

I. FACTS

The following facts are alleged in the complaint. The plaintiff, Reid O'Connell, is married to Gail O'Connell. Gail O'Connell is not a party to this action, but her pension is the center of controversy in this case. Gail O'Connell was employed by Hartford Hospital and CCMC, and has received a lump-sum payment of her pension from the hospitals. Plaintiff alleges that Kenney is the plan administrator for the Hartford Hospital plan, and that Murphy is the plan administrator for the CCMC plan.

Gail O'Connell began working at Hartford Hospital in June of 1967, and continued until 1996. At that time the pediatric department of Hartford Hospital merged with the pediatric department of CCMC. Gail O'Connell continued employment at CCMC until she took early retirement in July of 2001. Gail O'Connell was entitled to a pension from both Hartford Hospital and CCMC according to the "transfer policy" of the "cooperating hospital[s]." Gail O'Connell elected to receive a lump-sum payment of her pension in October of 2001. Gail O'Connell unsuccessfully contested the calculation of the lump-sum payment of both benefit plans. Plaintiff, who was a named beneficiary of Gail O'Connell's pension plan, asserts that Gail O'Connell remains entitled to additional benefits as a participant in the retirement plan of the cooperating hospitals. Plaintiff

unsuccessfully appealed the calculation of the lump-sum paid to Gail O'Connell through administrative processes with Hartford Hospital and CCMC in December of 2001 on behalf of Gail O'Connell by way of his power of attorney. Plaintiff was unable to come to an agreement with his wife's former employers over the alleged miscalculation.

II. DISCUSSION

O'Connell sets forth three counts in his complaint. Defendants seek dismissal of each count of the complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Alternatively, defendants seek dismissal of Count III pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

A. STANDARD

When considering a Rule 12(b)(6)¹ motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheur v. Rhodes, 416 U.S. 232, 236 (1974); Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996). Dismissal is warranted only if, under any set of facts that the

¹Defendants have not challenged this Court's subject matter jurisdiction over O'Connell's claims but are instead challenging his standing in this court. Because the court has subject matter jurisdiction over this controversy regarding federal law, defendants' motion is deemed a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted. See Sladek v. Bell Systems Management Pension Plan, 880 F.2d 972, 979 (7th Cir. 1989).

plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984); Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232). In its review of a motion to dismiss, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

B. O'CONNELL HAS STANDING AS AN ERISA BENEFICIARY

O'Connell has standing under ERISA because he has alleged facts that may establish that he remains a beneficiary of vested benefits under his wife's pension plan. In order to have standing to sue as an ERISA plaintiff, O'Connell must be a participant, beneficiary or fiduciary of the pension plan. See 29 U.S.C. § 1132(a)(3). ERISA defines a participant as: "[A]ny employee or former employee of an employer... who is or may become eligible to receive a benefit of any type from an employee benefit plan..." 29 U.S.C. § 1002(7) (2003). The statute defines beneficiary as: "[A] person designated by a participant or by the

terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.” 29 U.S.C. § 1002(8) (2003).

Defendants admit that the plaintiff was designated a beneficiary by Gail O’Connell. (See Hartford Hospital Mem. in Sup. Of Mot. To Dismiss at 8; CCMC Mem. in Sup. Of Mot. To Dismiss at 7). The similarity of the statutory definitions of “participant” and “beneficiary” strongly suggest that at any time a participant has proper standing under ERISA, a beneficiary will maintain concurrent standing. Defendants have not produced applicable statutory authority or case law that identifies any time that a participant will have standing for an ERISA claim while his or her beneficiary will not. Because the definitions as codified in 29 U.S.C. § 1002 are so similar, if Gail O’Connell has standing as a participant, Reid O’Connell will also have standing as a beneficiary. As a result, the Court must determine whether Gail O’Connell retains standing as a participant in her pension plan, and if she does, plaintiff will retain standing as a beneficiary.

Once an individual has received a lump sum payment of his or her vested pension benefits, he or she is typically no longer a participant under ERISA. The Court of Appeals for the Fifth Circuit has held that former employees who receive a lump-sum payment equal to the full amount of their vested benefit do not retain standing as a participant. See Yancy v. American

Petronia, 768 F.2d 707, 708-09 (5th Cir. 1985).

An individual may regain standing as a participant, however, if he or she claims that his or her employer miscalculated his or her benefit. The Court of Appeals for the Ninth Circuit has distinguished the limited standing given to retirees who have received a lump-sum pension benefit. That Court determined that it could not recognize standing for a plaintiff making a claim for damages and not pension benefits, because damages are not benefits available under a pension plan. Kuntz v. Reese, 785 F.2d 1410, 1411 (9th Cir. 1986) (per curiam), cert. denied, 479 U.S. 916 (1986). In distinguishing damages from pension benefits, the court acknowledged that standing may reattach for the purpose of asserting a claim for the remainder of vested benefits not received because of an employer's miscalculation. Id.

