

United States Court of Appeals for the Fifth Circuit

No. 26-30272
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 6, 2026

Thomas B. Plunkett, III
Clerk

KEITH E. SONDERLING, *Acting Secretary of Labor, United States
Department of Labor,*

Plaintiff—Appellee,

versus

KELLY SILLS,

Defendant—Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:23-CV-41

Before DAVIS, STEWART, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

The Acting Secretary of Labor sued Kelly Sills, president and sole owner of Coastal Bridge Company, L.L.C., for breaching his fiduciary duties under the Employee Retirement Income Security Act (ERISA). The Secretary alleged that Sills withheld employees' plan contributions from their paychecks without remitting them to insurers and failed to pay

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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employee claims that were billed under the company's self-funded health plan. The district court granted summary judgment for the Secretary. Sills, proceeding pro se, appeals. We AFFIRM.

Coastal sponsored an employee welfare benefit plan (the Plan) that offered fully-insured dental and vision coverage through Ameritas; fully-insured cancer, accident, and critical-illness coverage through Guardian; and self-insured medical coverage administered by Blue Cross Blue Shield of Louisiana (Blue Cross) pursuant to an Administrative Services Agreement (ASA). Under the ASA, Blue Cross processed and paid employee medical claims, then billed Coastal every month for reimbursement and administrative fees. Employees paid their share of these coverages through payroll withholdings.

Sills was Coastal's president and sole owner. He was an authorized signatory on Coastal's bank account and directed the company's finances, including disposition of Plan assets. According to Coastal's CFO, Sills was the ultimate decision-maker concerning what bills were paid and what bills went unpaid.

In 2019, Coastal stopped forwarding employee contributions to Ameritas and Guardian. The insurers terminated coverage in August and November 2019. Despite this, Coastal continued withholding employee contributions through December 27, 2019.

Coastal also sporadically failed to reimburse Blue Cross for employee medical claims, which resulted in suspensions and denied claims. In December 2019, Coastal withheld \$19,618.23 in employee contributions for medical coverage but failed to forward that amount to Blue Cross. Blue Cross suspended claim payments effective December 20, 2019.

On January 6, 2020, Sills terminated the Plan's coverages, retroactive to December 27, 2019. He did not timely execute a run-out agreement,

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through which Blue Cross would have processed employee health claims incurred before December 27 but received after that date. Months later, Sills signed a \$78,119.85 check to Blue Cross to reimburse it for medical expenses Blue Cross had processed and paid. But that amount did not cover run-out claims or other claims that had been denied during one of the ASA's other sporadic suspensions. At least 78 participants had claims denied, leaving \$172,351.35 in unpaid medical expenses.

As relevant here, the Secretary sued Sills on January 24, 2023. On April 10, 2024, the Secretary served Sills with requests for admission to which Sills never responded. By failing to respond, Sills admitted that he “had and exercised discretionary authority, control, and responsibility over Plan management and administration and exercised actual control over Plan assets.”¹ He also admitted that he “was a fiduciary and a party in interest with respect to the Plan” within the meaning of 29 U.S.C. § 1002(14) and (21)(A). He never moved to withdraw these admissions.²

After discovery closed, the Secretary moved for summary judgment. He supported the motion with a statement of uncontested material facts citing: the unanswered requests for admission, Sills's deposition testimony, and sworn statements from the Plan's investigator, Coastal's CFO, and the insurers. Sills filed multiple responses to the motion without leave of court and moved for additional discovery under Rule 56(d). But nowhere in these

¹ See FED. R. CIV. P. 36(a)(1)(A) (permitting requests for admissions relating to facts and “the application of law to fact”); FED. R. CIV. P. 36(a)(3).

² See FED. R. CIV. P. 36(b). In reply, Sills argues he responded to requests for admission submitted to Coastal. We don't consider arguments raised for the first time in reply and, regardless, Coastal's corporate responses to requests for admission cannot double as Sills's own, individual responses.

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responses did Sills address the Secretary's statement of material facts, as required by the district court's Local Rule 56.³

The district court treated the Secretary's statement of undisputed material facts as admitted under Local Rule 56(f), and further found each fact supported by record evidence. It then reviewed each of Sills's filings and found none identified competent evidence that raised a genuine dispute about his status as a functional fiduciary. It therefore entered judgment for the Secretary in the amount of \$209,466.34, plus interest. It also permanently enjoined Sills from serving as a fiduciary to any employee-benefit plan covered by ERISA. The court denied Sills's request for additional discovery under civil Rule 56(d) because it was not supported by an affidavit or declaration. And the court rejected Sills's request for reconsideration under Rule 59(e) as duplicative of Sills's arguments on summary judgment. Sills timely appealed. We review a grant of summary judgment de novo, applying the same standard as the district court.⁴ We review the denial of a Rule 56(d) request and the denial of a Rule 59(e) motion for abuse of discretion.⁵

Sills first contends the district court granted summary judgment by default through its application of Local Rule 56. We disagree. Local Rule 56 does not establish a novel means to enter summary judgment by default but instead implements the requirements of civil Rule 56.⁶ Because Sills did not

³ See M.D. La. Civ. R. 56(c) (requiring the nonmovant to "admit, deny or qualify" each numbered paragraph of the movant's statement and to support any denial or qualification with a record citation); M.D. La. Civ. R. 56(f) ("Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted.").

⁴ See *Tiblier v. Dlabal*, 743 F.3d 1004, 1007 (5th Cir. 2014).

⁵ See *Bailey v. KS Mgmt. Servs., L.L.C.*, 35 F.4th 397, 401 (5th Cir. 2022); *Templet v. HydroChem Inc.*, 367 F.3d 473, 477 (5th Cir. 2004).

⁶ See FED. R. CIV. P. 56(c), (e).

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controvert the Secretary's statement of material facts at all, the district court properly treated the Secretary's facts as undisputed, confirmed that each was supported by record citations, and assessed whether they entitled the Secretary to judgment.⁷ There is thus no basis for us to find the district court entered summary judgment by default.⁸

Sills also claims he was not a functional fiduciary as a matter of law.⁹ The threshold question in this regard is whether Sills "was acting as a fiduciary (that is, was performing a fiduciary function) when taking the action subject to complaint"¹⁰—namely, the decisions not to remit employee contributions and not to pay Blue Cross's invoices. The uncontroverted evidence on summary judgment shows Sills performed as a functional fiduciary: the admissions in the record establish his authority and status, and the deemed-admitted statement of facts attributes to Sills the actions subject to the Secretary's complaint. It is of no moment that the ASA was signed by Coastal's human-resources director or that it identified Coastal as Plan sponsor and named fiduciary; nor does Sills's professed delegation of Plan-related tasks absolve him of his fiduciary obligations.¹¹

⁷ See *Eversley v. MBank Dall.*, 843 F.2d 172, 174 (5th Cir. 1988); FED. R. CIV. P. 56(e)(2)–(3).

⁸ Sills argues for the first time in reply that the court disregarded his deposition testimony where he disclaimed authority over bill payments and payroll deductions. But Sills never alerted the district court to the testimony he now cites in reply. Evidence that is in the record but not cited in a nonmovant's response is not properly before the district court. See *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915–16 & n.7 (5th Cir. 1992). So we would not consider Sills's argument on appeal even had he raised it in his principal brief.

⁹ See 29 U.S.C. § 1002(21)(A)(i), (iii).

¹⁰ *Pegram v. Herdrich*, 530 U.S. 211, 226 (2000).

¹¹ Because Sills admitted, and the record independently shows, that he exercised discretionary authority over Plan management and administration, we need not decide

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Sills next challenges the substance of the judgment by questioning causation, amount, credits, and equitable relief.¹² As to causation, Sills argues that a third-party surety controlled Coastal's receivables and that decisions by the surety caused the Plan's losses. But the insolvency of a Plan sponsor, or a third party's control of a sponsor's receivables, does not excuse a fiduciary's failure to remit employee contributions.¹³ Moreover, it is undisputed that the surety in this case played no role in the Plan's medical claims.

As for the amount of the judgment, the record supports each component of the \$209,466.34 award, which consists of \$172,351.35 in denied Blue Cross claims as well as \$37,114.99 in unremitted employee contributions (\$19,618.23 for Blue Cross coverage, \$7,760.17 for Guardian, and \$9,736.59 for Ameritas).

Regarding credits, Sills argues the \$78,119.85 payment to Blue Cross overlaps with the court's award. But that payment reimbursed Blue Cross for claims it had already processed and paid. Those claims are not part of the \$172,351.35 denied-claims component of the court's judgment, so no offset or further reconciliation is due.¹⁴

Sills's challenge to the permanent injunction depends entirely on vacatur of the liability judgment, so it fails as well.

whether claims reimbursements that Coastal owed Blue Cross under the self-funded arrangement were themselves Plan assets. Neither party addresses the question.

¹² See 29 U.S.C. § 1109(a).

¹³ See *Bannistor v. Ullman*, 287 F.3d 287 F.3d 394, 401–04 (5th Cir. 2002).

¹⁴ Sills's reply brief raises other, more specific arguments about payment and reconciliation, but we do not consider arguments first raised in reply.

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We also find no abuse of discretion by the district court in denying relief under Rule 56(d). Sills submitted no affidavit or declaration as the rule requires, and he acknowledges the omission. Lastly, and regardless of our standard of review, the district court properly denied Sills's Rule 59(e) motion, which merely reiterated his summary-judgment arguments.¹⁵

The district court's judgment is AFFIRMED in all respects.

¹⁵ See *Templet*, 367 F.3d at 479 (stating Rule 59(e) "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment.").