STATE OF MICHIGAN

COURT OF APPEALS

LACYNTHIA HARTLEY,

Plaintiff-Appellee,

v

DETROIT POLICE BENEFIT & PROTECTIVE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
February 2, 1999

No. 202199
Wayne Circuit Court
LC No. 94-429505 CK

Before: Kelly, P.J., and Hood and Markey, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting plaintiff's motion for reconsideration, granting plaintiff summary disposition,[1] and awarding her mediation sanctions and taxable costs. We reverse and remand.

Plaintiff is the widow of a police officer who claims that she is entitled to death benefits from defendant. Defendant is a voluntary employee association which maintains an employee welfare benefit plan as defined by the Employee Retirement Income Security Act ("ERISA"), 29 USC 1002(1)(A) and (3).[2] Plaintiff's decedent was a plan participant who, during a prior marriage, had designated his former wife as primary beneficiary and his son as contingent beneficiary of his death benefits. Because he died without changing his beneficiary designation, and because his former wife was disqualified under the plan by virtue of their divorce, defendant's board of trustees paid death benefits to the decedent's son as the only beneficiary of record. That decision was overturned by the trial court.

On appeal, defendant argues that the trial court erred in applying state law to plaintiff's cause of action, and in granting her summary disposition and mediation sanctions. We agree. The trial court's decision to grant summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The provisions of ERISA "supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" as defined by ERISA. 29 USC 1144(a); see also *Ingersoll-Rand Co v McClendon*, 498 US 133, 138-139; 111 S Ct 478; 112 L Ed 2d 474 (1990). This broad clause also preempts court decisions having the effect of law. 29 USC 1144(c)(1).

Only laws that regulate "insurance, banking, or securities" are saved from preemption. 29 USC 1144(b)(2)(A). However, for purposes of this "savings clause," employee benefit plans shall not be deemed to be insurance companies nor to be engaged in the business of insurance.[3] 29 USC 1144(b)(2)(B). Here, plaintiff's cause of action necessarily involved an inquiry into the relevant provisions of a plan covered by ERISA and, thus, federal law controls. *Ingersoll-Rand, supra,* 498 US at 140. The trial court therefore erred in applying state insurance law in this case, specifically, *In re Seitz,* 426 Mich 630; 397 NW2d 162 (1986).

Federal law requires that a denial of benefits by an ERISA plan be reviewed de novo "unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone Tire and Rubber Co v Bruch,* 489 US 101, 115; 109 S Ct 948; 103 L Ed 2d 80 (1989). Where such discretionary authority is given, the plan's decision is reviewed under an arbitrary and capricious standard. *Firestone, supra,* 489 US at 111, 115.

Here, Article III of the plan grants the trustees the power to "manage[]" "[t]he property and affairs" of the plan, and the authority to "[h]ave and exercise all powers necessary or convenient to effect any purpose for which the Association is formed consistent with these Articles." Although the summary plan description states that the trustees have "the authority to . . . decide questions of eligibility for benefits," the plan document itself does not appear to grant them "discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Compare *Yeager v Reliance Std Life Ins Co,* 88 F3d 376, 380-381 (CA 6, 1996) (plan required claimants to submit "satisfactory proof" of loss to plan administrator); see also *Miller v Metropolitan Life Ins Co,* 925 F2d 979, 983-984 (CA 6, 1991) (plan stated that disability would be determined upon "medical evidence satisfactory" to plan administrator). Thus, we are not convinced that the trial court erred in reviewing the trustees' decision de novo. Nevertheless, it should be noted that, if the trustees' decision passes muster when reviewed de novo, it will certainly withstand the less stringent arbitrary and capricious standard advocated by defendant.[4]

Article VII of defendant's plan provides that "[u]pon the death of any Member of the Association, the amount set below shall be paid to his beneficiaries . . ." However, plaintiff relies upon Article VI which provides that "[i]f, upon the death of a Member, no beneficiary has been named, the person named has died, or the person named does not meet the qualifications [of the plan], then the Board of Trustees shall cause the benefits to be paid . . . to the following in the order named: (1) then living widow or widower . . . ." Here, plaintiff's decedent had designated his former wife as primary beneficiary and his son as contingent beneficiary. Upon his divorce from his former wife, she became ineligible for benefits under the terms of the plan. However, his son remained eligible. Thus, the trustees' decision to pay benefits to the son under Article VII, rather than to plaintiff under Article VI, fully comports with the terms of the plan document. The trial court therefore erred in granting summary disposition to plaintiff.

Given our decision, the trial court's award of mediation sanctions and taxable costs to plaintiff is also overturned.

Reversed and remanded. The trial court's order granting summary disposition to defendant is ordered reinstated. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Harold Hood
/s/ Jane E. Markey

[1] Although defendant moved for summary disposition under both MCR 2.116(C)(8) and (10), the trial court did not specify under which section it granted summary disposition to plaintiff upon reconsideration.

[2] Although defendant's plan was established for the benefit of police officers who are city government employees, it is covered by ERISA because it is not established or maintained by the city, nor its agencies or instrumentalities, but rather by a voluntary employee association for the benefit of its members. See 29 USC 1002(32); see also 29 USC 1003.

[3] The "deemer clause" provides that "[n]either an employee benefit plan described in section 4(a) [29 USC 1003(a) (plans covered by ERISA)], which is not exempt under section 4(b) [29 USC 1003(b) (plans not covered by ERISA)] (*other than a plan established primarily for the purpose of providing death benefits*), nor any trust established under such plan, shall be deemed to be an insurance company or other insurer . . . for purposes of any law . . . purporting to regulate insurance . . . ." 29 USC 1144(b)(2)(B). The applicability and meaning of this rather inartful italicized clause has not been addressed or decided in this case and therefore the issue has been waived. However, at least one federal court of appeals has held that, under some unspecified circumstances, a plan that provides primarily death benefits may be deemed to be an insurance company for purposes of state regulation of insurance. See *Barrientos v Reliance Standard Life Ins Co*, 911 F2d 1115, 1117-1118 (CA 5, 1990). We express no opinion on the correctness of that holding.

[4] The arbitrary and capricious standard "'is the least demanding form of judicial review of administrative action. . . . When it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary and capricious.'" *Perry v United Food and Commercial Workers*, 64 F3d 238, 242 (CA 6, 1995) (quoting *Davis v Kentucky Finance Cos Retirement Plan*, 887 F2d 689, 693 (CA 6, 1989)). Thus, "decisions [regarding] eligibility for benefits are not arbitrary and capricious if they are 'rational in light of the plan's provisions.'" *Miller, supra*, 925 F2d at 984; see also *Wendy's International, Inc v Karsko*, 94 F3d 1010, 1012 (CA 6, 1996). Only when a plan's determination is "downright unreasonable" will it be overturned. *Butler v Encyclopedia Brittanica Inc*, 41 F3d 285, 291 (CA 7, 1994).