

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PATRICIA HART)

Plaintiff,)

vs.)

Case No. 4:14 CV 1299 CDP

NATIONWIDE MUTUAL INS. CO.,)

Defendant.)

MEMORANDUM AND ORDER NUNC PRO TUNC

On March 23, 2016, I granted defendant's motion for summary judgment and dismissed plaintiff's ERISA complaint on the ground that she lacked standing to pursue her claims as she was not a Plan Participant. That Memorandum and Order and accompanying Judgment inadvertently dismissed plaintiff's complaint with prejudice. Plaintiff now asks that I alter the Judgment to reflect that her case was dismissed without prejudice, as the dismissal was based on her lack of standing. Plaintiff correctly notes that, if she lacks standing to bring this ERISA claim, then this Court lacks subject matter jurisdiction over the case. *See Dakota, Minn. & E.R.R. v. Schieffer*, 711 F.3d 878, 880 (8th Cir. 2013). As such the dismissal should have been *without* prejudice.

Accordingly,

IT IS HEREBY ORDERED that the motion to alter judgment [30] is granted, and the Memorandum and Order entered on March 23, 2016 [27] is corrected nunc pro tunc as follows: On page 12, “**IT IS HEREBY ORDERED** that Nationwide’s motion for summary judgment [20] is granted to the following extent: plaintiff’s complaint is dismissed without prejudice for lack of subject matter jurisdiction.” is substituted for “**IT IS HEREBY ORDERED** that defendant Nationwide’s motion for summary judgment [20] is granted, and defendant shall have summary judgment on plaintiff’s complaint, and plaintiff’s complaint is dismissed with prejudice.”

An Amended Judgment in accordance with this Memorandum and Order Nunc Pro Tunc and the Memorandum and Order entered on March 23, 2016, is entered this same date.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of April, 2016.