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Roberts v. National Health Corp.

United States Court of Appeals for the Fourth Circuit

November 18, 1997, Submitted ; January 14, 1998, Decided

No. 97-1613

Reporter

1998 U.S. App. LEXIS 446 *; 21 Employee Benefits Cas. (BNA) 2918

CECILIA DIANE ROBERTS, Plaintiff-Appellant, v. NATIONAL HEALTH CORPORATION, Defendant-Appellee, and NATIONAL HEALTH CORPORATION BENEFIT PLAN; NATIONAL HEALTHCARE CORPORATION, Defendants.

Notice: [*1] RULES OF THE FOURTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

Subsequent History: Reported in Table Case Format at: [1998 U.S. App. LEXIS 3522](#).

Prior History: Appeal from the United States District Court for the District of South Carolina, at Anderson. Henry M. Herlong, Jr., District Judge. (CA-96-1913-8-20).

Disposition: AFFIRMED.

Core Terms

notice, coverage, mailed, adequacy, district court, requirements

Case Summary

Procedural Posture

Plaintiff employee sought review of the grant of summary judgment by the United States District Court for the District of South Carolina in favor of defendant employer, on the grounds that the employer did not satisfy the notice requirements of the Consolidated Omnibus Reconciliation Act of 1985 extension provisions of the Employee Retirement Income Security Act of 1974 upon the employee's assertion of claims for benefits.

Overview

Shortly after leaving employment with the employer, the employee was hospitalized. The employee filed an action against the employer asserting claims for benefits, and discrimination under the Employee Retirement Income Security Act of 1974 (ERISA), and breach of fiduciary duty under the Consolidated Omnibus Reconciliation Act of 1985 (COBRA). The district court granted summary judgment in favor of the employer. The employee sought review on the grounds that she received no notice from the employer and, therefore, the employer did not satisfy the notice requirements of the COBRA extension provisions of ERISA. On appeal, the court held that the adequacy of the employer's notice was implicit in the district court's holding that the employer had met its burden of proving that it complied with COBRA's notice provisions. The court found that the evidence of the employer's COBRA report that was stamped with the date it was mailed to the employee complied with the mandates of [29 U.S.C.S. § 1166\(a\)\(4\)](#). The court held that the employee's claim was based solely on unsupported speculation, which was insufficient to overcome summary judgment.

Outcome

The court affirmed the district court's decision granting summary judgment in favor of the employer on the issue of the adequacy of the COBRA notice sent to the employee.

LexisNexis® Headnotes

Civil Procedure > Appeals > Summary Judgment Review > Standards of Review

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > Appeals > Standards of Review > De Novo Review

[HN1](#) [↑] The district court's grant of summary judgment is reviewed de novo.

Healthcare Law > Payment Systems > Insurance Coverage > General Overview

Pensions & Benefits Law > Consolidated Omnibus Budget Reconciliation Act > General Overview

Business & Corporate Compliance > ... > Pensions & Benefits Law > Consolidated Omnibus Budget Reconciliation Act > Notice Requirements

[HN2](#) [↑] [29 U.S.C.S. § 1166\(a\)\(4\)](#) requires the notice to disclose a beneficiary's rights under this subsection. The information should adequately inform the employee about the coverage the employee is entitled to receive and the money that the employee owes in order to maintain coverage. The notice must be sufficient such that the discharged employee could make an informed and intelligent decision whether to elect continuation coverage.

Counsel: Robert Edward Hoskins, FOSTER & FOSTER, L.L.P., Greenville, South Carolina, for Appellant.

William H. Foster, NELSON, MUL LINS, RILEY & SCARBOROUGH, L.L.P., Greenville, South Carolina, for Appellees.

Judges: Before WILKINS and MOTZ, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

Opinion

OPINION

PER CURIAM:

Cecilia D. Roberts appeals the district court's grant of the Defendant's summary judgment motion. While judgment was granted on a number of issues, Roberts appeals only one. Specifically, she claims that her employer did not satisfy the notice requirements of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) extension provisions of the Employee Retirement Income Security Act of 1974 (ERISA) upon its assertion that it deposited a notice in the mail to the

proper address in a timely fashion, when she contends that she [*2] received no notice and the employer is unable to produce a copy of the actual notice sent.

Roberts worked as a nurse's aid for the National Health Corporation; as an NHC employee, Roberts was a participant in the National Health Corporation Benefit Plan (collectively NHC). Her last day of work was October 23, 1993. Shortly thereafter, she was hospitalized from October 29, 1993, to November 11, 1993. She filed this action asserting claims for benefits and discrimination under ERISA and breach of fiduciary duty under COBRA.¹

The district court determined that NHC made a good faith attempt to comply with a reasonable interpretation of the provisions of COBRA by virtue of the fact that NHC produced business records which reflected that a form COBRA letter was mailed to Roberts at the correct address, and that such letter was sent as part of NHC's customary mailing practices of an automated system. [*3] The district court held that NHC proved not only an established procedure, but also provided evidence that the procedure was followed in Roberts' case. The district court held that while NHC was unable to produce a copy of the actual letter mailed to Roberts,² it did produce a COBRA report that is stamped with the date the COBRA letter was mailed to Roberts. Citing *Myers v. King's Daughters Clinic*, 912 F. Supp. 233, 236 (W.D. Tex.), *aff'd*, 96 F.3d 1445 (5th Cir. 1996), the district judge opined that Roberts's only means of rebuttal, that is, her contention that she did not receive the letter, is insufficient to overcome the fact that NHC met its burden of proving that it complied with COBRA's notice provisions. Finally, the district court held that NHC's established notification procedure, combined with a copy of the COBRA report stamped with the day the letter was mailed, fulfilled any record-keeping requirements imposed on an employer pursuant to [29 U.S.C. §§ 1027, 1059 \(1994\)](#).

[*4] [HN1](#) [↑]

The district court's grant of summary judgment is reviewed de novo. *Bailey v. Blue Cross & Blue Shield of Virginia*, 67 F.3d 53, 56 (4th Cir. 1995). While Roberts

¹ Roberts thereafter voluntarily dismissed her benefits claim, and the case progressed solely on her COBRA claim.

² Apparently, NHC usually maintains copies of the COBRA letters, but admitted to misplacing the letters for the time period in which Roberts' notice was sent.

acknowledges on appeal that NHC's attestation as to its timely mailing of the COBRA notice settles that issue in NHC's favor, she contends that the issue remains as to whether the notice was adequate, and because NHC cannot produce a copy of the actual letter sent to her, it cannot prove the adequacy of the notice under [29 U.S.C.A. §§ 1161, 1166 \(West Supp. 1997\)](#), a burden Roberts claims is on NHC.

While Roberts is correct that the district court failed to specifically address in its opinion Roberts' claim of adequacy of the notice, or to analyze NHC's form letter for its adequacy under [§ 1166](#), we find that the adequacy of the notice is implicit in the district court's holding that NHC met its burden of proving that it complied with COBRA's notice provisions.

[HN2](#)[↑] [Section 1166\(a\)\(4\)](#) requires the notice to disclose "such beneficiary's rights under this subsection." The information should adequately inform the employee about "the coverage[the employee] [is] entitled to receive and the money that [the employee] owes in [*5] order to maintain [] coverage." [Lincoln Gen. Hosp. v. Blue Cross/Blue Shield of Nebraska, 963 F.2d 1136, 1140 \(8th Cir. 1992\)](#). The notice must be sufficient such that the discharged employee could make an informed and intelligent decision whether to elect continuation coverage. See [id. at 1140](#); [Meadows v. Cagle's, Inc., 954 F.2d 686, 692 \(11th Cir. 1992\)](#).

Agreeing, as Roberts specifically does on appeal, that NHC did timely send her a COBRA notice, based upon its evidence that it followed its usual and customary business procedure of mailing its form COBRA letter to her at her proper address, it follows that that same form letter should be used to determine whether NHC's notice was substantively adequate in terms of the requirements of ERISA. In fact, the only evidence in the record from which the adequacy of the notice sent to Roberts may be determined is NHC's form COBRA letter. We find that the form letter complies with the mandates of [§ 1166\(a\)\(4\)](#). The letter notifies the employee of the date of termination of coverage, as well as the reason for such termination. It sets forth the applicable law as to the requirement of the employer to continue to provide health [*6] benefit coverage to the employee, the cost (via an attachment) of the coverage, and the length of time health benefit coverage will continue. It further sets forth all requirements of the employee to elect and keep such coverage, as well as the parameters of the coverage. Moreover, Roberts does not dispute NHC's contention that the form COBRA notices sent by NHC to its employees via

computer generation are in compliance with [§ 1166](#).

Roberts has offered no facts to support her claim that the NHC notice sent to her was not adequate. Rather, her claim is based solely on her unsupported speculation, which is insufficient to overcome summary judgment. See [Ash v. United Parcel Serv., Inc., 800 F.2d 409, 411-12 \(4th Cir. 1986\)](#).

Accordingly, we affirm the district court's decision granting summary judgment in favor of NHC on the issue of the adequacy of the COBRA notice sent to Roberts. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

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