

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PETER T. JULKA

Plaintiff,

v.

STANDARD INSURANCE COMPANY,

Defendant.

ORDER

09-cv-534-slc

Plaintiff Peter Julka filed suit against defendant Standard Insurance Company under the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461, contending that defendant violated ERISA when it refused to pay him long-term disability benefits under the disability insurance plan it issued to plaintiff's employer. On November 19, 2010, this court granted defendant's motion for summary judgment, holding that plaintiff's claims were time barred by the plan's contractual three year time limit on legal actions. Dkt. 57. Judgment was entered in favor of defendant on November 22, 2010. Now before the court is plaintiff's motion to alter or amend judgment under Fed. R. Civ. P. 59(e), or in the alternative, a new trial under Fed. R. Civ. P. 59(a). I am denying this motion.

DISCUSSION

I note at the outset that the purpose of a Rule 59 motion is to bring to the court's attention newly discovered evidence or a manifest error of law or fact. *Bordelon v. Chicago School Reform Board of Trustees*, 233 F.3d 524, 529 (7th Cir. 2000). It is not intended as an opportunity to reargue the merits of a case. *Neal v. Newspaper Holdings, Inc.*, 349 F.3d 363, 368 (7th Cir. 2003). Nor is a Rule 59 motion intended as an opportunity for a party to submit evidence that

could have been presented earlier. *Dal Pozzo v. Basic Machinery Co.*, 463 F.3d 609, 615 (7th Cir. 2006) (citing *Frietsch v. Refco, Inc.*, 56 F.3d 825, 828 (7th Cir. 1995)).

Plaintiff contends that it was error to grant summary judgment for two general reasons. First, plaintiff contends that he was treated unfairly by the court, which did not allow him additional time to file a response to defendant's motion for summary judgment and refused to grant his motion for leave to file his own untimely motion. However, I am not persuaded that it was error to deny plaintiff additional time to respond to defendant's motion for summary judgment or to file his own motion.

On August 12, 2010, the court granted defendant's motion for leave to file an untimely summary judgment motion, concluding that, based on the nature of the case and the standard of review in ERISA actions, it would be more efficient to consider defendant's arguments on paper rather than at a bench trial. Plaintiff was granted two extensions of time in which to file his brief in opposition to summary judgment, giving him until October 4, 2010 to file a brief. Thus, plaintiff had 54 days to prepare his opposition brief, rather than the standard 21 days that would have applied without the extensions. However, plaintiff did not file an opposition brief by October 4 and instead, filed requests on October 15, October 19 and November 3 for additional time as well as a request to file his own motion for summary judgment. The court denied these requests not because it is biased against plaintiff, but because plaintiff had repeatedly requested more time without producing results. In addition, he had been warned that he would receive no more extensions and that defendant had a legitimate interest in resolution of the case. The court believed that plaintiff had had sufficient time to consider and prepare a

response to defendant's arguments,¹ even considering plaintiff's unfortunate health and family issues. Despite these warnings, plaintiff did not submit any response to defendant's statute of limitations or other arguments regarding the merits of plaintiff's claims. Plaintiff's failure to file a timely response, despite ample opportunity to do so, is not sufficient reason to alter or amend the judgment.

Plaintiff's second argument in support of his Rule 59 motion is that this court's decision granting summary judgment for defendant was based on several factual errors related to defendant's communications with plaintiff regarding his disability claim and administrative appeal. The problem with this argument is that plaintiff waived his opportunity to dispute the factual record by failing to file his own version of events in response to defendant's motion for summary judgment. *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008) ("[M]otions under Rule 59(e) cannot be used to present evidence that could have been presented before judgment was entered.") More importantly, the court granted defendant's motion for summary judgment after concluding that plaintiff's claim was barred by the three-year limitations period in the disability insurance plan at issue. Plaintiff has not explained how any of the alleged factual errors he identifies would impact the statute of limitations issue.

In sum, I am not persuaded that it was error to grant defendant's motion for summary judgment. Therefore, I am denying plaintiff's motion to alter or amend the judgment or for a new trial.

¹ I also note that defendant raised the specific statute of limitations issue as an affirmative defense in its answer that was filed on December 28, 2009. Thus, plaintiff has been on notice of this issue for several months. If the court had not granted defendant's motion for leave to file a summary judgment motion, this case would have proceeded to trial on September 13, 2010, and plaintiff would have been expected to address the statute of limitations issue at that time.

ORDER

It is ORDERED that plaintiff Peter Julka's motion to alter or amend the judgment or for a new trial, dkt. 59, is DENIED.

Entered this 26th day of January, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge