DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

BANK OF AMERICA GROUP BENEFITS PROGRAM FIDUCIARY, the Bank of America Benefits Appeals Committee,	)	1 CA-CV 09-0048
	)	DEPARTMENT C
Plaintiff/Appellant,	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
CAROL RIGGS,	)	Procedure)
	)	
Defendant/Appellee.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CV 2007-020748

The Honorable Edward O. Burke, Judge

AFFIRMED

Snell & Wilmer LLP — Phoenix
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Attorney for Defendant/Appellee

I R V I N E, Presiding Judge

¶1 Bank of America Group Benefits Program Fiduciary, The Bank of America Benefits Appeals Committee (the "Appeals

Committee") appeals from a grant of summary judgment in favor of Carol Riggs ("Riggs"), a former employee of Bank of America N.A. ("Bank of America"). We affirm the superior court's holding that it owed no deference to the Appeals Committee's interpretation of the settlement agreement between Riggs and Bank of America (the "Agreement"). Because we find no genuine issues of material fact concerning the merits, we also affirm the judgment in favor of Riggs.

FACTS AND PROCEDURAL HISTORY

¶2 Riggs worked at Bank of America, and its predecessor banks, from November 16, 1987 through approximately February 1999. Her last position at Bank of America was Personal Banker IV.

¶3 Riggs began a medical absence from Bank of America in October 1998 after allegedly experiencing harassment and mistreatment by a Bank of America supervisor. She did not return to work. A stipulation between the Bank and Riggs states that Riggs "has been found totally disabled by the Social Security Administration and by Fortis Insurance Company."

¶4 According to Bank of America's 1998 "Your Employee Handbook," in effect in January 1999, any employee absent seven consecutive calendar days or more for medical reasons is on an "extended medical absence." If the extended medical absence lasts for twenty-four consecutive months, Bank of America has a

right to terminate the employee through "medical separation." In a June 2001 letter, Bank of America Vice President for Personnel Denise Trentalange acknowledged that Riggs was a medically separated employee entitled to continue "many of [her] benefits" including group medical coverage at the employee rate, if she elected to do so. The Appeals Committee reconfirmed Riggs' status as a medically separated employee during this litigation.

¶5 Riggs filed suit against Bank of America and several of its employees in September 1999 in superior court, alleging violation of the Family Medical Leave Act, 29 U.S.C. § 2601 et seq.; constructive discharge; and intentional infliction of emotional distress. Following mediation, the parties executed the Agreement resolving the lawsuit. Paragraph 4 of the Agreement provides:

> 4. **Continuation of Availability of Health Care Coverage**. Benefit insurance coverage (which currently includes, without limitation, medical, dental and vision care) for Riggs and her husband will continue to be offered pursuant to Bank's Long Term Disability coverage provided in cases of "medical separation" as set forth in summary in the Extended Medical Absences (Medical Separation – Effect on Benefits) section of Bank's *Your Employee Handbook* for 1998 (attached hereto as Attachment A). The policy described in the Handbook is the policy that was in effect at the time Riggs [sic] employment should have been medically separated. Riggs and Bank have agreed that she will be treated in accordance with this policy and Riggs and her husband will continue to be provided with the benefits,

> which may be modified from time to time, available to Bank employees medically separated pursuant to this policy, so long as Riggs continues to receive or is qualified to receive Long Term Disability benefits and this coverage will be billed at the active employee rate.

The Agreement, which includes an integration clause, also attaches pages 238 and 239 from the 1998 "Your Employee Handbook." Page 239 discusses the effect on benefits for medically separated employees:

> Medical separation – effect on benefits Some of your benefits can continue if you are receiving BankAmerica Long-Term Disability (LTD) Plan benefits (or have qualified to receive LTD benefits that are being offset by workers' compensation or Social Security benefits) at the time of a medical separation. Under current policy, you may continue enrollment in the company-sponsored health care plans for yourself and group life insurance on your life during the period you qualify to receive LTD benefits, up to age 65.

Riggs received the same health insurance available to active Bank of America employees for approximately three years after the Agreement's execution. The bank subsequently sought to harmonize Riggs' benefits with her employment and disability status. It contended that Riggs is eligible only for medical plans having Medicare supplemental coverage, and accordingly sent Riggs a formal denial of her claim to continued active employee medical coverage on February 22, 2006.

¶6 Riggs appealed to the Appeals Committee. That tribunal determined that Riggs had departed from active employee status on February 1, 1999, and consequently was eligible only for participation in medical plans with Medicare supplemental coverage offered under the BankAmerica Long-Term Disability Plan (the "Plan"). According to a letter sent on behalf of the Appeals Committee, the authority for this denial derives from page 18 of the 1998 "Your Employee Handbook" stating:

> If you are disabled (and not actively working) and eligible for Medicare coverage due to your disability, you must be enrolled in Parts A and B of Medicare in order to be eligible to continue coverage in a company-sponsored medical plan. Medicare will pay its benefits first, and the company-sponsored medical plan will be the secondary payer.

The Benefit Appeals Committee delayed implementation of the determination and filed a declaratory judgment action in Arizona's federal district court to define the parties' rights. *See Bank of Am. Group Benefits Program Fiduciary v. Riggs*, No. CV06-02805-PHX-NVW, 2007 WL 1876589 (D. Ariz. June 28, 2007). The district court dismissed the action, finding (1) no diversity jurisdiction, and (2) the action arose out of an agreement concerning one employee, not the entire plan, and thus neither related to the Employment Retirement Income Security Act

of 1974, 29 U.S.C. § 1001 ("ERISA") nor supported federal question jurisdiction.[1] *Id.* at **1-4.

¶7 Following the federal court dismissal, the Appeals Committee sued for declaratory relief on the Plan's behalf in the superior court. The Appeals Committee sought a declaration that: (1) the Agreement established Riggs' status as a medically separated employee on long-term disability; (2) the Agreement did not establish Riggs' status as an active employee entitled to active employee benefits; (3) the Appeals Committee reasonably interpreted the Plan and did not abuse its discretion; and (4) implementation of the Appeals Committee's decision would not constitute a breach of the Agreement. During the litigation, Riggs admitted that she was disabled, not actively working, and eligible for Medicare.

¶8 The parties filed cross-motions for summary judgment on (1) whether the Appeals Committee had the discretion to deny Riggs' appeal for active employee coverage; and (2) whether the

[1] Meanwhile, Riggs filed suit against Bank of America in superior court, alleging bad faith and breach of the implied covenant of good faith and fair dealing. The case was subsequently removed to United States District Court. In ruling on summary judgment, the district court found that the state superior court's ruling had a preclusive effect not only on the Appeals Committee, but also on Bank of America. *Riggs v. Bank of America, N.A.*, No. CV-07-1855-PHX-FJM, 2009 WL 211370, at *2 (D. Ariz. Jan. 29, 2009). The court alternatively ruled in a footnote that, even absent the preclusive effect, it would reach the same conclusion as did the state court. *Id*. at *2 n.3. This footnote ruling does not discuss the parol evidence issues and Riggs does not argue here that collateral estoppel applies.

Agreement afforded Riggs active employee coverage and whether that coverage was secondary to Medicare coverage. After briefing and oral argument, the superior court granted summary judgment to Riggs, stating in its minute entry:

> The court views its task as determining what was meant by the settlement agreement between the Bank of America and Ms. Riggs, which is different than a review of a plan administrator's decision under ERISA.
>
> The court finds that the clear meaning of the Settlement Agreement is that Ms. Riggs is entitled to continue to receive the same benefit insurance coverage she would have been entitled to under the 1998 Employee Handbook if she were an active employee for at least the following reasons:
>
> First, paragraph 4 of the Agreement states that she is entitled to receive benefit Insurance coverage as provided in cases of "medical separation;" second, the two pages from the 1998 Employee Handbook providing for this coverage are attached as exhibits to the Agreement; and third, paragraph 4 of the Agreement provides that she will be billed for the coverage at the "active employee rate." The Bank's position is inconsistent with this sentence because if Riggs has to enroll in Medicare her premium for the Bank coverage, which then becomes secondary, will be reduced.

The trial court subsequently awarded Riggs' $48,475.00 in attorneys' fees and $4,109.16 in costs, and entered judgment in her favor. This appeal followed.

DISCUSSION

I. The Standard Of Review

¶9 The Appeals Committee contends that we must review its rulings for abuse of discretion. It bases this argument on Riggs' pursuit of the review procedures afforded by Bank of America and the Appeals Committee. "Applying fundamental principles of waiver and estoppel," the Appeals Committee argues, "it is only fair that the results of the Committee's decision, reached under the very procedures that Riggs insisted be followed, now at least be reviewed with the deference traditionally accorded such decisions under ERISA." We disagree.

¶10 As the superior court found, this case arises out of a settlement agreement, not an ERISA benefits denial. The interpretation of a settlement agreement is a question of law we review independently. *See generally US West Commc'ns, Inc. v. Ariz. Corp. Comm'n*, 185 Ariz. 277, 280, 915 P.2d 1232, 1235 (App. 1996) (stating that the interpretation of a settlement agreement is a question of law for a court, not a discretionary matter entrusted to the Arizona Corporation Commission). The standard of review is de novo. *Burke v. Ariz. State Ret. Sys.*, 206 Ariz. 269, 272, ¶ 6, 77 P.3d 444, 447 (App. 2003). Moreover, the de novo standard governs our review of summary judgment rulings. *See Washburn v. Pima County*, 206 Ariz. 571, 574, ¶ 4, 81 P.3d 1030, 1033 (App. 2003).

¶11 The Appeals Committee bases its abuse of discretion argument on an estoppel theory. It cites no cases altering the standard of review based upon alleged estoppel,[2] and we have located none.

¶12 More importantly, regardless of the standard of review, the record fails to establish the basis for equitable estoppel. The elements of equitable estoppel are: (1) the party to be estopped commits acts inconsistent with the position it later adopts; (2) reliance by the other party; and (3) injury to the latter resulting from the former's repudiation of its prior conduct. *Valencia Energy Co. v. Ariz. Dep't of Rev.*, 191 Ariz. 565, 576-77, ¶ 35, 959 P.2d 1256, 1267-68 (1998).

¶13 The record does not reflect any inconsistent action by Riggs or reliance by the Appeals Committee. Instead, it supports

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[2] Instead, the Appeals Committee relies upon two distinguishable cases, *Jones v. Cochise County*, 218 Ariz. 372, 187 P.3d 97 (App. 2008) and *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 156 P.3d 1149 (App. 2007). In *Jones*, Division Two of this court found that a party waived an argument concerning the deficiency in a notice of claim by participating in the litigation for nearly a year. 218 Ariz. at 378-81, ¶¶ 21-29, 187 P.3d at 103-06. Such conduct was inconsistent with the intent to raise the notice of claim defense. *Id.* at 380, ¶ 27, 187 P.3d at 105. The party did not argue that a different standard of review should apply. In *Flying Diamond*, Division Two declined to find an association estopped from enforcing covenants' restrictions on building height. 215 Ariz. at 50-51, ¶¶ 27-31, 156 P.3d at 1155-56. The association's committee made no representations and committed no acts that would induce the resident to believe the restrictions would not be enforced. *Id.* at ¶¶ 30-31. This case also fails to advance the Appeals Committee's argument.

Riggs' argument that she had disputed the applicability of ERISA and any review by the Appeals Committee. Riggs' counsel twice wrote to the Appeals Committee in 2006, stating that he was reserving all claims as to the Appeals Committee's jurisdiction and asserting that Riggs was "preserving all claims that Ms. Riggs' claim is not subject to ERISA." Under these circumstances, we fail to see how the Appeals Committee could rely upon Riggs' use of the appellate procedures, and find no inconsistency in Riggs' positions. We therefore affirm the superior court's refusal to defer to the Appeals Committee's interpretation of the Agreement.

II. The Superior Court Properly Granted Summary Judgment

¶14 The Appeals Committee further contends that the superior court erroneously disregarded material issues of fact in granting summary judgment to Riggs. We view the evidence and all reasonable inferences in the light most favorable to the Appeals Committee. *See Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12, 69 P.3d 7, 11 (2003) (citing *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 482, ¶ 13, 38 P.3d 12, 20 (2002)).

