IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-2024

J.D. and K.D.,

Appellant

v.

UNIVERSAL HEALTH INSURANCE, CO.

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(THE HONORABLE JACOB K. JAVITS,
UNITED STATES DISTRICT JUDGE)

BRIEF OF APPELLEE

ORAL ARGUMENT IS REQUESTED

Team 10
[redacted]
Attorney for Appellee

January 12, 2024

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STATEMENT OF THE ISSUES

1. Should this court affirm the District Court's ruling that the Appellants may not proceed in their suit anonymously, based on Rule 10(a) of the Federal Rules of Civil Procedure and relevant precedent?
2. Should this court affirm the District Court's ruling that Count II of the original complaint must be dismissed because the Appellants' claims for equitable relief under 29 U.S.C.A. § 1132(a)(3) and future monetary relief 29 U.S.C.A. § 1132(a)(1)(B) are duplicate claims for relief?

STATEMENT OF THE CASE

Universal Health Insurance Co. (Universal) conducts business in the District of Columbia (DC) where it insures the CIA Consulting LLC Healthcare Plan ("the Plan") and administers claims for medical and mental health benefits. (Complaint – 2). Appellant J.D. is a DC resident and participant of Universal's Plan through her employer, CIA Consulting. Id. Appellant K.D., who is J.D.'s daughter and also a DC resident, is a Plan beneficiary. Id. The Plan is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, and the Mental Health Parity and Addiction Equity Act of 2008, codified, in part, at 29 U.S.C. § 1185a, Complaint – 1, Complaint – 8). The Plan provides coverage for medically necessary mental health and substance abuse disorder services including various increasing levels of care ranging from "outpatient," "partial

hospitalization," and "residential treatment." (Complaint – 2, Memorandum and Order – 2). Universal follows Standard of Care Guidelines to determine whether it can approve benefit claims. (Exhibit A, Memorandum and Order – 8)

Appellant K.D. is an adult young woman who has been diagnosed with depression, anxiety, and substance abuse disorder. (Complaint – 3). After a suicide attempt on March 1, 2022, and a subsequent heroin overdose, Universal covered K.D.'s emergency room admissions, a partial hospitalization for three weeks at the Road to Recovery facility located in the District of Columbia, and a subsequent residential treatment care at the Lifeline Inc., facility located in Virginia. (Complaint – 3). In a letter dated May 9, 2022, Universal notified J.D. that additional "residential treatment" beyond the approved three weeks would not be covered because it was no longer medically necessary based on K.D.'s improvement and because K.D. could receive care at a lower partial hospitalization level of care. (Complaint – 4). After review of an urgent appeal request from J.D. and after a failed attempt by Universal to reach K.D.'s service provider, Universal notified J.D. on May 13, 2022, that it upheld its initial determination to not cover the requested "residential treatment" level of care. (Complaint – 4, Exhibit C – 2). Following Lifeline's advice, J.D. decided to continue K.D.'s treatment at Lifeline for an additional twelve months and to pay additional expenses out-of-pocket. (Complaint – 4, Memorandum and Order – 3). J.D. did not request an external

appeal within four months from receiving the May 13, 2022, letter. (Exhibit C – 2).

On May 2, 2022, Appellants brought a civil lawsuit against Universal asserting two counts: 1) a claim for benefits under 29 U.S.C. § 1132(a)(1)(B) and 2) a claim seeking equitable relief under 29 U.S.C.A. § 1132(a), in the form of an injunction and equitable surcharge to remedy a violation of ERISA's mental health parity provision, 29 U.S.C.A. § 1185a. (Complaint – 4, Complaint – 6). Appellants then filed a motion to proceed anonymously which was denied by the Court. (Memorandum and Order – 1, Memorandum and Order – 7). Universal filed its own motion to dismiss J.D. as a plaintiff and to dismiss the second count in Appellants' complaint, which was granted by the court. (Memorandum and Order – 1, Memorandum and Order – 10). Because Appellants indicated they would not proceed with their claim for benefits if they must reveal their names, the District Court dismissed the case. (Memorandum and Order – 10). On January 12, 2024, Appellants filed their Notice of Appeal, indicating their intent to appeal to this Court from the order entered by the District Court. Universal filed its Appellee's Response Brief on January 12, 2024.

SUMMARY OF THE ARGUMENT

For Issue 1, the Appellants' effort to pursue their suit anonymously is improper because Rule 10(a) of the Federal Rules of Civil Procedure (Fed. R. Civ.

P. 10(a)) contain a presumption against anonymous complaints, and because the five factors set out in the five James factors are the core of the balancing test to be used by the court in determining whether to overcome the presumption contained in Rule 10(a). *James v. Jacobson*, 6 F.3d 233, 238-39 (4th Cir. 1993).

In this case, the record shows that five *James* balancing factors are not sufficient to overcome the Rule 10(a) presumption. First, the Appellant K.D. had ample opportunity to seek to seal her medical history, including her mental health issues, which would have better protected her privacy. Second, the Appellants have not introduced evidence that K.D. would suffer retaliatory physical or mental harm because of proceeding under their full names. Third, Appellant K.D. is a 19-year-old woman rather than a minor child whose privacy merits greater protection. Fourth, the action is against a private party, which is likely more subject to prejudice from the plaintiffs' use of anonymity than a government defendant would be. Finally, the Appellants' anonymity in this proceeding will impose unfairness because the Appellee would not be able to use material aspects of the Appellant K.D.'s medical and mental health records that would tend to undermine her anonymity. On balance, there are not enough reasons offered in this case to overcome the Rule 10(a) presumption that plaintiffs proceed in federal court under their full names.

For Issue 2, there are multiple scenarios under which a civil action may be brought to adjudicate the provisions of ERISA, and plaintiffs may request either

monetary or equitable relief. 29 U.S.C.A. §1132(a). However, equitable relief under §1132(a)(3) cannot be sought if it is a duplicative remedy to address the same injury. *Varity v. Howe*, 516 U.S. 489, 512-14 (1996); *Rochow v. Life Insurance. Co. of North America*, 780 F.3d 364, 373 (6th Cir. 2015) (en banc); *Silva v. Metropolitan Life Insurance Co*., 762 F.3d 711, 726 (8th Cir. 2014.

In this case, Count I of the original complaint would serve to clarify the future benefits to be paid to the Appellants in the case of the same injury. Consequently, Count I and Count II both request equitable relief for the same injury, and such duplicate remedies are disallowed.

ARGUMENT

This Court should affirm the trial court's denial of the Appellants motion to pursue her complaint anonymously and should affirm the trial court's dismissal of the Parity Act claim, Count II in the original complaint.

The traditional standard of review for a district court ruling on a question of law is *de novo*, applying the same standard as the district court. *Pierce v. Underwood* 108 S. Ct. 2541, 2546 (U.S. Sup. Ct., 1988). Cases involving a denial of benefits under the Employee Retirement Income Security Act (ERISA) generally entail a *de novo* standard of review. *Firestone Tire and Rubber Co. v. Bruch* 109 S.Ct. 948, 949 (U.S. Sup. Ct., 1989; *Mobley v. Continental Casualty. Co.* 383 F.Supp.2d 80, 88

(US. Dist. Ct., District of Columbia, 2005. In this case, the *de novo* standard of review is appropriate for both the issues presented, since the two issues presented on appeal are both questions of law based on the District Court's application of relevant law to guide its holding.

1. THE MOTION TO PROCEED ANONYMOUSLY WAS CORRECTLY DENIED, BASED ON BOTH THE FEDERAL RULE OF CIVIL PROCEDURE 10(A) AND THE FIVE *JAMES* FACTORS FOR BALANCING JUDICIAL OPENNESS WITH INDIVIDUALS' PRIVACY INTERESTS.

Under the Federal Rule of Civil Procedure 10(a), every pleading must name all the parties to the complaint within the title of the complaint. Rule 10(a). However, the district court may provide a "rare dispensation" of anonymity. *U.S. v. Microsoft Corp*., 56 F.3d 1448, 1464 (D.C.Cir.1995). Determining that a claimant may proceed anonymously allows the court to balance the presumption in favor of openness in judicial proceedings with an individual's privacy interests. *James v. Jacobson*, 1993; *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869 (7th Cir. 1997); *Yacovelli v. Moeser*, No. 02–596, 2004 WL 1144183, at *6 (M.D.N.C. May 20, 2004; *Qualls v. Rumsfeld*, 228 F.R.D. 8, 10 (D.D.C. 2005). The five factors for a court to consider in balancing these interests include:

> (1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature;

(2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties;

(3) the ages of the persons whose privacy interests are sought to be protected;

(4) whether the action is against a governmental or private party; and

(5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

See *James* at 238.

In this case, the district court correctly determined that the Federal Rule of Civil Procedure 10(a) creates a "strong…presumption in favor of parties proceeding in their own names." (Memorandum and Opinion – 4). However, the Appellants claim that K.D.'s mental health issues, sexual assault history, and drug rehabilitation create a privacy interest for K.D. that, if violated, she fears would expose her to shame and social isolation. (Complaint – 2; Dr. Evelyn Smith Declaration – 2). Consequently, the five James balancing test factors are appropriate to apply in determining whether to affirm the district court's ruling. In this circuit, the five James factors are the core of the balancing test to be used by the court in determining whether to overcome the presumption contained in Rule 10(a) that parties to a complaint be named rather than remain anonymous.

The first James factor is "whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation

or is to preserve privacy in a matter of a sensitive and highly personal nature." The weight of the evidence in this case suggests that the Appellant K.D. is pursuing anonymity in her complaint merely to avoid annoyance and criticism. First, the district court noted that Appellants K.D. and J.D. had an opportunity to move to seal K.D.'s medical records, instead of pursuing an anonymous complaint, but declined to do so. (Memorandum and Order – 7). The district court noted that Rule 10(a) does not require a complainant to reveal her medical history in the process of a complaint. (Memorandum and Order – 7) The fact that the Appellant K.D. had ample opportunity to seek to seal her medical history, including her mental health issues, indicates a lack of due diligence in protecting her privacy interests that the Court should not reward by militating against the presumption in favor of judicial openness.

The second James factor is "whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties." In this case, the Appellants have not introduced evidence that K.D. would suffer retaliatory physical or mental harm. While the Appellants cite the declaration of Dr. Evelyn Smith that K.D. "is very sensitive, even ashamed, about her past drug use and about having spent a year in a residential treatment facility [and] has expressed her fears that if anyone learns of this, she will be shunned," (Dr. Evelyn Smith Declaration - 2), the Appellants have not tied this concern to any

specific retaliation threat that K.D. has experienced. Rather, the Appellants have simply expressed generalized unease with her mental health and medical history becoming publicly known. Moreover, a common medical disorder, such as obsessive compulsive disorder, is not "such a badge of infamy or humiliation in the modern world" that it should be dispositive in determining that a party's identity should be concealed. *Doe v. Blue Cross & Blue Shield* at 872. In this case, K.D.'s substance abuse paired with overdose during the opioid epidemic is, unfortunately, a common enough condition. In this context, the Appellants' unease, though understandable, is not sufficient to meet the second James factor.

The third James factor is "the ages of the persons whose privacy interests are sought to be protected." Here, Appellant K.D. is a 19-year-old woman who is covered under her mother, J.D. 's, health plan. (Complaint – 1, Complaint – 2). Appellant K.D. is above the eighteen-year-old age of majority in the District of Columbia. D.C. Code § 46–101. Cases involving minor children in this circuit have been allowed to proceed anonymously, since the privacy interests of a minor child generally "outweigh the public's presumptive and substantial interest in knowing the details of [the] litigation." *D.B. v. District of Columbia*, 2021 WL 6753483, at *3 (D.D.C. March 11, 2021). However, since K.D. is not a minor child, the court should consider it relatively less important to protect her privacy interests vis-à-vis the presumptive public interest of judicial openness.

The fourth James factor is "whether the action is against a governmental or private party." In this case, the action was against a private party, which is likely more subject to prejudice from the plaintiffs' use of anonymity than a government defendant would be. *James* at 239 (fn 3). This concern dovetails with the fifth James factor, which is whether "the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously." Here, the Appellants' anonymity in this proceeding will impose unfairness because the Appellee would not be able to use material aspects of the Appellant K.D.'s medical and mental health records that would tend to undermine her anonymity. Since many of these records are material to the Appellee's case, the risk of unfairness to the Appellee is significant.

