

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

JACQUELINE CHARTRANT
GRESEHOVER,

Plaintiff,

vs.

Case No. 2015-4375-CB

GARDNER WHITE
FURNITURE CO, INC.,

Defendant.

OPINION AND ORDER

Defendant has filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

Plaintiff is the widow of David Gresehover, one of Defendant's former employees. Mr. Gresehover was hired by Defendant in January 2012. In connection with his employment, Mr. Gresehover completed a benefit election form through which he selected from multiple different benefit options. The benefits chosen applied from April 1st through March 31st of the following year. In March 2013, Defendant provided Mr. Gresehover with a benefit election form, through which he selected, *inter alia*, a \$150,000.00 voluntary life insurance policy ("Policy"). Plaintiff was named as the primary beneficiary under the Policy. The Policy had an effective date of June 1, 2013.

On April 21, 2015, Mr. Gresehover committed suicide. Plaintiff thereafter made an application for benefits under the life insurance policy Mr. Gresehover had selected. In

response, non-party Guardian Life Insurance Company (“Guardian”) denied the request on the basis that the death was the result of a suicide within two year of the effective date of the policy.

On December 8, 2015, Plaintiff filed her complaint in this matter against Defendant. In her complaint, Plaintiff alleges that Defendant breached its contractual obligation to obtain coverage under the Policy beginning on April 1, 2013 (Count I), and that Defendant was negligent in failing to obtain coverage under the Policy in a timely manner (Count II). On February 19, 2016, Defendant filed its instant motion for summary disposition. On March 11, 2016, Plaintiff filed her response. On March 21, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtko v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C) (10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in

opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

II. Arguments and Analysis

A. ERISA

In its motion, Defendant contends that Plaintiffs' claims are preempted under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 USC *et. seq.* ERISA preempts "any and all state claims insofar as they may now or hereafter relate to any employee benefit plan." 29 USC § 1144(a). While Plaintiff contests whether the Policy qualifies as an ERISA plan, she avers that the Court need not address that issue because claims arising from conduct prior to obtaining the Policy are not preempted.

ERISA preempts state law claims that "relate to" any employee benefit plan. See 29 U.S.C. § 1144(a); *Davies v. Centennial Life Ins.*, 128 F3d 934, 941 (6th Cir 1997). A law relates to an employee welfare plan if it "has a connection with or reference to such a plan." See *Davies*, slip. op. at 7–8, quoting *Shaw v. Delta Air Lines, Inc.* 463 US 85, 96–97, 103 S Ct 2890, 77 L Ed 2d 490 (1983). These "connection with" and "reference to" prongs are separate and distinct. *Id.* A state law may be preempted "even if the law is not specifically designed to affect such plans, or the effect is only indirect." *Zuniga v. Blue Cross & Blue Shield of Mich.*, 52 F3d 1395, 1401 (6th Cir.1995), quoting *Ingersoll-Rand v. McClendon*, 498 US 133, 139, 111 SCt 478, 112 L.Ed.2d 474 (1990). Thus, "only those state laws and state law claims whose effect on employee benefit plans is merely tenuous, remote or peripheral are not preempted." *Cromwell v. Equicor-Equitable HCA Corp.*, 944 F2d 1272, 1276 (6th Cir 1991). Finally, "[i]t is not the label

placed on a state law claim that determines whether it is preempted, but whether in essence such a claim is for the recovery of an ERISA plan benefit.” *Id.*

In *Aetna Health Inc v Davila*, 542 US 200 (2004), the United States Supreme Court set forth a two part test for determining whether a state law claim is completely preempted by ERISA. Specifically, a claim is completely preempted if: (1) the plaintiff “could have brought [its] claim under ERISA § 502(a)(1)(B),” and (2) “there is no other independent legal duty that is implicated by a defendant’s actions.” *Id.* at 210.

In *Estate of Minko ex rel Minko v Heins*, -- F Supp 2d -- (WD Wis, 2015), slip op at 3, the Court held that claims do not satisfy the *Davila* test, and are therefore not preempted where those claims depend on the terms of an employment contract and/or the defendant’s potential obligations under the contract or other duties under state law, and where the claims do not turn on the interpretation of the plan’s terms.

In addition, in *Franciscan Skemp Healthcare, Inc. v Central States Joint Bd Health and Welfare Trust Fund*, 538 F3d 594 (7th Cir 2008), the Court rejected preemption argument where the claims at issue did not arise from the plan or its terms, but rather from defendant’s allegedly tortious and/or negligent conduct. Specifically, in *Franciscan*, the Court noted that the plaintiff conceded that coverage was properly denied under the plan, but that defendants were nevertheless liable based on their failure to obtain the proper coverage. *Id.* at 597-599.

Additionally, in *Garner v Heartland Indus Partners, LP*, 715 F3d 609 (6th Cir 2013), the Court, in citing to *Davila*, held that where the duty at issue is not derived from, or conditioned upon, the terms of the plan, that duty is based upon a duty

independent of ERISA and the plan's terms, and is therefore not a claim preempted by ERISA. *Id.* at 614.

In this case, as in the above-referenced cases, Plaintiff's claims do not require the Court to interpret the terms of the Policy. Indeed, Plaintiff concedes that denial of coverage under the Policy was appropriate. In the Complaint, Plaintiff alleges that Defendant breached its contractual obligation to obtain \$150,000.00 in voluntary life insurance by April 1, 2013. Accordingly, the Court is satisfied that Plaintiff's claims in this case do not arise from the Policy, but rather from Defendant's duties under state law. Consequently, the Court is convinced that Plaintiff's claims are not preempted under the *Davila* test.

B. Failure to State a Claim

Defendant further contends that Plaintiff's claims should be dismissed even if they are not preempted because they fail to state claims upon which relief can be granted. With respect to Plaintiff's breach of contract claim, Defendant contends that the benefit selection form in and of itself is not a binding contract. In response, Plaintiff avers that her claims are not based solely on the benefit selection form; rather, Plaintiff avers that her claims are based on Defendant's promise to obtain \$150,000.00 in voluntary life insurance coverage beginning on April 1, 2013 in consideration for his continued employment, and that she is entitled to the benefit of that bargain as a known third-party beneficiary. (See Complaint, at ¶¶23-31.) While Defendant challenges that terms of the alleged contract, and requests that the Court examine various documents, such inquiries sound in review under MCR 2.116(C)(10) rather than (C)(8).

A court examines only the pleadings, and “[s]ummary disposition on the basis of subrule (C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery.” *Dailey v Dykema Gossett*, 287 Mich App 296, 305; 788 NW2d 679 (2010). Defendant’s only basis for summary disposition of Plaintiff’s breach of contract claim outside of preemption is its contention that Plaintiff has failed to state a claim upon which relief can be granted. While Defendant may ultimately establish that no contract requiring it to obtain the insurance in question prior to April 1, 2013 existed, the Court is satisfied that Plaintiff’s complaint has set forth allegations sufficient to state a claim for breach of contract. Consequently, Defendant’s motion must be denied.

Finally, Defendant assert that Plaintiff’s negligence claim is barred because she has not alleged that it breached a duty separate and distinct from the alleged contract. The failure to properly perform a contractual duty does not give rise to an action in negligence unless the plaintiff alleges a violation of a duty separate and distinct from the duty imposed under the contract. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 467; 683 NW2d 587 (2004). “If no independent duty exists, no tort action based on a contract will lie.” *Id.* In this case, Plaintiff has alleged that Defendant acted as Mr. Greshover’s and her agent in securing the insurance coverage at issue, and that it breached its duty by failing obtain coverage in a timely manner. (See Complaint, at ¶¶33-35.) However, those allegations are the same allegations as are contained in Plaintiff’s breach of contract claim. (*Id.* at ¶29.) Consequently, Plaintiff has failed to plead that Defendant has breached any duty separate and distinct from its alleged contractual duty. As a result, Plaintiff has failed to properly state a claim for negligence. Accordingly,

Defendant's motion for summary disposition of Plaintiff's negligence claim must be granted.

IV. Conclusion

For the reasons discussed above, Defendant's motion for summary disposition is GRANTED, IN PART, and DENIED, IN PART. Specifically, Defendant's motion for summary disposition of Plaintiff's negligence claim is GRANTED. The remainder of Defendant's motion is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: MAY 17 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge