

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SUSAN HARRIS MACKAY and)
NANCY HARRIS KEENAN,)
)
Plaintiffs,)
)
v.)
)
ESTATE OF PARKER F. HARRIS,)
LINDA W. HARRIS and the)
PARKER HARRIS, M.D., P.A.)
PROFIT-SHARING PLAN,)
)
Defendants)

Civil No. 03-150-B-W

**RECOMMENDED DECISION ON DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT AND
PLAINTIFFS' RULE 56(f) MOTION**

The plaintiffs filed a complaint in state court seeking to obtain certain pension benefits from their father's estate, their step-mother, or their father's former pension plan based on state common law and statutory causes of action and an agreement entered into by their parents in connection with their parents' 1992 divorce. The defendants removed the action to this Court based on the doctrine of ERISA preemption. Presently before the Court is the defendants' motion for summary judgment, based, essentially, on the same doctrine, and the plaintiffs' motion requesting that the Court defer judgment on the defendants' motion until additional discovery might be had on the plaintiffs' claims. Plaintiffs have requested oral argument on these matters, but I **DENY** that request at this stage of the proceedings. I recommend that the Court grant the defendants' motion and deny the plaintiffs' motion.

Facts

Parker Harris, M.D., and Penny Harris were married in 1963. (Defs' Statement of Mat. Facts, Docket No. 18, ¶ 1.)¹ They had two children, Susan and Nancy, the plaintiffs in this action. (Id., ¶ 2.) Dr. Harris was a physician and was employed by Parker F. Harris, M.D., P.A. ("the employer"). (Id., ¶ 3.) In 1992, the employer maintained a pension plan known as the Parker Harris, M.D., P.A. Money Purchase Pension Plan ("Plan A") that provided retirement benefits for its employees. (Id., ¶ 4.) Dr. Harris was a participant in Plan A. (Id., ¶ 5.) Penny Harris was not. (Id.)

Dr. Harris and Penny Harris divorced in July 1992. (Id., ¶ 6.) Their children, plaintiffs Susan and Nancy, were then 25 and 22 years old, respectively. (Id., ¶ 7.) Neither was dependent on either Dr. Harris or Penny at that time. (Id., ¶ 10.) As part of the personal property distribution agreed upon in the divorce, Dr. Harris consented to an immediate transfer to Penny of one-half of his interest in, plus an additional \$35,000.00 from, Plan A. (Id., ¶ 11.) The transfer was formalized in a section of the judgment of divorce entitled "Qualified Domestic Relations Order" and took place upon the finalization of the divorce. (Id., ¶¶ 12, 13.) The judgment of divorce also incorporated by reference a settlement agreement entered into between Dr. Harris and Penny Harris. (Id., ¶ 14.) A provision in the divorce settlement agreement pertaining to the division of personal property indicated as follows:

The parties agree to leave their portion of the pension to the surviving children of this marriage. Nothing contained herein shall prevent each from using his or her pension otherwise in their lifetime.

(Id., ¶ 16.)

¹ The plaintiffs have admitted all of the defendants' statements of fact. (Pls' Response to Defs' Statement of Mat. Facts, Docket No. 28, ¶¶ 1-37.)

In 1993, the employer established a new pension plan, known as the Parker F. Harris, M.D., P.A. Profit Sharing Plan (“Plan B”). (Id., ¶¶ 18, 19.) Plan A’s funds were “rolled into” Plan B. Plan B, like Plan A, was a retirement plan, but employer contributions became discretionary. (Id., ¶¶ 17, 20, 21, 22.) The employer is the administrator of Plan B. (Id., ¶ 37.)

In 1995, Dr. Harris married defendant Linda Harris. (Id., ¶ 23.) According to the plaintiffs, they spoke privately with their father at his wedding to Linda Harris and he assured them that if anything happened to him they would each receive \$300,000 of the roughly \$600,000 then existing in Plan B. (Pls’ Response to Defs’ Statement of Mat. Facts, Docket No. 28, ¶ 3 additional.) However, the decedent designated Linda Harris as the sole beneficiary of his Plan B benefits. (Docket No. 18, ¶ 24.) Dr. Harris died in 2002. (Id., ¶ 27.)

