



98529385

27

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

**FILED**

PRESTON TUCKER  
Plaintiff

Case No: CV-16-867652

2017 APR 19 P 08

AMERICAN FIDELITY LIFE INSURANCE CO., ET AL  
Defendant

Judge: MICHAEL J RUSSO

CLERK OF COURTS  
CUYAHOGA COUNTY

**JOURNAL ENTRY**

85 DISP.PRE-TRL - FINAL

04/18/2017: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH AFFIDAVIT AND EXHIBITS IN SUPPORT, FILED 02/10/2017, IS GRANTED.

PLAINTIFF REPLY TO MOTION SUMMARY JUDGMENT FILED, FILED 03/07/2017, IS MOOT. THIS IS NOT A MOTION, IT IS A REPLY BRIEF. OSJ. FINAL.

COURT COST ASSESSED TO THE PLAINTIFF(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

\_\_\_\_\_  
Judge Signature

\_\_\_\_\_  
Date

STATE OF OHIO )  
 ) SS:  
CUYAHOGA COUNTY )

IN THE COURT OF COMMON PLEAS  
CASE NO. CV-16-867652

Preston Tucker, )  
 )  
 ) Plaintiff )  
 )  
 ) vs )  
 )  
 ) American Fidelity Life Insurance Co., et al. )  
 )  
 ) Defendants )

**OPINION ON**  
**SUMMARY JUDGMENTS**

**MICHAEL J. RUSSO, JUDGE:**

This matter comes before the court on the motions for summary judgment of both parties, the briefs in opposition, the replies, and the parties' evidentiary and other submissions.

Tucker's complaint, filed *pro se* on August 15, 2016, alleges a breach of contract action against American Fidelity Life Insurance Company (AMFI) and Rita Enderson, vice president of AMFI. Tucker alleges that he was the beneficiary of a life insurance policy (Policy 573238) issued by American Fidelity Life Insurance Company to his mother, Laura Tucker. Laura Tucker passed away in the spring of 2015, and Tucker alleges that shortly thereafter the defendants wrongfully disbursed the entire policy amount of \$15,084.55 to the Cuyahoga Family Services Department for his child support arrearage, which is in an amount unknown to him. Tucker alleges that he was disputing his arrearages with Cuyahoga County and no law required defendants to disburse this money, that it was merely a company policy. Tucker further alleges that Enderson is personally liable for disbursing the money, although she was acting in her employment capacity.

Tucker moved for summary judgment on December 12, 2016 but attached no evidence to his motion. There is insufficient support from the pleadings and other evidence on the

docket that is in accordance with Civ.R. 56(c) for the burden of production to shift to the defendants. Tucker's motion for summary judgment is therefore denied.

Defendants moved for summary judgment on February 10, 2017 under several theories: 1) immunity under 42 U.S.C. §452; 2) immunity under R.C. 3121.21 and OAC 5101:12-55-40(D); 3) Tucker has failed to prove damages; and 4) Enderson is not liable in her individual capacity. Defendants include with their motion the affidavit of Rita Enderson and its incorporated exhibits: A) a death claim notification regarding Laura Tucker's policy; B) correspondence between AMFI and Tucker; C) the results of a search of the Child Support Lien Network; D) communication from the Cuyahoga County Child Support Enforcement Agency (CSEA); E) additional communications from CSEA; F) correspondence to the Ohio Child Support Payment Portal from Enderson; and G) court orders from the state of Ohio regarding Tucker's child support arrearage.

The court notes at the outset of its analysis that on March 7, 2017 Tucker filed an opposition to defendants' motion for summary judgment alleging that he never received responses to his initial interrogatories and requests for admissions. In their reply, filed March 10, 2017, defendants acknowledged that they served Tucker with discovery on that same date. In light of Tucker's reply, the Court *sua sponte* granted Tucker leave to file a sur-reply to defendants' motion for summary judgment by April 15, 2017. Despite this order, Tucker filed a motion to compel on March 27, 2017. The court held this motion in abeyance pending an in camera inspection of all discovery provided by defendants to Tucker. Defendants partially filed these documents on April 5, 2017 and also e-mailed them to the court's staff attorney. The court conducted a complete review of all documents provided and denies Tucker's motion to compel. A complete set of the documents provided to the court is attached to this order. As of the issuance of this order, no sur-reply by Tucker was filed on the court's docket.

The court first addresses defendants' argument that they are immune from liability under R.C. 3121.21, as it is dispositive of Tucker's claim. The relevant statute states in full that:

A payor or financial institution shall not be subject to criminal or civil liability for compliance, in accordance with sections 3121.18 to 3121.20 of the Revised Code, with a withholding or deduction notice.

Thus, if a child support enforcement agency determines that a child support obligor is receiving income from a payor, the court or agency shall require the payor to withhold an amount from the payment to satisfy the support order. R.C. 3121.03(a). A payor to a child support obligor is required under R.C. 3121.19 to forward the entire amount withheld to the department of job and services within seven days of withholding or deduction as described in R.C. 3121.03.

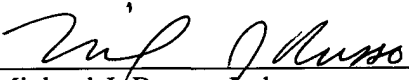
Enderson averred in her affidavit that she determined Tucker had a child support arrearage of \$28,291.62 as of June 14, 2015, which exceeded his life insurance benefit of \$15,084.55. Enderson received correspondence on June 18 and 19, 2015 from the Cuyahoga County CSEA confirming Tucker's obligations and advising her that AMFI was obligated under state law to withhold an amount necessary to pay Tucker's obligations. When Enderson subsequently was provided two court orders substantiating that the amount of Tucker's obligations exceeded the amount of his life insurance benefit with AMFI, she forwarded the entire amount of the life insurance benefit to the Ohio Child Support Payment Portal in good faith and in her capacity as an employee of AMFI.

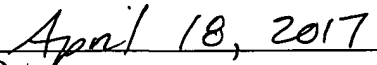
The court finds that even if Tucker were able to prove his breach of contract claim, AMFI and Enderson have provided sufficient evidence to show that they acted properly under Ohio law in disbursing the funds to the Ohio Child Support Payment Portal and that they are immune from civil liability under R.C. 3121.21. Any dispute as to the amount of child support

owed by Tucker can be determined only by the courts in which those child support orders were issued, and is not in consideration by this court.

The motion of defendants American Fidelity Life Insurance Co. and Rita Enderson for summary judgment is granted as there is no genuine issue of material fact and, after construing the undisputed evidence in a light most favorable to Preston Tucker, reasonable minds can come only to the conclusion that defendants American Fidelity Life Insurance Co. and Rita Enderson are entitled to judgment in their favor and against Preston Tucker as a matter of law.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Michael J. Russo, Judge

  
\_\_\_\_\_  
Date