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STATE OF MICHIGAN

IN THE SUPREME COURT
(On Appeal from the Michigan Court of Appeals)

In re ESTATE OF JENNIFER L. FOWLER.

SHELLIE SPACIL, Personal Representative
Of The ESTATE OF JENNIFER L. FOWLER,
Appellant,

v.

SC: 167501
COA: 365600
St. Clair PC: 19-000085-DE

JULIE BROOKS, Personal Representative
Of The Estate of Helen Fowler,
Appellee.
_____/

In re ESTATE OF JENNIFER L. FOWLER.

SHELLIE SPACIL, Trustee for the JENNIFER
L. FOWLER TRUST,
Appellant,

v.

SC: 167502
COA: 365603
St. Clair PC: 22-000259-CZ

JULIE BROOKS, Personal Representative of
The Estate of Helen Fowler,
Appellee.
_____/

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In re ESTATE OF JENNIFER L. FOWLER.

SHELLIE SPACIL, Trustee for the JENNIFER L. FOWLER TRUST,
Appellant,

v.

SC: 167503
COA: 365610
St. Clair PC: 2022-000259-CZ

JULIE BROOKS, Personal Representative of The ESTATE OF HELEN FOWLER,
Appellee.
_____/

APPELLANT JENNIFER FOWLER TRUST'S SUPPLEMENTAL BRIEF FOLLOWING ORAL ARGUMENTS

ORAL ARGUMENT REQUESTED

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II. IF SO, WHETHER MCL 700.7605(1) APPLIES TO PROPERTY PAID INTO AN IRREVOCABLE TRUST WHERE THE TRUST WAS REVOCABLE AT THE SETTLOR'S DEATH.

III. IF MCL 700.7605(1) DOES NOT APPLY TO THE PROPERTY AT ISSUE BECAUSE THE PROCEEDS WERE PAID INTO JENNIFER'S TRUST AFTER IT BECAME IRREVOCABLE, WHETHER THE PROCEEDS ARE ANALYZED UNDER PROVISIONS RELATED TO THE IRREVOCABLE TRUSTS, SEE MCL 700.7506(1)(c).

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[1] Appellant incorporates the Appendix filed with the Application For Leave to Appeal.

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QUESTIONS PRESENTED

I. WHETHER THE PROPERTY AT ISSUE, THE 401(K) AND LIFE INSURANCE PROCEEDS, BECAME PROPERTY OF JENNIFER'S TRUST AFTER THE TRUST AUTOMATICALLY BECAME IRREVOCABLE UPON HER DEATH.

II. IF SO, WHETHER MCL 700.7605(1) APPLIES TO PROPERTY PAID INTO AN IRREVOCABLE TRUST WHERE THE TRUST WAS REVOCABLE AT THE SETTLOR'S DEATH.

III. IF MCL 700.7605(1) DOES NOT APPLY TO THE PROPERTY AT ISSUE BECAUSE THE PROCEEDS WERE PAID INTO JENNIFER'S TRUST AFTER IT BECAME IRREVOCABLE, WHETHER THE PROCEEDS ARE ANALYZED UNDER PROVISIONS RELATED TO THE IRREVOCABLE TRUSTS, SEE MCL 700.7506(1)(c).

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INTRODUCTION

This Court has requested supplemental briefing addressing:

1. WHETHER THE PROPERTY AT ISSUE, THE 401(K) AND LIFE INSURANCE PROCEEDS, BECAME PROPERTY OF JENNIFER'S TRUST AFTER THE TRUST AUTOMATICALLY BECAME IRREVOCABLE UPON HER DEATH.

2. IF SO, WHETHER MCL 700.7605(1) APPLIES TO PROPERTY PAID INTO AN IRREVOCABLE TRUST WHERE THE TRUST WAS REVOCABLE AT THE SETTLOR'S DEATH.

3. IF MCL 700.7605(1) DOES NOT APPLY TO THE PROPERTY AT ISSUE BECAUSE THE PROCEEDS WERE PAID INTO JENNIFER'S TRUST AFTER IT BECAME IRREVOCABLE, WHETHER THE PROCEEDS ARE ANALYZED UNDER PROVISIONS RELATED TO THE IRREVOCABLE TRUSTS, SEE MCL 700.7506(1)(c).

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SUPPLEMENTAL ARGUMENT

I. WHETHER THE PROPERTY AT ISSUE, THE 401(K) AND LIFE INSURANCE PROCEEDS, BECAME PROPERTY OF JENNIFER'S TRUST AFTER THE TRUST AUTOMATICALLY BECAME IRREVOCABLE UPON HER DEATH.

In response to the Court's specific question, both the proceeds of the 401(k) and the life insurance policy became property of Jennifer Fowler's Trust after the Jennifer Fowler Revocable Trust became automatically irrevocable upon the death of Jennifer Fowler. As set forth herein, immediately upon/after the death of Jennifer Fowler:

a. The revocable trust became irrevocable,

b. The Jennifer Fowler Trust, as beneficiary of Jennifer's DTE 401(k) Plan, acquired its rights in the 401(k) Plan benefits, and;

c. The Jennifer Fowler Trust, as beneficiary of Met Life Insurance policy, acquired its rights to the life insurance proceeds.

All of these event occurred after the death of Jennifer Fowler.

Whether a trust was revocable or irrevocable is a question of the intention of the settlor. Fornell v Fornell Equipment, Inc, 390 Mich 540, 551 (1973). Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. MCL 700.7602(1). Unless an exception as enumerated in the statute applies, the terms of the Trust prevail over any provision of the

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Michigan Trust Code [the MTC]. MCL 700.7105(2). See In re Pollack Trust, 309 Mich App 125, 164 (2015).

Regarding transfers which occur upon death, such a transfer takes affect instantly upon the time of death. Aetna Life Ins Co v Owens, 318 Mich 129, 138-139 (1947); (noting that the beneficiary's interest in the policy attached instantly upon the death of the insured); In Re Allen Estate, 240 Mich 661 (1927); Richards v Pierce, 44 Mich 444 (1880); State Treasurer v Snyder, 294 Mich App 641 (2011).

