Docket No. 23-CV-499

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

J.D. AND K.D.

Appellants

v.

UNIVERSAL HEALTH INSURANCE CO.

Appellee

On Appeal from the United States District Court
for the District of Columbia
CIVIL ACTION NO. 23-CV-499
Judge Jacob K. Javits

APPELLANT BRIEF
ORAL ARGUMENT REQUESTED

Team 1
Attorney for Appellants

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JURISDICTIONAL STATEMENT

The U.S. District Court of the District of Columbia had subject-matter jurisdiction over this action under 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331. The U.S. Court of Appeals for the District of Columbia has subject matter jurisdiction over this action under 28 U.S.C. § 1291. The district court dismissed the case. The U.S. Court of Appeals for the District of Columbia has granted the appeal.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Did the district court err in holding the plaintiffs could not proceed with this claim anonymously where K.D.'s medical history and corroboration of her doctors point to the disclosure of her identity leading to a setback in her mental illness recovery and her identity is closely related to the co-plaintiff, J.D.?

II. Did the district court err in holding that no relief could be granted under 29 U.S.C. § 1132(a)(3) warranting the dismissal of Count II where it was unclear at the motion to dismiss stage whether duplicate relief would result, different theories of liability were proposed, and different injuries were suffered by the plaintiffs?

STATEMENT OF THE CASE

K.D., of the District of Columbia, is a 19-year-old woman who has a history of mental illness and substance use disorder. Compl. ¶ 7. Plaintiff J.D. is K.D.'s mother. Compl. ¶ 12. As a sophomore in high school, K.D. suffered from depression which was exasperated by a sexual assault in the summer prior to her junior year. Id. She began to drink alcohol, abuse drugs such as marijuana, oxycontin, and heroin, and allowed her grades to decline. Id.

K.D. was covered under the ERISA-governed CIA Consulting Healthcare Plan (the "Plan"). The Plan is insured and administered by Universal Health Insurance Co. ("Universal") and sponsored by J.D.'s employer. Compl. ¶ 5-6. The Plan provides coverage for medically necessary mental health and substance use disorder services including residential treatment, Compl. ¶ 8, which is defined as "[a] 24-hour, 7-days a week facility-based program that provides assessment, diagnostic services, and active health treatment to members who do not require the intensity of nursing care, medical monitoring and physician availability offered in Inpatient hospitalization." Compl. Ex. A. Universal has internal guidelines to assist in the administering of its benefits. Compl. ¶ 8. One of these guidelines limits residential treatment benefits to apply only for "members . . . whom a less intense level of care would not result in significant improvement." Compl. Ex. A. In practice, this guideline requires beneficiaries to fail at a lower level of care before receiving long-term residential care. Compl. ¶ 8.

In early 2022, K.D. received intensive outpatient treatment three days a week for her mental illness at the Road to Recovery facility, paid for by the Plan, but her mental illness worsened. Compl. ¶ 9. On March 1, 2022, K.D. attempted suicide by cutting her wrists. Compl. ¶ 10. She was first treated in an emergency room and was then admitted to a psychiatric hospital for three weeks. Compl. ¶ 10. The psychiatric hospital recommended she receive treatment at a "partial hospitalization" level of care for five days a week at Road to Recovery. Compl. ¶ 10. However, after leaving the psychiatric hospital and before her partial hospitalization, K.D. overdosed on heroin laced with fentanyl. Compl. ¶ 11. She was treated at the emergency room and then returned to the psychiatric hospital for three weeks, paid for by the plan. Id.

The hospital and the team at Road to Recovery recommended she receive treatment at a nearby residential facility, Lifeline Inc., with capabilities to treat both her mental illness and

substance use disorder. Compl. ¶ 12. Universal approved and paid for three weeks of this residential treatment. Compl. ¶ 12, 14. After a team of healthcare workers at Lifeline specializing in mental illness, substance use disorder, and trauma conducted an assessment of K.D., she was diagnosed with major depressive disorder, generalized anxiety disorder, and substance use disorder. Compl. ¶ 13.

On May 9, 2022, after three weeks of treatment at Lifeline, a letter was sent to K.D. informing her that Universal physician James Matzer determined her residential treatment at Lifeline was no longer medically necessary and therefore she could be treated at a lower level of care, partial hospitalization. Compl. ¶ 14, Ex. B. Universal considers residential care to be medically necessary when members meet the following: "1) they cannot cooperate with treatment unless they have round-the-clock structured care; 2) they are a danger to themselves or others; and 3) they cannot be safely treated at a lower level of care." Ex. B. The patient must also be willing to participate in treatment and, if coming directly out of residential treatment, the patient must need residential treatment to improve or prevent regression. Id. Dr. Matzer cited "information [they] have" indicating that K.D. is no longer actively suicidal and residential treatment is no longer necessary. Id. Dr. Matzer suggested that K.D. discuss other means of care with her doctor. Id. This letter outlined K.D.'s appeal rights which included a process for urgent appeals for inpatient substance use disorder treatment. Id.

K.D., J.D., and Lifeline disagreed that residential care was unnecessary and filed a timely and urgent appeal received by Universal the following day, May 10, 2023. Compl. ¶ 15, Ex. B. On May 13, a Universal physician sent a letter to K.D. affirming the denial of further residential treatment coverage, citing the "fail-first" residential treatment guideline. Compl. ¶ 15. The director of Lifeline and K.D.'s treating psychiatrist cautioned that K.D. was still at risk of

relapsing and committing suicide without round-the-clock care. Compl. ¶ 16. Thus, J.D. took out a second mortgage on her home to pay out-of-pocket for K.D.'s continued treatment at Lifeline. Compl. ¶ 16. K.D. remained at Lifeline in residential treatment, where she continued to receive round-the-clock care. After 12 months, her doctors then suggested she could receive outpatient care instead. Compl. ¶ 17. She continues to be at risk of relapse but has enrolled in college where she has been successful. Compl. ¶ 18.

J.D. and K.D. filed a complaint against Universal anonymously on August 2, 2023. On July 20, 2023, Dr. Evelyn Smith, K.D.'s doctor at Lifeline who continues to see her on a private out-patient basis, submitted a declaration stating her recovery is sensitive, and in addition to feeling as though she will be shunned for her past treatment and drug use, she may again become depressed and suffer a recurrence of substance use disorder if she cannot proceed anonymously. Dr. Evelyn Smith Dec. ¶ 7-9. The District Court for the District of Columbia denied the plaintiffs' motion to proceed anonymously and dismissed the plaintiffs' second cause of action. Memorandum Opinion and Order p. 1.

SUMMARY OF ARGUMENT

The district court erroneously failed to consider the entirety of the plaintiffs' interests proceeding anonymously against the benefits of full disclosure. K.D. and J.D. are not only seeking to proceed anonymously to avoid annoyance and criticism from litigation, but to avoid a risk of relapse in K.D. 's mental illness and substance use recovery which, according to her doctor, is likely to occur if she cannot proceed anonymously. A rare exception should be granted in this case because it is not a matter of special concern to the public and there are no government actors involved.

The district court also erred in holding that no equitable relief could be granted under § 502(a)(3) because the plaintiffs are also pursuing relief under § 502(a)(1)(B). The district court failed to realize it was too premature to determine if § 502(a)(1)(B) would provide adequate relief to the plaintiffs, resulting in duplicate recovery. The district court also failed to acknowledge that two different theories of liabilities and two different injuries are being asserted: a denial of benefits under § 502(a)(1)(B) and a violation of K.D.'s parity rights. Lastly, the district court disregarded the purpose of ERISA in dismissing the plaintiffs' claim under § 502(a)(3) because it foreclosed K.D.'s ability to exercise her parity rights ensured under ERISA.

ARGUMENT

The plaintiffs bring this case under the Employee Retirement Income Security Act ("ERISA"). The purpose of ERISA is to "protect . . . the interests of participants in employee benefit plans and their beneficiaries . . . by establishing standards of conduct . . . for fiduciaries of employee benefit plans, and by providing for appropriate remedies . . . and ready access to the Federal courts." 29 U.S.C. § 1001(b).

A district court's decision on whether to grant a motion to proceed anonymously is reviewed *de novo*." In re Sealed Case, 931 F.3d 92, 96 (D.C. Cir. 2019). However, a district court's application of the relevant factors in deciding to grant a motion to proceed anonymously is reviewed for an abuse of discretion." Id. Under the "abuse of discretion" standard of review, the court analyzes "whether the decision maker failed to consider a relevant factor [or] relied on an improper factor, and whether the reasons given reasonably support the conclusion." Id. (quoting Kickapoo Tribe of Indians of the Kickapoo Reservation in Kan. v. Babbitt, 43 F.3d 1491, 1497 (D.C. Cir. 1995)). A district court's decision to grant a motion to dismiss is reviewed

by appellate courts *de novo*. Ctr. for Biological Diversity v. U.S. Int'l Dev. Fin. Corp., 77 F.4th 679, 685 (D.C. Cir. 2023).

I. The district court erred in holding that the plaintiffs could not proceed anonymously by failing to adequately weigh K.D.'s interest in anonymity against the benefits of full disclosure, failing to precisely identify the factors adopted by this Circuit, and disregarding compelling medical corroboration by K.D.'s doctor.

Federal Rules of Civil Procedure 10(a) provides that all pleadings must name the parties to the suit. The naming of parties contributes to the "presumption of openness in judicial proceedings [that is] a bedrock principle of our judicial system." In re Sealed Case, 971 F.3d at 326. A presumption of openness in judicial proceedings is considered important for a few reasons. For one, the public has a "legitimate interest in knowing all of the facts involved, including the identities of the parties" using the public's courts. In re Sealed Case, 971 F.3d at 326 (citing U.S. v. Microsoft Corp., 56 F.3d at 1463). Further, the anonymous proceeding of plaintiffs gives rise to "profound questions of fundamental fairness and perhaps even due process." U.S. v. Microsoft Corp., 56 F.3d at 1457. For instance, plaintiffs may use their anonymity to make fraudulent accusations. Id. at 1464.

However, courts may allow parties to proceed anonymously or under pseudonyms in rare circumstances. U.S. v. Microsoft Corp., 56 F.3d at 1464. To do so, the party seeking to remain anonymous must show "a concrete need for such secrecy, and identify the consequences that would likely befall it if forced to proceed in its own name." In re Sealed Case, 971 F.3d at 326. These assertions must be more than speculative assertions of harm. Id.

Subsequently, the court then must "balance the litigant's legitimate interest in anonymity against countervailing interests in full disclosure." In re Sealed Case, 931 F.3d at 96. In balancing these factors, the Court of Appeals of the District of Columbia has adopted the five

factors first used by the Fourth Circuit in James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993). These factors are:

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

In re Sealed Case, 931 F.3d at 97 (quoting James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993)). These factors are meant to be non-exhaustive factors to guide courts rather than a "wooden exercise of ticking the five boxes." In re Sealed Case, 931 F.3d at 97.

The Court of Appeals for the District of Columbia in In re Sealed Case, 971 F.3d 324, 326 (D.C. Cir. 2020), applied these factors to a plaintiff oil refinery seeking to proceed pseudonymously in an Environmental Protection Agency's claim. The first of the James factors "commonly involves intimate issues such as sexual activities, reproductive rights, bodily autonomy, medical concerns, or the right or the identity of abused minors." In re Sealed Case, 971 F.3d at 327. Because the plaintiff only argued there is a hypothetical, vague risk of business information being revealed if they were being forced to disclose their identity, their justification did not relate to an attempt to preserve information of a sensitive and highly personal nature." In re Sealed Case, 971 F.3d at 327.

Regarding the second factor, mental and physical harm, the court in In re Sealed Case held the plaintiff refinery had not justified their pseudonymity under this factor either because they had only shown speculative economic risks, not actual mental or physical harm. In re Sealed Case, 971 F.3d at 328. Other federal appellate courts have also explored this second factor

dealing specifically with mental harm. See e.g. Doe v. Blue Cross & Blue Shield United of Wis., 112 F.3d 869, 872 (7th Cir. 1997) (holding that plaintiff could not proceed anonymously in an ERISA action to avoid disclosure of her obsessive-compulsive disorder because it is a common disorder and permitting anonymity would imply that mental illness is shameful); See also Plaintiff B v. Francis, 61 F.3d 1310, 117-18 (11th Cir. 2011) (holding the district court inadequately considered the expert testimony on the psychological damage that would result if the requesting party had to disclose their identity).

Regarding the third factor, the age of the requesting party, some courts have held that college-aged individuals "may still possess the immaturity of adolescence" and this James factor could favor legal adults. Yacovelli v. Moser, No. 1:02-cv-596, 2004 WL 1144183 at *24, (M.D.N.C. May 20, 2014); see Student A v. Liberty University, 602 F. Supp. 3d 901, 919-20 (W.D. Va. 2022).

This court and other federal appellate courts have warned against the failure of the district court to adequately weigh the interests of the parties in remaining anonymous against the interests in full disclosure. In U.S. v. Microsoft Corp., 56 F.3d 1448, 1464 (D.C. Cir. 1995), this court held that the district judge erred in allowing a plaintiff corporation to proceed anonymously since the district court judge did not consider the risk of unfairness to the opposing party or the public. Microsoft Corp., 56 F.3d at 1464. Similarly, in the often-cited James case, the Fourth Circuit court vacated and remanded a lower court's decision denying the plaintiffs, a husband and wife, anonymity in a case against the physician defendant who artificially inseminated the wife with the physician's own sperm. James, 6 F.3d at 239. The court held that the lower court's ruling to not grant anonymity was not a careful weighing of interests but was based upon the belief that "anonymity at trial . . . is never permissible." Id.

Courts have upheld parents' ability to proceed anonymously when the revelation of their identity would lead to the exposure of sensitive information about their child. See J.W. v. District of Columbia, 318 F.R.D. 196, 199 (D.D.C. 2016) (holding that parents could remain anonymous in order to protect their son's privacy interests because their own identities would lead to the uncovering of their child's identity).

Here, the District Court erred in not allowing the plaintiffs to proceed anonymously by failing to adequately weigh the plaintiffs' interest in anonymity against the benefits of full disclosure, ignoring Circuit precedent. Although there is a presumption against allowing plaintiffs to proceed anonymously, K.D. has made a sufficient showing of a concrete need for anonymity that outweighs the countervailing interest in full disclosure. In addition to her fear of being "shunned," K.D. demonstrated a concrete need to avoid a setback in mental illness and substance use recovery, which could lead to further self-harm and suicide attempts. Considering the medical evidence and corroboration by her doctors, this need is more than a speculative need. Similar to the parents in J.W. v. District of Columbia, who were permitted to proceed anonymously to protect their child's confidential information, J.D. should be allowed to proceed anonymously to protect her daughter's identity and sensitive medical history.

The District Court also erred in its failure to precisely identify the factors used by this Circuit to "balance the litigant's legitimate interest in anonymity against countervailing interests in full disclosure" as adopted from the Fourth Circuit's James decision. By using a hodge-podge of factors from various appellate courts instead of the framework used in this Circuit, the District Court failed to carefully consider the interests and needs the plaintiffs asserted in their decision to proceed anonymously in addition to the countervailing interests.

Regarding the first James factor, although K.D. is seeking to avoid the criticism and annoyance of being "shunned" for her mental illness, she is more importantly seeking privacy in a matter of a sensitive and highly personal nature: intimate details of her intense medical history of mental illness. This exceeds the vague risk of business information being revealed in the 2020 In re Sealed Case. 971 F.3d at 327. The District Court's failure to view K.D.'s specific privacy interests is akin to the district court's failure to consider the opposing party's interests in U.S. v. Microsoft Corp. See U.S. v. Microsoft Corp., 56 F.3d at 1464. It is also similar to the lower court's decision in James which the Fourth Circuit said was not a *careful* weighing of interests. See James, 6 F.3d at 239.

Although it is true that in all medical cases there is a threat to privacy of intimate medical concerns, the district court failed to see that in the case at hand, K.D.'s concern for privacy is more than mere medical details but rather is about her intense struggle with serious substance use issues, mental illness including threats to her own life, and a traumatic sexual assault. Although, as the Seventh Circuit warned against in Doe v. Blue Cross & Blue Shield United of Wisconsin, mental illness should not be considered shameful, here K.D. 's interest in maintaining privacy in her deeply personal medical history speaks of more than just her desire to avoid shame but to protect her health and even her life. Sealing or redacting her medical records would not sufficiently alleviate this compelling interest as her history of mental illness will still be generally disclosed and, as discussed below, this could have a significant impact on her mental health. The plaintiffs here are not seeking a per se rule permitting all plaintiffs in medical cases to proceed anonymously. Rather, the plaintiffs are asking for a rare exception to the presumption against anonymity because, as Dr. Evelyn Smith corroborated, the consequences of disclosing her name could mean a relapse of her substance use disorder and mental illness.

The second James factor to be weighed, the risk of mental harm to the requesting party, strongly favors K.D.'s anonymity. Here, the District Court did not adequately consider K.D. 's history of mental illness and substance use disorder, her treatment at several facilities for years, and Dr. Smith's declaration that she is at risk of a setback in her recovery. The failure of the district court to consider the totality of K.D.'s important medical history and the district court's assumption that Dr. Smith's declaration is "equivocal" is similar to the district court's disregard in Plaintiff B v. Francis of expert testimony on the psychological harm that could result if the plaintiffs in that case could not proceed anonymously. K.D. 's medical history and corroboration by well-trained doctors point to a near certainness of a relapse back to destructive and life-threatening behavior that exceeds mere speculation. Considering the James factors are not meant to be a "wooden exercise of ticking the five boxes," In re Sealed Case, 931 F.3d at 97, this factor is compelling enough to alone permit K.D. to proceed anonymously because it is a matter of life, health, and safety.

However, other James factors further support the plaintiff's argument. The third James factor to be weighed, the requesting party's age, supports K.D.'s ability to proceed anonymously. The district court erred by conclusively stating this factor cannot benefit K.D. since she is not a minor. Here, like other courts have held, even though K.D. is 19 years old and therefore legally an adult, most of her teenage years were spent in medical facilities as she recovered from her mental illness and substance use. Because of the preoccupation of these formative years, she still possesses "the immaturity of adolescence" and should be permitted to proceed anonymously. Additionally, her battles with her mental illness, substance use, and sexual assault occurred when she was a minor, and she has only recently become an adult therefore her experiences are still incredibly sensitive subjects.

Speaking to the fourth factor, since Universal is not a government actor, there is not a strong public interest in requiring the plaintiffs to disclose their identities. Similarly, the fifth factor does not cut against the plaintiffs, as there is no unfairness to Universal in the matter at hand. The plaintiffs are not concerned with the disclosure of their identities to Universal. Instead, they are concerned with the public's knowledge. Further, the plaintiffs are not seeking anonymity to hide fraudulent conduct. Rather, as explained above, there were clear medical reasons for her desire to proceed with anonymity.

Moreover, the purposes of both ERISA and FRCP 10(a) support K.D. 's argument that she should be able to proceed anonymously. If plaintiffs like K.D. with serious medical interests at stake are denied the ability to sue anonymously under ERISA, they are then unable to seek relief for their claims under ERISA, undermining the statute's purpose. Speaking to FRCP 10(a), although it is valid that the courts belong to the public, the plaintiffs' identity is not a matter of public concern, and even if the plaintiffs proceed with anonymity, the public will still understand their courts are being used to adjudicate an ERISA claim.

II. The district court erred in holding that no relief could be granted under ERISA Section 502(a)(3) warranting the dismissal of Count II by relying on an overly narrow interpretation of Supreme Court precedent and failing to acknowledge the Court permits simultaneous claims so long as duplicate recovery will not result.

The plaintiffs brought claims for relief under ERISA § 502(a)(1)(B) for monetary damages resulting from the denial of further medical benefits and also under ERISA § 502(a)(3) for equitable relief remedying violations of the Mental Health Parity and Addiction Equity Act ("Parity Act"). ERISA § 502(a)(1)(B) provides that: "[a] civil action may be brought 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." 29 U.S.C. § 1132(a)(1)(B). Section 502(a)(3) provides that: "[a] civil action may be brought by a . . . beneficiary . . . to

enjoin any act or practice which violates any provision of this subchapter . . . or to obtain other appropriate equitable relief to redress such violations." 29 U.S.C. § 1132(a)(3). "Appropriate equitable relief" refers to relief that was "typically available in equity." CIGNA Corp v. Amara, 563 U.S. 421 (2011) (quoting Sereboff v. Mid Atl. Med. Servs., Inc., 547 U.S. 356, 357 (2006)). The Parity Act provides,

> In the case of a group health plan that provides both medical . . . benefits and mental health or substance use disorder benefits, such plan . . . shall ensure that . . . the treatment limitations applicable to such mental health or substances use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan . . . and there are no separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits.

29 U.S.C. § 1185(a)(3)(A)(ii). In essence, this means that under ERISA, plans cannot treat mental illness needs differently than other medical or surgical needs. Id. The Parity Act "is designed to end discrimination in the provision of coverage for mental health and substance use disorders as compared to medical and surgical conditions." Coalition for Parity, Inc. v. Sebelius, 709 F. Supp. 2d 10, 13 (D. D.C. 2010).

Supreme Court Precedent

Neither the Supreme Court nor the United States Court of Appeals for the District of Columbia have provided clear guidance as to whether a district court must grant a motion to dismiss a plaintiff's claim for equitable relief under § 503(a)(3) brought with a claim for monetary relief under § 502(a)(1)(b). However, the Supreme Court has explored the relationship between the two provisions.

In Varity Corp v. Howe, 516 U.S. 489, 512 (1996), the Court explained that § 502(a)(1)(B) provides an avenue for relief for "wrongful denial of benefits and information" while § 502(a)(3) is a "'catchall' provision[] . . . offering appropriate equitable relief for injuries

caused by violations that § 502 does not elsewhere adequately remedy." The Varity Court responded to the concerns that allowing plaintiffs to proceed under both provisions would lead to a complication of claims for relief because plaintiffs could "repackage" claims for benefits as § 502(a)(3) claims, requiring different legal standards. Varity Corp v. Howe, 516 U.S. 489, 514-15 (1996). In response, the Court emphasized that "where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be *no need* for further equitable relief, in which case such relief *normally would not be 'appropriate'*" as § 502(a)(3) requires. Id. at 515 (emphasis added). In Varity, the Court held the plaintiffs could be provided a remedy under § 502(a)(3) because in their circumstance, Congress had not elsewhere provided adequate relief and so, in keeping with the purpose of ERISA in providing a remedy, § 502(a)(3) catchall was the only appropriate avenue for relief. Id. See also Moyle v. Liberty Mut. Ret. Ben. Plan, 823 F.3d 948, 961 (9th Cir. 2016) ("Varity did not explicitly prohibit a plaintiff from pursuing simultaneous claims under § 1132(a)(1)(B) and § 1132(a)(3)").

CIGNA Corp. v. Amara, 563 U.S. 421 (2011), is another prominent Supreme Court case that has contributed to the understanding of the interaction between § 502(a)(1)(B) and § 502(a)(3). In this case, the Court held that equitable relief sought in the form of plan reformation exceeded the relief authorized by § 502(a)(1)(B). CIGNA Corp v. Amara, 563 U.S. 421, 438 (2011). However, because plan reformation is a form of equitable relief that would typically be available in equity, the Court held relief could be brought under § 502(a)(3). Id. at 442-43. Amara has been interpreted by some circuits to mean that plaintiffs are not barred from initially bringing a § 502(a)(3) just because they had brought a claim under § 502(a)(1)(B). Silva v. Metro. Life Ins. Co., 762 F.3d 711, 727 (8th Cir. 2014). Although the Amara did not explicitly state this, the Court "in effect does precisely that" by holding that even though § 502(a)(1)(B)

did not authorize relief, § 502(a)(3) does provide an avenue for equitable relief. Moyle v. Liberty Mutual Retirement Ben. Plan, 823 F.3d 948, 960 (9th Cir. 2016); Geralds v. Entergy Servs. Inc., 709 F.3d 448, 452 (5th Cir. 2013); Kenseth v. Dean Health Plan, Inc., 722 F.3d 869, 892 (7th Cir. 2013).

The Supreme Court has also provided helpful explanations of general interpretive canons. For example, when proceeding under complimentary but also conflicting statutory provisions, courts would "show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the operation of the other." Christine S. v. Blue Cross Blue Shield of N.M., 428 F. Supp. 3d 1209, 1233 (D. Utah 2019) (quoting POM Wonderful LLC v. Coca-Cola Co., 573 U.S. 102, 115 (2014)). Further, the Court has held that when exploring the relationship between statutes, courts should interpret the statute as a symmetrical and coherent regulatory scheme, and fit if possible, all parts into a harmonious whole. Christine S., 428 F. Supp. 3d at 1233 (quoting Food & Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000)).

Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure are not affected by the Court's rulings in Varity or Amara. Silva, 762 F.3d at 726 (quoting Black v. Long Term Disability Ins., 373 F. Supp. 2d 897, 902-03 (E.D. Wis. 2005)). Rule 8(a) provides that a pleading stating a claim for relief must contain "a demand for relief sought, which may include relief in the *alternative* or *different* types of relief." Fed. R. Civ. P. 8(a)(3) (emphasis added). Further, the Federal Rules provide that "a party may set out 2 or more statements of a claim or defense alternative or hypothetically . . . . If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient."

Fed. R. Civ. P. 8(d)(2). Rule 18 provides that a party asserting a claim may assert as many claims or alternative claims as it has against an opposing party." Fed. R. Civ. P. 18(a).

Circuit Court Holdings

New York State Psychiatric Ass'n v. UnitedHealth Group, 798 F.3d 125, 129 (2d Cir. 2015), a Second Circuit case, provides helpful insight into the interaction between § 502(a)(1)(B) and § 502(a)(3) based the Court's holdings in Varity and Amara. In this case, the lower court dismissed the plaintiff's § 502(a)(3) claim because § 502(a)(1)(B) offered an appropriate remedy. N.Y. State Psychiatric Ass'n v. UnitedHealth Group, 798 F.3d 125, 130 (2d Cir. 2015). The Second Circuit vacated the lower court's dismissal, holding that the decision to dismiss the § 502(a)(3) claim was premature because the plaintiff was not yet successful on his § 502(a)(1)(B) claim, and so it was "too early to tell if his claims under 502(a)(3) are in effect repackaged claims under 502(a)(1)(B)." Id. at 134; see also Silva, 762 F.3d at 727 (8th Cir. 2014) ("At the motion to dismiss stage, it is difficult for a court to discern the intricacies of the plaintiff's claims to determine if the claims are indeed duplicate . . . and determine if one or both could provide adequate relief").

With this concern for prematurity, New York State Psychiatric Ass'n stands for the proposition that the relevant inquiry is whether duplicate recoveries will result from the proceedings under § 502(a)(1)(B) and § 502(a)(3), not whether there are simultaneous causes of action. N.Y. State Psychiatric Ass'n, 798 F.3d at 134. The plaintiff in this case was allowed to proceed under 502(a)(3) for violations of the Parity Act and § 502(a)(1)(B) for a denial of his benefits. Id. at 128. This interpretation is emphasized by the Eighth and Ninth Circuits as well. See Silva, 762 F.3d at 728 ("Rather, we conclude those cases prohibit duplicative *recoveries* when a more specific section of the statute, such as § 1132(a)(1)(B), provides a remedy similar to

what the plaintiff seeks under . . . § 1132(a)(3)"); see also Moyle, 823 F.3d at 960 ("if Appellants are unable to recover benefits . . . under § 1132(a)(1)(B), they can, however, receive reformation of the Retirement Plan as an equitable remedy under § 1132(a)(3)") (emphasis in original); Castillo v. Metropolitan Life Ins. Co., 970 F.3d 1223, 1229 (9th Cir. 2020).

The Eighth Circuit has expanded on the authorization of simultaneous claims under § 502(a)(3) and § 502(a)(1)(B), emphasizing that plaintiffs can proceed under both provisions if they are asserting distinct theories of liability. Jones v. Aetna Life Ins. Co., 856 F.3d 541, 547 (8th Cir. 2017). In Jones v. Aetna Life Insurance Co., 856 F.3d 541, 547 (8th Cir. 2017), the Court held that the district court's holding that the § 502(a)(3) claim should be dismissed as duplicative was erroneous because two different theories of liability were asserted: (1) claim for benefits wrongfully denied to her under the plan, and (2) the defendant breached its fiduciary duties. Id. The Eighth Circuit based its decision in Jones on Silva v. Metropolitan Life Insurance Co., 762 F.3d 711, 726 (8th Cir. 2014). Id. In Silva, the court held that the plaintiff, seeking to proceed under alternate theories could plead both and is simply not allowed to recover twice. Silva, 762 F.3d at 726; See Powell v. Minn. Life Ins. Co., 60 F.4th 1119, 1123 n.2 (8th Cir. 2023).

In Rochow v. Life Insurance Co. of North Carolina, 780 F.3d 364, 375 (6th Cir. 2015), the Sixth Circuit took a different approach in its interpretation of Amara and Varity which was less plaintiff-friendly. The Court held that fiduciary duty claims under § 502(a)(3) cannot be brought in addition to a § 502(a)(1)(B) claim unless there is a claim based on an injury separate and distinct from the denial of benefits or if relief provided by Congress has shown to be inadequate. Rochow, 780 F.3d at 373. In this case, adequate relief was provided under §

502(a)(1)(B), and the plaintiff was seeking relief for a single injury. Id. at 375. Therefore, the plaintiff could not pursue relief under § 502(a)(3) in addition to § 502(a)(1)(B). Id. at 376.

Some courts have spoken specifically to the relationship between the Parity Act and 29 U.S.C. § 502. These courts have held that since the Parity Act is not a "part of the plan," 29 U.S.C. § 502(a)(1)(B), but rather a "provision of this subchapter," 29 U.S.C. § 502(a)(3), relief for Parity Act violations cannot be obtained under § 502(a)(1)(B). See Christine S., 428 F. Supp. 3d at 1219 ("And because the Parity Act is a substantive provision of ERISA, this court has held that it must be enforced through Section 502(a)(3)"); see also E.W.Health Net Life Ins. Co., 86 F.4th 1265, 1281 (10th Cir. 2023); see also N.R. by and through S.R. v. Raytheon Co., 24 F4th 740, 749, n.3 (1st Cir. 2022) (explaining "the defendants agree that 1132(a)(3) is the avenue to pursue a Parity Act claim"). So, in keeping with the purpose of ERISA in providing a remedy, courts hold that there is a need for further equitable relief under § 502(a)(3) since it is not appropriate for § 502 (a)(1)(B) to provide relief for statutory violations. These courts emphasize that this does not conflict with Supreme Court precedent. In both Amara and Varity, the Court implied that relief for fiduciary duty breaches under the plan could be brought under § 502(a)(3) because there is a chance the plaintiff's § 502(a)(1)(B) claim would be unsuccessful. See Amara, 563 U.S. at 1879; see also Varity, 516 U.S. at 515. Neither Amara nor Varity spoke to how relief would be granted if both the § 502(a)(1)(B) and (a)(3) claims were successful, and if the plaintiff's § 502(a)(3) claim arose under a different statutory provision rather than a fiduciary duty arising from the plan.

Prematurity

Here, the District Court erred in interpreting Supreme Court precedent too narrowly in their dismissal of Count II, failing to see that at the motion to dismiss phase, it is unclear if

adequate relief will be provided under § 502(a)(1)(B). In both Varity and Amara, because the plaintiffs were unable to receive adequate relief under § 502(a)(1)(B), relief could be provided under § 502(a)(3). Varity, 516 U.S. at 512, 515; Amara, 563 U.S. 421, 442-43 (2011). Similarly, at the motion to dismiss phase in the present case, the plaintiffs have not proven their action under § 502(a)(1)(B) and therefore have not shown that § 502(a)(1)(B) will provide them adequate relief. If, like in Varity and Amara, there were circumstances causing the plaintiffs' § 502(a)(1)(B) claim to be unable to proceed, adequate relief could be provided under § 502(a)(3), and therefore their § 502(a)(3) claim was erroneously and prematurely dismissed. Similarly, like the § 502(a)(1)(B) and Parity claims in New York State Psychiatric Ass'n, it is too early to tell if K.D. and J.D.'s Parity Act claim was "in effect repackaged claims under 502(a)(1)(B)." N.Y. State Psych. Ass'n, 798 F.3d at 134. And, like in Silva, without a discussion of the merits of the plaintiffs' claim, "it is [too] difficult for a court to discern the intricacies of the plaintiff's claims to determine . . . if one or both could provide adequate relief." Silva, 762 F.3d at 727.

Proper Inquiry

Further, as several circuit courts have pointed out, nowhere in Varity or Amara did the Court hold that plaintiffs could not pursue both claims. Rather, the Court in those two cases warned against duplicate *recoveries* under § 502(a)(3) resulting when § 502(a)(1)(B) provides an adequate remedy. Here, the district court failed to distinguish that Supreme Court precedent permits proceeding under both provisions while "prohibit[ing] duplicative *recoveries* when a more specific section of the statute, such as § 1132(a)(1)(B), provides a remedy similar to what the plaintiff seeks under . . . § 1132(a)(3)." Silva, 762 F.3d at 728. This is consistent with Fed. R. Civ. P. 8(a)(3). In the present case, the plaintiffs are merely seeking to proceed under both provisions and have not yet shown they will receive duplicate recoveries. So, the district court's

dismissal because there was a chance of duplicate recoveries was erroneous and inconsistent with Supreme Court precedent.

The district court's dismissal of Count II was also erroneous under the Eighth Circuit's interpretation of Supreme Court precedent which emphasizes that plaintiffs can proceed under both provisions if different theories of liabilities are asserted under the different provisions, even if relief is identical. Like in Jones, where the Eighth Circuit held that seeking relief for a denial of benefits as well as a breach of fiduciary duty was permissible, the plaintiffs in this case are bringing two distinct theories of liability: a denial of benefits and a violation of the Parity Act. Even if on its face equitable relief under the two provisions looks duplicative, the plaintiffs' claims under both provisions should be able to proceed under the "distinct theories of liability" framework, making dismissal erroneous. See Jones, 856 F.3d at 547. This framework of different theories of liability championed by the Eighth Circuit is consistent with the Fed. R. Civ. P. 8(d)(2) and 18, further grounds that the district court's dismissal of Count II was erroneous.

Even if the district court applied the defendant-friendly approach the Sixth Circuit used in Rochow, the district court should not have dismissed the plaintiffs' claim under Count II. Separate and distinct injuries have occurred in the case at hand, unlike the plaintiff in Rochow. The injury under § 502(a)(1)(B) was K.D.'s denial of continuing residential treatment, and the injury under § 502(a)(3) was a violation of K.D.'s statutory rights to not have unequal coverage restrictions on benefits related to mental illness. Rochow can also be distinguished from the case at hand because in a prior case, the Rochow plaintiff was already provided adequate relief under § 502(a)(1)(B), making the plaintiff's § 502(a)(3) claim in the subsequent case futile. Here, the plaintiffs' § 502(a)(3) claim was not yet futile because it was unclear at that stage if relief under § 502(a)(1)(B) would be adequate.

The district court also disregarded the purpose of ERISA to provide a remedy and access to federal courts by dismissing Count II. Here, if the plaintiffs were to go to trial proceeding only under their § 502(a)(1)(B) denial of benefits claims, they would not be able to exercise their Parity rights since it is a statutory provision and does not arise from the Plan. Moreover, if the plaintiffs were to fail on their denial of benefit claims under § 502(a)(1)(B), there would be no other avenue to seek equitable relief under other ERISA provisions because their § 502(a)(3) claim was dismissed.

The intention of Congress has also been disregarded by the district court in its erroneous dismissal of Count II. In allowing the plaintiffs to proceed only under § 502(a)(1)(B), the district court ignored Supreme Court precedent holding that courts must interpret statutes as "'symmetrical and coherent regulatory scheme[s]' . . . and 'fit, if possible, all parts into a harmonious whole.'" Food & Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000) (citations omitted). The district court's preclusion of Count I not only ignores the above-stated law but fails to approach the various provisions as a coherent regulatory scheme and instead holds that important parts of ERISA are unable to coexist.

CONCLUSION

For the foregoing reasons, the court should reverse its denial of the plaintiffs' motion to proceed anonymously and vacate the district court's dismissal of Count II.