STATE OF MICHIGAN

COURT OF APPEALS

SPECTRUM HEALTH HOSPITAL,

Plaintiff-Appellee,

v

STEPHANIE JEAN LEHR,

Defendant/Third-Party Plaintiff-Appellant,

and

NGS AMERICAN, INC.,

Third-Party Defendant-Appellee.

UNPUBLISHED
September 8, 2011

No. 298688
Kent Circuit Court
LC No. 07-013014-CK

Before: GLEICHER, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Third-party plaintiff Stephanie Jean Lehr (Lehr) became pregnant with triplets after being implanted with embryos created by Angela and Scott Sarver. Plaintiff Spectrum Health Hospital (Spectrum) treated Lehr during her pregnancy. Third-party defendant NGS American, Inc. (NGS), the administrator of Lehr's employee medical benefit plan, denied coverage for Spectrum's services on the basis that Lehr's plan did not cover charges incurred by a surrogate mother. After Spectrum sued defendant for payment of its services, Lehr filed a third-party complaint against NGS. In her amended complaint, Lehr asserted claims under the Employment Retirement Income Security Act of 1974 (ERISA), 29 USC 1001 *et seq.*, for breach of fiduciary duty, declaratory relief, and insurance benefits. The trial court granted summary disposition to NGS. We affirm.

Lehr first claims that the trial court erred when it granted NGS's motion for summary disposition under MCR 2.116(C)(4). We review a trial court's ruling on a motion for summary disposition under MCR 2.116(C)(4) de novo. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). We "must determine whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate a lack of subject matter jurisdiction." *L & L Wine & Liquor Corp v Liquor Control Comm*, 274 Mich App 354, 356; 733 NW2d 107 (2007) (alternations omitted).

"[T]he district courts of the United States . . . have exclusive jurisdiction of civil actions" brought under ERISA, except for ERISA actions to recover benefits under 29 USC 1132(a)(1)(B). 29 USC 1132(e)(1); see also *Townsend v Brown Corp of Ionia, Inc*, 206 Mich App 257, 261; 521 NW2d 16 (1994). State courts lack subject matter jurisdiction over ERISA claims for breach of fiduciary duty. *Townsend*, 206 Mich App at 260-261. In this case, the trial court concluded that it did not have subject matter jurisdiction over Lehr's breach of fiduciary duty claim. We agree. The trial court lacked subject matter jurisdiction over Lehr's claim for breach of fiduciary duty. 29 USC 1132(e)(1); *Townsend*, 206 Mich App at 260-261. Moreover, contrary to Lehr's assertion, the trial court did not conclude that ERISA preempts the Surrogate Parenting Act, MCL 722.851 *et seq.* More importantly, it also did not conclude that it lacked subject matter jurisdiction to decide Lehr's claims for benefits and declaratory relief. Rather, it reviewed the merits of those claims. Accordingly, we conclude that the trial court properly granted summary disposition to NGS with respect to Lehr's claim for breach of fiduciary duty, and Lehr's argument related to the claims for benefits and declaratory relief has no basis in the record.

Lehr next argues that the trial court erred when it granted summary disposition for NGS under MCR 2.116(C)(8) and (C)(10) with respect to her claim for benefits under § 1132(a)(1)(B). We review a trial court's summary disposition ruling de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Although NGS moved for summary disposition under MCR 2.116(C)(8) and (C)(10), the motion was considered under (C)(10); therefore, we apply the standard of review for a motion filed under MCR 2.116(C)(10). *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 457; 750 NW2d 615 (2008). When reviewing a motion brought under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 247; 776 NW2d 145 (2009). A motion for summary disposition under MCR 2.116(C)(10) is properly granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Campbell v Human Servs Dep't*, 286 Mich App 230, 235; 780 NW2d 586 (2009).

Generally, courts review a denial of benefits in an ERISA claim under § 1132(a)(1)(B) de novo. *Firestone Tire & Rubber Co v Bruch*, 489 US 101, 115; 109 S Ct 948; 103 L Ed 2d 80 (1989). However, where a "benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan," courts review the administrator's decision to deny benefits under the arbitrary and capricious standard of review. *Id.*; *Price v Bd of Trustees of Ind Laborer's Pension Fund*, 632 F3d 288, 295 (CA 6, 2011). The ERISA plan in this case gave NGS discretionary authority to determine eligibility for benefits and to construe the terms of the plan. Therefore, our review of Lehr's claim for benefits is limited to whether NGS's denial of benefits was arbitrary and capricious. *Price*, 632 F3d at 295. "The arbitrary and capricious standard is the least demanding form of judicial review . . . . When it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary or capricious." *Schwalm v Guardian Life Ins Co of America*, 626 F3d 299, 308 (CA 6, 2010) (quotation marks and citation omitted). Our review is confined to the record that was before the plan administrator. *Wilkins v Baptist Healthcare Sys, Inc*, 150 F3d 609, 615 (CA 6, 1998).