While Gail O'Connell did receive a lump-sum payment of her pension in October of 2001, the plaintiff began to contest the computation of her benefit on her behalf beginning in December of 2001. Because Gail O'Connell claims further entitlement to her vested benefit, she retains standing as a participant, essentially the same standing as if she had not yet received any payment under the plan. Her contest of the hospitals' computation of the benefit potentially makes Gail O'Connell eligible to receive future benefits, which qualifies her as a

participant. According to this reasoning, if she was a party in this case, Gail O'Connell would have standing as a participant because of the alleged miscalculation of her benefit.

The Court of Appeals for the Fifth Circuit has stated that plaintiffs making claims based on the miscalculation of a lump-sum payment have standing as participants because they may become eligible for additional vested benefits. Sommers Drug Stores Emp. P. Sharing v. Corrigan, 883 F.2d 345, 348-9 (5th Cir. 1989). Other circuit courts have clearly stated that in order to be a participant, a retiree must have a colorable claim to vested benefits. See Vartanian v. Monsanto Co., 14 F.3d 697, 701 (1st Cir. 1994); Christopher v Mobil Oil Corp., 950 F.2d 1209, 1220-1 (5th Cir. 1992) (quoting Yancy, 768 F.2d at 709). Gail O'Connell remains a participant in her pension plan with Hartford Hospital and CCMC because she disputes the computation of her lump-sum benefit. A dispute over the computation of this benefit would allow her to assert a claim for the alleged remainder of her vested pension benefit as an ERISA participant. Plaintiff has claimed that the pension payment was miscalculated, and pled facts that may prove an entitlement to additional benefits. Therefore Gail O'Connell has a colorable claim to additional vested benefits, and retains standing as an ERISA participant under her pension plan.

As Gail O'Connell's named beneficiary of the pension plan,

Reid O'Connell retains standing to seek judgment that the calculation of the pension was made in error. Because the definitions of participant and beneficiary are so similar, and ERISA provides concurrent standing to participants, beneficiaries and fiduciaries, it follows that Reid O'Connell has standing as a beneficiary in this case. Just as Gail O'Connell retains standing as a participant as if she never received a lump-sum payment, Reid O'Connell retains standing as a beneficiary as if she never received a lump-sum payment. His claim is not for damages, but instead for the alleged remaining balance of Gail O'Connell's vested benefit. Therefore, Reid O'Connell might have a direct claim² for the benefit that she has not received.

Accordingly, plaintiff has standing in this court because he qualifies as a beneficiary as defined by ERISA. Plaintiff could not represent his wife if she was a plaintiff in this case, but he may represent his own interests as a beneficiary. Plaintiff has pled facts that support his status as a beneficiary according to the definition provided by ERISA, and therefore may continue to pursue his claims.

² Although plaintiff may not be eligible to receive that sum as a beneficiary at the present time, he may still be entitled to declaratory judgment if there was a miscalculation. Sladek, 880 F.2d at 976.

C. KENNEY AND MURPHY ARE NOT PLAN ADMINISTRATORS

The documents provided by the defendants, and relied upon in the complaint, make it clear that neither Kenney nor Murphy is a named administrator of either pension plan. Therefore, neither Kenney nor Murphy can be a proper defendant in this case.

ERISA defines the term "administrator" as: "(i) the person specifically so designated by the terms of the instrument under which the plan is operated." 29 U.S.C. § 1002(16). Also, "(ii) if an administrator is not so designated, the plan sponsor [will be the plan administrator]" Id. The statute goes on to define a "plan sponsor" as: "the employer in the case of an employee benefit plan established or maintained by a single employer." Id. Under the statute, a plan administrator will be the person designated by the plan documents, and if no administrator is named, the default administrator shall be the employer.

The Hartford Hospital plan documents name "the Employer" as the plan administrator. (Def. Mem., Ex. B at 57). The CCMC plan document states that: "The Hospital shall be the plan administrator." (Def Mem., Ex. A at 30). Kenney and Murphy are therefore dismissed as defendants because neither fits the statutory definition of "plan administrator."

Count III of the complaint is dismissed with leave to amend, because neither of the remaining defendants is named as a party to that Count. The plaintiff may amend the complaint to name the

proper administrators as defined within the hospital documents to state a claim in Count III within twenty (20) days of the date of this decision.

III. CONCLUSION

For the reasons set forth herein, defendants' motions (dkt. #s 11, 13) are **DENIED in part and GRANTED in part**. Count III is **DISMISSED** without prejudice to amend within twenty (20) days of the date of this order.

So ordered this ___ day of December, 2003.

/s/DJS

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE