

No. 25-CV-101

In The
Sixth Circuit Court of Appeals

Elinor Dashwood, Individually and on Behalf of the Estate of Marianne Dashwood
and a Class of Others Similarly Situated

Appellant,

v.

Willoughby Health Care Co., Willoughby RX, and ABC Pharmacy, Inc.,
Appellee.

On Appeal to the United States District Court for the Eastern District of Tennessee

BRIEF FOR THE Appellee

TEAM 8

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QUESTION PRESENTED

1. Whether the district court properly dismissed the Appellant's amended complaint for failing to state a claim for wrongful death under Tennessee law against either ABC Pharmacy or Willoughby RX, pursuant to the Federal Rules of Civil Procedure ("FRCP") 12(b)(6). More specifically, whether the district court erred in finding that Count I – alleging a predicate duty established by Tennessee law allows for a wrongful death suit arising from the allegation that the application of plan policy regarding administration of prescription drug benefits is inconsistent with Tennessee law – is preempted by ERISA.
2. Whether the district court properly dismissed the Appellant's amended complaint for failing to state a claim for fiduciary breach against Willoughby Health Care and Willoughby RX based on a disgorgement remedy under ERISA Section 502(a)(3). More specifically, whether the district court erred in finding that the Appellant's amended complaint fails to: (1) highlight specifically identifiable funds that allegedly motivated the Willoughby Defendants, (2) show how Willoughby Health Care can be surcharged for payments possibly provided to Willoughby RX, and (3) allege that the possible funds remain in Willoughby RX's possession.

STATEMENT OF THE CASE

This case arises from the death of Marianne Dashwood (“Ms. Dashwood”) as a result of an allergic reaction caused by her ERISA plan health insurance provider’s decision to swap out the antibiotic she had been prescribed to treat an infection of MRSA with a preapproved, similar alternative drug per the plan’s prescription drug policy.

Following Ms. Dashwood’s death, her sister, Elinor Dashwood brought suit in the United States District Court for the Eastern District of Tennessee seeking compensatory and punitive damages under a state wrongful death claim, as well as declaratory, injunctive, and other appropriate equitable relief, including surcharge and disgorgement of all amounts by which Willoughby RX and Willoughby Health Care profited for claims of fiduciary breach in violation of ERISA Section 404 , 29 U.S.C. § 1104.

The United States District Court for the Eastern District of Tennessee granted Defendants’ motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), finding that Petitioners had failed to state a claim for which relief could be granted, as (1) the state wrongful death claim was preempted under ERISA’s express preemption clause, and (2) the remedies sought for breach of fiduciary duty was not available under ERISA.

Petitioners appealed the District Court’s decision. The Sixth Circuit Court of Appeals granted petitioners appeal and set oral argument for March 6, 2026.

STATEMENT OF THE FACTS

Prior to her death in 2024, Marianne Dashwood was a participant in a fully insured healthcare plan sponsored by her former employer, Cottage Press. Ms. Dashwood worked at one of the numerous Cottage Press locations in Johnson City, Tennessee, where she was a permanent resident. As an academic publishing company, Cottage Press is not limited to Tennessee, but is also found in North Carolina and Virginia, where they sponsor healthcare plans for their employees. The plan provided is fully insured by Appellee Willoughby Health Insurance Co. and is governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §1001 *et seq.*

Willoughby Health is a nationwide health care insurance company that is granted full discretionary authority to decide claims for benefits, as well as administer said benefits under the Plan. In administering these benefits, Willoughby Health properly delegated authority to Willoughby RX, a subsidiary of Willoughby Health and a pharmacy benefit manager (“PBM”), which created a “formulary” of preferred drugs used in deciding prescription drug claims. Willoughby RX had the authority to develop both this formulary of covered drugs and policies concerning this formulary as Willoughby Health is empowered to delegate authority over to a PMB. Additionally, a newly acquired subsidiary of Willoughby RX, and falling within the larger corporate umbrella of Willoughby Health Care, is Appellee ABC Pharmacy. ABC Pharmacy is a nationwide

pharmacy chain that has retail outlets through the United States, including Johnson City where Ms. Dashwood lived and worked.

Willoughby RX, acting through ABC Pharmacy and in accordance with its “formulary,” routinely switches similar, preferred drugs for prescribed medication. These routine switches are done without contacting the prescribing doctor unless a plan participant, beneficiary, or prescribing doctor expressly objects. In Ms. Dashwood’s case, her prescribed medication was substituted for a similar preferred drug in accordance with the “formulary.” There was no express objection to this action from Ms. Dashwood, who at the time was the plan participant, her beneficiary, or her prescribing doctor.

Ms. Dashwood accidentally cut her leg while on a hike, causing her to develop a serious MRSA infection leading to her hospitalization at Johnson City Hospital Center in early December 2024. While hospitalized, Ms. Dashwood informed her medical team of an allergy to sulfonamides, also known as sulfa drugs, discovered in 2022 when she had a severe allergic reaction to another sulfa drug that had been prescribed. Johnson City Hospital treated her accordingly, through an intravenous drip of antibiotic vancomycin. She was ultimately released on December 10th after responding well to the treatment and was given a five-day prescription for the same antibiotic.

Her sister, Appellant Elinor Dashwood (“Elinor”), brought said prescription to an ABC Pharmacy in Johnson City. Ms. Dashwood’s insurance, acting in accordance with its “formulary,” switched the prescribed vancomycin to a similar drug provided by the formulary, Bactrim, which was provided to Elinor. Elinor was informed of this switch and that Bactrim was just a generic form of vancomycin. However, Bactrim is not a generic form of vancomycin since they come from two different drug families, resulting in different bodily responses. Vancomycin comes from a class of antibiotics called fluoroquinolones. Bactrim originates from a class of antibiotics called sulfonamides; the class of drugs Ms. Dashwood has a well-documented allergy to. Ms. Dashwood, after taking Bactrim for just over a day, suffered a severe allergic reaction which led to her death while in transport to the hospital.

In administering the benefits of Ms. Dashwood’s Plan, by switching to the formulary preferred drug Bactrim, neither Willoughby Health Care, Willoughby RX, nor ABC Pharmacy consulted Ms. Dashwood’s doctor. Although a recent Tennessee pharmaceutical law has made it illegal for a pharmacy or a PBM to change prescribed medications without a treating physician’s authorization, there is no private right of action established by this law nor does it escape preemption with respect to Plans that fall within section 514 of ERISA. Additionally, it is claimed that Willoughby Health Care and Willoughby RX switch prescriptions for

similar preferred drugs because of financial incentives provided by drug manufacturers rather than legitimate medical reasons. However, although both Willoughby appellees are beneficiaries of such an arrangement, there are no specific funds within the beneficiaries' possession to confirm this claim, and there is no equitable relief to be granted under section 502 of ERISA.

Ultimately, Elinor brought this suit individually and on behalf of Ms. Dashwood's estate, for which she was appointed Executrix, as well as a class of others she felt were similarly situated with respect to count II.

SUMMARY OF ARGUMENT

Appellant's claims must be dismissed for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6).

Appellant's wrongful death and violation of Tennessee state law claim is preempted by ERISA because the governed plan is closely related to the authority granted to Willoughby Health to administer prescription drug benefits under the plan. Willoughby Health is empowered to delegate to Willoughby RX, its PBM, the authority to develop a formulary of covered drugs and apply said formulary when deciding prescription drug claims. Further, both the actions being in connection to plan administration and benefit structures and the remedies sought for injuries stemming from plan administration, preempts Appellant's claim under 29 U.S.C. §1132(a).

Relief cannot be granted in accordance with the Appellant's claim for disgorgement and request restitution of ill-gotten gains. For a remedy to constitute appropriate equitable relief within the meaning of ERISA section 502(a)(3), the basis of the claim and the nature of the underlying remedy sought must be equitable in nature. Not only are equitable surcharges for a beneficiary's losses considered a type of damages not recoverable by ERISA plaintiffs, but Appellant also fails to specify identifiable funds within the beneficiaries' possession. As such, the lower court's decision to grant the Appellee's motion to dismiss should be upheld.

ARGUMENT

The court should find that the Appellant: (1) has failed to state a claim for wrongful death under Tennessee law against either ABC Pharmacy or Willoughby RX as it is preempted by ERISA, and (2) has failed to state a claim for which relief can be granted for fiduciary breach against Willoughby Health Care and Willoughby RX under ERISA. In evaluating Appellant's wrongful death claim, the court should find that the characteristics of the governing plan and the plan's prescription policy relates to the administration of prescription drug benefits under the plan, couching it within the express preemption provision in ERISA Section 514. A state law claim is expressly or implicitly preempted if it falls under the ERISA preemption provision, thus Appellants wrongful death claim must be

barred. The Court should also find that Appellant's claim cannot be remedied under the "catch-all" provision within ERISA Section 502, as Appellant has failed to identify specific funds that the Appellee unjustly possessed. Additionally, the savings from switching the expensive medications for cheaper medications are not specifically identifiable funds, and any kickbacks went to Willoughby RX not Willoughby Health Care, making it incapable of being surcharged. The court should affirm the lower court's decision to grant Appellee's motion to dismiss both counts propounded in Appellant's amended complaint.

I. ERISA's express preemption provision in Section 514, 29 U.S.C. § 1144(a), preempts the Appellant's Wrongful Death Claim

ERISA contains an express preemption provision indicating that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. Section 514(a), 29 U.S.C. § 1144(a). State law may be expressly or implicitly preempted under ERISA. (citation). A law is expressly preempted where it "relates to" any employee benefit plan. (citation). Historically, The Court has interpreted the phrase "relate to" broadly, pertaining to any state laws that have "a connection with or reference to" an ERISA plan. *Rutledge v. Parm. Care Mgmt. Ass'n*, 592 U.S. 80,86 (2020). A claim is preempted under the "connection to" prong if it "governs a central matter of plan administration or interferes with nationally uniform plan administration." *Rutledge*, 592 U.S. at 87. A wrongful death claim is preempted under ERISA if it

is predicated upon the refusal to authorize certain benefits such that it would impose external governance on central plan administration, jeopardizing uniformity. *Tolton v. Am. Biodyne, Inc.*, 48 F.3d 937, 942 (6th Cir. 1995). Courts have held that such state law claims when “related to” benefit plans are “thus . . . preempted by ERISA.” *Id.* This application has been followed by other courts, finding ERISA Section 514 preempts wrongful death claims based on an insurer’s denial of benefits under an ERISA governed plan. *See, e.g., Turner v. Fallon Cnty. Health Plan, Inc.*, 127 F.3d 196, 197-99 (1st Cir. 1997) (State law claims were preempted and “ERISA did not provide damages remedy for denial of rights under benefits plan or breach of fiduciary duty in withholding of such benefits” in refusing to provide coverage for a patients treatment regime); *Spain v. Aetna Life Ins. Co.*, 11 F.3d 129, 131 (9th Cir. 1993) (The “sole exception to ERISA’s preemption rule for any law of any state which regulates insurance, banking, or securities did not apply to [a] state common-law wrongful death claim”); *Corcoran v. United Healthcare, Inc.*, 965 F.2d 1321, 1332 (5th Cir. 1992), *abrogated on other grounds by, Mertens v. Hewitt Assocs.*, 508 F.3d 248 (5th Cir. 1993).

Similarly, a law is implicitly preempted for any claim “that duplicates, supplements, or supplants the ERISA civil enforcement remedy” set forth in ERISA Section 502(a), 29 U.S.C. § 1132(a), such that it “conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-

empted”. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004). Were the court to permit Appellant’s claim to proceed – a claim based in a remedy explicitly rejected by Congress as available under ERISA – federal policy choices would be undermined. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987). Thus, preemption applies where there is no independent legal duty implicated by Appellee’s actions, and the denial of coverage is regarding coverage to which Appellant is only entitled to because of the terms of an ERISA-regulated employee benefit plan. *Davila*, 542 U.S. at 210. ERISA preemption is primarily concerned with pre-empting laws requiring providers to structure benefit plans in particular ways. 592 U.S. at 86-87. While state laws that are “merely a form of cost regulation” will not be subject to preemption, those that are “so acute that it will effectively dictate plan choices” may not stand. *Rutledge*, 592 U.S. at 86-87.

Appellant’s claim is both explicitly and implicitly preempted. Under Section 514(a) of ERISA, 29 U.S.C. § 1144(a), Appellant’s claim is explicitly preempted because it “relates to” the administration of prescription drug benefits under the plan. Appellants challenge Appellee’s application of policies in administering prescription drug benefits under the plan, asserting, in essence, that Ms. Dashwood’s death resulted from the way in which benefits under the plan were administered. As described in the summary plan description (“SPD”), Willoughby Health was empowered to delegate to its PBM, Willoughby RX, the authority to

develop both a formulary of covered drugs and policies concerning the formulary, and to apply policies in deciding prescription drug claims. The delegation of authority with respect to regulation of prescription drug claims is a central policy of plan administration, such that Tennessee law (which would otherwise invalidate the plan's system of a formulary and policy of swapping similar less expensive drugs for those more expensive, barring objection from the plan holder, beneficiary, or physician) would mandate drastic, unique structural changes in the administration of ERISA plan benefits.

Appellants may argue that The Supreme Court and the Sixth Circuit have only extended preemption under ERISA to cases involving the refusal to authorize certain benefits, as in *Davila* and *Tolton*. While Appellants may argue that requiring a plan to obtain consent from a patient or provider prior to swapping medications is not “related to” the administration of a plan such that it is not premised on the denial of benefits, the way in which a plan approves or denies prescription drugs is centric to the administration of plan benefits. Being denied the original prescription and given the available prescription per the formulary under the plan constitutes a form of benefit denial.

Nevertheless, Willoughby RX and ABC Pharmacy's extend and provide benefits in regard to certain prescription drugs and the prescription administered to those insured. The monitoring and making adjustments to prescriptions through the

created formulary “relates to” the administration of prescription drug benefits under the plan and thus is preempted under ERISA Section 514(a) and Section 502(a).

II. The losses and harms alleged by the Appellant are not remediable under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3)

The Appellant fails to assert a claim for fiduciary breach against Willoughby Health and Willoughby RX. Under ERISA, a plan participant or beneficiary is authorized to sue “(A) to enjoin any act or practice which violates [ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provision of this [subchapter] or the terms of the plan.” Section 502(a)(3), 29 U.S.C. § 1132(a)(3). The Court has determined that individual harms that stem from fiduciary breaches in operation of plan, can be remedied under Section 502(a)(3); however, those remedies must constitute “appropriate equitable relief,” meaning remedies “typically available in equity.”

Varsity Corp. v. Howe, 516 U.S. 489, 507 (1996); *Aldridge v. Regions Bk.*, 144 F.4th 828, 846 (6th Cir. 2025). To constitute “appropriate equitable relief” in relation to ERISA Section 502(a)(3), both the basis of the claim itself and the nature of the underlying remedy itself must be equitable in nature. *Sereboff v. Mis Atl. Med. Servs.*, 547 U.S. 356, 363 (2006). However, courts have routinely held that when a remedy is sought under ERISA Section 502(a)(3), not *all remedies* typically available in a court of equity are available, even those remedies with an

equitable basis. *Aldridge*, 144 F.4th at 846 (citing *Mertens v. Hewitt Assoc.*, 508 U.S. 248, 256 (1993)). Rather, the only remedies that are available under Section 502(a)(3) are those *typically* available. *Id.* Further, the Court in *Mertens* highlighted that “[e]quitable’ relief must mean something less than all relief.” *Mertens v. Hewitt Assoc.*, 508 U.S. at 258.

Remedies including equitable surcharge, general restitution, and disgorgement are unavailable to ERISA plaintiffs. In *Aldridge*, the court determined that a request for an equitable surcharge to compensate for a beneficiary's losses is a damages remedy that is unrecoverable by an ERISA plaintiff and cannot be sued for under §1132(a)(3). *Id.* Recovery was similarly unavailable in *Mertens*, when an ERISA plaintiff sought to recover monetary losses from a non-fiduciary who knowingly participated in an administrator's breach of fiduciary duties. *Mertens*, 508 U.S. at 255, 256. Additionally, the court in *Rose* found that in order for a remedy to qualify as “equitable” under the ERISA “catch-all” provision, the remedy must be property, rather than personal, and thus recovery could not occur with respect to a defendant's general assets. *Rose v. PSA Airlines*, 80 F.4th 488 (4th Cir. 2003). In order to recover, the court required plaintiff to identify specific property or money in the defendant's possession, rightfully belonging to the plaintiff. *Id.*

