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STATE OF MICHIGAN

IN THE SUPREME COURT

JENNIFER L. FOWLER TRUST, Under Agreement dated August 17,2002	Supreme Court No: 167501
Plaintiff/Appellant,	COA No:365603 Consolidated with 365600 and 36510
	Lower Court No. 19-000085-DE Consolidated with 22-000259-CZ and 22-000259-CZ
v	
JULIE BROOKS, Personal Representative of the ESTATE OF HELEN FOWLER	
Defendant/Appellee.	

APPELLEE'S ANSWER TO APPLICATION FOR LEAVE AND BRIEF IN OPPOSITION

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COUNTER STATEMENT OF QUESTIONS PRESENTED

I. **WHETHER THE COURT OF APPEALS PROPERLY APPLIED MCL 700.7605(2) IN RULING THAT THE DTE SAVINGS AND STOCK OWNERSHIP PLAN ASSET, WHICH IS ONLY PAYABLE TO THE REVOCABLE JENNIFER L. FOWLER LIVING TRUST, AS ITS ONLY DESIGNATED BENEFICIARY, IS THEN AN ASSET WHICH CAN BE REACHED BY A CREDITOR, AS THE REVOCABLE JENNIFER L FOWLER LIVING TRUST IS A RECIPIENT OF THE ASSET, WHICH IS GOVERNED PURSUANT TO BEING A TRUST DEFINED UNDER MCL 700.7605(1)?**

The Court of Appeals Answered:	Yes
The Trial Court Answered:	No
The Appellant Answers:	No
The Appellee Answers:	Yes

II. **WHETHER THE COURT OF APPEALS AND THE PROBATE COURT PROPERLY APPLIED MCL 500.2207(2) IN RULING THAT THE METROPOLITAN LIFE INSURANCE PROCEEDS PAID TO THE REVOCABLE JENNIFER L. FOWLER LIVING TRUST, AS THE ONLY DESIGNATED BENEFICIARY OF THE LIFE INSURANCE POLICY, IS AN ASSET OF THE REVOCABLE JENNIFER FOWLER LIVING TRUST, SUBJECT TO THE TRANSFER OF FUNDS PURUSUANT TO MCL 700.3805, MCL 700.7605, MCL 700.7606 AND MCL 700.7607 AND THE EXPRESSED TERMS OF BOTH THE LAST WILL AND TESTAMENT OF JENNIFER FOWLER AND THE REVOCABLE JENNIFER FOWLER LIVING TRUST TO SATISFY THE WRONGFUL DEATH CLAIM OF THE APPELLANT ESTATE OF HELEN FOWLER?**

The Court of Appeals Answered:	Yes
The Trial Court Answered:	Yes
The Appellant Answers:	No
The Appellee Answers:	Yes

III. **WHETHER THE COURT OF APPEALS AND THE PROBATE COURT PROPERLY DETERMINED THAT MCL 700.7605(4) DOES EXEMPT THE METROPOLITAN LIFE INSURANCE PROCEEDS PAID TO THE REVOCABLE JENNIFER L. FOWLER LIVING TRUST, WHERE JENNIFER FOWLER'S LIFE INSURANCE POLICY DID NOT NAME A DEPENDENT OR ANOTHER INDIVICUAL AS A BENEFICIARY, BUT INSTEAD NAMED THE TRUST AS THE BENEFICIARY?**

The Court of Appeals Answered:	Yes
The Trial Court Answered:	Yes
The Appellant Answers:	No
The Appellee Answers:	Yes

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STATEMENT OF JURISDICTION

The jurisdiction of this Court is pursuant to MCR 7.305(B).

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INTRODUCTION

As the Trial Court's Opinion and Order states:

> "There is no dispute about the underlying facts. Helen Fowler was the mother of Jennifer Fowler. On November 10, 2018, Helen was killed by Jennifer. Jennifer then took her own life.
>
> Helen's Estate pursued a wrongful death action against Jennifer's Estate in the St. Clair County Circuit Court. Following a trial, a judgment was entered in favor of Helen's Estate against Jennifer's Estate in the amount of $626,606.24."

(See Appellant's App'x p 479)

Shelly Spacil, the Personal Representative of The Estate of Jennifer Fowler filed an appeal of the wrongful death award. The Court of Appeals in *Brooks v Spacil,* unpublished per curiam opinion, (issued January 25, 2024, Docket No. 361353) affirmed the judgment awarded by the jury.

The Appellee, the revocable Jennifer L, Fowler Living Trust filed a declaratory complaint (April 25, 2022) and then an amended Complaint for declaratory relief (May 17, 2022- See Appellant's App'x p 347) seeking a determination from the Probate Court as to whether and to what extent, assets of the revocable Jennifer Fowler Living Trust ("Trust") are subject to be utilized to satisfy the judgment creditor, the Estate of Helen Fowler.

The Appellant Estate of Helen Fowler, filed in response, on June 7, 2022, an "Answer to Complaint for Declaratory Relief and Counter-Claim of Defendant/Counter Plaintiff Julie Brooks, as Personal Representative of the Estate of Helen Fowler" (See Appellant's App'x p 364) seeking a determination by the Probate Court requiring the Trustee of the revocable Jennifer Fowler Living Trust to receive the funds from the DTE Savings and Stock Plan (DTE Plan) (See Appellant's App'x p 146) in accordance with

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both the terms of the DTE Plan and the revocable Jennifer L. Fowler Living Trust and that said fund, once received, as well as the current funds held in the revocable Jennifer L. Fowler Living Trust be restricted with said financial institutions until further Order of the Court.

The Estate of Helen Fowler also sought an order determining the Metropolitan Life Insurance proceeds held in the Jennifer Fowler Trust be conveyed to the Estate of Jennifer Fowler, deceased, for a transfer of funds by the Appellee revocable Jennifer L. Fowler Living Trust towards satisfying the outstanding Wrongful Death judgment in favor of the Appellant Estate of Helen Fowler. After the evidentiary hearing and the filing of post evidentiary hearing briefs by the parties, the Probate Court in its Opinion and Order, dated March 15, 2023, determined that the Life Insurance proceeds were subject to satisfying the claims of Helen Fowler Estate, to which the Estate of Jennifer L. Fowler filed an appeal to the Michigan Court of Appeals of the Probate court's decision.

The Estate of Helen Fowler, further sought an order from the Probate Court determining, that once the DTE Savings and Stock Plan pension benefit was paid to the revocable Jennifer Fowler Living Trust, as required by both the terms of the Plan and the Trust, enough said funds in the revocable Jennifer Fowler Living Trust be conveyed to the Estate of Helen Fowler to satisfy the outstanding wrongful death judgment against the Estate of Jennifer Fowler. The Probate Court determined that the DTE Savings and Stock Plan benefit was exempt from being available to satisfy the balance of the wrongful death judgment, to which the Estate of Helen Fowler filed an appeal to the Michigan Court of Appeals of the Probate court's decision.

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The transcript of the Evidentiary hearing of August 5, 2022, the complaint and counter complaint (Appellant's App'x p 385 & p 364 & p 387) and the post evidentiary brief and reply brief of the Appellant Helen Fowler Estate (Appellee's App'x p 003a & 025a) and the post evidentiary brief and reply brief of the Appellee Jennifer Fowler Revocable Trust (Appellee's App'x p 040a & 054a) comprised the record on appeal.

The Court of Appeals consolidated the appeals brought by the parties by order *In re Fowler Estate; In re Jennifer L. Fowler Trust,* unpublished order of the Court of Appeals entered April 11, 2023 (Docket Nos. 365600;365603 and 365610).

The Court of Appeals in *In Re Estate of Jennifer L. Fowler,* Docket Nos. 365600, 365603,365610 (For Publication, decided July 18, 2024) (Appellant's App'x p 489) affirmed that portion of the probate court's order allowing the life insurance proceeds to be used to satisfy the claim of the Appellee Julie Brooks, Personal Representative of the Estate of Helen Fowler and reversed the portion of the probate court's order disallowing recovery of the 401(k) account proceeds to be used to satisfy the claim of the Appellee Julie Brooks, Personal Representative of the Estate of Helen Fowler.

The Appellant, the revocable Jennifer L. Fowler Living Trust timely filed an Application for Leave to Appeal on August 29, 2024 seeking to have this Court overturn the decisions of the Court of Appeals.

GROUNDS FOR GRANTING APPLICATION FOR LEAVE

MCR 7.305(B) sets forth the grounds upon which this Court will consider whether to grant the Appellant's Application for Leave. The provisions of MCR 7.305(B) that are applicable to the appeal herein are:

Grounds. The application must show that

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(3) the issue involves a legal principle of major significance to the state's jurisprudence:

(5) in appeal of a decision of the Court of Appeals,

(a) the decision is clearly erroneous and will cause material injustice, or

(b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals,

The Appellee's "Counter-Statement of Facts and Counter-Statement of Questions Presented" clearly demonstrate that the Appellant has failed to establish any grounds to grant the Application for Leave to this Court.

The Appellant concedes that "the facts of this case may be unique" (Appellant's brief page ix). The "uniqueness" of these facts mitigates against any finding that the decision involves a legal principle of major significance. In reality, that is probably the reason why there are no cases directly on point.

In addition, the Appellant uses the terms below of "affects estate planning principles" without any explanation as to what "principles" are affected. Further, the Appellant uses the term "to satisfy totally unrelated claims of a decedent's Estate". Valid claims against an Estate, the nature of which may be of various types, are not considered or catalogued by the comprehensive MTC and EPIC provisions, but a wrongful death judgment against the Jennifer Fowler Estate would not be "totally unrelated' and has been acknowledged by the Appellant as a valid claim. The Court of Appeals considered the applicable statutory provisions and prior case law and applied same to the "unique" facts of this matter in making its decision.

The Michigan Trust Code (MTC), Reporter's Comment states:

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> "The MTC relies upon the structure and provisions of the Uniform Trust Code (UTC) for many of its provisions. However, the MTC is a uniquely Michigan document that draws from both the UTC and prior Michigan law to preserve long-established procedures, practices and principles concerning trusts in Michigan while also filing the numerous gaps that existed in the law. On balance the MTC tends to preserve long-standing Michigan law absent significant procedural or policy benefits from changing the law."

A review of the Court of Appeals decision is consistent with the guidance afforded by the MTC and EPIC, and prior case law. The Court of Appeals made an informed and correct decision, under the facts of this case, that the revocable Jennifer L. Fowler Living Trust is obligated to transfer assets to the Estate of Jennifer Fowler to cover any deficiency of valid claims against the estate. It is also clear that this panel of the Court of Appeals also followed prior case law and statutory provisions in making its determination that the Metropolitan Life Insurance proceeds held in the revocable Jennifer L. Fowler Living Trust are also available to cover any deficiency of valid claims against the estate.

If the Appellant feels that a more definitive decision would benefit Michigan jurisprudence, the published decision of the Court of Appeals provides said benefit.

The Appellant has not argued or presented any evidence that the decision of the Court of Appeals conflicts with a Supreme Court decision or another decision of the Court of Appeals.

The remaining ground for granting of an application for leave states "(a) the decision is clearly erroneous and will cause material injustice" strikes a chord with the undersigned counsel. If in fact, the Court of Appeals had ruled contrary to its decision, it would have resulted in a gross material injustice. The facts that support this assertion by Appellee are as follows:

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1. The decedent Jennifer Fowler, developed an estate plan which provided for a Trust and a Will, that both had specific provisions that provided that if there were valid claims against her Estate, and if the funds in her Estate would be insufficient to satisfy the claims, that the assets held in her revocable trust would be available to satisfy said claims. Those provisions were not only agreed to by the decedent Jennifer Fowler, but were consistent with the provisions of both EPIC and MTC that the assets of revocable Trust would be available to cover any deficiency.
2. The decedent Jennifer Fowler, a single woman, whose only child, died in 2015, chose not to name any individual or individuals as beneficiaries of her workplace Metropolitan Insurance policy, but rather named upon her death, the revocable Jennifer L. Fowler Living Trust as the beneficiary.
3. The decedent Jennifer Fowler, also chose upon her passing, that the funds held in her workplace 401(k) DTE Savings and Stock Plan, would be paid to the revocable Jennifer L. Fowler Living Trust.
4. That the decedent, Jennifer Fowler, killed her mother Helen Fowler, prior to her death, which resulted in a valid Wrongful Death Claim against her Estate which was brought by a surviving daughter Julie Brooks and surviving son, Thomas Fowler on behalf of the Estate of Helen Fowler.
5. Those decisions by the decedent Jennifer Fowler, and the circumstances of which she did not have a spouse and or a child/dependent at the time of her death, removed any exemptions that could be claimed against valid claims against her estate as alleged by the Appellant.

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6. The Appellant, who is the Personal Representative of the Estate of Jennifer L. Fowler and the Trustee of the revocable Jennifer L. Fowler Living Trust are one and the same—Sherry Spacil.
7. Sherry Spacil is also a residual beneficiary of the revocable Jennifer L. Fowler Living Trust.
8. Sherry Spacil has repeatedly and consistently testified, that as opposed to seeing that the Wrongful Death Judgment awarded in favor of Julie Brooks and Thomas Fowler, the son and daughter of Helen Fowler, who was killed by the decedent Jennifer Fowler, is paid from the assets of the Estate of Jennifer Fowler, has vowed to spend every last "dime" of the Estate and Trust, as opposed to paying the valid claim of the Appellee.
9. That the actions of Shelly Spacil, are contrary to the terms of both the Jennifer Fowler Will and revocable Trust, and her fiduciary duties as both the Personal Representative and Trustee to pay the valid wrongful Death Judgment, and instead is pursuing her own personal agenda, in order to maximize her own residual distribution from the Trust.

Justice would hardly be served by disavowing the estate plan of Jennifer Fowler and instead allowing Shelly Spacil, as PR and Trustee to subvert not only the testator Jennifer Fowler's Will and Trust provisions, but the provisions under Michigan law that dictate the circumstances when a revocable Trust is to transfer funds to an Estate to satisfy any deficiency of a valid claim against an estate.

In making any judicial determination as to whether a material injustice would result by a decision of the Court of Appeals, one must look to the outcome that would

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result if this Court were to overturn the Court of Appeals decision. That analysis would have to conclude that:

1. That the daughter Julie Brooks and son Thomas Fowler, the persons who suffered the loss of their mother, Helen Fowler, would be denied the recovery of a valid Wrongful Death judgment that has been determined by a jury and then affirmed by another panel of this Court of Appeals.
2. That the long standing and guiding principle of both the Michigan statutory scheme set forth in both EPIC and MTC and Michigan jurisprudence, that the assets of a **revocable trust** are subject to be utilized to satisfy a deficiency of a decedent's estate, unless said funds are intended to serve a surviving spouse or children/dependents, will now be upended to reward a residual beneficiary of a trust who is given greater priority than persons who suffered losses validly determined by a jury.
3. That a Personal Representative and Trustee, Shelly Spacil, who is a residual beneficiary of the revocable Jennifer L. Fowler Living Trust, will be rewarded, for her own self-determined intent to spend every last dime, to prevent the recovery of the valid losses of Julie Brooks and Thomas Fowler, despite the fact that the Trust has more than enough funds to satisfy said losses and provide significant funds to the residual beneficiaries. Personal Representative and Trustee, Shelly Spacil's stated intent, is contrary to the Testator Jennifer L. Fowler's written intent, memorialized in both her Will and revocable Trust, to provide said funds to pay any deficiency out of her Trust, if her Estate did not have sufficient funds to accomplish same.

The decision of the Court of Appeals is not erroneous and is consistent with existing provisions of EPIC and MTC and prior case law and serves to address the true meaning of justice in this truly “unique” case.

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COUNTER-STATEMENT OF FACTS

The parties to this action stipulated to the following joint exhibits that were admitted at the Evidentiary Hearing of August 5, 2022. (Appellant's App'x p 392)

1. Exhibit 1 – Last Will and Testament
2. Exhibit 2 – Living Trust of Jerry Ed Fowler
3. Exhibit 3 – Metropolitan Life Policy
4. Exhibit 4 – Metropolitan Life Check
5. Exhibit 5 – DTE Savings and Stock Plan
6. Exhibit 6 – Empower Retirement Details
7. Exhibit 7 – Judgment Entered 1/19/2022

Shellie Spacil testified that she was the Personal Representative of the Estate of Jennifer L. Fowler, Deceased, as well as the Trustee of the revocable Jennifer Fowler Living Trust. (Appellant's App'x p 391) Shellie Spacil testified she was appointed trustee by Jennifer Fowler after Jennifer Fowler's son passed in 2015. (Appellant's App'x p 393)

Shellie Spacil, testified that she came to know the decedent Jennifer Fowler when they were residing in the same apartment complex and then when they also were both employed at Detroit Edison (Appellant's App'x p 391)

Shellie Spacil testified that she never saw the will of Jennifer Fowler, even thought she was the Personal Representative of the Estate of Jennifer Fowler. (Appellant's App'x p 395) Shellie Spacil testified as to her duties as **Personal** Representative of the Estate of Jennifer Fowler were to "look out for the best benefit of the trust and its beneficiaries". (Appellant's App'x p 396)

Shellie Spacil testified that she became aware of the wrongful death claim in May of 2019 and understood her duties were to "take care of the trust, look out for the beneficiaries in any proceedings that might be brought against the estate itself". (Appellant's App'x p 397)

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Shellie Spacil testified that her personal opinion was that the family of Helen Fowler, deceased, should not get anything. (Appellant's App'x p 403) She justified that her motivation has been to make sure that the claim of the Estate of Helen Fowler did not receive "one dime". (Appellant's App'x p 409)

Shellie Spacil testified that all of the monies received from the sale of vehicles, bank accounts, and the sale of Jennifer Fowler's home were placed into the revocable Jennifer Fowler Living Trust account. (Appellant's App'x pp 410-411)

Shelly Spacil further testified that the revocable Jennifer Fowler Living Trust was named as the beneficiary of the Metropolitan Life Insurance benefit and she received a check for $438,085.23 made payable to the Jennifer L. Fowler Trust (Appellant's App'x pp 412-413/Trial Exhibit 3, Appellant's App'x p 108/Joint Trial Exhibit 4, Appellant's App'x p 145). Shellie Spacil testified that the life insurance proceeds were deposited into the revocable Jennifer L. Fowler Living Trust as the trust was the beneficiary of the life insurance policy.

Shellie Spacil testified that Jennifer Fowler's son had died in 2015 and she never had any other children nor a spouse, and the named beneficiary for the life insurance policy was the revocable Jennifer L. Fowler Living Trust. (Appellant's App'x p 413-See also Joint Exhibit #2, Appellant's App'x p 8, the Restated revocable Jennifer Fowler Living Trust dated December 17, 2017; Article 2) Shellie Spacil further testified that the named beneficiaries of the revocable Jennifer L. Fowler Living Trust were Jane Korth, Madeline Korth (niece), Terri Brennan, and Shellie Spacil, none of whom are a spouse, a child, or were any way dependent on Jennifer Fowler, deceased, during her lifetime. (Appellant's App'x p 414) These beneficiaries were identified in Joint Trial Exhibit #2 on

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page 7-1S as Terrie Brennan and page 9-1 as Shellie Spacil, Jane Fowler (Korth) and Madeline Korth of the revocable Jennifer Fowler Living Trust.

Shellie Spacil testified that the second large asset of the revocable Jennifer L. Fowler Living Trust was the DTE Electric Company Savings and Stock Ownership Plan and the revocable Jennifer L. Fowler Living Trust was the named beneficiary of said employment retirement plan. At the time of the evidentiary hearing Shellie Spacil was aware, at least, as of several months prior to the hearing, the DTE Savings and Stock Plan has approximately $850,000.00 in value. (Appellant's App'x p 449) See also Joint Trial Exhibit 6. (Appellant's App'x 221)

The trustee and personal representative Shellie Spacil were not aware of the provisions of the DTE Savings and Stock Ownership Plan regarding the "time of benefit" payments. When Shellie Spacil was questioned as to why the DTE Savings and Stock Ownership Plan had not been paid to the revocable Jennifer L. Fowler Living Trust over four years, she testified that was on the advice of counsel. (Appellant's App'x p 416)

The DTE Savings and Stock Ownership Plan (Joint Trial Exhibit 5, Appellant's App'x p 146), under Section 8.4(b), states:

> "Distribution Upon Death. The distribution to a Beneficiary under Section 8.1 shall be made as of the earliest practicable Valuation Date coinciding with or next following the Members death". (Appellant's App'x p 190)

Shellie Spacil testified that she had not requested the payment of the DTE Savings and Stock Ownership Plan to be paid in accordance with the provisions of the revocable Jennifer L. Fowler Living Trust pursuant to the above estate plan provision on the advice of her lawyers. (Appellant's App'x p 419)

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Shellie Spacil as personal representative and trustee had paid an estimated $175,000 from the revocable Jennifer L. Fowler Living Trust in defending the wrongful death claim as well as acknowledging there were monies probably still owed. The legal expense had exhausted the funds received from the sale of the home, sale of motor vehicles and bank accounts were thus exhausted and not available towards the payment of the wrongful death judgment obtained against the Estate of Jennifer L. Fowler by the Estate of Helen Fowler (Appellant's App'x p 421) She again testified that this defense was in accordance with her intention that the Helen Fowler Estate is to not receive one dime. (Appellant's App'x p 421)

Shellie Spacil testified that she would continue to spend whatever attorney fees and costs were necessary until a court ordered her otherwise. (Appellant's App'x p 422)

Shellie Spacil acknowledged that the Jennifer L. Fowler Last Will and Testament (Joint Exhibit 1-Article 6, Section 1, Appellant's App'x p 4), (which she had never read), directed the personal representative "that all my just debts, claims, funeral expenses, expenses of the administration of my estate, income taxes, real and personal property taxes, estate taxes, inheritance taxes, death taxes, succession duties of every kind and nature that may be assessed or become payable because of my death shall be paid as soon after my death as may be found convenient." (Appellant's App'x p 423)

Shellie Spacil acknowledged that the Jennifer L. Fowler Trust (Joint Trial Exhibit 2-Article 2 Section 2, pg 6-2, Appellant's App'x p 33) authorized her, as Trustee, to pay the "legally enforceable claims" against the Estate of Jennifer Fowler. (Appellant's App'x p 425)

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Shellie Spacil acknowledged that the Last Will and Testament (Joint Trial Exhibit 1, Article 6 pg 4, Appellant's App'x p 4) at transcript page 39, and the revocable Jennifer L. Fowler Living Trust (Joint Trial Exhibit 2, Article 6, Section 4, pg 6-2, Appellant's App'x p 33) at page 41 directed her as Personal Representative and Trustee to coordinate the responsibility of paying claims with respect to the property within both legal instruments.

Shellie Spacil acknowledged that the wrongful death judgment (Joint Trial Exhibit 7, Appellant's App'x p 345) is a legally enforceable claim against the Jennifer L. Fowler Estate. (Appellant's App'x p 425)

Shellie Spacil acknowledged that she filed an appeal of the wrongful death judgment pursuant to her intention that the Estate of Helen Fowler would not get one dime and pursuant to her intention to spend whatever it takes to see that monies were paid. (Appellant's App'x pp 426-427)

Shellie Spacil was further asked (Appellant's App'x p 467) specifically about, about an additional section of the revocable Jennifer Fowler Living Trust (Joint Trial Exhibit 2- section 6.4 (a), pg 6-4, Appellant's App'x p 35) that reads:

> **Retirement Plans**
>
> "Despite any conflicting provisions in my trust, no expenses, claims, or death taxes shall be paid out of any retirement plan assets which become trust property as a result of my death, **unless my Trustee has first used all other assets available to my Trustee".**

Shellie Spacil acknowledged that the revocable Jennifer L. Fowler Living Trust directed that she was not to use the "retirement plan assets" unless the other trust assets were used first. (Appellant's App'x p 468) Shellie Spacil acknowledged that she had received the Metropolitan Insurance life insurance proceeds but had not put the DTE Savings and Stock Ownership Plan into the trust. (Appellant's App'x p 468)

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Following subsequent questioning, she acknowledged that that the above stated Trust provision would direct her to pay any shortfall of estate assets available to pay legally enforceable claims, after the expenditure of other trust assets, if the court determined it to be required. (Appellant's App'x pp 468-471)

STANDARD OF REVIEW

The Claim of misapplication of a statutory construction by the trial court is reviewed de novo. *People v Babcock,* 469 Mich247, 253 (2003); *Veenstra v Washtenaw Country Club,* 465 Mich 155, 159 (2002).

ARGUMENT

I. THE COURT OF APPEALS PROPERLY APPLIED MCL 700.7605(2) IN RULING THAT THE DTE SAVINGS AND STOCK OWNERSHIP PLAN ASSET, WHICH IS ONLY PAYABLE TO THE REVOCABLE JENNIFER L. FOWLER LIVING TRUST, AS ITS ONLY DESIGNATED BENEFICIARY, IS AN ASSET WHICH CAN BE REACHED BY A CREDITOR, AS THE REVOCABLE JENNIFER L FOWLER LIVING TRUST IS A RECIPIENT OF THE ASSET, WHICH IS GOVERNED PURSUANT TO BEING A TRUST DEFINED UNDER MCL 700.7605(1).

A. Standard of Review

A trial court's decision involving statutory construction is reviewed de novo. *People v Babcock,* 469 Mich247, 253 (2003); *Veenstra v Washtenaw Country Club,* 465 Mich 155, 159 (2002).

B. Analysis

Resolution of this matter requires an analysis of the origin and nature of two different trusts. One of the trusts was established by DTE, the employer of Jennifer Fowler and is identified as "DTE Electric Company Savings & Stock Ownership Plan for Employees Represented by Local 223 UWUA". The other trust, the "Jennifer L. Fowler Revocable Trust", was created by Jennifer Fowler as an estate planning instrument.

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They are two and distinct trusts with different purposes and different applications as to the provisions of MCL 700.7605.

"DTE ELECTRIC COMPANY SAVINGS & STOCK OWNERSHIP PLAN FOR EMPLOYEES REPRESENTED BY LOCAL 223 UWUA" TRUST

The decedent, Jennifer Fowler was a participant in a Savings & Stock ownership plan at DTE Energy as an employee which is known as "DTE Electric Company Savings & Stock Ownership Plan for Employees Represented by Local 223 UWUA". (Appellant's App'x p 146) This is customarily known as an ERISA Plan.

ERISA requires that, with a handful of exceptions, primarily relating to assets held by insurance companies, the assets of an employee benefit plan must be held in Trust.

The "DTE Electric Company Savings & Stock Ownership Plan for Employees Represented by Local 223 UWUA" meets the definition of a trust that is identified in MCL 700.7605(2) which provides:

> "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, and 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 a trust described in subsection (1)."

The "DTE Electric Company Savings & Stock Ownership Plan for Employees Represented by Local 223 UWUA" is a trust established qualified under section 401 (not 403) of the Internal Revenue Code. See Article 1.3 of Joint Trial Exhibit 5. (Appellant's App'x p 151)

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The funds, are still being held in the DTE Savings and Stock Ownership Plan over 5 years after the death of Jennifer Fowler despite the mandatory provision of Section 8.1 of the Plan. (Appellant's App'x pp 187-188).

The decedent, Jennifer Fowler, after her only son's death in 2015, could have named other individual beneficiaries to receive directly any proceeds from the DTE Electric Company Savings and Stock Ownership Plan for Employees Represented by Local 223 of the Utility Workers Union of America. However, she made the decision to name only her revocable Jennifer L. Fowler Living Trust as the beneficiary of the proceeds of the Plan after her death. Thus, under the decedent's own estate plan, the funds held in the Plan are to be paid over the revocable Jennifer Fowler Living Trust.

Jennifer Fowler died on November 10, 2018. Under Article 8, section 4, subsection b (Appellant's App'x p 190) of the DTE Electric Company Savings and Stock Ownership Plan for Employees Represented by Local 223 of the Utility Workers Union of America, ***a one-time lump sum distribution*** to the named beneficiary, Shellie Spacil, as Successor Trustee to the Jennifer L. Fowler Revocable Trust should have been made as follows:

> "**Distribution Upon Death.** A ***distribution*** to a Beneficiary under section 8.1 shall made as of the earliest practicable Valuation Date coinciding with or next following the Member's death."

Trustee Shellie Spacil has deliberately failed to direct the **distribution** (not "payments') required above contrary to the Plan requirement as set forth above.

The anti-assignment and anti-alienation provisions of ERISA are intended to ensuring that "if a worker has been promised a defined pension benefit upon retirement---and if he has fulfilled whatever conditions are required to obtain a vested benefit---he

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actually will receive it" *Nachman Corp. v Pension Benefit Guaranty Corp.,446 U.S. 359 (1980);* cited in *Patterson v Shumate,* 504 U.S. 753 (1992).

Under the circumstances herein, the settlor, Jennifer Fowler, will not be receiving any of the pension benefit **payments** under the retirement plan, nor are there any dependents (spouse or children) of the settlor, Jennifer Fowler, who shall receive any **payments** under the pension plan. Rather, the value of the Savings and Stock ownership plan, under both the terms of the DTE pension plan and the Jennifer Fowler Trust, are to be paid directly in a **one-time lump sum distribution** to the revocable Jennifer L. Fowler Living Trust.

The Court of Appeals specifically addressed the fact circumstances herein wherein the direct beneficiary (Jennifer Fowler) of the Plan dies before she is entitled to receive payments from the Plan by citing the provision of the DTE Savings and Stock Ownership Plan applicable at page 4 (Appellant's App'x p 482) of its opinion as follows:

> (5) **Death of Beneficiary.** If a Beneficiary who is entitled to receive payments from the Trust Fund dies before receiving all payments due, any ***remaining benefit*** shall be paid to the Beneficiary's estate in a ***lump sum***.

Upon the death of Jennifer Fowler, her elected revocable Jennifer L. Fowler Living Trust is then entitled to a lump sum distribution of the funds held in the 401(k) plan.

The Court of Appeals in its opinion made the critical distinction between the DTE Savings and Stock plan and the revocable Jennifer L. Fowler Trust as stated at page 5-6 (Appellant's App'x pp 483-484):

> The probate court ruled that Jennifer's 401(k) account funds were not available to pay her creditors because the funds are part of a plan complying with the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1001 *et seq.* There is no dispute that the Savings and Stock Plan is a qualified 401(k) account that was intended to provide Jennifer with retirement income during her lifetime. However, the Savings and Stock Plan

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provides that, after Jennifer's death, any remaining funds are to be paid to the fund beneficiary's estate in a lump sum if there is no surviving beneficiary. Therefore, under the Savings and Stock Plan, any 401(k) account funds remaining after Jennifer's death converted to a lump-sum payment. This asset no longer involved a retirement account administered by DTE. Upon the lump-sum conversion, the funds were no longer part of the Savings & Stock Plan subject to federal regulations for retirement accounts. For this reason, the probate court erred by ruling that MCL 700.7605(2) applied to prohibit Helen's estate from reaching the lump-sum payment of the remaining 401(k) account funds.

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Although ERISA protects funds held by a retirement account, that protection is lost once the beneficiary receives the funds. In *State Treasurer v Abbott,* 468 Mich 143, 149, 153-159; 660 NW2d 714 (2003), the Court concluded that ERISA did not prevent the state treasurer from accessing funds protected by ERISA after the funds were deposited from a pension plan into a prisoner's account because ERISA does not protect pension funds after the beneficiary receives the. While *Abbott* involves a prisoner account, the rationale of *Abbott* applies equally to this case. After Jennifer's death, the funds from the Savings and Stock Plan no longer are to be used to fund retirement benefits, but are payable in a lump sum. Jennifer named her trust the beneficiary of those funds, instead of naming any individual beneficiary. ERISA is intended to protect retirement assets, but the lump sum payment due to Jennifer's trust can no longer be considered a retirement account.

THE REVOCABLE "JENNIFER L. FOWLER LIVING LIVING TRUST"

There is no question that the revocable Jennifer L. Fowler Living Trust meets the definition of MCL 700.7605(1) as follows:

700.7605 Liability of trust for expenses, claims, and allowances.
Sec. 7605.
(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:
(a) The administration expenses of the settlor's estate.
(b) **An enforceable and timely presented claim of a creditor of the settlor**, including a claim for the settlor's funeral and burial expenses.

(c)Homestead, family, and exempt property allowances

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C. Law

It is clear that MCL 700.7605(1) is the result of long-standing Michigan statutory and case law that has consistently held that a revocable trust, such as the Jennifer L. Fowler Living Trust, is required to transfer sufficient assets to the decedent's estate, to satisfy a creditor of a deceased, if there are insufficient funds available to the estate of the deceased.

The Court of Appeals thoroughly reviewed the holding in *Commerce Bank, N.A. v Bolander,* 44 Kan.App.2d 1; 239 P.3d 83 (2007) which cited prominently the Michigan Court of Appeal decision in *In re Johannes Trust,* Mich App 514, 518, 479 NW2d 25 (1991).

The Court of Appeals, at page 9, held:

> We agree that the analysis in *Bolander* applies with equal force to the construction and application of MCL 700.7605. After Jennifer's death, the required lump sum payment of the 401(k) account funds became an asset subject to a creditor's claim to the extent that the assets in Jennifer's estate were insufficient to satisfy her debts. Accordingly, we reverse in part of the probate court's order to the extent that it holds the 401(k) account funds could not be used to satisfy the judgment debt owed by Jennifer's estate to Helen's estate.

The Kansas Appellate Court cited Michigan case law significantly in arriving at its decision.

> The district court's decision is an application of the clear unambiguous intent of the legislature in K.S.A. 58a-505(a)(3) of making the assets of a revocable trust "subject to the claims of the settlor's creditors." A revocable living trust, such as the trust in this case, is a trust established during the settlor's lifetime in which the settlor reserves the right to alter, amend, or revoke the trust and may retain the right during his or her lifetime to direct the disposition of principal and income. At the death of the settlor, the trust assets are disposed of in accordance with the terms of the trust document. When a trust is created for the settlor's own benefit, the settlor's creditors can reach any trust assets and, for purpose of the present case, those nonexempt assets available to the settlor. **See *In re Johannes Trust,* 191 Mich App 514, 518, 479 NW2d 25 (1991);** *Vanderbilt Credit Corp. v Chase*

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Manhattan Bank, 100 App. Div. 2d 544, 546, 473 NYS2d 242 (1984); Restatement (Second) of Trusts 156, p 326 (1959). This rule promotes a valid public policy that a person ought not to be able to shelter his or her assets from creditors in a discretionary trust of which he or she is the beneficiary and thus be able to enjoy all the benefits of ownership of the property without any of the burdens. **See *In re Johannes Trust*, 199, Mich App at 518.**

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There is no question in this case that IRA benefits are statutorily "exempts from any and all claims of creditors of the beneficiary or participant." K.S.A. 60-2308(b); see *Bartlett Cooperative Ass'n v Patton,* 239 Kan. 628, Syl. ¶¶ 2, 3, 722 P.2d 551 (1986) (IRAs are precluded from garnishment under Kansas law for proceedings filed on or after July 1, 1986). The promissory note complied with K.S.A. 60-2308(b), where it limited the right of setoff by expressly excluding any IRA or Keogh accounts or any trust accounts where setoff would be prohibited by law. Commerce could not reach the IRAs during Wanda's life. The question in this case is whether Commerce can reach the IRA benefits after Wanda's death where the beneficiary of the IRA benefits is the Trust.

Commerce argues, and the district court held, the exemptions that surround an IRA or its benefits to the settlor are personal to the settlor. We agree. The exemption is not transferable and disappears upon the death of the settlor, except for certain statutory exceptions such as the homestead rights and various real and personal property. See K.S.A. 59-401; K.S.A. 59-403. In *In re Vary Estate,* 401 Mich. 340, 350, 258 NW2d 11 (1997), *cert. denied* 434 U.S. 1087 (1978), the court applied this rationale in the context of Social Security benefits:

"We think the same reasoning applies here. If the Congress intended to exempt benefits such as paid to Mrs. Vary from legal process even when the recipient died, it would have said so or would have used different wording. Both *Philpott* [, 409 U.S. 413 (1973),] and *Porter* [, 370 U.S. 159 (1963),] indicate that such benefits are for support of living people with continuing needs. Exemption is a protection that does not survive the individual. It is a personal protection which dies with the beneficiary."

Black letter law also supported the personal nature of an exemption. 31 Am. Jur. 2d, Exemptions § 238 (2002), provides:

"The right to an exemption exists solely by virtue of express constitutional or statutory provisions. Accordingly, any determination of persons or classes of persons who may claim exemptions in any particular state must be directed to that state's constitution and statutes and, unless the debtor claiming an exemption is one of the persons or classes of persons therein named, his claim cannot prevail, because a debtor's right to an exemption

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> is a personal one which does not survive the death of the person in whose favor it exists."
>
> See also 31 Am. Jur 2d Exemptions § 239 (which provides that the right of exemption is limited to a natural, rather than a legal, person).
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> ***
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> We realize the benefit of naming specific individuals as beneficiaries of an IRA. However, that is not the estate planning devise selected by Wanda. Instead, Wanda named her revocable Trust as the beneficiary of her IRAs, and the legislature has determined that assets in a revocable trust are subject to the claims of creditors at the death of the settlor. K.S.A. 58a-505.
>
> ***
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> The district court's decision in this case does not stand the law upside down under the Kansas Uniform Trust Code. The assets in the Trust are subject to the claims of Wanda's creditors pursuant to K.S.A. 58a-505. Although Wanda's IRA benefits were not available to her creditors during her lifetime, they are available to her creditors upon her death because she placed them in an inter vivos revocable trust.

The action herein, by the Counter Plaintiff/Appellant Estate of Helen Fowler, does not attempt to reach assets held by the DTE Savings and Stock Ownership Plan (Plan), or to have the Probate Court direct the Plan to take a particular action. Rather, the Counter Plaintiff/Appellant Estate of Fowler requested the Probate Court, under its rightful authority and jurisdiction, to either compel the Personal Representative and Trustee Shellie Spacil to fulfill her duties as to the proper administration of both the Estate and Trust or in the alternative appoint an impartial substitute(s) to act accordingly. Although the St. Clair County Probate Court cannot order an action to be taken by the Plan, it can order the Personal Representative of the Estate of Jennifer Fowler and/or Trustee of the revocable Jennifer Fowler Living Trust to facilitate the payment of the DTE Savings & Stock Ownership Plan assets to the designated beneficiary—the revocable Jennifer Fowler Living Trust, and then transfer any necessary assets, at the request of the Personal Representative of the Jennifer Fowler

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Estate to satisfy the outstanding claim of the Counter Plaintiff/Appellant's wrongful death judgment which rightfully should have been some time ago without the needless and meritless expenditure of wasteful and improper costs, trustee fees and attorney fees.

Just as in *Bolander, supra,* had the deceased Jennifer Fowler designated Jane Korth, Madeline Korth, Terri Brennan and Shellie Spacil as direct beneficiaries of her DTE Savings & Stock Ownership Plan, then those distributions would have not been subject to the claims of any creditor of Jennifer Fowler, including the Estate of Helen Fowler as those funds **would not have been an asset** of the revocable Jennifer Fowler Living Trust and MCL 700.7605(2) would prevent any attempt by any creditor, including the Estate of. Helen Fowler, from seeking to attach those funds of the DTE Savings and Stock Plan to satisfy a claim against the Estate of Jennifer Fowler.

Further, had Jennifer Fowler survived, MCL 700.7605(2) would have precluded any judgment creditor, such as the Estate of Helen Fowler from seeking to attach her DTE Savings & Stock Ownership Plan to satisfy a claim. The stated purpose of the legislature to preclude attachment in either of the two above circumstances is served by the enactment and application of MCL 700.7605(2).

However, that is not the case herein. Again, just as in *Bolander, supra,* Jennifer Fowler chose a different estate plan scheme.

The decedent, Jennifer Fowler, chose to make her home, bank accounts, life insurance policy benefits and DTE Savings & Stock Ownership Plan funds as the asset makeup of the revocable Jennifer Fowler Living Trust. The life insurance benefit and the DTE Savings & Stock Ownership Plan funds can only be paid to the designated

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beneficiary—the revocable Jennifer Fowler Living Trust. Once those funds are paid into the revocable Jennifer Fowler Living Trust --- MCL 700.7605(2) has no application.

The Jennifer Fowler Living Trust is a revocable trust and thus subject to the statutory provisions of MCL 700.7605(1) which is consistent with long standing Michigan case law that a revocable trust is subject to creditors. The terms of MCL 700.7605(1) provide:

> **700.7605 Liability of trust for expenses, claims, and allowances**.
>
> Sec. 7605.
>
> (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:
> (a) The administration expenses of the settlor's estate.
> (b) An enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses.
> (c) Homestead, family, and exempt property allowances
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> The Michigan Trust Code (MTC), Reporter's Comment states:
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> "The MTC relies upon the structure and provisions of the Uniform Trust Code (UTC) for many of its provisions. However, the MTC is a uniquely Michigan document that draws from both the UTC and prior Michigan law to preserve long-established procedures, practices and principles concerning trusts in Michigan while also filing the numerous gaps that existed in the law. On balance the MTC tends to preserve long-standing Michigan law absent significant procedural or policy benefits from changing the law."

The MTC provides that a revocable trust, such as the revocable Jennifer Fowler Living Trust, is required to transfer funds to the Estate of Jennifer Fowler, when the estate does not have sufficient funds to satisfy the judgment creditor Estate of Helen Fowler.

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Appellee Shellie Spacil, as the Personal Representative of the Estate of Estate of Jennifer Fowler per MCL 700.3704 has statutory duties which require:

> "A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court. However, the personal representative may invoke the court's jurisdiction in a proceeding authorized by this act to resolve a question concerning the estate or its administration."

Appellee Shellie Spacil, as the Personal Representative of the Estate of Estate of Jennifer Fowler per MCL 700.3805. has statutory duties which require:

> **If there are insufficient assets to pay all claims in full** or to satisfy homestead allowance, family allowance, and exempt property**,** the personal representative **shall certify the amount and nature of the deficiency to the trustee of a trust** described in section 7605(1) for payment by the trustee in accordance with section 7606"

Counter Defendant Shellie Spacil, as the Personal Representative of the Estate of Estate of Jennifer Fowler has a duty under Article Six of the Last Will and Testament of Jennifer Fowler, dated December 12, 2017, and as Trustee of the revocable Jennifer Fowler Living Trust to pay the claim of the Counter Plaintiff/Appellant Estate of Helen Fowler's wrongful death claim, evidenced by the judgment entered in the Wrongful Death lawsuit **"as soon after my death as may be found convenient."** (See Evidentiary Hearing Joint Trial Exhibit 1, Appellant's App'x p 1)

Counter Defendant Shellie Spacil, as the Trustee of the revocable Jennifer Fowler Living Trust, per MCL 700.7606. has statutory duties which require:

> "(1) A trustee of a trust described in section 7605(1) shall pay to the personal representative of the settlor's estate the amount that the personal representative certifies in writing to the trustee required to pay the administration expenses of the estate; an enforceable and timely presented claim of a creditor of the settlor…**"**

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The estate plan that the decedent Jennifer Fowler chose consists of two documents, a will and a revocable trust. Both documents set forth that the valid claims against her estate are to be paid. The Jennifer Fowler Last Will and Testament (Joint Exhibit 1, Article 6, Section 1, Appellant's App'x p 4) states:

> "I direct my Personal Representative to consult with the Trustee of my Trust to determine whether any expense or tax shall be paid from my trust or from my probate estate. I direct that all my just debts, claims, funeral expenses, expenses of administration of my estate, income taxes, inheritance, taxes, death taxes and succession duties of every kind and nature, that may be assessed or become payable because of my death, shall be paid as soon after my death as may be found convenient."

The Jennifer Fowler Revocable Trust (Joint Exhibit 2- Article 6 Section 2, Appellee's App'x pp 32-33) states:

> "My Trustee is authorized, but not directed to pay the following:
>
> ***
>
> Legally enforceable claims against me or my estate. "

The revocable Jennifer Fowler Living Trust clearly addressed the circumstances which occurred herein, wherein the Estate of Jennifer Fowler has inadequate assets to satisfy a valid claim against her estate.

Retirement Plans

> "Despite any conflicting provisions in my trust, no expenses, claims, or death taxes shall be paid out of any retirement plan assets which become trust property as a result of my death, unless my Trustee has first used all other assets available to my Trustee".
> (Joint Trial Exhibit 2-Article 6 Section 6(a)-pg 6-4, Appellee's App'x p 35)

The above trust provision is in accord with Michigan case law and MCL 700.7605(1) which provides that a revocable trust asset is subject to the claims of creditor against Jennifer Fowler's estate. In this matter, after the application of the other revocable Jennifer Fowler Living Trust assets, there would be an approximate

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deficiency of $163,000.00 to be charged per the wrongful death judgment against the approximate $850,000.00 DTE Savings & Stock Ownership Plan that are to be paid into the revocable Jennifer L. Fowler Living Trust. (Appellee's App'x p 467-471).

After the payment of all valid expenses and claims, then, and only then would Jane Korth, Name Madeline Korth, Terri Brennan and Shellie Spacil be entitled to the distribution of the residue balance of the revocable Jennifer L. Fowler Living Trust. The 4 individuals named in the revocable Jennifer L. Fowler Living Trust may have preferred that Jennifer Fowler had left them as direct beneficiaries of the insurance policy and the DTE Savings & Stock Ownership Plan. They may have even preferred that their names were placed on the title of her home as joint survivors. But Jennifer Fowler did not. Rather Jennifer Fowler left an estate plan involving her created revocable Jennifer L. Fowler Living Trust that is in accord with Michigan case law and statute that requires that all valid claims against her estate be satisfied before the 4 individual named beneficiaries of the revocable Jennifer L. Fowler Living Trust receive their distribution.

Any exemptions from a judgment creditor provided by ERISA are extinguished upon Jennifer Fowler's death.

The Michigan Supreme Court, in *State Treasurer v Abbott.,*468 Mich 143 (2003) held that ERISA does not protect pension funds after the beneficiary receives them. The Court held:

> "We also prefer the approach adopted by the overwhelming majority of federal courts. Once pension funds are deposited in an inmates account, ERISA does not protect them. We agree with the *Guidry II* court that the text of subsection 206(d)(1) does not address whether benefits that the pensioner has already received are protected. The statute's silence on this issue requires deference to the reasonable interpretation set forth in the Treasury Department regulation. *Guidry II, supra; Chevron, supra.* **That regulation clarifies that the statute protects against the alienation or**

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> **assignment of rights *against the plan itself*.** Other statutory schemes, including the Social Security Act, clearly protects benefits after their receipt. **Congress did not include such expansive language in ERISA**."

APPLICATION OF ERISA

As stated above the Michigan Supreme Court, in *State Treasurer v Abbott.,*468 Mich 143 (2003) held that ERISA does not protect pension funds after the beneficiary receives them. The Court held:

> "We also prefer the approach adopted by the overwhelming majority of federal courts. Once pension funds are deposited in an inmates account, ERISA does not protect them. We agree with the *Guidry II* court that the text of subsection 206(d)(1) does not address whether benefits that the pensioner has already received are protected. The statute's silence on this issue requires deference to the reasonable interpretation set forth in the Treasury Department regulation. *Guidry II, supra; Chevron, supra.* That regulation clarifies that the statute protects against the alienation or assignment of rights *against the plan itself.* Other statutory schemes, including the Social Security Act, clearly protects benefits after their receipt. Congress did not include such expansive language in ERISA."

ERISA was discussed and applied in *Clark v Rameker Trustee, et al,* 573 U. S. 122 (2014) where the Court opined:

> We disagree. In ordinary usage, to speak of a person's "retirement funds" implies that the funds are currently in an account set aside for retirement, not that they were set aside for that purpose at some prior date by an entirely different person. Under petitioners' contrary logic, if an individual withdraws money from a traditional IRA and gives it to a friend who then deposits it into a checking account, that money should be forever deemed "retirement funds" because it was originally set aside for retirement. That is plainly incorrect.

The Court of Appeals in its opinion made the critical distinction between the DTE Savings and Stock plan and the revocable Jennifer L. Fowler Trust as stated at page 5-6:

> The probate court ruled that Jennifer's 401(k) account funds were not available to pay her creditors because the funds are part of a plan complying with the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1001 *et seq.* There is no dispute that the Savings and Stock Plan is a qualified 401(k) account that was intended to provide Jennifer with

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> retirement income during her lifetime. However, the Savings and Stock Plan provides that, after Jennifer's death, any remaining funds are to be paid to the fund beneficiary's estate in a lump sum if there is no surviving beneficiary. Therefore, under the Savings and Stock Plan, **any 401(k) account funds remaining after Jennifer's death converted to a lump-sum payment**. This asset no longer involved a retirement account administered by DTE. Upon the lump-sum conversion**, the funds were no longer part of the Savings & Stock Plan subject to federal regulations for retirement accounts.** For this reason, the probate court erred by ruling that MCL 700.7605(2) applied to prohibit Helen's estate from reaching the lump-sum payment of the remaining 401(k) account funds.
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> Although ERISA protects funds held by a retirement account, that protection is lost once the beneficiary receives the funds. In *State Treasurer v Abbott,* 468 Mich 143, 149, 153-159; 660 NW2d 714 (2003), the Court concluded that ERISA did not prevent the state treasurer from accessing funds protected by ERISA after the funds were deposited from a pension plan into a prisoner's account because ERISA does not protect pension funds after the beneficiary receives the. While *Abbott* involves a prisoner account, the rationale of *Abbott* applies equally to this case. **After Jennifer's death, the funds from the Savings and Stock Plan no longer are to be used to fund retirement benefits, but are payable in a lump sum. Jennifer named her trust the beneficiary of those funds, instead of naming any individual beneficiary. ERISA is intended to protect retirement assets, but the lump sum payment due to Jennifer's trust can no longer be considered a retirement account.**

The Appellant cites *In re Cross,* 640 B.R. 388 (WD MI, 2022) as supporting Appellant's position and the Trial Court's decision. In fact, the *Cross, supra,* decision is inapplicable to the factual and legal circumstances herein. The fact circumstances and legal issue to be decided in *Cross* were stated by the Bankruptcy Court as follows:

1. Mr. Cross received $859.84 as a monthly payment from his GM 401 retirement plan which was deposited in his Bank of America savings account. (pp 389-390)
2. The dispute involved a claimed objection by Mr. Cross which was disputed by the Trustee. "The dispute, however, whether the funds which were traceable to the Plan, but held as cash in the Debtor's bank account as of the petition date, enjoy similar protections such that they are not property of the estate, or alternatively, that they may

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be exempted under the Michigan exemption statute for pension and other employee benefit plans, Mich. Comp. Laws 600.5451(1)(l).” (p 389)

3. The Bankruptcy Court ultimately held, after a long dissertation on decisions of the Michigan’s courts and federal courts that “After the Debtor’s receipt of the funds, they were no longer subject to be excluded from property of the estate under 541(c)(2). There were also no longer part of Debtor’s ‘right or interest’ in the pension plan so as to be subject to exemption under Mich. Comp. Laws 600.5451(1)(l).”
4. The DTE 401 Plan is a trust that is subject to the exemptions under MCL 700.7605(2) but in this case is not the “debtor”.
5. As the Appellee agrees, the revocable Jennifer Fowler Living Trust is a Trust under MCL 700.7605(1) that is obligated to furnish funds to cover the valid enforceable debts of the “debtor” –the Estate of Jennifer Fowler.
6. Once the revocable Jennifer Fowler Living Trust receives the funds from the DTE 401 Plan, it is obligated to pay monies over to the Estate of Jennifer Fowler by virtue of Michigan statutes as previously cited. The Appellant Estate of Helen Fowler is not making a claim against the protections afforded to the DTE 401 Plan from creditors or against a participant or named beneficiary. Rather, they are requesting the Court to enforce the mechanisms provided by the Legislature to receive monies from a MCL 700.7605(1) Trust-- the revocable Jennifer Fowler Living Trust ---to pay the valid and enforceable debt of the Estate of Jennifer Fowler.