In Re Cress' Estate, 335 Mich 551 (1953), the Court addressed the issue of when inheritance tax is payable, the day of death or date of distribution of the estate assets, there was a Will contest and a settlement. In addressing the issue, the Court stated:

> "In a well-reasoned opinion, Attorney General Oren in 1902 advised (Opinions Attorney General 1903, p 74):
>
> **"Under the Michigan law the transfer of property by the death of a decedent takes place upon the death, and not upon the distribution.** It is true, where the transfer takes place pursuant to a will, the will must be probated before the devisee or legatee is entitled to the full enjoyment of the transfer; but when the will is once probated, the probate, for all purposes relating to the existence and transfer of the title, relates back to the death of testator. * * *
>
> "The devolution of the property and the right of the State have their origin at the same moment of time. The ascertainment of the value of the taxable interest and the fixing of the tax necessarily takes place subsequent to the death. **But the guide is the value at the time of the death, when the interests were acquired."**
>
> ***
>
> "In the case at bar, the tax is computed by reason of transfer of property by will. **The compromise**

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> **agreement does not change the fact that the entire property in the estate passes by reason of the will, and at the time of the death of testator. The right of the State becomes fixed at the moment of death,** although the value of the taxable interest is fixed at a later date, nor does the so-called Dodge act, CL 1948, § 702.45 (Stat Ann 1943 Rev § 27.3178[115]), encouraging the settlement of will contests and other contests over the distribution of a decedent's estate change or modify our inheritance tax laws." 335 Mich at 564. (Emphasis added)

See also Emmet Cnty. Treasurer v Litzner (In re Emmet Cnty. Treasurer for Foreclosure) 345 Mich App 692 (2023).

- **The Revocable Trust Becomes Irrevocable:**

The Jennifer Fowler Trust was executed on August 17, 2012 and restated on December 12, 2017. Appellant's Appendix 11. Jennifer L. Fowler died on November 10, 2018. Appellant's Supplemental Appendix 1. [1] The Jennifer L. Fowler Living Trust became irrevocable on the date of the death, namely November 10, 2018.

The Jennifer L. Fowler Living Trust provides in relevant part:

> **"Article One**
>
> **Creation of My Trust**
>
> Section 1. My Trust
>
> ***
>
> My trust is a revocable living trust that contains my instructions for my own well-being and that of my loved ones." Appellant's Appendix, p. 11.
>
> ***

[1] Due to the poor quality condition of Jennifer Fowler's death certificate, Appellant's Appendix 136, Appellant provides a legible copy of the death certificate.

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Article Four

"Administration of My Trust

During My Lifetime"

Section 1. My Lifetime Powers

During my life, I shall have the express and total power to control and direct payments, make investment decisions, add or remove trust property, and amend or revoke this trust." Appellant's Appendix, p. 16.

***

d. Amend or Revoke the Trust

I shall have the absolute right to amend or revoke my trust, in whole or in part, at any time. Any amendment or revocation must be delivered to my Trustee in writing. ...[.]. Appellant's Appendix 17.

***

"Article Six

Administration of My Trust upon My Death

Section 1. My Administrative Trust

Upon my death, my trust shall become irrevocable and my Trustee shall administer all trust property under the terms of this Article...[.]." Appellant's Appendix, p. 32.

Pursuant to the expressed terms of the Trust, the Jennifer L. Fowler Living Trust is and was a revocable trust at all times until November 10, 2018, when Jennifer died at which time the Trust instantly became irrevocable. See Appellant's Appendix pp 130-135 and Appendix 136. See also Appellant's Supplemental Appendix p. 1.

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Upon the death of Jennifer Fowler, and the Jennifer Fowler Trust becoming irrevocable, the rights of beneficiaries became vested. In re Childress Trust, 194 Mich App 319 (1992).

- **401(k)**

Jennifer Fowler was an employee of DTE and through her employment she held an interest in a 401(k) account. Appellant's Appendix pp. 221-344. During her lifetime, the 401(k) was owned by Jennifer. Appellant's Appendix pp. 222-344, monthly DTE 401(k) statements. The 401(k) was covered under DTE 401(k) Plan which was and is governed by Employee Retirement Income Security Act of 1974, Pub. L No. 93-406, 88 Stat. 829 (codified at *29 U.S.C.A. §§ 1001, et seq.,* hereinafter referred to as ERISA. Appellant's Appendix, pp. 146-221. The Jennifer Fowler Trust was the beneficiary of the 401(k) account. Appellant's Appendix p. 225, and also as set forth in all monthly statements,

The DTE Plan, as relevant to the issue before the Court provides:

Article 2. Definitions

> Whenever used in the Plan, the following terms shall have the meanings set forth below unless otherwise expressly provided. The definition of any term in the singular shall also include the plural, whichever is appropriate in the context. Appellant's Appendix, p. 152
>
> ***
>
> **2.6 Beneficiary**
>
> Beneficiary means the person or persons designated by the Member under section 8.1 to receive death benefits under the Plan. Appellant's Appendix, p 154.

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***

2.15 Eligible Employee

Eligible Employee means any Employee who is represented by Local 223 of the Utility Workers Union of America except:

(a) any individual engaged and classified by an Employer as an independent contractor, regardless of whether a government agency, court, or other entity subsequently determines that such individual is an employee for purposes of employment taxes or any other purpose; and

(b) Any individual who is considered a "leased employee" of an Employer within the meaning of Code se3ction 414(n), regardless of whether a government agency, court, or other entity subsequently determines that such individual is an employee for purposes of employment taxes or any other purpose. Appellant's Appendix,. P. 157

***

2.30 Member

Member means a Participant or a former Participant who still has an Account balance under the Plan. Appellant's Appendix, p. 160.

***

2.34 Participant

Participant means any Eligible Employee of an Employer who has met and continues to meet the active participation requirements of the Plan as set forth in Article 4. Appellant's Appendix, p. 160

***

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Article 8-Distributions

8.1 Entitlement to Distribution Upon Death of Member

(a) **Death of Member.** If a Member dies before the complete distribution of the Member's Vested Interest in his or her Account, the Beneficiary designated by the Member shall be entitled to receive the remaining portion of the Vested Interest of such Account in the form described in section 8.3, and as of the Valuation Date provided in section 8.4.