Similarly, a remedy that the Sixth Circuit has found to be nonactionable is the request for compensatory damages, or more broadly the request for monetary relief when “measured by the plaintiff’s ‘losses,’” and when the assets sought come from the “general assets” of a beneficiary. *Id.* at 846. This was clearly outlined in *Aldridge*, where the court concluded that when a restitution remedy is raised to recover from a fiduciary, it must seek “specific funds in the beneficiaries’ possession” in order to be equitable. *Id.* Importantly, the funds, aside from being specific, must be shown to be *in* the beneficiaries’ possession. *Id.* Thus, for the Court to consider the Appellant’s requested remedies in relation to Section 502 of ERISA, they must have pointed to *specific funds* that were *in* Willoughby Health or Willoughby RX’s *possession*. Appellants have failed to identify specific funds in either Willoughby defendant’s possession, and seek an equitable remedy which the court has found unavailable under an ERISA Section 502(a)(3) action, thus Appellants have failed to state an aim for which relief can be granted.

First, the Appellant’s claim for economic damages as compensation for Ms. Dashwood’s losses (accounting for loss of lifetime earnings as a result of death), is nonactionable and impermissible. The court has held that a plea to recover an “equitable surcharge” based on an ERISA healthcare plan beneficiary’s loss is nonactionable. Though *Aldridge* turned on the loss of benefits by participants in a “top-hat” retirement plan when their employer declared bankruptcy, the court

relied and expanded upon *Mertens*, both of which determined that a request for monetary relief based on a beneficiary's loss or denial of benefits is not a claim for "equitable relief." Further, as seen in *Turner*, the Supreme Court has stressed that ERISA does not "create compensatory or punitive damage remedies where an administrator of a plan fails to provide the benefits due under that plan." *Turner*, 127 F.3d at 198 (citing *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134 (1985)). Appellant's claim is predicated on a veritable denial of benefits, as Ms. Dashwood's provider's request for Vancomycin was virtually denied, and substituted for the pre-approved, similar, alternative drug per the plan formulary. As such, the Appellant's request for monetary relief for the "losses" of Ms. Dashwood, the plan beneficiary, does not authorize a civil action to redress any violations of ERISA or her plan.

Secondly, Appellant fails to name specific funds in the beneficiaries' possession in its claim for disgorgement against Willoughby Health and Willoughby RX. Rather, Appellant seeks a money judgment collectable from any of the beneficiaries' general assets. Such a request constitutes a request that is *per se* a non-equitable remedy under ERISA, because it does not seek *specific funds* that are *in* the beneficiaries' possession. Identification of specific funds within the beneficiaries' possession are necessary conditions for an equitable remedy as

defined by ERISA. *Aldridge*, 144 F.4th at 846 (citing *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213-214 (2002)).

Appellant refers to the difference between the cost of Vancomycin and Bactrim, in addition to the incentivizing payments made by Bactrim manufacturers for classification as a preferred prescription as the plan's formulary alternative for Vancomycin. The cost savings between the drug costs are not specifically identifiable funds from which Appellants can claim a right of recovery, as the specific figure is unattainable, thus relief can not be granted against either Willoughby RX or Willoughby Health Care. Furthermore, Appellants have failed to assert that Willoughby RX is in possession of the funds, and nor did the funds, in fact, remain in Willoughby RX's possession, thus barring recovery of the sought funds from Willoughby RX.

CONCLUSION

For the foregoing reasons, the judgement of the District Court for the Eastern District of Tennessee should be affirmed. Appellants have failed to state a claim for which relief can be granted, as their wrongful death claim is expressly and implicitly preempted by ERISA Section 514, 29 U.S.C. § 1144(a), as it is predicated upon a state law which seeks to regulate plan conduct which "relate to" plan administration. Additionally, Appellants seek relief which the court may not grant as an equitable surcharge is an impermissible remedy under ERISA Section

502(a)(3), 29 U.S.C. § 1132(a)(3). Furthermore, Appellants seek a remedy which fall outside the scope of equitable remedies permitted by ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3) as the money damages they seek are not a specifically identifiable sum within Appellee's possession. Appellants have failed to state a claim upon which relief can be granted; thus, the case was appropriately dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). This case should be dismissed, and the decision of the District Court affirmed.