

NOV 21 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KENNETH J. BAILEY, for himself and as
executor of the Estate of Linda Jean
Weeks,

Plaintiff-Appellant,

v.

UNION BANK RETIREMENT PLAN;
EMPLOYEE DEFERRED
COMPENSATION AND BENEFIT
PLANS ADMINISTRATIVE
COMMITTEE,

Defendants-Appellees.

No. 14-55734

D.C. No. 5:12-cv-01754-R-SP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted November 16, 2016**

Before: LEAVY, BERZON, and MURGUIA, Circuit Judges.

Kenneth J. Bailey appeals pro se from the district court's summary judgment

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

in his action under the Employment Retirement Income Security Act of 1974 (“ERISA”) for surviving domestic partner benefits and breach of fiduciary duty. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court’s grant of summary judgment. *Tremain v. Bell Indus., Inc.*, 196 F.3d 970, 975 (9th Cir. 1999). Where an ERISA-governed plan grants discretionary authority to determine eligibility for benefits or to construe the terms of the plan, we review for an abuse of discretion the administrator’s interpretation of the plan, and de novo the district court’s application of this standard. *Tapley v. Locals 302 & 612 of the Int’l Union of Operating Eng’rs-Emp’rs Constr. Indus. Ret. Plan*, 728 F.3d 1134, 1139 (9th Cir. 2013). We may affirm on any basis supported by the record. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). We affirm.

The district court properly granted summary judgment on Bailey’s claim for surviving domestic partner benefits under 29 U.S.C. § 1132(a)(1)(B) because Bailey failed to raise a genuine dispute of material fact as to whether the plan administrator’s denial of benefits was an abuse of its discretion. *See McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1113 (9th Cir. 2000) (under abuse of discretion standard, plan administrator’s denial of benefits must be upheld “if it is based upon a reasonable interpretation of the plan’s terms and if it was made in good faith”).

Summary judgment on Bailey's breach of fiduciary duty claim was proper because Bailey failed to raise a genuine dispute of material fact as to whether the failure to inform Bailey or his domestic partner of the registration requirement for surviving domestic partner benefits was a breach of defendants' fiduciary duties. *See* 29 U.S.C. § 1104(a) (setting forth standard of care and duties of plan fiduciary); *In re Oracle Corp. Secs. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (describing non-moving party's burden to show specific facts demonstrating existence of genuine disputes for trial).

AFFIRMED.