"ERISA requires that benefit plans must be written in a manner calculated to be understood by the average plan participant." *Kovach v Zurich American Ins Co*, 587 F3d 323, 332 (CA 6, 2009) (quotation marks and citation omitted). When interpreting the provisions of a plan governed by ERISA, "a plan administrator must adhere to the plain meaning of its language, as it would be construed by an ordinary person." *Shelby Co Health Care Corp v Southern Council of Indus Workers Health & Welfare Trust Fund*, 203 F3d 926, 934 (CA 6, 2000). In this case, the plan did not define the term "surrogate mother." NGS looked to Wikipedia Encyclopedia and Merriam-Webster Dictionary to define "surrogate mother." Although NGS's use of Wikipedia Encyclopedia to define "surrogacy" is questionable (because Wikipedia's content can be edited by its users), Merriam-Webster Dictionary was an acceptable source for NGS to obtain the common and ordinary meaning of "surrogate mother." *Stanton v Battle Creek*, 466 Mich App 611, 617; 647 NW2d 508 (2002) ("When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate."). Merriam-Webster Dictionary defined a "surrogate mother" as "a woman who becomes pregnant usually by artificial insemination or surgical implantation of a fertilized egg for the purpose of carrying the fetus to term for another woman." We find that NGS's interpretation of "surrogate mother" was consistent with the plain meaning of a surrogate mother, "as it would be construed by an ordinary person." *Shelby*, 203 F3d at 934.

Lehr contends that NGS's interpretation of "surrogate mother" was arbitrary and capricious because NGS did not resort to the Surrogate Parenting Act's definition of "surrogate mother." However, as already stated, NGS was obligated to adhere to the common, ordinary meaning of the plan's language. It would have been unreasonable for NGS to rely solely on the Surrogate Parenting Act to obtain the common, ordinary meaning of "surrogate mother." See *Kovach*, 587 F3d at 333 (plan administrator's reliance on only case law to obtain ordinary meaning of "accidental" was unreasonable). Moreover, the act's definitions are limited by the language "[a]s used in this act." See MCL 722.853. Thus, the trial court was not required to apply the Surrogate Parenting Act's definition of "surrogate mother" outside the context of the act. See *Klooster v City of Charlevoix*, 488 Mich 289, 305; 795 NW2d 578 (2011) (where a statute limits the application of a definition to "this chapter," a court errs where it applies the definition outside of the specified chapter). We also reject Lehr's contention based on the legal principle that where a statute defines a term, that definition supersedes a commonly accepted or dictionary definition. Lehr's argument illustrates a well-founded rule of statutory construction. See *LeGalley v Bronson Community Schs*, 127 Mich App 482, 485-486; 339 NW2d 223 (1983). But, as this case does not involve the interpretation of a statute, the stated rule of statutory construction is inapplicable. Accordingly, we conclude that NGS's interpretation of "surrogate mother" was not arbitrary and capricious.

We also conclude that NGS's decision to deny benefits was not arbitrary and capricious. Lehr became pregnant after she was implanted with embryos created by the Sarvers. Lehr was a "surrogate mother" under NGS's reasonable interpretation of the plan. And, Spectrum's services to Lehr concerned Lehr's pregnancy. In reaching our conclusion, we reject Lehr's contention that NGS is liable for her pregnancy expenses because the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, presumes that she is the natural mother of the triplets. Even assuming that Lehr is their natural mother under EPIC, Lehr does not explain—by either citation to legal authority or argument—how her status as the natural mother of the triplets entitles her to benefits under the plan. "An appellant may not merely announce [her] position

and leave it to this Court to discover and rationalize the basis for [her] claims, nor may [she] give issues cursory treatment with little or no citation of supporting authority." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

For the above reasons, the trial court did not err when it granted summary disposition for NGS with respect to Lehr's ERISA claim for benefits.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens