UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-40536

(Summary Calendar)

CONNIE CHIDESTER,

Plaintiff-Appellant,

versus

CAMILLE QUOYESER, et al.

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Louisiana
(93-CV-175)

(November 23, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:[*]

Connie Chidester brought suit in state court against Quoyeser, Inc., her former employer; Camille Quoyeser, the company president; Laura Credeur, a Quoyeser, Inc., employee (collectively referred to as "Quoyeser"); and Franklin Life Insurance Company ("Franklin"), Quoyeser's health insurance provider. Chidester alleged, *inter alia,* various state-law causes of action pertaining to the termination of her health coverage. Quoyeser and Franklin removed

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[*]Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the action to federal court and moved for summary judgment or partial summary judgment, arguing that Chidester's state-law claims are preempted by the Employee Retirement Income Security Act ("ERISA"). *See* 29 U.S.C. § 1144 (1988). The district court granted a partial summary judgment in favor of both defendants, dismissing all of Chidester's state-law claims as preempted by ERISA. Chidester now appeals, asserting that her state-law claims are not preempted because the injury upon which they are based occurred while she was not a participant in the health care plan and was proximately caused by an act unrelated to the plan.

I

A month after Chidester began her employment with Quoyeser, Inc., she qualified to join the employer-provided, Franklin-administered health care plan ("the Plan"). Soon after, Chidester was hospitalized for approximately one month, during which time she was diagnosed with lupus and informed that she was pregnant. Approximately two months after returning to work, Chidester was terminated as part of a force reduction. Camille Quoyeser told Chidester that her health benefits would be extended, at company expense, past the end of her employment.

Chidester delivered her baby prematurely amidst health complications related to her lupus condition. When Credeur informed Chidester three to four months later that Quoyeser, Inc., would no longer provide Chidester with health insurance, Chidester objected. Following Camille Quoyeser's instructions, Credeur forged Chidester's signature on the insurance cancellation forms

and forwarded them to Franklin. Chidester learned of the cancellation one week after it took effect, when she attempted to check into a hospital because of chest pains. Franklin informed Chidester that the cancellation was pursuant to their receipt of a signed cancellation form.

After requesting an investigation by the United States Department of Labor, Chidester learned for the first time that under the terms of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), she was entitled to retain her health insurance, at her own expense, for eighteen months after termination of her employment. Chidester contacted Quoyeser, informed them of their alleged violation of COBRA, and requested that her benefits be reinstated under the Plan. Chidester's benefits were reinstated at the direction of Camille Quoyeser shortly thereafter and Chidester received retroactive coverage from Franklin for the nine-week period following the termination of her coverage.

Chidester sued Quoyeser and Franklin, alleging intentional fraudulent misrepresentation and/or negligent misrepresentation against Quoyeser, and gross and wanton negligence and/or breach of contract against Franklin. She appeals the district court's partial summary judgment dismissing her state-law claims as preempted by ERISA.

II

Chidester contends that a state-law claim is not preempted by ERISA if based on an injury that occurred while the plaintiff was not a plan participant or that was the result of fraudulent

activity unrelated to the plan. Thus, while Chidester concedes that the Plan is an "employee benefit plan" governed by ERISA,[1] she argues that her state-law claims are not properly preempted by the statute.

ERISA's preemptive effect on a state law turns on three factors. "First, the state law must `relate to' an employee benefit plan. Second, the state law is not preempted if it regulates insurance, banking, or securities . . . . Third, the state statute must attempt to reach in one way or another the `terms and conditions of employee benefit plans.'" *Lane v. Goren*, 743 F.2d 1337, 1339 (9th Cir. 1984) (quoting 29 U.S.C. § 1144). "A law `relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection to such a plan." *Shaw v. Delta*

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[1] 29 U.S.C. § 1144 provides, in pertinent part, as follows:

> (a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . .
>
> (b) (2)(A) . . . nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates, insurance, banking, or securities.
>
> (c) For purposes of this section:
> (2) The Term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

29 U.S.C. § 1144 (1988).

Air Lines, Inc., 463 U.S. 85, 96-97, 103 S. Ct. 2890, 2900, 77 L. Ed. 2d 490 (1983). The United States Supreme Court has concluded that "the express pre-emption provisions of ERISA are deliberately expansive, and designed to `establish pension plan regulation as exclusively a federal concern.'" *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45-46, 107 S. Ct. 1549, 1552, 95 L.Ed. 2d 39 (1987) (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523, 101 S. Ct. 1895, 1906, 68 L. Ed. 2d 402 (1981)).[2]

In keeping with its expansive interpretation of ERISA, the Supreme Court has consistently held that the statute preempts claims related to pension plans and brought under state laws of general application, noting that "even indirect state action bearing on private pensions may encroach upon the area of exclusive federal concern." *Alessi*, 451 U.S. at 525, 101 S. Ct. at 1907 ("It is of no moment that the [state] intrudes indirectly, through a workers' compensation law, rather than directly, through a statute called `pension regulation.'"). In *Pilot Life*, for example, the Court determined that the "common law causes of action" in that case))fraud in the inducement, tortious breach of contract, and

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[2] *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47-48, 107 S. Ct. 1549, 1553, 95 L. Ed. 2d 39 (1987) (noting "expansive sweep" of the preemption clause); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739, 105 S. Ct. 2380, 2388-89, 85 L. Ed. 2d 728 (1985) (stressing "broad scope of the preemption clause" and stating that it "was intended to replace all state laws that fall within its sphere"); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97, 103 S. Ct. 2890, 2900, 77 L. Ed. 2d 490 (1983) (emphasizing Congress' use of the term was meant in the "broad sense" and concluding that limiting ERISA preemption to laws specifically designed to affect employee benefit plans would be to ignore the clear intent of the preemption provisions).

breach of fiduciary duty))were preempted by ERISA. *Pilot Life*, 481 U.S. at 47-48, 107 S. Ct. at 1552-53. Similarly, in *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 140, 111 S. Ct. 478, 483, 112 L. Ed. 2d 474 (1990), the Court held that a state-law wrongful termination claim was preempted by ERISA.

This Circuit has also held that state-law claims brought under laws of general application are preempted by ERISA if the claims relate to a pension plan. *See Corcoran v. United Healthcare, Inc.*, 965 F.2d 1321, 1329 (5th Cir.), *cert. denied*, ___ U. S. ___, 113 S. Ct. 812, 121 L. Ed. 2d 684 (1992). A state-law cause of action is preempted "even if the action arises under general state law that in and of itself has no impact on employee benefit plans." *Cefalu v. B.F. Goodrich Co.*, 871 F.2d 1290, 1292 n.5 (5th Cir. 1989). "Indeed, much pre-emption litigation involves laws of general application which, when applied in particular settings, can be said to have a connection with or a reference to an ERISA plan." *Corcoran*, 965 F.2d at 1329. State-law claims are preempted by ERISA if: "(1) the state law claims address areas of exclusive federal concern, such as the right to receive benefits under the terms of an ERISA plan; and (2) the claims directly affect the relationship between the traditional ERISA entities))the employer, the plan and its fiduciaries, and the participants and beneficiaries." *Memorial Hosp. Sys. v. Northbrook Life Ins. Co.*, 904 F.2d 236, 245 (5th Cir. 1990) (footnotes omitted).

Chidester contends that her state-law claims are not preempted because the injury upon which they are based occurred while she was

not a participant in the health care plan and was proximately caused by an act unrelated to the plan. However, a state-law claim for fraud, like any other state-law cause of action, is preempted by ERISA if it "relates to" an employee benefit plan. *See, e.g.*, *Christopher v. Mobil Oil Corp.*, 950 F.2d 1209, 1218-19 (5th Cir.) (holding state-law claims for fraud and negligent misrepresentation to be preempted because they "related to" an employee benefit plan), *cert. denied*, ___ U.S. ___, 113 S. Ct. 68, 121 L. Ed 2d 35 (1992); *Lee v. E.I. DuPont de Nemours & Co.*, 894 F.2d 755, 758 (5th Cir. 1990) (holding state-law action for fraud and misrepresentation to be preempted whether or not there is an ERISA-provided remedy). While we held in *Perkins v. Time Ins. Co.*, 898 F.2d 470 (5th Cir. 1990), that a claim against an independent insurance agent who fraudulently induced an insured to switch from a non-ERISA policy to an ERISA-regulated policy was not preempted, our decision there was based on our finding that the fraud "[did] not affect the relations among the principal ERISA entities (the employer, the plan fiduciaries, the plan, and the beneficiaries)." *Id.* at 473.

By contrast, the alleged fraud against Chidester did involve the principal ERISA entities: Quoyeser, her employer; Franklin, the plan fiduciaries; an ERISA-regulated plan; and herself, the beneficiary of an ERISA-regulated plan. The alleged fraud occurred at a time when Chidester was fully covered by the Plan and involved a document related to the administration of that plan. Thus, we hold that Chidester's state-law claims "relate to" an employee

pension plan governed by ERISA, and are properly preempted by that statute.

III

For the foregoing reasons, **WE AFFIRM**.