

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-2024

Leonard Hartford Tunnell

Plaintiff - Appellant

v.

Public School Retirement System of Missouri, also known as PSRS of Missouri; Steve Yoakum

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Joplin
(3:19-cv-05084-BP)

JUDGMENT

Before KELLY, WOLLMAN, and STRAS, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

August 27, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

LEONARD HARTFORD TUNNELL,)	
)	
Plaintiff,)	
v.)	Case No. 19-05084-CV-SW-BP
)	
PUBLIC SCHOOL RETIREMENT)	
SYSTEM OF MISSOURI and)	
STEVE YOAKUM,)	
)	
Defendants.)	

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Plaintiff, acting pro se, filed this suit against Defendants Public School Retirement System of Missouri ("PSRS") and Steve Yoakum. He alleges that Defendants violated the Employment Retirement Income Security Act of 1974 ("ERISA") and the Retirement Equity Act of 1984 ("REA") when he was not given beneficiary status in his ex-wife's retirement fund after she died. Defendants have filed a motion to dismiss the Amended Complaint for, among other reasons, lack of subject matter jurisdiction, asserting that the retirement plan administered by PSRS is a governmental plan and therefore is not governed by either ERISA or REA. As discussed below, the motion to dismiss, (Doc. 5), is **GRANTED**.

I. BACKGROUND

Plaintiff alleges that his ex-wife passed away one month after their divorce. He contends that before executing the Settlement Agreement that was part of their divorce, the two of them agreed (apparently orally) to name each other as the beneficiary on their respective retirement plans.¹ However, Plaintiff's ex-wife (who was a public-school teacher in Missouri) designated

¹ This alleged agreement appears to be contrary to the subsequent Judgment of Dissolution of Marriage, which states: "Wife shall have as her sole and separate property . . . the PSRS retirement account (which the parties agree is non-marital) Husband hereby waives and releases any interest, right, title or claim thereto." (Doc. 6-1, p. 8.) In light

someone else as her beneficiary and Plaintiff did not receive any portion of her pension benefits. He alleges that Defendants violated provisions of ERISA or REA that require a spouse (in this case, him) to affirmatively consent to having someone else be named as the beneficiary.

Defendants present three arguments, the first two of which are jurisdictional. First, they argue that the Court lacks jurisdiction because the retirement plan at issue is a governmental plan so it is not governed by ERISA and REA. Second, they argue that Plaintiff lacks standing. Finally, Defendants argue that the Amended Complaint should be dismissed because it fails to state a claim. The Court agrees with Defendants' first argument, making it unnecessary to consider the other two.

II. DISCUSSION

REA amended ERISA, *e.g.*, *Boggs v. Boggs*, 520 U.S. 833, 843 (1997); therefore, for ease of discussion the Court will refer to ERISA. In order to have jurisdiction in this case, the Court must first determine whether the plan at issue is governed by ERISA. "Where federal subject matter jurisdiction is based on ERISA, but the evidence fails to establish the existence of an ERISA plan, the claim must be dismissed for lack of subject matter jurisdiction." *Dakota, Minnesota & E. R.R. Corp. v. Schieffer*, 711 F.3d 878, 880 (8th Cir. 2013) (quoting *Kulinski v. Medtronic Bio-Medicus, Inc.*, 21 F.3d 254, 256 (8th Cir. 1994)).

ERISA does not apply to "governmental plans." 29 U.S.C. § 1003(b)(1). "The term 'governmental plan' means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." *Id.* § 1002(32). PSRS was created by Missouri law "[f]or the purpose of providing retirement allowances and other benefits for public school

of the Court's holding, there is no need to consider Defendants' argument that the case should be dismissed based on this Judgment.

teachers” and is “a body corporate” administered and operated by a Board of Trustees appointed by the Governor of Missouri. MO. REV. STAT. § 169.020. And, significantly, the Eighth Circuit has held that PSRS is an arm of the state. *See generally Public Sch. Ret. Sys. of Missouri v. State St. Bank & Tr. Co.*, 640 F.3d 821 (8th Cir. 2011).

For these reasons, PSRS is a “governmental plan” within the meaning of ERISA. Therefore, ERISA does not apply to this plan, and the Court lacks jurisdiction over Plaintiff’s claims.

III. CONCLUSION

Defendants’ Motion to Dismiss is **GRANTED** and this case is dismissed without prejudice for lack of jurisdiction.

IT IS SO ORDERED.

Date: May 7, 2020

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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