(b) **Designation of Beneficiary.**

(1) **General Rule.** Each Member may designate one or more persons as Beneficiary to receive the remaining portion of the Vested Interest of the Member's Account in the event of the Member's death. Each such designation shall be made on a form provided by the Plan Administrator, shall be effective only when filed in writing with the Plan Administrator, shall be effective only when filed in writing with the Plan Administrator, and shall revoke all prior designations, subject to the provisions of paragraph (2) below. ...[.]. Appellant's Appendix, p. 187.

***

8.4 Time of Benefit Payments

(b) **Distribution Upon Death.** A distribution to a Beneficiary under section 8.1 shall be made as of the earliest practicable Valuation Date coinciding with or next following the Member's death. Appellant's Appendix, p. 190.

Upon death and pursuant to the DTE Plan, the 401(k) account transferred to the named beneficiary, The Trust.[2] Appellant's Appendix, p. 187.

[2] At this time, the funds have not been transferred to the Trust and remain in possession and control of the Plan Administrator, Empower.

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It is beyond dispute that during the lifetime of Jennifer Fowler, Jennifer Fowler was the owner the 401(k) and the 401(k) account was not an asset of The Trust. Appellant's Appendix, pp. 221-344. Additionally, as the 401(k) was held in the DTE Plan during Jennifer's life, the 401(k) account was exempt from any judgment attachment and could not be used to satisfy any claims against Jennifer Fowler during her lifetime. DaimlerChrysler Corporation and DaimlerChrysler-UAW Pension Agreement v. Cox, 447 F.3d 967, 972-974 (6th Cir. 2006).

ERISA requires "every employee benefit plan to be established and maintained pursuant to a written instrument," 29 U.S.C. § 1102(a)(1), specifying the basis on which payments are made to and from the plan," § 1102(b)(4). Kennedy v Plan Adm'r for DuPont Sav. & Inv. Plan 555 U.S. 285, 286-287 ; 129 S. Ct. 865 ; 172 L. Ed. 2d 662; 2009. The plan administrator is obliged to act in accordance with the documents and instruments governing the plan. *§ 1104(a)(1)(D),* Kennedy v Plan Adm'r for DuPont Sav. & Inv. Plan 555 U.S. at 286-287. Under the terms of the Plan, as well as ERISA, a beneficiary's rights vest in upon the participant's retirement or death. See Plan ¶8.1; Appellant's Appendix 225; 29 U.S.C. 1055; Hopkins v AT&T Global Info. Solutions Co., 105 F.3d 153, 155-57 (4th Cir. 1997).

For the above reasons, the 401(k) account became property of the Jennifer L. Fowler Living Trust on November 10, 2018, after the Jennifer Fowler Revocable Trust automatically became irrevocable upon the death of Jennifer Fowler.

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- **Life Insurance:**

Metropolitan Life Insurance Company ("Met Life") insured the life of Jennifer Fowler under an employee group insurance policy issued through her employer, DTE. See Appellant's Appendix, p. 108-144. The beneficiary of the life insurance policy was the Jennifer L. Fowler Living Trust. Appellant's Appendix, p. 114. On January 14, 2019, Met Life paid to the Jennifer L. Fowler Living Trust $438,385.20. Appellant's Appendix, p. 145.

Appellant submits that the Jennifer L. Fowler Living Trust did not acquire any rights property rights in the life insurance benefits until after the death of Jennifer Fowler, which was also the event upon which the Trust automatically became irrevocable.

In Dogariu v Dogariu 306 Mich 392, 406 (1943), this Court, addressing the rights of a named beneficiary in a life insurance policy, stated:

> "However, upon his death the widow, as beneficiary, was immediately vested with the right to the *insurance*. As said in *Jacobs v. Abraham Lincoln Life Ins. Co., supra, p. 1164*:
>
> > "No change of beneficiary having been accomplished prior to the death of the insured, the right of the plaintiff (beneficiary) to the proceeds became vested at her death."
>
> In *Knights of Maccabees of the World v. Sackett, supra,* the court said, p. 366:
>
> > "The interest of the beneficiary attaches instantly upon the death of the insured, and the question whether a change has been effected must be determined as of that particular instant of time."

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> See, also, *Ancient Order of Gleaners v. Bury, supra; Fink v. Fink, supra; Wandell v. Mystic Toilers, 130 Iowa, 639 (105 N.W. 448)*.
>
> The payment of the proceeds of the policies into court in pursuance of stipulations and decrees of interpleader did not affect the claim of the widow as beneficiary, because her right to the insurance became absolute upon the death of her husband. *Knights of Maccabees of the World v. Sackett, supra; Reid v. Durboraw, supra; Ireland* v. *Ireland,* 42 Hun (49 N.Y. Sup. Ct.), 212. In 2 Couch on *Insurance*, § 308, it is stated, p. 828:
>
> > "The rights of the named beneficiary vest at the instant of the insured's death, and cannot be affected by any subsequent act of the insurer."
>
> One of the benefits of life insurance is that, in most instances, it is paid to the designated beneficiary with reasonable promptness after the death of the insured. To hold that, without substantial compliance with the provisions of the policy relative to change of beneficiary, an insured, by his will alone, could change such beneficiary, would open the door to possible fraud and irregularities and would create uncertainty tending to interfere with the customary practice of prompt payment. We are convinced that in the absence of a showing of substantial compliance with the policy's requirements, the will of the insured, standing alone, should not effect a change of beneficiary."

In the case at bar, the Trust's rights a beneficiary to the life insurance policy and proceeds did not occur until death, at which time the rights, whatever they are, become instantly vested and assets of the revocable trust, which at the time of vesting, had also become irrevocable as a result of Jennifer's death.

For the foregoing reasons, both the 401(k) and the life insurance proceeds became property of Jennifer Fowler's Trust after the Trust automatically became irrevocable upon her death

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II. IF SO, WHETHER MCL 700.7605(1) APPLIES TO PROPERTY PAID INTO AN IRREVOCABLE TRUST WHERE THE TRUST WAS REVOCABLE AT THE SETTLOR'S DEATH.

