

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



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FINAL JUDGMENT

March 14, 2019

Before: MICHAEL B. BRENNAN, Circuit Judge
MICHAEL Y. SCUDDER, Circuit Judge
AMY J. ST. EVE, Circuit Judge

No. 18-2601	JOSEPH REINWAND, Plaintiff - Appellant v. NATIONAL ELECTRICAL BENEFIT FUND, NEBF, Defendant - Appellee
Originating Case Information:	
District Court No: 3:17-cv-00538-bbc Western District of Wisconsin District Judge Barbara B. Crabb	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

United States Court of Appeals

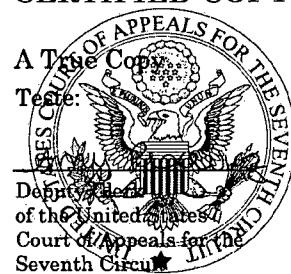
For the Seventh Circuit
Chicago, Illinois 60604

CERTIFIED COPY

May 24, 2018

Before

William J. Bauer, *Circuit Judge*
Michael S. Kanne, *Circuit Judge*
Ilana Diamond Rovner, *Circuit Judge*



JOSEPH REINWAND,
Plaintiff-Appellant,

No. 18-1422 v.

LAWRENCE J. BRADLEY, et. al.,
Defendants-Appellees.

] Appeal from the United
] States District Court for
] the Western District of
] Wisconsin.
]
] No. 3:17-cv-00538-bbc
]
] Barbara B. Crabb,
] Judge.

ORDER

On March 9, 2018, the court issued an order requiring that appellant Reinwand file, on or before March 23, 2018, a brief memorandum stating why this appeal should not be dismissed for lack of jurisdiction. Appellant, however, has not filed a response. Nor has he responded to the court's show cause order of April 2, 2018. Therefore, on review of the short record,

IT IS ORDERED that this appeal is **DISMISSED** for lack of jurisdiction.

Generally, an appeal may not be taken in a civil case until a final judgment disposing of all claims against all parties is entered on the district court's civil docket pursuant to Fed. R. Civ. P. 58. *See Alonzi v. Budget Construction Co.*, 55 F.3d 331, 333 (7th Cir. 1995); *Cleaver v. Elias*, 852 F.2d 266 (7th Cir. 1988).

The district court has not issued a Rule 58 judgment in the present case, and for good reason. Plaintiff Reinwand's case is not at an end in the district court. As the court noted in its order of February 5, 2018, plaintiff Reinwand's ERISA claim against defendant National Electric Benefit Fund remains. As such, appellant Reinwand must wait until the entire case is at an end before he can seek review in this court of the district court's February 5, 2018 order.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOSEPH REINWAND,

Plaintiff,

OPINION and ORDER

17-cv-538-bbc

v.

LAWRENCE J. BRADLEY, DENNIS F. QUEBE,
JOHN GRAU, SALVATORE J. CHILIA, LONNIE R. STEPHENSON
and NATIONAL ELECTRICAL BENEFIT FUND,

Defendants.

In this civil action, pro se plaintiff Joseph Reinwand, a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, is bringing claims under the Employee Retirement Income Security Act, 29 U.S.C. § 1132, and under 42 U.S.C. § 1983 against the pension plan of his previous employer, as well as its administrator and trustees. Now before the court is defendants' motion to dismiss the case under Fed. R. Civ. P. 12(b)(6). Defendants contend that plaintiff's § 1983 claim should be dismissed because defendants are not government actors and plaintiff's ERISA claim should be dismissed as to the individual defendants. Dkt. #10. Defendants have also moved to strike plaintiff's jury demand from his complaint. Dkt. #12. I am granting both motions.

With respect to plaintiff's claim under § 1983, plaintiff makes no attempt to explain why he could bring a claim for violation of his "civil rights" against a private entity or non-

governmental actor. As the Court of Appeals for the Seventh Circuit explained to plaintiff in a previous lawsuit he brought against some of the same defendants, a claim under § 1983 against these defendants "is frivolous," because "only 'state actors' can be liable under § 1983" and defendants are not state actors. Reinwand v. National Electrical Benefit Fund, 683 F. App'x 516, 517 (7th Cir. 2017). Therefore, I will dismiss plaintiff's § 1983 claim.

With respect to plaintiff's ERISA claim for benefits under 29 U.S.C. § 1132(a)(1)(B), defendants argue that only the plan itself, and not the individual defendants, are proper defendants. The Court of Appeals for the Seventh Circuit has stated that a cause of action for "benefits due" under § 1132(a)(1)(B) "must be brought against the party having the obligation to pay." Larson v. United Healthcare Insurance Co., 723 F.3d 905, 913 (7th Cir. 2013). "Typically the plan owes the benefits and is the right defendant." Id. In some circumstances, however, an individual or entity other than the plan may be an appropriate defendant to a claim for benefits, such as where an entity other than the plan has the obligation to pay benefits or where the employer and plans are closely intertwined. Id. (allowing plaintiff to sue insurance company that was responsible for making benefit decisions and paying claims); Mein v. Carus Corp., 241 F.3d 581, 584–85 (7th Cir. 2001) (allowing plaintiff to sue his employer to recover ERISA benefits because employer and plan were closely intertwined); Riordan v. Commonwealth Edison Co., 128 F.3d 549, 551 (7th Cir. 1997) (permitting plaintiff to sue employer to recover ERISA benefits because plan documents referred to employer and plan interchangeably).

In this instance, however, the allegations in plaintiff's complaint do not support any

basis for bringing a claim against the individual defendants. His allegations do not suggest that the individual defendants are obligated to pay benefits or that the plan itself is interchangeable with the individuals. Additionally, unlike in plaintiff's previous case, Reinwand v. National Electrical Benefit Fund et al., 14-cv-845-bbc, plaintiff is not bringing a claim under § 1132(c)(1), for which a plan administrator would be an appropriate defendant. In this case, plaintiff has raised only a claim for benefits, for which the plan is the appropriate defendant. Therefore, I will grant defendants' motion to dismiss the individual defendants.

Finally, because I am dismissing plaintiff's § 1983 claim, I also will grant defendants' motion to strike plaintiff's request for a jury trial. Plaintiff's only remaining claim is an ERISA claim for benefits under 1132(a)(1)(B), and there is no right to a jury trial on ERISA claims. Patton v. MFS/Sun Life Financial Distributors, Inc., 480 F.3d 478, 484 (7th Cir. 2007) ("the plaintiff has no right to a jury trial" in ERISA case); McDougall v. Pioneer Ranch Ltd. Partnership, 494 F.3d 571, 575–76 (7th Cir. 2007) ("[T]here is no right to a jury trial because ERISA's antecedents are equitable, not legal.").

ORDER

IT IS ORDERED that

1. The motion to dismiss filed by defendants Lawrence J. Bradley, Dennis F. Quebe, John Grau, Salvatore J. Chilia and Lonnie R. Stephenson, dkt. #10, is GRANTED. Plaintiff Joseph Reinwand's claims under 42 U.S.C. § 1983 are DISMISSED and the individual

defendants are DISMISSED from this case.

2. Defendants' motion to strike plaintiff's jury demand, dkt. #12, is GRANTED.

Entered this 5th day of February, 2018.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOSEPH REINWAND,

Plaintiff,

OPINION and ORDER

v.

17-cv-538-bbc

NATIONAL ELECTRICAL BENEFIT FUND,

Defendants.

In this civil action, pro se plaintiff Joseph Reinwand, a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, is bringing claims under the Employee Retirement Income Security Act, 29 U.S.C. § 1132, against the pension plan of his previous employer. On February 5, 2018, I granted a motion to dismiss claims plaintiff had included against the administrator and trustees of the plan, concluding that plaintiff's complaint failed to state claims against those defendants under ERISA or 42 U.S.C. § 1983. Now before the court are plaintiff's motion for leave to amend his complaint, dkt. #20, and motion for reconsideration of the dismissal order. Dkt. #21. Both motions will be denied.

With respect to the motion for leave to file an amended complaint, plaintiff neither filed a proposed amended complain nor explained adequately what changes he wishes to make to his original complaint. Instead, he suggests that he may be able to add information that would clarify the basis for his claims against the previously-dismissed individual defendants. Plaintiff's vague statements are not sufficient to justify granting his motion. If plaintiff wishes to renew his motion by filing a timely proposed amended complaint, he may

do so, but I will not grant him leave to file an amended complaint without reviewing his proposed pleading.

In support of his motion for reconsideration, plaintiff argues that the individual defendants may be sued under ERISA and held personally liable for the benefits owed to plaintiff because, according to the plan documents, the trustees and administrators are responsible for evaluating and paying claims. However, none of the plan provisions cited by plaintiff would support a finding that the trustees or administrators are *personally* responsible for paying claims. Rather, the provisions indicate that these individuals have official responsibilities in administering the plan and paying benefits, but no personal obligations to pay, as would be the case if the plan and the individuals were “interchangeable.” E.g., Riordan v. Commonwealth Edison Co., 128 F.3d 549, 551 (7th Cir. 1997). As explained in the previous order, dkt. #19 at 2, the appropriate defendant on an ERISA claim for benefits is “the party having the obligation to pay,” which is “[t]ypically the plan.” Larson v. United Healthcare Insurance Co., 723 F.3d 905, 913 (7th Cir. 2013). Plaintiff has pointed to nothing in the plan documents to undermine my previous conclusion that the plan is the appropriate defendant in this case. Therefore, I will deny his motion for reconsideration.

ORDER

IT IS ORDERED that plaintiff Joseph Reinwand's motion for reconsideration, dkt. #21, and his motion for leave to amend his complaint, dkt. #20, are DENIED.

Entered this 11th day of April, 2018.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

April 4, 2019

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 18-2601

JOSEPH REINWAND, <i>Plaintiff-Appellant,</i> <i>v.</i>	Appeal from the United States District Court for the Western District of Wisconsin.
NATIONAL ELECTRICAL BENEFITS FUND, NEBF, <i>Defendant-Appellee.</i>	No. 3:17-cv-538 Barbara B. Crabb, <i>Judge.</i>

O R D E R

On consideration of the motion for panel rehearing filed by plaintiff-appellant on March 29, 2019, and construed as a petition for rehearing, all members of the original panel have voted to deny the petition.

Accordingly, the petition for rehearing is hereby DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**