¶15 The crux of this case is whether the Agreement supplies Riggs with more health care coverage than that provided under the Plan. Riggs contends that the Agreement represents an exception to the policy on Medicare supplemental coverage, but

the Appeals Committee maintains that she cannot receive active employee benefits and is entitled only to Medicare supplemental coverage under the Plan. For the reasons stated in its ruling, we agree with the superior court that the Agreement entitles Riggs to continue the coverage she was eligible for at the time her lawsuit was settled.

¶16 Turning to the Agreement itself, we find that the only reference to "active employee" appears in the final sentence of paragraph 4 awarding her benefits "available to Bank employees medically separated pursuant to this policy, so long as Riggs continues to receive or is qualified to receive Long Term Disability benefits and this coverage will be billed at the active employee rate."

¶17 The Appeals Committee contends that this reference to the "active employee rate" only makes sense if we interpret the agreement to afford something other than active employee benefits. If Riggs were an active employee, there would be no reason to specify that she would receive the active employee rate. One could argue the provision signifies that Riggs has to enroll in Medicare but will receive more support on her premium than would otherwise be provided.

¶18 Riggs responds that the "active employee rate" reference would be meaningless if the parties intended Medicare to be involved because Medicare recipients "don't pay 'active

employee rates.'" Furthermore, Paragraph 4 states that Riggs' benefits "will be continued to be offered pursuant to . . . the [1998] policy," and it is undisputed that she received active employee benefits before and after signing the Agreement. The parties might have intended to create an exception for Riggs from the general rule that an employee in her position is entitled to no more than Medicare supplemental coverage.

¶19 We agree with the superior court that the clear meaning of the settlement agreement is that Riggs (and her husband) would "continue" to receive the medical insurance coverage as she had been receiving. By attaching certain specific provisions of the 1998 Handbook, the parties plainly defined the coverage to be that available to "medically separated" employees. Although the Appeals Committee argues Riggs' eligibility for Medicare makes her coverage be that provided to "disabled" employees, the Agreement does not say this. The reference in paragraph 4 to Long Term Disability coverage or benefits is not equivalent to Social Security disability, which is what entitles Riggs to Medicare coverage. It is apparent from the 1998 Handbook that an employee may be eligible for the Bank's Long Term Disability program even if they are not considered disabled for Social Security purposes. Therefore, we reject the interpretation of the Settlement Agreement that equates the two.

¶20 We also find unpersuasive the argument that Riggs' claim must be rejected because paragraph 4 retains the option that benefits provided to Riggs and her spouse "may be modified from time to time." The Bank certainly retains some ability to change the details of its coverage, but the issue before us is whether Riggs can be required to accept coverage that she would not have been required to accept at the time the settlement was signed. The Appeals Committee does not allege that the Bank's benefits have been modified so much that all active employees must elect Medicare coverage if eligible, so we need not decide exactly how much the Bank can modify its benefits. We simply decide that the Agreement allows Riggs to continue the coverage she had.

¶21 The Appeals Committee also points to page 239 of the 1998 "Your Employee Handbook," which is attached to the Agreement, and states: "Some of your benefits can continue if you are receiving BankAmerica Long-Term Disability (LTD) Plan benefits (or have qualified to receive LTD benefits that are being offset by workers' compensation or Social Security benefits) at the time of a medical separation." Paragraph 4, however, specifically continues the benefits Riggs and her husband had been receiving, including, "without limitation, medical, dental and vision care." These benefits are plainly included in the Settlement Agreement. We also note that page 239

itself explains that certain other benefits would not continue, such as new loans and other banking services at preferred rates.

CONCLUSION

¶22 For the reasons stated above, we affirm the judgment. In addition, we grant Riggs' request for attorneys' fees and costs on appeal upon her compliance with Rule 23 of the Arizona Rules of Civil Appellate Procedure.

/s/
_____
PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/
_____
MICHAEL J. BROWN, Judge

/s/
_____
DONN KESSLER, Judge