The plaintiffs filed suit in state court to recover plan proceeds from Dr. Harris’s Estate, the plan, or Linda Harris based on the 1992 divorce settlement agreement. The defendants removed the suit to this Court. The now operative, Revised Amended Complaint asserts four counts, apparently the same four that were originally asserted in state court: (1) breach of contract; (2) conversion; (3) fraudulent transfer; and (4) unjust enrichment. (Docket No. 15.) In addition to these causes of action, the plaintiffs recite the equitable remedies of specific performance and constructive trust. (Id.) Linda Harris has counterclaimed, requesting a declaratory judgment that she is the lawful beneficiary of her deceased husband’s pension benefits because she is the named beneficiary of Plan B and because ERISA mandates that she be the beneficiary as Dr. Harris’s surviving spouse. (Docket No. 16.) As of yet, no funds have been distributed to Linda Harris from Plan B. (Docket No. 18, ¶ 28.)

Discussion

Summary judgment is warranted only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); United States Steel v. M. DeMatteo Constr. Co., 315 F.3d 43, 48 (1st Cir. 2002). The defendants argue that they are entitled to judgment against the plaintiffs’ state law causes of action because the causes of action are preempted by ERISA. By extension, they contend that they are also entitled to a declaration that Linda Harris is the lawful beneficiary of the decedent’s pension benefits. (Defs’ Mot. Summ. J., Docket No. 17, at 26.) The plaintiffs argue that their causes of action are not preempted by ERISA because they arise from a “qualified domestic relations order,” or QDRO, and are therefore excepted from ERISA’s sweeping preemption provision. (Pls’ Opp. to Defs’ Mot. Summ. J., Docket No. 29, at 2-3.)

1. ERISA preempts state law claims for pension benefits unless they arise from a qualified domestic relations order.

As amended by the Retirement Equity Act of 1984 (REA), Pub. L. 98-397, 98 Stat. 1426, ERISA mandates that the surviving spouse of a pension plan participant receive the available pension benefit following the death of the plan participant, unless the surviving spouse consents in writing to an alternative beneficiary. Boggs v. Boggs, 520 U.S. 833, 843 (1997) (discussing the purpose and scope of ERISA § 1055); 29 U.S.C. § 1055(a) & (b)). In Boggs, the Supreme Court held that a Louisiana law permitting a predeceasing spouse (the participant’s first wife) to devise an equitable interest in the participant’s pension fund was preempted by ERISA and could not be enforced because “ERISA’s solicitude for the economic security of surviving spouses would be undermined by allowing a predeceasing spouse’s heirs and legatees to have a community property interest in the survivor’s annuity.” 520 U.S. at 843 (observing that not even

the plan participant has the power to defeat a surviving spouse's "statutory entitlement"). As in Boggs, there is here a "direct clash between state law and the provisions and objectives of ERISA" because "[i]t would undermine the purpose of ERISA's mandated survivor's annuity to allow [the Dr. Harris-Penny divorce settlement agreement] to defeat [Linda Harris's] entitlement to the annuity § 1055 guarantees her as the surviving spouse." Id. at 844.

In addition to mandating benefits for surviving spouses, ERISA mandates that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d). This prohibition on assignment and alienation of pension benefits extends to an assignment or alienation ordered pursuant to a "domestic relations order," unless the domestic relations order is a "qualified domestic relations order" (QDRO). Id. § 1056(d)(3)(A).

A QDRO is a type of domestic relations order which creates or recognizes an alternate payee's right to, or assigns to an alternate payee the right to, a portion of the benefits payable with respect to a participant under a plan. § 1056(d)(3)(B)(i). A domestic relations order, in turn, is any judgment, decree, or order that concerns "the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant" and is "made pursuant to a State domestic relations law (including a community property law)." § 1056(d)(3)(B)(ii). A domestic relations order must meet certain requirements to qualify as a QDRO. See §§ 1056(d)(3)(C)-(E).

Boggs, 520 U.S. at 846. Importantly, ERISA not only permits alienation of plan benefits by means of a QDRO, but also permits state law causes of action to go forward if they arise under a QDRO. Id. at 846-47 ("QDRO's . . . are exempt from both the pension plan anti-alienation provision . . . and ERISA's general pre-emption clause, § 1144(b)(7)). In effect, if the settlement agreement incorporated into the 1992 divorce judgment is a QDRO, then ERISA does not preempt the plaintiffs' state law claims. Cf. Metro. Life Ins. Co. v. Bigelow, 283 F.3d 436, 440 (2d Cir. 2002) ("This, then, is the nub of the present dispute: if the Judgment is a qualified

domestic relations order ('QDRO'), ERISA does not preempt it, and the Daughters are the proper beneficiaries; if, however, the Judgment is not a QDRO, then ERISA preempts, and the Father is the proper beneficiary.”).

2. *The plaintiffs' claims do not arise from a Qualified Domestic Relations Order and are, therefore, subject to dismissal.*

The plaintiffs contend that the 1992 agreement between the decedent and Penny Harris “to leave their portion of the pension to the surviving children of [their] marriage” is enforceable because it was incorporated into the divorce judgment, which they classify, *carte blanche*, as a QDRO. The defendants counter that the agreement was not part of the divorce court’s QDRO and, moreover, could not be part of a QDRO as a matter of law because the plaintiffs were not dependent upon the decedent at the time of the agreement.

A QDRO is defined as a domestic relations order “which creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan.” 29 U.S.C. § 1056(d)(3)(B)(i)(I). In order to qualify as a QDRO, a domestic relations order must also meet several other requirements. Among other things, the order must “clearly specify”:

- (i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,
- (ii) the amount or percentage of the participant’s benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,
- (iii) the number of payments or period to which such order applies, and
- (iv) each plan to which such order applies.

29 U.S.C. § 1056(d)(3)(C)-(D).

The settlement agreement at issue in this case is preempted by ERISA and cannot serve as a legal designation of an alternative beneficiary of Plan B or create an equitable interest in the funds formerly existing in Plan A. The settlement agreement was not incorporated into the divorce court's QDRO. Even a cursory review of Exhibit A of the Revised Amended Complaint (Docket No. 15) reflects that the only "QDRO" entered by the court for purposes of creating benefits in the Plan A pension fund concerned the lump sum payment of one-half of the Plan's then existing value, plus an additional \$35,000.00, to Penny Harris. Although the settlement agreement was incorporated into the court's broader divorce judgment, it was not incorporated into that portion of the judgment captioned "Qualified Domestic Relations Order." Rather, the court merely incorporated and "approved" Dr. Harris and Penny Harris's settlement agreement, and "found" that the agreement "divided the marital and non-marital personal property to the satisfaction of the parties." There is no indication whatsoever that the divorce court imposed a legal obligation on Dr. Harris to ensure that the plaintiffs herein receive any benefit from his pension other than what he or Penny Harris might gift or bequeath to them. To the contrary, the language of the settlement agreement makes plain that Dr. Harris was entirely free to do what he wished with the funds during his lifetime. Permitting a participant to exercise unfettered control over pension funds during his lifetime is antithetical to the concept of a QDRO, which serves to assign or alienate pension benefits to someone other than the participant or his intended beneficiary and does so specifically for support purposes.² See Boggs, 520 U.S. at 847 (indicating that those ERISA provisions enabling the assignment of pension benefits to an alternate payee "are essential to one of REA's central purposes, which is to give enhanced

² Parenthetically, there is no authority to support the contention that a Maine divorce court has any authority to set aside marital property for the benefit of independent, adult children.

protection to the spouse and dependent children in the event of divorce or separation, and in the event of death the surviving spouse”) (emphasis added).³

Because the settlement provision is not a QDRO, the appropriate disposition of the pension plan benefits is determined by reference to the plan and ERISA’s surviving spouse provision, not the 1992 divorce judgment or an alleged oral promise. Because all of the plaintiffs’ causes of action draw on the divorce judgment and Maine law for viability, dismissal of the action is appropriate at this time.⁴ Because the plaintiffs have failed to present a valid claim to the proceeds of the subject pension plan, it would be appropriate at this time to declare Linda Harris the lawful beneficiary of the plan.

3. *The plaintiffs have failed to articulate how further discovery might influence the resolution of this matter and, therefore, resolution of the summary judgment motion should not be deferred.*

The plaintiffs move for a continuance to permit discovery to be had pursuant to Rule 56(f) of the Federal Rules of Civil Procedure. (Docket No. 36.) In order for a litigant opposing summary judgment under Rule 56(f) to successfully defer disposition of an otherwise timely summary judgment motion, he or she must make a sufficient proffer explaining why he or she is unable to currently adduce the essential facts, how the “the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion,” and why there is “a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist.” Resolution Trust Corp. v. North Bridge Assocs., Inc., 22 F.3d 1198, 1203 (1st

³ See also Boggs, 520 U.S. at 849 (“The QDRO provisions address the rights of divorced and separated spouses, and their dependent children, which are the traditional concern of domestic relations law.”).

⁴ The plaintiffs contend that this case is different because the decedent was the plan administrator. (Docket No. 29 at 4-5.) This argument does not get off the ground, however, because the plaintiffs admitted that the employer, Parker F. Harris, M.D., P.A., was the administrator. They did not establish that Parker F. Harris, M.D., was. In any event, even if the Court might draw such an inference, a claim against an administrator or other fiduciary of an ERISA plan would be equally preempted by ERISA. The plaintiffs have not asserted a cause of action pursuant to ERISA. Nor have they articulated any legal basis for maintaining such a claim pursuant to ERISA § 1132.

Cir. 1994). From this general framework, the First Circuit has formulated five requirements: “authoritativeness, timeliness, good cause, utility, and materiality.” Id. A request for further discovery is presumptively meritorious if all five requirements are met, though failure to meet all five requirements does not deprive the Court of discretion to permit further discovery. Id.

In their proffer, the plaintiffs offer that they would like to depose Linda Harris, the accountant for Plan B, and the attorney who counseled Dr. Harris with respect to his estate plan and who also represents the Estate herein. (Docket No. 36 at 1.) According to the plaintiffs, these witnesses might have certain unarticulated, “essential information as to the facts surrounding the divorce . . . and how the pension plan was structured after that.” (Id.) For instance, the plaintiffs represent that the prenuptial agreement between Dr. Harris and Linda Harris contains undisclosed information that should be included in their response to summary judgment, but was omitted due to their inability to authenticate the same without first deposing Linda Harris. (Id. at 2.) Also in support of the motion for continuance, the plaintiffs have offered the Affidavit of Sean M. Farris, Esq. Mr. Farris’s affidavit largely reiterates the representations contained in the motion, but adds that he would obtain discovery “regarding prior beneficiaries before [the pension plan] was changed to Linda W. Harris.” (Aff. of Sean M. Farris, Docket No. 33, Attachment 1, ¶ 5.) According to Mr. Farris, these several discovery initiatives “may be essential and [might yield] substantial information that would aid this Court in determining the outcome of the Defendants’ Motion for Summary Judgment.” (Id., ¶ 7.) The defendants oppose the motion, arguing that the plaintiffs’ showing falls short of the North Bridge Associates standard. I agree. Most significantly, the plaintiffs appear unable to articulate how the discovery they seek would influence the outcome of the defendants’ summary judgment motion. Because it is not at all apparent to me how the discovery initiatives they describe could

render the settlement agreement at issue a QDRO or otherwise undermine the application of ERISA's mandatory surviving spouse provision, I **RECOMMEND** that the Court **DENY** the plaintiffs' Rule 56(f) motion.

Conclusion

For the reasons stated herein, I **RECOMMEND** that the Court **DENY** the plaintiffs' Rule 56(f) motion (Docket No. 36) and **GRANT** the defendants' motion for summary judgment (Docket No. 17). The plaintiffs' request for a hearing (Docket No. 34) is **DENIED** for purposes of this recommendation.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

February 25, 2004

/s/ Margaret J. Kravchuk
United States Magistrate Judge

U.S. District Court
District of Maine (Bangor)
CIVIL DOCKET FOR CASE #: 1:03-cv-00150-JAW
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MACKAY et al v. ESTATE OF PARKER F. HARRIS et al

Assigned to: JUDGE JOHN A. WOODCOCK JR.
Referred to: MAG. JUDGE MARGARET J. KRAVCHUK
Demand: \$
Lead Docket: None
Related Cases: None
Case in other court: None

Date Filed: 08/28/03
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

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**PARKER HARRIS MD PA
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PLAN**
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Pension Plan*

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Counter Claimant

ESTATE OF PARKER F HARRIS

LINDA W HARRIS

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*previously known as the Parker
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V.

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