of a final decision rendered by the Plan. To determine whether the circuit court erred in concluding that the Plan's limitations period operates to bar the Fischers' lawsuit as untimely filed, we must ascertain whether the Plan's ninety-day judicial review limitations period was reasonable and whether it was properly applied in this case. We find both of these answers to be, unequivocally, "yes."

First, the Plan's limitations period was reasonable insofar as it permitted Mr. Fischer a definite period of time within which to seek judicial review of its final decision. A cause

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extent they have not been assigned as errors in the instant appeal, are not before the Court.

of action under ERISA does not accrue until the subject Plan renders its final administrative decision. *See, e.g., Young v. Verizon's Bell Atlantic Cash Balance Plan*, 667 F. Supp. 2d 850, 887 (N.D. Ill. 2009) ("[A]n ERISA action logically accrues after the final administrative appeal is denied in writing." (citation omitted)); *Dameron v. Sinai Hosp. of Baltimore, Inc.*, 595 F. Supp. 1404, 1415 (D. Md. 1984) ("Absent unusual circumstances, the date the beneficiary was notified of the reconsideration decision will trigger the running of the statute of limitations."). Here, the Plan document specifically states that the ninety-day limitations period begins to run from the date of the Plan's final decision: "No legal action concerning the denial of benefits under this Plan may be commenced or maintained against the Plan or the Employer more than ninety (90) days after your receipt of notice of a decision on review of your appeal[.]" Because this limitations period does not begin to run until *after* the Plan has rendered its final decision on a claim, the limitations period corresponds with, rather than contravenes, the Plan participant's right of action under ERISA. *See* 29 U.S.C. § 1132(a)(1)(B) (2006); 29 U.S.C. § 1133(2) (1974); 29 C.F.R. § 2560.503-1(j) (2001). *Cf. White v. Sun Life Assurance Co. of Canada*, 488 F.3d 240 (4th Cir. 2007).

Second, the Plan's ninety-day limitations period was properly applied to bar Mr. Fischer's appeal from the Plan's final decision. Under the terms of the Plan, the ninety-day limitations period should have started on the date of the Plan's final decision on November 29, 2006,[3] and expired on February 27, 2007. Instead, however, the Plan gratuitously afforded Mr. Fischer a grace period within which to submit additional evidence to document the likelihood of recovery from Mr. Vanperson, during which time the ninety-day limitations period was tolled. If Mr. Fischer submitted additional documentation during this time, his claim presumably would have been reevaluated. If Mr. Fischer did not provide additional information, the Plan's decision would become final upon the expiration of this grace period, *i.e.*, February 27, 2007, and the Plan's ninety-day limitations period would begin to run from that date, ending on May 28, 2007.

It is undisputed that Mr. Fischer did not submit additional information for the Plan's consideration before the expiration of the February 27, 2007, deadline. Neither did Mr. Fischer file a cause of action seeking judicial review of the Plan's final decision on or before May 28, 2007, the deadline resulting from the Plan's grace period. Rather, Mr. Fischer waited until December 17, 2007, to file the instant proceeding seeking judicial review of the

[3]Although the Plan document actually states that the ninety-day judicial review limitations period starts to run upon the participant's *receipt* of the Plan's final decision, rather than upon the date of the decision's issuance, both parties to this appeal have identified the date of the final decision as the determinative benchmark from which the ninety days should be calculated. Thus, we will not belabor this point but will adopt the parties' view.

Plan's final decision, nearly seven months after the expiration of the limitations period. Despite Mr. Fischer's repeated requests for reconsideration of the Plan's final decision denying him benefits, such correspondences did not serve to "renew [his] stale claim[.]" *Dameron*, 595 F. Supp. at 1414.

From these facts, we find that the Plan properly applied its ninety-day judicial review limitations period to bar the Fischers' lawsuit as untimely filed. Not only did the Plan apply its limitations period as plainly stated in the Plan document, but it also generously afforded Mr. Fischer an *additional* ninety days to submit supporting documentation to prove his entitlement to benefits. By contrast, Mr. Fischer failed to provide additional documentation to support his claim for benefits or to seek judicial review within the prescribed period. Thus, it is the Plan participant, himself, who is responsible for the delay that bars his suit.

For the foregoing reasons, we conclude that the circuit court did not err by granting summary judgment to SWVA and the Plan based upon the operation of the Plan document's ninety-day judicial review limitations period.[4] Accordingly, the December 30, 2009, order of the Circuit Court of Cabell County is hereby affirmed.

Affirmed.

ISSUED: May 13, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh

[4]Having determined that the circuit court correctly ruled that the Plan document's ninety-day judicial review limitations period applies to bar the Fischers' lawsuit, we need not consider whether the circuit court's decisions regarding discovery in such litigation were erroneous.