Appellant submits that the assets payable to the revocable trust, after the trust became irrevocable upon the death of the settlor, namely the 401(k) and the life insurance proceeds, are not subject to the provisions of MCL 700.7605(1).

Appellant acknowledges that the assets of the Estate of Jennifer Fowler are insufficient to satisfy its expenses, claims, and allowances. It is further beyond dispute, and acknowledged, that pursuant to the terms of the MTC, the assets which existed in a Jennifer Fowler revocable trust immediately prior to Jennifer Fowler's death are subject to claims of her creditors pursuant to MCL 700.7506(1)(a). The obvious question now centers on the assets which the Jennifer Fowler Trust received following the death of Jennifer Fowler.

This Court interprets statutes to discern and give effect to the Legislature's intent, and in doing so focus on the statutory language and apply the language on the basis of their ordinary meaning and the context within which they are used in the statute.. Clam Lake Twp v Dep't of Licensing and Regulatory Affairs, 500 Mich 362, 373 (2017), ACLU of Mich v Calhoun Co Sheriff's Office, 509 Mich 1, 8 (2022); Whitman v City of Burton, 493 Mich 303, 311 (2013). Where the language of the statute is unambiguous, it is concluded that the Legislature intended the meaning clearly expressed, and the statute must be enforced as written and no further judicial construction is required or permitted. Ward v Sun Valley Foods, 460 Mich 230 (1999). It is well settled that to discern the Legislature's intent, statutory

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provisions are *not* to be read in isolation; rather, context matters, and thus statutory provisions are to be read as a whole. Griffith v State Farm Mut Auto Ins Co, 472 Mich 521, 533 (2005).

MCL 700.7506 provides in relevant part:

> **(1)** Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:
>
> > **(a)** During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.
> >
> > (b) **After the death of a settlor**, and subject to the settlor's right to direct the source from which liabilities will be paid, **the property of a trust that at the settlor's death was revocable by the settlor**, either alone or in conjunction with another person, **is subject to expenses, claims, and allowances as provided in section 7605.**

As relevant to this issue, MCL 700.7506(1)(a) and (b) address two separate circumstances:

a. During the settlor's lifetime property which was in a revocable trust is subject to the settlor's creditors, and;

b. Upon the settlor's death, property which was in a trust, which at the time of the settlor's death was revocable, is subject to the provisions of MCL 700.7605.

Under MCL 700.7506(1)(b), the only trust assets which are subject to the claims of under MCL 700.7605(1), are assets which were in a revocable trust before the revocable trust became irrevocable due to the death of the settlor.

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The assets in a revocable trust which were subject to claims of creditor's during the settlor's lifetime, and assume they remain in the Trust at the time of the settlor's death, when the revocable trust would then automatically become irrevocable, would be subject to claims of the Estate of the settlor under MCL 700.7605. Assets which came into the revocable trust, after it became irrevocable, would not be subject to the provisions of MCL 700.7605 or the claims of the settlro's Estate.

This conclusion is consistent with the statute and the rules of statutory construction, since if the intent of the statute was to all assets of a revocable trust, which because irrevocable upon death be subject to the claims of the settlor's Estate's creditors, MCL 700.7506(1)(b) would have so provided.

This interpretation is support by the provisions of the Utah version of the Uniform Trust Code, [UTC], 75B-2-505 of the Utah Code Annotated, the sequel to the MTC, which provides:

> Regardless of whether the terms of a trust contain a spendthrift provision, the following rules apply:
>
> **(1)**
>
> **(a)** During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors.
>
> **(b)** If a revocable trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.
>
> ***
>
> **(3) After the death of a settlor, and subject to the settlor's right to direct the source from which**

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> **liabilities will be paid, the property of a trust that was revocable at the settlor's death, but not property received by the trust as a result of the death of the settlor which is otherwise exempt from the claims of the settlor's creditors,** is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. [Emphasis added].

Granted, the Utah version of the UTC is a clear indication that post-death transfers into a revocable trust which became irrevocable upon death, are free from the claims of the settlor's creditors. Appellant submits that while the Utah statute clearly addresses post-death transfers into a trust which became revocable upon death in detail, underlying language of the statute is same the basic language of MCL 700.7506(1)(b), and thus, the same rationale applies.

It would have been extreme easy of the legislature to have included in the statute that all assets acquired by a revocable trust, which became irrevocable upon the death of the settlor, are subject to the claims of the settlor's creditors. In construing a statute, the Court must assume that when the Legislature drafted its legislation, that it knows what the existing law is and takes it into consideration. O'Connell v Dir of Elections, 316 Mich App 91, 99 (2016). Considering the statute use of the phrase "revocable trust, which became irrevocable upon the death of the settlor" or similar language, Argument III, *infra.,* the legislature clearly chose to only subject the assets which were in a revocable trust, at the time of the settlor death, to the claims of the settlor's creditor under MCL 700.7605(1),

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MCL 700.7605(1) provides in relevant part:

> (1) **The property of a trust** over which the settlor has the right without regard to the settlor's mental capacity, **at his or her death**, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself **is subject to all of the following**, but only to the extent that the settlor's property subject to probate administration is insufficient to satisfy the following expenses, claims, and allowances:

Appellant submits that the plain language of MCL 700.7605(1) applies only to assets which were in revocable trust [which the settlor had a right to revoke] prior to the settlor's death and that post-death assets which came into a revocable trust following the death of the settlor, when the trust became automatically, are free from the claims of the settlor's creditor's. Therefore, MCL 700.7605(1) does not apply to property paid into an irrevocable trust which became irrevocable upon death of the settlor.

This issue is obviously a a matter of first impression. The only other case which has interpreted MLC 700.7605(1) and/or 700.7605(4) is United States v Estate of Chicorel, United States District Court for the Eastern District of Michigan January 17, 2017, Decided; January 17, 2017, Case No. 16-10894, 2017 U.S. Dist. LEXIS 229139. Supplemental Appendix 2.

In Chicorel, the trial court addressed the potential liability of a Trust for tax liability of the settlor and whether the Trust should be added as a parties to a tax collection action. The Trust's sole assets was acquired after the settlor's death where the revocable trust automatically became irrevocable.

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Addressing the issue, the Court stated:

> "The government seeks to add Ralph Chicorel as trustee to the decedent's trust and argues that the property of the trust is subject to its claim under Michigan statute. (Dkt. # 13, Pg. ID 70.) Defendant argues that claims against the trust would be futile because Michigan law does not subject the trust's property to claims by creditors of the estate. (Dkt. # 14, Pg. ID 101-02.) Because the court agrees with this contention by Defendant, it will not address Defendant's other arguments regarding futility.
>
> ***
>
> **Central to the futility question is whether Michigan law authorizes creditors to collect on a revocable trust made irrevocable by the death of the settlor.** On this point, the parties dispute the proper interpretation of Michigan statute. First, MCL 700.7506(1)(b) provides:
>
> > After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.
>
> In turn, MCL 700.7605(1) states:
>
> > The property of a trust over which the settlor has the right . . . at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself is subject to . . . . (b) An enforceable and timely presented claim of a creditor of the settlor[.]
>
> ***
>
> Defendant argues that MCL 700.7506(1) and 7605(1) "plainly make the assets of a *revocable* trust subject to the claims of creditors under certain circumstances. **However, trust funds are only subject to claims of a decedent's creditors to the extent that these**

funds existed in a *revocable* trust at the date of decedent's death." (Dkt. # 14, Pg. ID 102. **Because the trust received the death benefit proceeds only after the trust became irrevocable and not otherwise part of the estate, Defendant argues those proceeds are unreachable by Decedent's creditors.** (*Id.*) Emphasis added.

In opposition, the government contends that the language of the statute "does not limit assets of a trust which are subject to creditors' claim[s] to only those that existed at the time of the settlor's death. (Dkt. # 15, Pg. ID 172-73.) **The government points to section 7506(1)(b), which states "[a]fter the death of a settlor . . . the property of a trust that at the settlor's death was revocable by the settlor . . . is subject to expenses, claims, and allowances as provided in section 7605." The phrase "at the settlor's death," the government argues, refers to the time in determining whether a trust is revocable, not what property was held by the trust. (Dkt. # 15, Pg. ID 172-73.) Thus, by the government's logic, property held by a trust made irrevocable by the death of the settlor is always reachable by creditors under Michigan law.** Emphasis added.

The government's construction ignores the most salient statutory provision, which provides:

> "For purposes of this section, property held or received by a trust to the extent that the property would not have been subject to a claim against the settlor's estate if it had been paid directly to a trust created under the settlor's will or other than to the settlor's estate, or property received from a trust other than a trust described in this section, shall not be considered trust property available for the payment of the administration expenses, a claim against the settlor's estate, or an allowance described in subsection (1). MCL 700.7605(4)."

Had Decedent used a testamentary trust instead of a revocable living trust, sections 7605(1) and 7506(1) unambiguously would not apply and the death benefit proceeds would not be subject to claims of the estate's

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> creditors. **In effect, Defendant's assertion that the statute does not apply to property held outside of a revocable trust at the time of Decedent's death is correct.** The government cannot reach the death benefit proceeds held by Decedent's now-irrevocable trust. As a result, the government's proposed amendment would be futile with respect to its claims against the trustee." Appellant's Supplemental Appendix pp. Emphasis added.

The holding and rationale of US District Judge Robert Cleland certainly applies in the instant case, and for that reason, the assets acquired by the of the Jennifer Fowler Revocable Trust, after Jennifer's death and when the trust became automatically irrevocable, are free from any claims of the settlor's creditors.

In the event this Court concludes that MCL 700.7605(1) includes assets received by a revocable trust after it became irrevocable upon the death of the settlor, the 401(k) and life insurance proceeds are nevertheless not subject to the claims of creditors pursuant to both MCL 700.7605(2) and (4).

MCL 700.7605(2) provides:

> (2) A trust established as part of, and **all payments from**, an employee annuity described in section 403 of the internal revenue code, 26 USC 403, an individual retirement account described in section 408 of the internal revenue code, 26 USC 408, a Keogh, or HR-10, plan, or **a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401**, shall not be considered to be a trust described in subsection (1). [Emphasis added]

The 401(k) benefit of which the Trust is the beneficiary, is clearly within the statutory provision "all payments from…a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401" and as such, the

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401(k) is affirmatively excluded from being considered a trust described in subsection (1).

Additionally, MCL 700.7605(4) precludes both the 401(k) and the life insurance proceeds from the claims of the settlor's creditors under MCL 700.7605(1).

MCL 700.7605(4) provides:

> (4) For purposes of this section, **property** held or **received by a trust** to the extent that the **property would not have been subject to a claim against the settlor's estate if it had been paid directly to** a trust created under the settlor's will or **other than to the settlor's estate**, or property received from a trust other than a trust described in this section, **shall not be considered trust property available for the payment of the administration expenses, a claim against the settlor's estate, or an allowance described in subsection (1).**

Clearly, subsection (4) provides an exemption for property if it had been paid directly to a testamentary trust or paid "other than to the settlor's estate…[.]." Under the terms of MCL 700.7605(4) both the 401(k) and the life insurance proceeds qualify as "property—received by a trust...paid directly to...other than to the settlor's estate." The interpretation of the statute in Chicorel is clearly consistent with the terms of provisions of MCL 700.7605(4).

Clearly, both the 401(k) and the life insurance proceeds fit within the exemption provisions of MCL 700.7605(4). The proceeds are payable to other than the settlor's estate. The life insurance policy had no cash value during Jennifer's life, and except for naming a beneficiary Jennifer Fowler had no financial interest

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in the policy during her lifetime and the insurance proceeds only became available upon Jennife's death, and payable to the Trust.

While the 401(k) account was in existence and owned by Jennifer during her lifetime, it was beyond the scope of her creditor's under ERISA the anti-alienation provisions of ERISA. DaimlerChrysler Corporation and DaimlerChrysler-UAW Pension Agreement v. Cox, 447 F.3d 967, 972-974 (6th Cir. 2006). Upon the death of Ms. Fowler, her trust then acquired its interest in the 401(k) account, and like the life insurance proceeds, pursuant to MCL700.7605(4), constitutes "property—received by a trust...paid directly to...other than to the settlor's estate", and specifically excluded from being Trust property under MCL 700.7605(1).

Responding to the Court's question, MCL 700.7605(1) does not apply to property paid into an irrevocable trust where the trust was revocable at the settlor's death.

III. IF MCL 700.7605(1) DOES NOT APPLY TO THE PROPERTY AT ISSUE BECAUSE THE PROCEEDS WERE PAID INTO JENNIFER'S TRUST AFTER IT BECAME IRREVOCABLE, WHETHER THE PROCEEDS ARE ANALYZED UNDER PROVISIONS RELATED TO THE IRREVOCABLE TRUSTS, SEE MCL 700.7506(1)(c).

The proceeds of the 401(k) and life insurance are not subject to the provisions of MCL 700.7506(1)(c) relating to Irrevocable Trusts as the Jennifer Fowler Living Trust was at all times a revocable trust, and while it became irrevocable upon Jennifer Fowler's death, and has never been an Irrevocable Trust.

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Prior to Jennifer's death, and perhaps more importantly, at the time of its execution, August 17, 2012, or its Restatement, December 12, 2017, Appellant's Appendix 11. The Jennifer Fowler Trust by its expressed terms and provisions was at all times a revocable trust. Under the terms of the Trust and upon Jennifer's death, the revocable trust became irrevocable.

The Jennifer Fowler Trust did not become a new Trust. A valid trust agreement is created by executing the document. Sagendorph v Lutz, 286 Mich 103, 108 (1938). Even after Jennifer Fowler's death, the Jennifer Fowler Trust remained as a Revocable Trust, which was now irrevocable, and would be administered pursuant to its terms.

Upon Jennifer's death, the Trust it did not become an Irrevocable Trust; rather, it continued to be a revocable trust, which became irrevocable, and the rights of the respective parties became fixed and vested upon death and subject to the terms of the Trust. In re Childress Trust, 194 Mich App 319 (1992). The Jennifer Fowler Trust has never been an Irrevocable Trust within the meaning of MCL 700.7506(1)(c).

In adopting the Estates and Protected Persons Act, MCL 700.1101 et. seq, [EPIC], MCL 700.1107 defines "Trust" as:

> "(n) "Trust" includes, but is not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created. Trust includes, but is not limited to, a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust does not include a constructive trust or a resulting trust, conservatorship, personal representative, custodial

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> arrangement under the Michigan uniform transfers to minors act, *1998 PA 433*, *MCL 554.521* to *554.552*, business trust providing for a certificate to be issued to a beneficiary, common trust fund, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or another arrangement under which a person is a nominee or escrowee for another."

There are numerous forms of trusts. While the MTC does not refine an Irrevocable Trust, it does define "revocable" as:

> "(h) '"Revocable"', as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving." MCL 700.7103(h)."

Further, unless a trust expressly provides that it is irrevocable, a trust is revocable and the settlor may revoke or amend the trust. MCL 700.7602. The Trust agreement is created by executing the document. Sagendorph v Lutz, 286 Mich 103, 108 (1938).

As noted in In re Maloney Trust, 423 Mich 632, 639 (1985) regarding irrevocable trust:

> "We note that generally, a settlor must relinquish permanent control of trust property to enjoy the favorable tax consequences inherent in an irrevocable inter vivos trust. Bogert, Trusts & Trustees (2d ed), § 234, pp 47-48. Accordingly, we should ascertain the settlor's intent at the time the instrument was created."

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Regarding some feature of an irrevocable trust, which are not included in a revocable trust, the New Hampshire Supreme Court in In re Chamberlin, 155 NH 13, 17; 918 A2d 1, 4-5; (2007) noted:

> "The petitioner concedes that neither she nor the respondent has the right to invade the *Trust* corpus. That is, indeed, one of the defining *features* of an *irrevocable trust*. *See* 7 C. DeGrandpre, *New Hampshire Practice, Wills, Trusts and Gifts* § 31.02[2], at 399 (4th ed. 2003); G. Bogert & G. Bogert, *The Law of Trusts and Trustees* § 234, at 56-57 (2d ed. rev. 1992). It necessarily follows that the assets the parties used to fund the Trust ceased being property belonging to either or both of them once those assets were placed in the Trust and beyond the reach of the parties. *See In re Marriage of Pooley, 996 P.2d 230, 232 (Colo. Ct. App. 1999)* "it is the extent of the beneficiary's right to or interest in the trust rather than the source of funding for the trust that determines whether the trust and the income from it are [marital] property"); *cf. Abrams v. Abrams, 131 N.H. 522, 524-25, 556 A.2d 1173 (1989)* (affirming trial court determination, under unsustainable exercise of discretion standard, that once husband's trust terminated, trust corpus distributed to husband was marital property). Thus, the parties' act of placing liquid assets in an irrevocable trust removed them from the statutory definition of marital property. *See RSA 458:16-a, I.* Accordingly, we hold that the trial court did not err in so concluding and consequently affirm its ruling on that issue."

Of course, in the case at bar, during her lifetime, Jennifer Fowler reserved the right to invade the trust corpus, as well as amend or revoke the Trust. Simply stated, The Jennifer Fowler was a revocable trust.

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In reviewing a trust, the general rule is that the intent of the settlor at the time of the execution of the document is to be carried out as nearly as possible. In re Maloney Trust, 423 Mich at 639.

This Court interprets statutes to discern and give effect to the Legislature's intent, and in doing so focus on the statutory language and apply the language on the basis of their ordinary meaning and the context within which they are used in the statute.. Clam Lake Twp v Dep't of Licensing and Regulatory Affairs, 500 Mich 362, 373 (2017), ACLU of Mich v Calhoun Co Sheriff's Office, 509 Mich 1, 8 (2022); Whitman v City of Burton, 493 Mich 303, 311 (2013). Where the language of the statute is unambiguous, it is concluded that the Legislature intended the meaning clearly expressed, and the statute must be enforced as written and no further judicial construction is required or permitted. Ward v Sun Valley Foods, 460 Mich 230 (1999). It is well settled that to discern the Legislature's intent, statutory provisions are *not* to be read in isolation; rather, context matters, and thus statutory provisions are to be read as a whole. Griffith v State Farm Mut Auto Ins Co, 472 Mich 521, 533 (2005).

As relevant to the issue raised by the Court, MCL 700.7506 provides:

> (1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:
>
> (a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.
>
> (b) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction

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> with another person, is subject to expenses, claims, and allowances as provided in section 7605.
>
> **(c) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach no more than the lesser of the following:**
>
> **(i) The claim of the creditor or assignee.**
>
> **(ii) The maximum amount that can be distributed to or for the settlor's benefit exclusive of sums to pay the settlor's taxes during the settlor's lifetime. ...[.].** (emphasis added)

Under MCL 700.7506, the following is clear:

- During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors; MCL 700.7506 (1)(a);
- A creditor may reach from an irrevocable trust no more than the lesser of the creditor's claim or the maximum amount available for the settlor's benefit. MCL 700.7506 (1)(c)

Reviewing MCL 700.7506, while a revocable trust becomes irrevocable upon the death of the Settlor, such a trust is not an Irrevocable Trust within the meaning of MCL 700.7506(1)(c) for the simple reason that MCL 700.7506 (1)(b) addresses the situation of a revocable trust which has become irrevocable as a result of the death of the settlor. That scenario is controlled by MCL 700.5605(1)(b). MCL 700.7506(1)(c) deals only with Irrevocable Trusts.

By including a revocable trust, which has become irrevocable as a result of the death of the settlor, within the definition Irrevocable Trust under MCL 700.7506(1)(c), would be inconsistent with the expressed statutory provisions and would disregarding the nature of the trust at the time of its execution. MCL 700.7506(1)(b) already addresses a revocable

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trust made irrevocable by death. To now bootstrap that attempt to favor that "trust" as a Irrevocable Trust would require that the Revocable Trust be rewritten into something it never was.

A plain reading of MTC requires that the Irrevocable Trust referenced in MCL 700.7506(1)(c) is not a revocable trust which became irrevocable upon the death of the settlor, but in fact a Trust, which was an Irrevocable Trust on the day of its execution.

The application of subsection (1)(c) to Irrevocable Trusts, and not revocable trusts which became irrevocable upon the death of the settlor, was recognized in Reporter's Comment to MCL 700.7506, [Martin & Harder, Estates and Protected Individuals Code with Reporters' Commentary (ICLE), February 2023 update), where the reporter noted:

> "Paragraph (1)(c) is derived from UTC §505(c). It describes the maximum amount that can be reached by a creditor from an irrevocable trust. It is consistent with Michigan common law. *See Vander Weele v Commissioner,* 27 TC 340 (1956), *aff'd,* 254 F2d 895 (6th Cir 1958).
>
> Several common planning techniques rely on the ability of a settlor to create a grantor trust for federal income tax purposes. In some instances, the trust may permit or provide for distributions to pay or reimburse the settlor for the additional taxes caused by the grantor trust income tax treatment. Paragraph (1)(c) also makes clear that the ability alone of the trustee to pay the settlor's taxes or to reimburse the settlor for their taxes does not create a right on the part of the settlor's creditors to reach trust property to satisfy claims. Therefore, the amount of trust property that could be distributed in payment or reimbursement of the settlor's tax liability is not counted in determining the maximum amount distributable to the

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> creditor in satisfaction of the creditor's claims. This clarification is import for purposes of the federal estate tax. *See* Rev Rul 2004-64."

A review of various Michigan statutes and applying the rules of statutory construction clearly supports the conclusion that MCL 700.7506(1)(c) applies only to Irrevocable Trusts, and not revocable trusts which automatically become irrevocable upon death, While certainly not an exhaustive list, as relevant to this issue, the legislature has applied the following statutory terms:

- "revocable trust" in the following relevant statutes: MCL 700. 7411; MCL 700.7506; MCL 700.7601; MCL 700.7602; MCL 700.7603; MCL 700.7604; MCL 700.7605; MCL 700.7808 and MCL 700.7814.

- "irrevocable trust" has been applied in the following relevant statutes. MCL 700.7201(3)(h); MCL 700.7411; MCL 700.7506; MCL 700.7602; MCL 700.7814; MCL 700.7820a. see also MCL 56631(s)(ii)(A) [the Fraudulent Conveyance Act] and MCL 14.253.(b) [Registration of Charitable Trust].

- "revocable trust which became irrevocable whether by the death" [or similar language phrases] has been applied in MCL 700.7409a(2)(c); MCL 700.7603(4); MCL 700.7604(3); MCL 700.7814 and MCL 14.253(b).

Respectfully, applying the statutory rule that the nature of a trust is to be determined at the time of execution, and given the language of the

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Jennifer Fowler Trust, there can be no question but that the trust was, and continued to be a revocable trust, under the death of Jennifer Fowler, when the Trust became irrevocable.

Given the nature of the various forms of trust, and particularly Revocable Trusts and Irrevocable Trust, Appellant submits that the proper description of the Jennifer Fowler Revocable Trust, following her death, would be a revocable trust which became irrevocable by death. See MCL 700.7409a(2)(c); MCL 700.7603(4); MCL 700.7604(3); MCL 700.7814 and MCL 14.253(b).

The legislature has shown the ability to clarify the nature of a revocable trust upon the death of the settlor, where the trust becomes irrevocable. The legislature has used specific language so there is no question of the nature of the trust involved. Addressing the phrase "revocable trust which became irrevocable whether by the death" [or similar language], MCL 14.253(b), a statute dealing with registration of charitable trust, provides in relevant part:

> "For the purpose of this act the interests of charitable remainder beneficiaries of a trust shall be considered remote if under the maximum exercise of discretion by the trustee in favor of the charitable remainder beneficiaries of such trusts, the value of their interests in the aggregate assets, computed actuarially at 5% or less of the value of the property subject to the trust, such determination **shall be made at the time of the creation of an irrevocable trust, or at the time a revocable trust becomes irrevocable,** or at the death of the testator in case of a testamentary trust." Emphasis added.

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Of significance, the legislature has clearly chosen to differentiate between the nature of a trust, and particularly, at the creation of an irrevocable trust [the trust is always irrevocable] and revocable trusts which have become irrevocable as a result of the death of the settlor [the trust became irrevocable under the happening of an event, but is not an irrevocable trust] throughout various provisions of the MTC.

Addressing relevant provisions of the MTC, the Michigan statutory scheme provides:

- MCL 700.7409a(2)(c) provides in relevant part:

  > 2.
  >
  > **(c)** Within 63 days after the date the trustee acquires knowledge of the creation of an undisclosed trust of which the trustee is trustee or the date the trustee acquires knowledge that **a formerly revocable trust of which the trustee is trustee has, by becoming irrevocable, whether by the death of the settlor** or otherwise, become an undisclosed trust, the trustee shall notify all nondisclosure correlative right holders and protection power holders of the trust's existence, of the identity of the settlor or settlors, of the court in which the trust is registered, if it is registered, and of the right to request a copy of the terms of the trust that describe or affect the power holders' rights or powers. Emphasis added.

- MCL 700.7411 provides in relevant part:

  > "(2) Subsection (1) does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before April 1, 2010."

- MCL 700.7601 provides in relevant part:

"The capacity required to create, amend, revoke, or add property to a **revocable trust**, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will."

- MCL 700.7603(4) provides in relevant part:

(3) A person who succeeds to the position of trustee of a revocable trust upon the death, resignation, or incapacity of a trustee who was also the trust settlor is not liable for an action of the settlor while the settlor was serving as trustee.

- MCL 700.7604 provides in relevant part:

"Except as provided in subsection (2), a person may commence a judicial proceeding to contest the **validity of a trust that was revocable at the settlor's death** within the earlier of the following:

(2) If a trust that was **revocable at the settlor's death** ...[.]

(3) Upon the death of the settlor of **a trust that was revocable at the settlor's death**, ...[.].

- MCL 700.7814 provides in relevant part:

(2) A trustee shall do all of the following:

***

(c) Subject to subsection (6), within 63 days after the date the **trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise**, notify the qualified trust beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the court in which the trust is registered, if it is registered, and of the right to request a copy of the terms of the trust that describe or affect the trust beneficiary's interests. (emphasis added)

***

(6) Subsection (2)(b) and (c) applies only to a trustee who accepts a trusteeship, **an irrevocable trust created, or a**

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> **revocable trust that becomes irrevocable** on or after the effective date of the amendatory act that added this section. (Emphasis added).[3]

Answering this Court's question whether the 401(k) and life insurance proceeds are analyzed under provisions related to the irrevocable trusts, MCL 700.7506(1)(c), given the legislature's ability the use specific language regarding a revocable trust which has become irrevocable due to the death of the settlor, the answer is No"!

In fact, given the language which the legislature has employed in addressing Irrevocable Trust and a Revocable Trust which becomes irrevocable automatically upon death, Appellant submits that had the legislature so intended MCL 700.7605(1)(c) to apply to a Revocable Trust becoming irrevocable upon death, MCL 700.7506(1)c) would have to read:

> (1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:
>
> ***
>
> (c) With respect to **AN IRREVOCABLE TRUST OR A FORMERLY REVOCABLE TRUST WHICH HAS BECOME IRREVOCABLE, WHETHER BY THE DEATH OF THE SETTLOR OR OTHERWISE**, a creditor or assignee of the settlor may reach no more than the lesser of the following:
>
> (i) The claim of the creditor or assignee.
>
> (ii) The maximum amount that can be distributed to or for the settlor's benefit exclusive of sums to pay the

[3] The legislature clearly knows how to enact statutes which reference both irrevocable trusts as well as formerly revocable trust has become irrevocable, whether by the death in the same statute. Surely, had the legislature sought to address anything other than an irrevocable trust in MCL7506(1)(c), it would have provided a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise.

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> settlor's taxes during the settlor's lifetime. (emphasis added)

Clearly, the legislature did not enact MCL 700.7506(1)(c) to accomplish a redraft of the statute. Rather, MCL 700.7506(1)(c) applies only to Irrevocable Trusts, where the grantor may have rights to income, as noted by Martin & Harder, Estates and Protected Individuals Code with Reporters' Commentary (ICLE), in their commentary.

Further, if this interpretation is applied to MCL 700.7506(1)(c), then the entire trust, including assets received after the trust became irrevocable, would presumable to subject to the claims of creditors, as it would appear that the settlor, having reserved the right to revoke the trust, all of the assets of the Trust would be subject to claims. Such an interpretation is not only contrary to the expressed terms of MCL 700.7506)(1)(c), it would run contrary to the terms of MCL 700.7506(1)(b) and MCL 700.7605, and would eliminate the "exemptions" allowed under MCL 700.7605(2), (3) and (4).

Lastly, if this is what the legislature wanted to accomplish, it could have easily provided that all assets of a revocable trust, whether during the settlor's lifetime or after death, and regardless of when the assets were acquired, are subject to claims of the settlor's creditors. The legislature did not go that far, and any interpretation expanded the statute is not only contrary to the legislative intent but is contrary to any reasonable interpretation of the legislative intent.

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Answering this Court's question, whether the proceeds are analyzed under provisions related to Irrevocable Trusts pursuant to MCL 700.7506(1)(c), the answer is respectfully No!

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, Appellant requests this Court reverse the decision of the Michigan Court of Appeal and hold that both the 401(k) and the life insurance benefits are exempt from attachment to satisfy the claims against the Estate of Jennifer Fowler, including those of the Estate of Helen Fowler.

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CERTIFICATE OF COMPLIANCE WITH MCR 7.305(A)(1)

In compliance with MCR 7.305(A)(1), I hereby certify that Appellant's Supplemental Brief Following Oral Arguments contains 8,454 countable words as determined by Microsoft Word "Wordcount"; the typeface used is Century Schoolbook set at a 12 point font except for footnotes.

HEYBOER LAW PLC
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