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Case No. 17-1683

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Dec 13, 2017
DEBORAH S. HUNT, Clerk

FRANCES M. WOLF, Plaintiff-Appellant, v. CAUSLEY TRUCKING, INC. and GREGORY CAUSLEY, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

O P I N I O N

BEFORE: COLE, Chief Judge; McKEAGUE and STRANCH, Circuit Judges.

McKEAGUE, Circuit Judge. Randy Rieck was Vice President and Director of Maintenance at Causley Trucking, Inc., a closely held corporation owned by Rieck's uncle, Gregory Causley. Causley Trucking purchased a life insurance policy on Rieck's life and agreed to pay Rieck's wife, Plaintiff Frances Wolf, "no less than the cash value of the policy" on Rieck's death. Following Rieck's death on August 7, 2014, the company paid Wolf $206,405.39. Believing that amount far less than the "cash value of the policy," Wolf filed suit against Causley Trucking and Causley. In two separate orders—one granting a partial motion to dismiss and another granting summary judgment on the remaining claims—the district court disposed of Wolf's claims.

We **AFFIRM**.

I

Factual Background. Randy Rieck began working at Causley Trucking in 1977. He would eventually rise to the position of Vice President. On November 30, 2004, Causley Trucking's Board of Directors adopted a Death Benefit Only Plan ("DBO Plan") to provide death benefits "to the beneficiaries of the Corporation's eligible employees, if death occurs while the employee remains in the employment of the Corporation or has retired from employment after attaining age 65 with a minimum of 20 years of service." R. 8, Ex. A, PID 118–20.

The DBO Plan provided that the "Board of Directors shall determine which employees, hereafter referred to as 'Participants,' are eligible for the Plan and the amount of death benefits payable on the life of each Participant under the Plan." *Id.* The DBO Plan further stated that Causley Trucking "may wish to purchase life insurance policies" to ensure sufficient assets to "meet its obligation to pay the death benefits provided for under this Plan." *Id.* Causley Trucking was "designated as owner and beneficiary of any such policies purchased and all rights and benefits accruing from such policies shall belong solely to [Causley Trucking]. The Participant shall have no rights or interest in such policies." *Id*. Causley, as president of Causley Trucking, would be the administrator and fiduciary of the Plan. *Id*. Finally, the Plan provided that the "Plan's funding policy shall be that all the death benefits payable under the Plan shall be provided out of the general assets of [Causley Trucking]. Such general assets shall include any insurance proceeds received by the Corporation at the death of a Participant." *Id.*

Causley Trucking determined that Rieck was an eligible employee and entered into a death benefit only agreement with Rieck ("Rieck DBO Agreement") on November 30, 2004. The Rieck DBO Agreement provided for "payments in the amount of no less than the cash value of the policy in equal installments over 10 years to the Participant's spouse while living." R. 8, Ex. B, PID 122–

23. The "policy" to which that provision refers is not stipulated in the agreement, but Wolf's claims all relate to a universal life insurance policy on Rieck's life that was purchased by Causley Trucking on November 17, 2004.

Rieck became stricken with cancer, and while her husband's health deteriorated, Wolf met with Causley to discuss the Rieck DBO Agreement. Causley informed Wolf that in the event of her husband's death, she would receive around $400,000. In a later meeting, after Rieck had died, Causley's estimate dropped to $300,000. The number changed a third time after Wolf asked for information on how the number was calculated—she was then told the benefit would be around $350,000. Ultimately, however, Causley Trucking paid Wolf a number below any of those forecasts: $206,405.39.

Procedural Background. Wolf challenged the death benefit amount through the DBO Plan's review procedure on December 12, 2014. The crux of the dispute centered on the interpretation of the "cash value of the policy" in the Rieck DBO Agreement. Wolf contended that the "cash value of the policy" is determined *after* Rieck's death—and after Rieck's death, the cash value of the policy is the full death benefit amount of $1,059,496. In an April 9, 2015 letter, Causley upheld its original benefits decision. The letter explained that the "cash value of the policy" is "the amount that Causley Trucking, as the owner of the policy, would have received if the policy had been surrendered on the date of Mr. Rieck's death." R. 8, Ex. D, PID 131. That surrender value was $181,693.93 and constituted the minimum owed to Wolf. The additional some $25,000 Causley paid to Wolf represented the surrender penalty charges, which Causley paid to Wolf in its discretion.

