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# UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

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COURTENAY ANN MILLER,

*Plaintiff-Appellant*,

*v*.

DONNA RUTH BRUENGER,

*Defendant-Appellee*.

No. 19-5763

Appeal from the United States District Court
for the Western District of Kentucky at Louisville.
No. 3:18-cv-00069—Rebecca Grady Jennings, District Judge.

Decided and Filed: February 13, 2020

Before: SILER, GIBBONS, and READLER, Circuit Judges.

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## COUNSEL

**ON BRIEF:** Stephen P. Imhoff, THE IMHOFF LAW OFFICE, Louisville, Kentucky, for Appellant. Kirk Hoskins, Louisville, Kentucky, for Appellee.

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## OPINION

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CHAD A. READLER, Circuit Judge. Coleman Miller's passing gave birth to a dispute over his life insurance proceeds. Coleman's life insurance policy arose from his federal service and is governed by the Federal Employees' Group Life Insurance Act of 1954. Because Coleman failed to designate a policy beneficiary, the federal government distributed Coleman's life insurance proceeds to his only child, Courtenay Miller, in accordance with the statutorily

directed federal distribution scheme. Coleman's former spouse, however, claimed entitlement to the proceeds pursuant to a separation agreement signed at the time of the couple's divorce.

Eventually, Courtenay filed a complaint in federal court for declaratory relief. Finding the absence of a substantial question of federal law, the district court dismissed the complaint for a lack of jurisdiction. We agree and **AFFIRM** the judgment of the district court.

## I. BACKGROUND

*The Policy*. Enacted in 1954, the Federal Employees' Group Life Insurance Act (FEGLIA) launched a group life insurance program for federal employees. *See Hillman v. Maretta*, 569 U.S. 483, 486 (2013). The United States Office of Personnel Management (OPM), responsible for managing FEGLIA, entered into a contract with Metropolitan Life Insurance Company (MetLife) to provide insurance to federal employees. *Id.*

For policies purchased in accordance with FEGLIA, enrollees can select a beneficiary to receive the policy's proceeds upon the policyholder's death. 5 U.S.C. § 8705(a). In the absence of a valid beneficiary selection, FEGLIA provides an order of precedence for the proceeds, starting with the widow or widower of the policyholder. *Id.* Relevant for today's purposes is the next level of distribution under FEGLIA: the children or other descendants of the policyholder. *Id.*

FEGLIA will not follow the statutory order of precedence, however, where there exists a "court decree of divorce, annulment, or legal separation, or . . . any court order or court-approved property settlement agreement incident to any decree of divorce, annulment, or legal separation" that "expressly provides" for payment to someone other than the person otherwise entitled to the benefits under FEGLIA's distribution scheme. 5 U.S.C. § 8705(e)(1). But to be effective for FEGLIA proceeds purposes, the relevant court decree, order, or approved agreement must be "received" by the policyholder's "employing agency" or OPM prior to the policyholder's death. 5 U.S.C. § 8705(e)(2).

*The Parties.* At the time of his death, Coleman Miller was a civilian federal service employee working at Tinker Air Force Base in Oklahoma. As a federal employee, Coleman, by virtue of FEGLIA, maintained a life insurance policy through MetLife.

Coleman was once married to Donna Bruenger. Their 27-year marriage ended in divorce in 2011. At the time of their divorce, the couple entered into a property settlement agreement (PSA). Among the many provisions in the PSA is a section explaining that "[Donna] shall remain the beneficiary of the life insurance policy in the name of [Coleman] to the extent of two (2) times the value of [Coleman]'s annual rate of income/salary." In its order approving of the PSA and granting the divorce, the state court instructed the parties, consistent with the PSA, that "[Coleman] is hereby ordered to assign his Federal Employee's Group Life Insurance (FEGLI) benefits to [Donna]."

Upon Coleman's death, his only child, Courtenay, was appointed administratrix of her father's estate. At some point, Courtenay became aware of the PSA's assignment language and the corresponding state court order. Not knowing how to proceed, she contacted Tinker Air Force Base. The Air Force informed Courtenay that the court order governing Coleman's divorce had not been filed with Coleman's employing office. On that basis, Courtenay was paid roughly $172,000 in insurance proceeds.

*The Legal Proceedings.* Disagreeing with the federal government's beneficiary determination, Donna demanded that she be paid the life insurance proceeds. When Courtenay refused, Donna filed a claim against Coleman's estate in Oklahoma Probate Court. But upon agreement of the parties, that suit was dismissed. Courtenay then filed a claim of her own, this one an action in federal court seeking a declaration that she is the rightful owner of the proceeds. Finding a lack of subject-matter jurisdiction, however, the district court dismissed the suit. This appeal followed.

## II. ANALYSIS

Before a federal court takes up a case's merits, it must assure itself of its jurisdiction over the case's subject matter. *Kroll v. United States*, 58 F.3d 1087, 1092 (6th Cir. 1995). And on that score, a federal court's subject-matter jurisdiction is restricted, both by operation of the

Constitution, and by federal statutes. *Estate of Cornell v. Bayview Loan Servicing, LLC*, 908 F.3d 1008, 1011 (6th Cir. 2018). One area where Congress has authorized federal-court jurisdiction is in instances where the amount in controversy between the parties exceeds $75,000, and where there is "complete diversity" between the parties—meaning the parties are citizens of different states. 28 U.S.C. § 1332. Today's case easily clears the first jurisdictional hurdle, with over $170,000 at issue. But it falls short of the second, as Donna and Courtenay are both residents of Kentucky.

That leaves one other potential basis for invoking federal subject-matter jurisdiction: cases that present a question of federal law. 28 U.S.C. § 1331. Federal-question jurisdiction exists when the cause of action arises under federal law. *Estate of Cornell*, 908 F.3d at 1011. Whether a cause of action arises under federal law must be apparent from the face of the "well-pleaded complaint." *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). This means that, for purposes of assessing whether federal-question jurisdiction exists, federal courts ignore any potential federal defenses that may arise in the course of the litigation. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003).

Some fine-tuning of the well-pleaded complaint rule is necessary for declaratory judgment actions. *See Chase Bank USA, N.A. v. City of Cleveland*, 695 F.3d 548, 554 (6th Cir. 2012). Rather than examining the face of the declaratory judgment complaint, we instead "ask whether, absent the availability of declaratory relief, the case could have [been] brought in federal court." 15A James Wm. Moore et al., *Moore's Federal Practice – Civil* § 103.44 (2019); *see also Severe Records, LLC v. Rich*, 658 F.3d 571, 580 (6th Cir. 2011) (quoting *Stuart Weitzman, LLC v. Microcomputer Res., Inc.*, 542 F.3d 859, 862 (11th Cir. 2008)). To make that assessment, we look to the anticipated claim underlying the request for declaratory relief, in this case, Donna's claim to recover the proceeds, to determine if the face of that claim could arise under federal law. *Severe Records, LLC*, 658 F.3d at 580 (quoting *Stuart Weitzman, LLC*, 542 F.3d at 862). With Courtenay putting at issue in the declaratory judgment action whether she is entitled to the life insurance proceeds, we must anticipate whether Donna's hypothetical suit to recover those proceeds would be federal in nature. In other words, would her anticipated claim "arise under" federal law?

A claim arises under federal law, for purposes of federal-question jurisdiction, when the cause of action is (1) created by a federal statute or (2) presents a substantial question of federal law. *Estate of Cornell*, 908 F.3d at 1012–14. Neither is satisfied here.

*FEGLIA does not create a cause of action for Donna to assert.* A federal statute can create a cause of action in one of two ways, either expressly in the text of the statute, or as a direct implication of that text. *Id.* at 1013. Express actions exist when the statute "in so many words" allows an aggrieved party to bring suit in federal court. *Ohlendorf v. United Food & Commer. Workers Int'l Union, Local 876*, 883 F.3d 636, 640 (6th Cir. 2018) (quoting *Traverse Bay Area Intermediate Sch. Dist. v. Mich. Dep't of Educ.*, 615 F.3d 622, 627 (6th Cir. 2010)). For example, federal law contains an express cause of action for disputes arising out of contracts between a union and an employer. 29 U.S.C. § 185(a) ("Suits for violation of contracts between an employer and a labor organization representing employees . . . may be brought in any district court . . . ."); *Ohlendorf*, 883 F.3d at 642 (noting that 29 U.S.C. § 185(a) produces a cause of action).

FEGLIA does not contain an express cause of action authorizing Donna's suit against Courtenay. At most, FEGLIA allows for hypothetical suits against the United States to be brought in federal court. 5 U.S.C. § 8715 ("The district courts of the United States have original jurisdiction, concurrent with the United States Claims Court [United States Court of Federal Claims], of a civil action or claim against the United States founded on this chapter [5 USCS §§ 8701 et seq.]."). Because FEGLIA creates no express right of action for Donna to assert against Courtenay, federal jurisdiction does not arise from an express statutory cause of action.

Nor does FEGLIA create an implied cause of action for Donna to pursue. We proceed with caution before finding that a statute creates an implied cause of action. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1855 (2017). Where an implied cause of action arises, it must be directly derived from Congress's intent. *Estate of Cornell*, 908 F.3d at 1013. In other words, while the action is implied (rather than express), Congress's intent to imply such a claim must be expressed in "clear and unambiguous terms." *Id.* (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290 (2002)).

That clear and unambiguous intent is absent here. We know, from FEGLIA's express terms, that Congress considered jurisdictional questions by authorizing suits against the United States to be brought in federal district court. But Congress showed no intent—express or implied—to create in FEGLIA a federal claim for actions between private parties. *See Ziglar*, 137 S. Ct. at 1856 ("Congress will be explicit if it intends to create a private cause of action."); *see also First Am. Title Co. v. Devaugh*, 480 F.3d 438, 453 (6th Cir. 2007) (applying "*expressio unius est exclusio alterius*, 'the mention of one thing implies the exclusion of another'" in statutory interpretation (quoting *Millsaps v. Thompson*, 259 F.3d 535, 546 (6th Cir. 2001))); *Marx v. Centran Corp.*, 747 F.2d 1536, 1545 (6th Cir. 1984) (noting that where Congress provides a remedy in one place but not another, courts should hesitate to read a remedy into the statute elsewhere (quoting *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 19 (1979))). We must give that legislative choice meaning. *Moses v. Providence Hosp. & Med. Ctrs.*, 561 F.3d 573, 580 (6th Cir. 2009) (noting that "Congress acts intentionally and purposely in the disparate inclusion or exclusion" of statutory language (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983))).

In sum, we find neither an express nor an implied cause of action for Donna to assert under FEGLIA.

*Donna's anticipated action does not present a substantial question of federal law.* Nor can Courtenay establish federal-question jurisdiction on the basis that any litigation pursued against her by Donna would be based on a substantial federal question. These types of questions typically require "the interpretation of a federal statute" that is so significant that a federal court should hear the case. *Eastman v. Marine Mech. Corp.*, 438 F.3d 544, 552 (6th Cir. 2006); *see, e.g.*, *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 313 (2005). To establish federal jurisdiction on this basis, the underlying cause of action must (1) "necessarily raise[] a stated federal issue" that is (2) "disputed and substantial" and (3) hearable by the federal courts without disturbing the established federal-state court balance. *Estate of Cornell*, 908 F.3d at 1014 (quoting *Grable*, 545 U.S. at 314).

Donna's anticipated claim does not necessarily raise a federal issue. Courtenay, anticipating Donna's state court claim, sought a declaration in federal court that she is the

rightful recipient of the life insurance proceeds. It follows that any rival claim brought by Donna to those same proceeds would rely on the PSA and accompanying state court order, which Donna says assigned the proceeds to her.

That claim would not arise under federal law. At heart, it is an action to enforce the PSA, not FEGLIA. *See Victoria v. Metro. Life Ins.*, No. C 09-04179 CRB, 2010 WL 583946, *2 (N.D. Cal. Feb. 16, 2010) (finding that plaintiffs claim was for breach of covenant of good faith and fair dealing, not for FEGLIA benefits). The PSA's impact on the life insurance proceeds, moreover, will likely turn on a question of state law. Indeed, there is evidence to that effect. As the district court noted, Donna previously filed a claim in probate court against the Miller estate that mentioned no federal law. And even if FEGLIA (or another federal issue) would arise in litigation pursued by Donna, federal jurisdiction is not established simply because a state court may have to entertain a federal issue. State courts are well-equipped to do so, when asked. *Hill v. Curtin*, 792 F.3d 670, 675 (6th Cir. 2015).

To the extent FEGLIA had any bearing on Donna's hypothetical state-court lawsuit, it would likely be as a defense to Donna's claim asserted by Courtenay. That is, Courtenay would likely emphasize that the state court order was never filed with the federal government. Under FEGLIA, for a state court order to supersede the statutory order of precedence, the state court order must be received by the federal government. 5 U.S.C. § 8705(e)(2). Yet however powerful that FEGLIA-based defense to Donna's claim might be, defenses invoking federal law do not transform a state-law claim into a federal case. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). This is true even when the parties agree that the anticipated federal defense is the only disputed issue. *Id.* As they inform at most a potential defense to Donna's claim, arguments regarding FEGLIA are not a part of her anticipated well-pleaded complaint.

Even if Donna's anticipated claim necessarily raised a question of federal law, it would not be a substantial and disputed one. To raise a substantial question of federal law, the federal issue must not only be contested but also substantial, "indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum." *Grable*, 545 U.S. at 313. In assessing whether a federal question of law is substantial, we consider whether a federal agency is a party to the action, whether the federal issue is important and dispositive, and how broad the

binding effect of the decision will be. *See Mikulski v. Centerior Energy Corp.*, 501 F.3d 555, 570 (6th Cir. 2007). We consider these factors, "along with any other[s]" that are relevant, "in aggregate." *Id.*

*Grable* offers an example of a substantial federal question. 545 U.S. 308. There, the IRS seized private property and sold it to satisfy a tax delinquency. *Id.* at 310. Following the sale, Grable & Sons Metal Products, Inc., the original property owner, brought a quiet-title suit in state court alleging that the notice of the seizure it received was deficient under federal law. *Id.* at 311. Grable received notice of the seizure via certified mail, but it believed that personal service was required to comply with the applicable federal statute. *Id.* The defendant then removed the case to federal district court, arguing that a federal question existed because the case turned on the interpretation of a federal tax statute. *Id.* Grable moved to remand, but the district court allowed the case to proceed in federal court. *Id.* Federal jurisdiction was appropriate, the Supreme Court ultimately concluded, because the basis for the suit contained a substantial question of federal law. *Id.* at 315.

Reflecting on its earlier decision in *Grable*, the Supreme Court, in *Empire HealthChoice Assurance, Inc. v. McVeigh*, explained that the question of federal law in *Grable* was substantial for three reasons. One, a federal agency was involved in the dispute. *Empire*, 547 U.S. at 700. Two, the case presented a clear issue of federal law—the interpretation of a federal statute's notice provision—that was dispositive and "could be settled once and for all." *Id.* (quoting R. Fallon, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 65 (5th ed. Supp. 2005)). And three, the federal interest at stake—the receipt of delinquent taxes—was an important one. *Id.*; *Estate of Cornell*, 908 F.3d at 1014–15; *Grable*, 545 U.S. at 315.

Today's case lacks many of these same federal indicia. There is no federal agency present in this dispute. *Empire*, 547 U.S. at 700 (finding that a dispute between two private parties hurts the argument for federal jurisdiction). To the extent the case raises a federal issue regarding application of FEGLIA, it seemingly does not do so for a broad range of parties; rather, the inquiry would be "fact-bound and situation-specific." *Id.* at 701. And the United States's interest in how a former employee's life insurance proceeds are distributed would not be

described as significant, when measured against the weighty federal issues the government faces on a regular basis. *See id.* (noting that the federal government's interest in attracting workers to the federal workforce does not justify federal jurisdiction).

Even assuming Donna's anticipated claim raised a disputed, substantial federal issue, the federal courts nonetheless could not hear it without upsetting the established federal-state court balance. With an eye to federalism and comity concerns, federal courts are understandably reluctant to insert themselves into areas that are traditionally the province of the state courts. *Isaac Ford v. Uniroyal Pension Plan*, 154 F.3d 613, 616 (6th Cir. 1998) ("[T]he federal courts may not intrude into the traditional domains of the states absent authorization from Congress."); *Palkow v. CSX Transp., Inc.*, 431 F.3d 543, 555 (6th Cir. 2005) ("Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined." (quoting *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941))). Domestic relations issues are quintessential examples. *See Hillman*, 569 U.S. at 490 ("The regulation of domestic relations is traditionally the domain of state law.").

Congress shares that reluctance. Nothing in FEGLIA indicates that Congress intended to bring domestic relations disputes into the federal realm. Among other indicators, the chief reference in FEGLIA to federal-court jurisdiction is with respect to suits against the United States, 5 U.S.C. § 8715, a powerful indicator that Congress intended to leave disputes between dueling beneficiaries to the state courts. *See Estate of Cornell*, 908 F.3d at 1016. By the same token, granting federal jurisdiction here would risk swinging open the federal courtroom doors to any dispute over the distribution of a federal employee's life insurance proceeds. *See Victoria*, 2010 WL 583946, *3. Such an influx of cases could very well "distort the division of judicial labor assumed by Congress under [§] 1331." *Eastman*, 438 F.3d at 553. Unlike *Grable*, in other words, this is not the rare type of case that courts are unlikely to see again. *Victoria*, 2010 WL 583946, *3.

All told, we agree with the district court that Courtenay and Donna's dispute does not contain a substantial question of federal law conferring federal-question jurisdiction.

*There is likewise no preemption principle that creates federal-question jurisdiction.* In the absence of federal-question jurisdiction, Courtenay argues that jurisdiction is nonetheless appropriate here because FEGLIA completely preempts state law. Complete preemption, it is true, is considered an "exception to [the] well-pleaded-complaint rule," as its application results in any state-law claim being deemed a federal-law claim "from its inception." *Medlen v. Estate of Meyers*, 273 F. App'x 464, 467 (6th Cir. 2008) (quoting *Caterpillar Inc.*, 482 U.S. at 393); *see also Hogan v. Jacobson*, 823 F.3d 872, 879 (6th Cir. 2016) (explaining that unlike express preemption, complete preemption is not a defense—it is a jurisdictional doctrine establishing federal-court jurisdiction). But proving such exhaustive preemption by the federal government is exceedingly difficult.

Complete preemption arises in the rare circumstance where Congress legislates an entire field of law. *Roddy v. Grand Trunk W.R.R.*, 395 F.3d 318, 323 (6th Cir. 2005). When Congress does so, federal law completely overrides all state law on the topic. *See AmSouth Bank v. Dale*, 386 F.3d 763, 776 (6th Cir. 2004). Given that dramatic altering of the traditional federal-state balance, we are reluctant to find such broad-based preemption. *Roddy*, 395 F.3d at 323. The statute in question must reflect clear congressional intent to do so. *See id.* And its language must contain "extraordinary preemptive power." *Id.* at 323–24 (noting that complete preemption exists "where Congress has indicated an intent to occupy the field so completely that any ostensibly state law claim is in fact a federal claim" (quoting *AmSouth*, 386 F.3d at 776)). In other words, the statute must engulf an entire area of state law, transforming a state-law complaint into one that essentially states a federal claim. *Medlen*, 273 F. App'x at 467.

We see no evidence that FEGLIA clears these high bars. Congress, to be sure, did intend for FEGLIA to have some preemptive force. Congress expressly directed that FEGLIA preempts any state law or regulation that is inconsistent with FEGLIA. 5 U.S.C. § 8709(d)(1) ("The provisions of any contract under this chapter . . . shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions."). But that preemption clause does not rise to the exacting standards required to find complete preemption. *See Roddy*, 395 F.3d at 323–24. In fact, FEGLIA's preemption provision

likely cuts the other way. Had Congress intended entirely to occupy the field, it would have said so in more express terms, perhaps along the lines of stating that FEGLIA is the exclusive cause of action for any claim (including state-law claims) that could implicate FEGLIA. *Cf. Griffioen v. Cedar Rapids & Iowa City Ry. Co.*, 785 F.3d 1182, 1189 (8th Cir. 2015) ("[W]ithout a federal cause of action which in effect replaces a state law claim, there is an exceptionally strong presumption against complete preemption." (quoting *Johnson v. MFA Petroleum Co.*, 701 F.3d 243, 252 (8th Cir. 2012))). Thus, FEGLIA does not completely preempt state law.

Nor, as Courtenay appears to suggest, does the just-mentioned express preemption clause in FEGLIA establish federal-question jurisdiction on its own accord. Express preemption operates as a defense to state-law claims. *See Gardner v. Heartland Indus. Partners, LP*, 715 F.3d 609, 612 (6th Cir. 2013) (noting that ERISA's express preemption provision operates as a federal defense). But a federal defense is just that—a defense to a state-law claim. And such a defense would not appear on the face of a well-pleaded complaint. Courtenay is free to argue in state court that Donna's claim is preempted by federal law. But asserting that defense does not transform Donna's claim, one rooted in state law, into a blossoming federal one. *Id.* Nor is the state court encumbered in deciding that preemption question on its own accord. *Roddy*, 395 F.3d at 326.

## CONCLUSION

For these reasons, we **AFFIRM** the judgment of the district court.