On balance, there are not compelling reasons contained in an analysis of these five factors that would outweigh the Rule 10(a) presumption against anonymity. The evidence shows that the Appellants seek to avoid public embarrassment, which is not a sufficient reason to award anonymity. Moreover, providing the Appellants' anonymity in this complaint would increase the risk of prejudice to the Appellee when it defends its actions at trial.

2. THE MOTION TO DISMISS COUNT II PLEADING EQUITABLE RELIEF WAS CORRECTLY SUSTAINED, BECAUSE THE APPELLANTS' CLAIMS FOR EQUITABLE RELIEF UNDER 29 U.S.C.A. § 1132(a)(3) AND FUTURE MONETARY RELIEF UNDER 29 U.S.C.A. § 1132(a)(1)(B) ARE DUPLICATE CLAIMS FOR RELIEF.

ERISA in §503 defines multiple scenarios under which a civil action may be brought to adjudicate the provisions of ERISA. 29 U.S.C.A. §1132(a). One such scenario, provides that a civil action may be brought for equitable relief "by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." 29 U.S.C.A. §1132(a)(3). A complainant may also seek monetary relief for alleged denial of benefits under 29 U.S.C.A. §1132(a)(1)(B), which allows a civil action to be brought by a participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

In this case, the Appellants, in Count II of the original complaint, requested equitable relief under 29 U.S.C.A. §1132(a), specifically "[a]n injunction requiring Universal to follow the terms of the Plan in making future benefit determinations and to refrain from applying internal guidelines inconsistent with the parity provisions of ERISA; and [s]uch other appropriate equitable relief as the Court deems necessary and proper to protect the interests of Plaintiff under the Plan." (Complaint – 7). However, the Appellants also requested in the original complaint

"[a]n order requiring payment of health insurance benefits due to the [Appellant] under the Plan." (Complaint – 7).

If a court under Count I of the original complaint was to determine that the Plan's tiered system of interventions for mental health services violated 29 U.S.C.A. §1132(a)(1)(B), then the future relief the Appellant sought in Count II of the complaint under 29 U.S.C.A. §1132(a)(3) was relief that would flow naturally from the requested present relief under Count I. Specifically, by holding that the Plan's tiered system of interventions was improperly used in K.D.'s case, the court would also be clarifying that the same system of interventions could not be used in K.D.'s case in the future in the event of a possible relapse. This relief would take the form of a monetary payment and would not require further equitable relief in the form of an injunction or other corrections of equity.

The district court adopted the position that the equitable relief sought under Count II was duplicative to the relief sought under Count I. (Memorandum and Order – 9, 10). In particular, the U.S. Supreme Court has held that equitable relief under §1132(a)(3) could not be sought if it formed a duplicative remedy to address the same injury. *Varity v. Howe*, 516 U.S. 489, 512-14 (1996). This holding has been applied more recently by the Sixth Circuit. *Rochow v. Life Insurance. Co. of North America*, 780 F.3d 364, 373 (6th Cir. 2015) (en banc). Moreover, the Supreme Court refined its *Varity* holding in *Silva* to specify that duplicate "recoveries," one under

§1132(a)(3) and one under §1132(a)(1)(B) were proscribed under ERISA. *Silva v. Metropolitan Life Insurance Co*., 762 F.3d 711, 726 (8th Cir. 2014. In 2016 the Ninth Circuit confirmed that "double recoveries' (i.e., duplicate recoveries) were forbidden under the *Silva* holding when pursued for the same injury. *Moyle v. Liberty Mut. Retirement Ben. Plan*, 823 F.3d 948, 961 (9th Cir., 2016). In light of these precedents, the principle of forbidding duplicate recoveries on the same injury is well-established in ERISA case law, and should be adopted in this circuit as well.

CONCLUSION

The district court correctly dismissed the Appellant's motion to proceed anonymously based on Rule 10(a) and the five James factors, as well as correctly dismissing Count II of the original complaint based on 29 U.S.C.A. §1132(a). Therefore, this Court should affirm the district court's denial of the Appellant's motion to proceed anonymously, as well as the district court's dismissal of Count II of the original complaint.