Unsatisfied, Wolf filed suit in Michigan state court on June 15, 2015. Following removal of the suit to federal court on the basis of the Employee Retirement Income Security Act (ERISA), on August 13, 2015, Wolf amended her complaint. Wolf alleged the following claims: (1) wrongful

denial of benefits under ERISA, 29 U.S.C. § 1132(a)(1)(B); (2) breach of fiduciary duty; (3) refusal to supply requested information under ERISA, 29 U.S.C. § 1132(c)(1); (4) common law estoppel; (5) common law breach of contract; and (6) common law conversion.

On February 5, 2016, the district court denied Wolf's motion to remand to state court and granted in part Defendants' motion to dismiss Wolf's six-count complaint. Part of Count II and all of Counts I and IV survived. Defendants moved for summary judgment on those remaining claims on December 16, 2016. The district court adopted a magistrate judge's Report and Recommendation and granted summary judgment in favor of the Defendants on May 23, 2017.

This appeal followed.

II

Wolf asserts three errors on appeal. First, she contends this case was never properly in federal court because the DBO Plan was not an employee benefit plan within the meaning of ERISA. Second, assuming ERISA does control, Wolf argues that the district court wrongly granted summary judgment on Count I of her complaint alleging Defendants did not comply with the Plan's terms. And third, Wolf argues that the court erred in granting summary judgment against her breach of fiduciary duty claim in Count II. We find no error and thus affirm.

A. Motion to Remand

ERISA contains an express preemption provision stating that it "shall supersede any and all [s]tate laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). In order for preemption to apply—effectively transforming a state law claim into a federal law one and permitting removal—a claim must qualify under ERISA's civil enforcement provision. 29 U.S.C. § 1132(a)(1)(B); *Warner v. Ford Motor Co.*, 46 F.3d 531, 534 (6th Cir. 1995). That enforcement provision is triggered only when an "employee welfare benefit plan" within the

meaning of ERISA is at issue. Wolf argues that the DBO Plan adopted by Causley Trucking is not an ERISA-qualifying plan, and that her state case was not properly removable to federal court. The district court disagreed with Wolf, and so do we. This case is properly in federal court.

1. Standard of Review

We review the district court's conclusion that the Causley DBO Plan/Rieck DBO Agreement qualified as an ERISA-governed "employee welfare benefit plan" de novo.[1] ERISA defines an "employee welfare benefit plan" in relevant part as:

> any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer . . . to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment . . . .

29 U.S.C. § 1002(1). To qualify as such a plan, the DBO Plan and Rieck DBO Agreement, taken together, must satisfy *each* prong of the four-part *Dillingham* test, so named for the Eleventh Circuit case that outlined the inquiry. *Williams v. WCI Steel Co., Inc.*, 170 F.3d 598, 602 n.3 (6th Cir. 1999); *Donovan v. Dillingham*, 688 F.2d 1367 (11th Cir. 1982) (en banc). "Under the *Dillingham* test, an ERISA plan exists if a reasonable person can ascertain (1) the intended benefits, (2) the class of beneficiaries, (3) the source of financing, and (4) the procedures for

[1] Defendants cite *Kolkowski v. Goodrich Corp.*, 448 F.3d 843 (6th Cir. 2006), for the proposition that this question is reviewed by this court under the clearly erroneous standard. But that is only true when the determination is particularly fact-bound. Where key facts are undisputed, the determination is better considered a mixed question of law and fact that we review de novo. Here, the parties agree that a master DBO Plan was in place and that Rieck had entered into a personal DBO Agreement. They further agree that the dispute in this case centers on the meaning of "cash value of the policy" in Rieck's DBO Agreement, and that the "policy" referred to is the insurance policy Causley took out on Rieck's life. R. 47, R & R, PID 1079 ("The parties do not dispute this inevitable conclusion.") The critical question remaining—whether the DBO Plan and Rieck DBO Agreement qualify as an ERISA plan—is better considered a legal one. *House v. Am. United Life Ins. Co.*, 499 F.3d 443, 449 (5th Cir. 2007) ("In this case, where the parties concede the existence of the firm's employee welfare benefit plan and the facts relative to whether House's coverage was a part of that scheme or a separate plan were undisputed, the district court's interpretation of the word 'plan' as used in ERISA poses a question of law subject to de novo review.").

receiving benefits." *Williams*, 170 F.3d at 602 (citing *Dillingham*, 688 F.2d at 1372). Both parties agree that *Dillingham* provides the governing standard. They disagree only with respect to how the district court applied it.

2. Analysis

Wolf concedes that the Rieck DBO Agreement meets the latter three *Dillingham* elements—our analysis is accordingly limited to the first. To qualify as ascertainable benefits under *Dillingham*'s first prong, this court has held that a reasonable person must be able to identify both the *nature* and the *amount* of the benefits. *Williams*, 170 F.3d at 603–04. Promised benefits that are merely "amorphous," "ephemeral," or "contingent" will not do the trick. *Id.* at 603.

We start with the critical provision in the Rieck DBO Agreement. The "Payment of Benefit" provision provides in relevant part that, after Rieck's death, the "Corporation shall, beginning on the month following the Participant's death, make payments in the amount of no less than the cash value of the policy in equal installments over 10 years to the Participant's spouse while living." R. 8, Ex. B, PID 122. Wolf admits that this provision in the Rieck DBO Agreement sufficiently identifies the *nature* the benefits would take—death benefits payable in 10 installments—but argues that the Agreement fails to specify sufficiently the *amount* of those benefits. According to Wolf, two phrases—though especially one—create this uncertainty.[2] While the "cash value of the policy" is ambiguous, Wolf asserts that the primary culprit is the "no less than" phrase. That is because,

[2] Wolf half-heartedly contends that another reason the benefits were "hopelessly vague" is that the DBO Plan didn't actually require that an insurance policy be purchased—and if no such policy is purchased, benefits would be indeterminable. Appellant Br. at 25 ("How does one ascertain the death benefit value if there is no policy?"). But, as the magistrate judge found, the Rieck DBO Agreement's reference to "cash value of the policy" would make no sense if there was no underlying insurance policy. R. 47, PID 1079 n. 2. Moreover, Wolf's entire argument is that she was wrongfully denied benefits because she was entitled to *more* of the underlying insurance policy (namely, all of it)—so she clearly understood there was an insurance policy in place, that it is the basis for any benefits she's owed, and that the only question is what qualifies as "cash value" of that policy.

"[e]ven if the cash value [of the policy] were ascertainable, all that can be determined from Mr. Rieck's Plan is that the value of the intended benefits was anywhere from the cash value to infinity." Appellant Br. at 25. This unacceptable imprecision, Wolf contends, explains Causley's changing estimates of the benefits Wolf would receive.

Wolf's argument can be reduced to a single premise: any employee benefit plan that specifies a minimum benefit but allows for discretionary upward departures is too indeterminate to qualify as an ERISA-governed plan. This premise makes little sense on its own terms, and it finds no support in precedent.

While benefit plans with built-in discretion might in some cases preclude ERISA from controlling, this is not such a case. Wolf's theory would have some purchase where a benefit plan sets a ceiling on benefit amounts without an accompanying floor—leaving open the possibility that the employee in every case gets nothing. Even the most prescient observer would struggle to ascertain the promised benefits in such a plan. But the same logic does not hold for plans, like Rieck's, that do just the opposite. Unlike a benefit plan that sets a ceiling without a floor, the Rieck DBO Agreement specifies a minimum required benefit. And so long as that minimum required benefit is ascertainable, in our view, *Dillingham*'s first prong is satisfied. That the Plan affords Causley discretion to pay *greater* death benefits does not change the fact that it is obligated to pay *at least* a specified amount. Put another way, as to what benefits Wolf is legally *entitled* to, the Rieck DBO Agreement is anything but "amorphous," "ephemeral," or "contingent"—Wolf must get no less than the cash value of the policy. *See Williams*, 170 F.3d at 603.

No wonder, then, that Wolf fails to find precedent embracing her premise. Neither of the cases Wolf relies on adopt the principle that benefit plans establishing a minimum and allowing for upward departures are necessarily outside ERISA's ambit. *Williams*, 170 F.3d at 603–04; *Siemon v.*

AT&T Corp., 117 F.3d 1173, 1179 (10th Cir. 1997). Nor do they stand for the proposition that a benefits plan is governed by ERISA only when an exact benefit amount is specified.

Start with *Williams*. There, we considered whether an agreement to set aside $21 million in trust to pay retirement benefits qualified for ERISA treatment. Because the plan failed to determine either the nature of the benefits or the amount retirees would receive, we held that it did not. *Williams*, 170 F.3d at 603–04. But the Rieck DBO Agreement determines both the nature (death benefits) and the amount (no less than the cash value of the policy) of the benefits. And while we did say in *Williams* that the plan failed to qualify for ERISA because it did not "determine exactly what benefits would go to which employees or retirees," *id.* at 603, that statement should not be read to require plans to specify a fixed dollar guarantee. Rather, the "what benefits" language is best read as referring to the *type* of benefits, i.e. whether the benefits will come in the form of "medical coverage, insurance, vacation, unemployment or other type of benefits." *Id.* In any event, the *Williams* "plan" involved a lump sum of cash set aside to provide for retirees, with no direction on how it was to be disbursed. That is in stark contrast to the Rieck DBO Agreement's promise to pay Wolf at least the cash value of the policy in 10 installment payments. Factually far apart, *Williams* thus cannot guide our inquiry here.

Siemon is even further afield. In that case, the Tenth Circuit considered a benefit plan that allowed an employee to request sickness or accident benefits by demonstrating "severe financial need and hardship." 117 F.3d at 1174. On receiving the request, the employer had discretionary authority to authorize payments or loans of no more than $1,000. *Id.* Because the plan embodied "no statement of any entitlement by an employee to any benefit whatsoever, much less a level of benefit," the Tenth Circuit held that it was not an ERISA-governed plan. *Id.* at 1179. The Rieck DBO Agreement, by contrast, does specify an entitlement to a benefit, and the level of that benefit—

the cash value of the life insurance policy on Rieck's life. Far from the unbridled discretion afforded the employer in *Siemon*—akin to a "'good samaritan' project with a $1,000 limit," *id.* at 1179—the Rieck DBO Agreement guaranteed a minimum and calculable benefit.

Wolf nevertheless persists. With the terms of the Rieck DBO Agreement easily distinguished from the plans in cases on which she tries to rely, Wolf urges the court to look beyond the Agreement itself and "consider the surrounding circumstances to determine if a reasonable person should have been able to ascertain the intended benefits." Appellant Br. at 27–28. Here again, Wolf argues that "Mr. Causley's several representations doom[] Causley's position that the benefit could easily be determined." *Id.* at 28. This argument reduces to the same premise—that plans with built-in discretion are automatically too speculative under *Dillingham*—we have already rejected. We repeat the point for emphasis: the relevant question is whether the benefits to which Wolf was *entitled* were ascertainable. Whether she might receive some amount above and beyond that entitlement—as Defendants' projections initially suggested—does not take the Rieck DBO Agreement outside ERISA's purview.

Because the district court correctly found that ERISA preempted Wolf's state-law claims, the case was properly removed to the district court. We therefore affirm the district court's denial of Wolf's motion to remand.

B. Count I: Failure to Comply with Plan Terms

ERISA provides a cause of action to beneficiaries who wish to challenge an employer's failure to pay benefits as required by the terms of a benefit plan. 29 U.S.C. § 1132(a)(1)(B). Wolf's first challenge is pursuant to § 1132(a)(1)(B). She alleges that the terms of the DBO Plan and the Rieck DBO Agreement compel Defendants to pay her the entire death benefit of the policy on Rieck's life—$1,059,496—rather than the value of the policy if it is surrendered on the date of

Rieck's death—the $206,405.39 she received. The district court, finding Causley's benefit determination reasonable, granted summary judgment in favor of Defendants. We affirm.

1. Standard of Review

When the administrator of a benefits plan is given discretionary authority to determine benefits, we invalidate benefits decisions only where they are arbitrary and capricious. *McDonald v. Western-Southern Life Ins. Co.*, 347 F.3d 161, 168 (6th Cir. 2003); *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). The DBO Plan, in Section 8(b), provided Causley with "discretionary authority to determine eligibility for benefits and to construe the terms of the Plan." R. 8, Ex. A, PID 119. Accordingly, arbitrary and capricious review applies here. Both parties agree.

"[T]he arbitrary and capricious standard is the least demanding form of judicial review of administrative action." *Williams v. Int'l Paper Co.*, 227 F.3d 706, 712 (6th Cir. 2000). So long as "it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary or capricious." *Davis v. Kentucky Fin. Companies Ret. Plan*, 887 F.2d 689, 693 (6th Cir. 1989) (citation and internal quotation marks omitted). That means "we must accept a plan administrator's rational interpretation of a plan even in the face of an equally rational interpretation offered by the participants." *Morgan v. SKF USA, Inc.*, 385 F.3d 989, 992 (6th Cir. 2004).

2. Analysis

While the fight concerning whether this is an ERISA-governed plan focused on the "no less than" language in the Rieck DBO Agreement, the battleground now shifts to the meaning of "cash value of the policy." Causley concluded that "cash value of the policy" unambiguously refers to the value of the policy had it been surrendered the day Rieck passed away. Wolf contends that the phrase refers to the entire death benefit paid to Causley, as owner of the policy, on Rieck's death.

She argues that the language "cash value of the policy" is ambiguous, and says Causley's determination that the phrase refers to the surrender value of the policy is arbitrary and capricious. The stakes of their disagreement are high: the different interpretations make about an $800,000 difference.

To show that Causley's conclusion was arbitrary and capricious, Wolf primarily points to Causley's process. Wolf makes much of the fact that Causley "determined, re-determined and ultimately finally determined" Wolf's benefit amount, without justifying the changing estimates. Appellant Br. at 34. But like the magistrate judge noted, our inquiry is limited to "whether the administrator *applied the terms of the Plan as written in a reasonable manner*." R. 47, R & R, PID 1081 (emphasis added) (citation and internal quotation marks omitted). Wolf's challenge, then, must focus on Causley's interpretation of the "no less than the cash value of the policy" language in the Rieck DBO Agreement. And specifically, Wolf must show that Causley unreasonably interpreted the meaning of "cash value of the policy," since that is the only benefit Wolf is *entitled* to. The "no less than" phrase—unconstrained by any other language in the Rieck DBO Agreement—permits a purely discretionary upward departure that is not susceptible to an arbitrary and capricious challenge.

But Causley's interpretation of "cash value of the policy" was reasonable, and so Wolf's argument fails. In determining that "cash value of the policy" referred to the policy's surrender value, Causley claims to have relied on several definitions provided by insurance and investment services.[3] *See* R. 36, Ex. 10, West's Encyclopedia of American Law, PID 536 (defining "cash

[3] Wolf argues that these definitions were not relied on by Causley as plan administrator, and that they should not be considered by this court in reviewing the reasonableness of Causley's determination. The magistrate judge rejected this argument, and we do so as well. Wolf does not argue that the exhibits containing these definitions should be excluded from the Administrative Record, and we may—indeed, must—consider the entire Administrative Record in evaluating Causley's decision. *See Moon v. Unum Provident Corp.*, 405 F.3d 373, 378–79 (6th Cir. 2005). Still, Wolf contends that Causley's claim to have relied on those definitions is belied by Causley's

value" as the "amount of money that an insurance company pays the insured upon cancellation of a life insurance policy before death"); R. 36, Ex. 11, AAA Life Insurance Company, PID 621 (defining "cash value" as "the amount of cash available to the owner when a permanent life insurance policy is surrendered to the life insurance company"); R. 36, Ex. 12, Trusted Choice Insurance, PID 631 (noting that "cash value and the cash surrender value are inherently the same"); R. 36, Ex. 13, Investopedia, PID 635 (noting that cash value and surrender value are synonymous). Based on those definitions, Causley reasonably determined that the "cash value of the policy" was the value of the policy had it been surrendered on the day of Rieck's death. That was equal to the "Net Surrender Value" (cash value minus the surrender charges), or $181,698.93. R. 36, Ex. 10, PID 535. Causley, however, chose not to subtract the surrender charges, and awarded Wolf $206,405.39. That decision was based on a reasonable interpretation of the DBO Plan and the Rieck DBO Agreement.

Indeed, had the DBO Plan and the Rieck DBO Agreement intended to provide, as Wolf contends, the face amount of the life insurance policy, it easily could have said so. There is no question that the "face amount" of the policy unambiguously refers to the entire death benefit owed to the policy owner, Causley, on Rieck's death. No one would dispute that the "face amount" of the policy here is the entire death benefit of $1,059,496—the policy statements make that plain as day. R. 36, Ex. 10, Tab A, PID 554. But the "face amount" is not what the Rieck DBO Agreement requires Causley to pay. And we will not contort the commonly-understood meaning of "cash value" to conflate it with "face amount."

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own statements that he arrived at his various benefits determinations on his own. Defendants are right that this argument "misses the point," since "Causley could use these definitions to determine the proper definition of 'cash value,' but then still make his own determination as to the amount of benefit above that cash value that CTI would pay to Plaintiff, if any." Appellee Br. at 27.

Wolf's focus on the fact that Causley's estimates changed—from a high of some $400,000 to the final determination of just over $200,000—confuses the issue. That might make some difference in our analysis if Wolf could show those varying estimates were based on differing (and inconsistent) interpretations of the meaning of "cash value of the policy." Were that the case, Causley's interpretation of the Rieck DBO Agreement terms would look less like "reasoned explanation, based on the evidence," *Davis*, 887 F.2d at 693, and more like the product of whim and caprice. But we have no reason to think that is the case. Just as likely, the variation is explained by a different *discretionary* surplus amount Causley at one time planned to add to the minimum benefit Wolf was *entitled* to. Strong evidence of this is that, even in Causley's lowest estimate before his final determination, he never estimated a benefit amount lower than the cash value of the policy. As for any surplus beyond the policy's cash value, Causley can vary all he wants—the Rieck DBO Agreement expressly provides Causley with discretion to do just that when it stipulates a benefit of "*no less than* the cash value of the policy." The Agreement says nothing about how that "no less than" discretion is to be cabined; Causley could have provided 100 different estimates *above* the cash value of the policy, and Wolf's argument would fare no better.

Lastly, our conclusion is fortified by an anomalous principle inherent in Wolf's position. As the magistrate judge put it: "In essence, Plaintiff requests application of a rule that, wherever an ERISA governed plan provides for administration of benefits of 'at least X' dollars,' the administrator's decision is necessarily arbitrary and capricious, because there cannot be a reasoned explanation for choosing to grant X dollars, or X plus one dollar, or X plus one million dollars." R. 47, PID 1081. Lacking any intuitive or logical appeal, it is no surprise that Wolf can cite no legal authority for such a position. The magistrate judge could find no "case law instructing that such open ended provisions result in necessarily arbitrary decisions." *Id.* Neither can we. Therefore, just

as we rejected Wolf's theory that discretionary benefit plans are too indeterminate to fall under ERISA's purview, we reject the related principle that discretionary benefit plans necessarily result in arbitrary and capricious decisions.

Because Causley's determination that the "cash value of the policy" refers to the surrender value on the date of Rieck's death was a reasonable one, we conclude that it was not arbitrary and capricious of Causley to award Wolf that amount.

C. Count II: Breach of Fiduciary Duty

ERISA permits a beneficiary to bring a breach of fiduciary duty claim under 29 U.S.C. § 1109(a). Plan administrators under ERISA must discharge their duties under the plan in the best interest of the participants and the beneficiaries. 29 U.S.C. § 1104(a)(1)(A)–(B); *Pfahler v. Nat'l Latex Prods. Co.*, 517 F.3d 816, 829 (6th Cir. 2007). Wolf alleges Causley, in his role as plan administrator, breached his fiduciary duties in two principal ways: (1) placing the company's interest above Rieck and Wolf in determining the benefit amount and (2) mismanaging the DBO Plan's assets by commingling the life insurance policy on Rieck's life with Causley Trucking's general assets. The district court found both arguments meritless. So do we.

1. Standard of Review

This court reviews the district court's order granting summary judgment against Wolf's fiduciary duty claims de novo. *Donati v. Ford Motor Co., Gen. Ret. Plan, Ret. Comm.*, 821 F.3d 667, 671 (6th Cir. 2016). However, to the extent Wolf's claims are really challenges to the plan administrator's interpretation of the DBO Plan and the Rieck DBO Agreement, such challenges are again properly reviewed under the arbitrary and capricious standard. *Wells v. U.S. Steel & Carnegie Pension Fund, Inc.*, 950 F.2d 1244, 1247 (6th Cir. 1991).

2. Analysis

Wolf identifies two potential breaches of Causley's fiduciary duties under § 1104. She alleges (1) that Causley's self-interest led to an improper benefits determination that injured the Plan and (2) that Causley mismanaged DBO Plan assets. We take these in turn.

a. Determination of Benefit Amount

Wolf claims that Causley's improper calculation of benefits constituted a breach of the fiduciary duty owed to the Plan itself under § 1132(a)(2), which expressly incorporates § 1109. Specifically, she asserts that Causley's "failure to keep the Company's interest separate from his deliberation when determining the amount of death benefits was a breach of his fiduciary duty to the Plan itself." Appellant Br. at 39–40. The district court rejected this argument, finding that it was "wholly proper for Causley to deposit any monies received from the insurance policy on Rieck into the general coffers of Causley Trucking" because "the Plan itself has no assets and there is no Plan trust." R. 47, R & R, PID 1087. We agree with the district court. To be actionable under § 1132(a)(2), an alleged breach of fiduciary duty must result in a loss to the plan. *See* § 1132 (incorporating § 1109, which provides that fiduciaries may be liable for "losses to the plan"); *see also LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248 (2008) (discussing how § 1132(a)(2) claims address losses to the plan); *Roth v. Sawyer-Cleator Lumber Co.*, 16 F.3d 915, 920 (8th Cir. 1994) (describing § 1109 claims as requiring a "prima facie case of loss to the plan"). The Plan at issue here had no funds held in trust, and the Plan documents provided for benefit payment from the company's general assets. Wolf therefore cannot establish that the Plan suffered any losses as a result of Causley's calculation of benefits.

b. Mismanaging Plan Assets

Wolf contends Causley breached his fiduciary duties as plan administrator by commingling the DBO Plan assets with Causley Trucking's general assets. This, according to Wolf, happened in two ways. The first was through Causley's assignment of the Rieck life insurance policy proceeds to Comerica Bank, which meant the policy proceeds could be used to pay down Causley's Comerica debt obligation; the second was through the basic design of the scheme, which called for Causley to pay Rieck's beneficiary Wolf out of the company's general assets.

Neither complaint has a leg to stand on. Both are fatally undermined for the same reason highlighted by the magistrate judge and district court and mentioned above: the DBO Plan assets could not be improperly commingled because the Plan has no assets of its own. Instead, the DBO Plan expressly states that "all death benefits payable under the Plan shall be provided out of the general assets of the Corporation." R. 8, Ex. A, PID 118. The DBO Plan also makes clear the life insurance policy was never intended to be some asset separate and apart from Causley Trucking's general assets. Rather, the Plan provides that the "Corporation shall be designated as owner and the beneficiary of any such policies purchased and all rights and benefits accruing from such policies shall belong solely to the Corporation." *Id.* As for Rieck—the plan "participant"—and Wolf—the plan "beneficiary"—the Plan provided that they "have no rights or interest in such policies." *Id.* The upshot, as the magistrate judge put it: "Commingling of Plan assets cannot occur where all funds not paid to beneficiaries were due to Causley Trucking, because there are no Plan assets to commingle." R. 47, R & R, PID 1087.

Wolf counters that an unfunded plan can still provide the basis for a wrongful commingling claim. That is true here, Wolf says, because Causley assigned its right to the proceeds of the policy to Comerica Bank in violation of the nonassignability clauses present in both the DBO Plan and

Rieck DBO Agreement. Not so. Those clauses only prohibit the assignment of "rights, interests and benefits receivable" under the Plan. R. 8, Ex. A, PID 119; R. 8, Ex. B, PID 122. The proceeds of the life insurance policy on Rieck's life are not a "right, interest, or benefit receivable" under the DBO Plan or Rieck DBO Agreement. Moreover, both nonassignability clauses prohibit only "participants" (Rieck) and "beneficiaries" (Wolf) from transferring their interests, not the owner of the policy (Causley Trucking).

In sum, the DBO Plan and Rieck DBO Agreement gave Wolf one legal entitlement: death benefits of no less than the cash value of the insurance policy taken out on her husband's life. But nothing in the DBO Plan or Rieck DBO Agreement specifies that such a benefit must come from an independently funded and maintained account. Indeed, the DBO Plan says just the opposite—all benefits due would be paid "out of the general assets of the Corporation." R. 8, Ex. A, PID 118. We therefore affirm the district court's dismissal of Wolf's fiduciary claims to the extent they are premised on asset mismanagement.

III

For the reasons set forth above, we **AFFIRM** the district court's denial of Wolf's motion to remand and its grant of summary judgment in favor of Defendants.