NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 30, 2024*
Decided November 1, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1472

TRUSTEES OF THE N.E.C.A./LOCAL 145 I.B.E.W. PENSION PLAN,
Plaintiff-Appellee,

v.

LINDA K. MAUSSER, individually and d/b/a QCA ELECTRIC,
Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois.

No. 4:18-cv-04045-SLD-JEH

Sara Darrow,
Chief Judge.

O R D E R

The Trustees of the National Electrical Contractors Association and the Local 145 I.B.E.W. Pension Plan (jointly "the Plan") operate as a fringe-benefit collection agent for funds administered by the Association's Quad Cities Chapter ("N.E.C.A.") and the

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

I.B.E.W. Local No. 145 ("Union"). The Plan sued Linda Mausser under the Employment Retirement Income Security Act (ERISA), 29 U.S.C. § 1001–1461, asserting that Mausser, the sole proprietor of an electrical company bound by a collective bargaining agreement between N.E.C.A. and the Union, failed to make pension contributions required under the agreement. The district court granted the Plan's motion for summary judgment on Mausser's liability, and after a bench trial, the court determined the exact amount of contributions she owed. We affirm.

Mausser and her husband own a sole proprietorship doing business as QCA Electric, for which her husband also performs electrical work. QCA Electric operates under a collective bargaining agreement negotiated with N.E.C.A. and the Union. The agreement requires Mausser to make certain contributions to the Plan for every hour of electrical work performed by her husband. The Plan is a "multiemployer plan" regulated by ERISA, 29 U.S.C. § 1002(37)(a), designed to allow employees in unionized industries to participate in standard benefit plans and to encourage employers to share the administrative burden of meting out benefits.

In 2015, QCA Electric was selected at random for a contractor-compliance audit authorized by the collective bargaining agreement. As part of the audit, Mausser needed to produce documentation verifying the accuracy of the hours she reported and her contributions to the Plan. She did not provide the requested documentation and stated that she did not possess any relevant company records.

The Plan sued Mausser to enforce the agreement's requirement to comply with the audit, 29 U.S.C. § 1132, and to pay any delinquent contributions, interest, liquidated damages, and audit and attorney's fees, *id.* § 1145.

The district court later granted the Plan's motion for summary judgment and ordered Mausser to comply with the audit. The court explained that there was no dispute that Mausser was obligated to make contributions: She signed a letter of assent binding her to the terms of the agreement, including compliance with the audit. The court determined, however, that there were disputed facts over the amount of delinquent contributions owed.

The court held a trial to resolve whether and in what amount Mausser was delinquent in her contributions. At trial, the Plan presented a third-party auditor's formula that used Mausser's tax returns to calculate contributions owed. The Plan requested contributions consistent with that formula, along with interest, liquidated damages, costs, and attorney's fees. On cross-examination, Mausser asked the auditor

whether a more reasonable calculation would subtract material costs from the gross revenue reported on her tax returns (since pension contributions are due only for labor, and QCA Electric's gross revenue also included income from selling materials to clients, not just labor). The auditor agreed that subtracting material costs would be more reasonable. At the trial's end, the court issued an order that set forth its findings of fact and conclusions of law. The court agreed with Mausser that the auditor's formula was not a just and reasonable estimation of delinquent contributions, and that it would be unjust to award contributions without subtracting the cost of materials from the gross revenue. The court thus ordered the Plan to submit the auditor's updated calculations incorporating the subtraction of material costs.

After the Plan provided the auditor's updated calculations, the court made supplemental findings of fact and conclusions of law. It ultimately approved the auditor's formula as a "just and reasonable" approximation of the contributions owed. Further, the court determined that interest, audit costs, court costs, and attorney's fees were justified under ERISA's terms. 29 U.S.C. § 1132(g)(2)(B), (D), (E). In total, the court awarded nearly $40,000 in unpaid contributions plus nearly $30,000 in interest, liquidated damages, costs, and attorney's fees.

Mausser moved for reconsideration and argued that the Plan's introduction during discovery of an exhibit—labeled as an amendment to the collective bargaining agreement—was prejudicial and misleading. She maintained that the amendment had not been adopted as part of the collective bargaining agreement, and that it was unfair for the auditor and the court to rely on its suggested formula for calculating contributions owed. The Plan conceded that the amendment should be stricken from the record. (The amendment was one that another plan had used, expressly allowing trustees to use a formula similar to the formula used by the auditor here.)

The district court denied Mausser's motion to reconsider. The court discounted Mausser's arguments as "quibbles" over the auditor's formula, though it agreed to strike the amendment from the case.

On appeal, Mausser first challenges the summary judgment, disputing that she was obligated to maintain records on her husband's hourly work. She asserts that the Internal Revenue Service does not require sole proprietorships like QCA Electric to keep payroll records and that revenue is reported on personal income tax returns.

Mausser, however, misunderstands her obligations under ERISA and the collective bargaining agreement. ERISA requires an employer to "maintain records with

respect to each of his employees sufficient to determine the benefits due or which may become due to such employees." 29 U.S.C. § 1059(a)(1). And the collective bargaining agreement requires an employer, as part of the audit to determine due benefits, to provide "payroll records, reports, *and other reasonably requested information necessary to conduct a compliance audit*" (emphasis added). In other words, Mausser had to maintain sufficient records of her husband's hours to determine expected benefits. Even if we assume that sole proprietors are not required under the tax code to maintain payroll records, Mausser cannot evade her obligations under ERISA and the collective bargaining agreement to maintain records that are "reliable," "contemporaneous," and "accurate." *Chi. Dist. Council of Carpenters Pension Fund v. Reinke Insulation Co.*, 347 F.3d 262, 264 (7th Cir. 2003); *Laborers' Pension Fund v. RES Env't Servs.*, 377 F.3d 735, 739 (7th Cir. 2004) (citation omitted). Because Mausser failed to provide any records during the audit, the court properly determined that she was liable for delinquent contributions under the agreement.

Next, Mausser asserts for the first time that she is not obligated to contribute to the Plan because ERISA requires contributions only for employees, and her husband—a working owner of a sole proprietorship—is not an employee under Title I of ERISA. Mausser cites 29 CFR § 2510.3-3(c), which excludes from the definition of "employees" a sole proprietor and her owner spouse. But she waived this argument by not raising it in the district court.[1] *See Johnson v. Prentice*, 29 F.4th 895, 903 (7th Cir. 2022). Waiver aside, Mausser's interpretation of § 2510.3-3(c) is incorrect. The Supreme Court held in *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1, 6, 20–21 (2004), that ERISA applies to plans covering owners (including owner spouses) so long as the plan also covers non-owner employees. Mausser argues that *Yates* is inapposite because QCA Electric has no employees, only owners, but this mischaracterizes QCA Electric's status. QCA Electric participates in a *multi-employer* plan that, according to the collective bargaining agreement, includes numerous other owners and employees. *Yates* therefore

[1] Mausser denies making any waiver. In her reply brief, she points to her assertions on direct and cross-examination that QCA Electric does not maintain payroll or have W-2s—assertions that, she thinks, show that QCA Electric has no employees. Significantly, however, she does not contend that she apprised the district court of any argument that the absence of employees negates her obligation to make contributions consistent with ERISA. Nevertheless, we liberally construe the filings of pro se litigants and will touch briefly on the merits. *See Nichols v. Mich. City Plant Plan. Dep't*, 755 F.3d 594, 600 (7th Cir. 2014).

controls, and Mausser is bound under ERISA to make the contributions demanded by the collective bargaining agreement. *See* 29 U.S.C. § 1145.

Mausser lastly challenges the denial of her motion to reconsider based on the Plan's introduction of the amendment during discovery—an amendment that, she asserts, was "fabricated, falsified, [and] forged" and tainted the trial proceedings. *See* FED. R. CIV. P. 60(b)(3) (allowing for relief from a final judgment if opposing party commits fraud, misrepresentation, or misconduct). But the court appropriately exercised its discretion here. Mausser needed to prove that the Plan engaged in misconduct that prevented her from fully and fairly presenting her case, *see Venson v. Altamirano*, 749 F.3d 641, 653 (7th Cir. 2014), yet she offers no specific evidence of fraud or misrepresentation, much less any evidence that the admission of the amendment prejudiced her. The Plan relied on the amendment only to lend credence to the formula used by the third-party auditor to calculate delinquent contributions. Indeed, the court clarified that the amendment, which was not mentioned at trial, "was never the basis for [its] conclusions."

AFFIRMED