The four beneficiaries of the revocable Jennifer Fowler Living Trust are not the intended persons to fall under the protection of ERISA, MTC, EPIC or Michigan case law. Rather, once Jennifer Fowler died, the only recipient of any funds held in the DTE

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Plan became immediately payable to the Jennifer Fowler Revocable Living Trust as her sole beneficiary pursuant to the terms of the DTE Plan (See Article 8, section 8.3(b) p38 of Joint Trial Exhibit 5, Appellee's App'x p 189). Once received by the Jennifer Fowler Revocable Living Trust, those funds are then in a Trust identified and governed by MCL 700.7605(1) and therefore subject to the provisions of the MTC, EPIC and the terms of the Last Will and Testament and the revocable Jennifer Fowler Living Trust.

The Plaintiff/Counter Defendant's Spacil's position is essentially arguing that the non-spouse/non-dependent beneficiaries of the revocable Jennifer Fowler Trust are somehow imbued with the exemptions that were available to the Settlor Jennifer Fowler while she was living. The exemptions that surround an ERISA account or its benefits are personal to the settlor, except for certain statutory provisions that are expressly spelled out. The Michigan Supreme Court in *In Re Vary Estate*, 401 Mich 340 (1977), *cert. denied* 434 U. S. 1087(1978) applied this rationale in the context of social security benefits:

> "We think the same reasoning applies here. If the Congress intended to exempt benefits such as paid to Mrs. Vary from legal process even when the recipient died, it would have said so or would have used different wording. Both *Philpott* [409 U. S. 413 (1973)] and *Porter,* [370 U. S. 159 (1963)] indicate that such benefits are for the support of living people with continuing needs. Exemption is a protection that does not survive the individual. It is a personal protection which dies with the beneficiary.
>
> ****
>
> Social security is imbued with a personal characteristic which dies with the beneficiary. Thereafter, if any funds pass into the estate for probate as did Jeanette Vary's, they are subjected to state law."

The Court of Appeals at page 7 cited with approval the following excerpt of the *Bolandar, supra,* holding as follows:

> Black letter law also supports the personal nature of an exemption. 31 Am. Jur.2d, Exemptions Section 238 provides:

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> "The right to an exemption exists solely by virtue of express constitutional or statutory provisions. Accordingly, any determination of persons or classes of persons who may claim exemptions in any particular state must be directed to the state's constitution and statutes and, unless the debtor claiming an exemption is one of the persons or classes of persons therein named, his claim cannot prevail, because a debtor's right to an exemption is a personal one which does not survive the death of a person in whose favor it exists."
>
> In addition, 31 Am. Jur. 2d, Exemptions Section 239 provides that the right of exemption is limited to a natural, rather than a legal, person.

There is no issue that the specific named beneficiary of both the Met Life Insurance policy and the 401k pension plan is the revocable Jennifer L. Fowler Living Trust and not any of the named beneficiaries of the Trust. In *Central States, supra,* the Ninth Circuit Court of Appeals emphasized the "bright line rule that the name on the beneficiary card controls the payment of benefits."

CONCLUSION

A. DTE Savings and Stock Ownership Plan (Plan)

The following facts are undeniable:

1. The DTE Savings and Stock Ownership Plan (Plan), by both the designation by the employee, Jennifer Fowler, and the terms of the revocable Jennifer l. Fowler Living Trust, is obligated to pay the retirement proceeds to the single beneficiary--- the Jennifer L. Fowler Living Trust.
2. The Met Life insurance benefit has already paid its benefit to the designated sole beneficiary—the revocable Jennifer Fowler Living Trust.
3. MCL 600.6023(1)(k) only provides an exemption for "The right or interest of a **person** in a pension, profit sharing…". The revocable Jennifer Fowler Living Trust is not a "person" who has a right or interest in a pension, profit-sharing, stock bonus, or other plan that is qualified under section 401 of the internal revenue code of

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1986…nor does this matter involve an exemption which applies to the federal bankruptcy code per MCL 600.6023(1)(k). That "person", who had a right or interest in the pension plan was Jennifer Fowler prior to her death. The beneficiaries of the revocable Jennifer L. Fowler Living Trust, Jane Korth, Madeline Korth, Terri Brennan and Shellie Spacil, the non-spouse/non-dependents only have an interest in the remainder assets of the revocable Jennifer L. Fowler Living Trust after all the "legally enforceable claims" have been paid.

4. That MCL 700.7605(1) provides that to the extent a decedent's property subject to probate administration is insufficient to pay creditors' claims, the decedent's trust, if revocable during the decedent's lifetime, is subject to payment of creditors' claims.
5. **The revocable Jennifer L. Fowler Living Trust is not a trust that is part of a qualified retirement plan and thus does not meet the requirements of MCL 700.7605(2)** that is:

> "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, and 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 a trust described in subsection (1). "

6. There is no valid exemption under Michigan law which shields the revocable Jennifer L. Fowler Living Trust from being subject to the terms of the Michigan Trust Code, which require the Trustee to transfer assets, including the yet to be paid Plan assets to the Estate of Jennifer Fowler upon a deficiency for the payment of claims.

Again, the Counter Defendant/Appellee has argued that the DTE Savings & Stock Ownership Plan funds at issue, whether liquidated or not, are not the property of Jennifer Fowler or her estate. That is correct. The funds are to be paid to the designated

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beneficiary ---the revocable Jennifer L. Fowler Living Trust. As such, by operation of the Michigan probate statutes and the provisions of the Jennifer Fowler Last Will and Testament and the revocable Jennifer Fowler Living Trust, those funds, after deposit into the revocable Jennifer Fowler Living Trust, are available to be transferred to the Jennifer L. Fowler Estate, to the extent that it is insolvent, to pay the wrongful death judgment against the Jennifer L. Fowler Estate.

A critical point, is that the language of MCL 700.7605(2) plainly disqualifies the revocable Jennifer Fowler Living Trust from being deemed subject to the exemption of MCL 700.7605(2).

MCL 700.7605 (2) states:

> (1) **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).**

Subsection (2) provides the following type of trusts" established as part of, and all payments from" … "shall not be considered to be a trust described in subsection (1). The revocable Jennifer Fowler Living Trust is not a trust that was ***established*** as part of any of the subsections below and does not consist of all payments from one of the exceptions below. The revocable Jennifer L. Fowler Living Trust held property in the form of the decedent's residence, bank accounts, life insurance proceeds paid to it as the designated beneficiary and a yet to be made payment from the designated beneficiary of the DTE Savings & Stock Ownership Plan.

Sections 401 and 403 of the Internal Revenue Code contain a myriad of different

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employer/employee retirement plans, but Section 401 and Section 403 are two distinct sections that address different aspects of the options that are available to both the employer and employee in the establishment of the plans. MCL 700.7605(2) first addresses an employer trust that is established as an "employee annuity" under section 403 of the Internal revenue code. Section 403 states:

> "If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2)(whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee (in the year in which so distributed) under section 72 (relating to annuities)."

1. **MCL 700.7605(2) first addresses "A trust established as part of, and all *payments* from, an employee annuity described in section 403 of the internal revenue code"**

The revocable Jennifer L. Fowler Living Trust was not established as part of, nor providing *payments* that would be made pursuant to an annuity contract described in section 403 of the internal revenue code. There are no "payments" pursuant to an annuity contract or plan pursuant to section 403. Rather the DTE Electric Company Savings and Stock Ownership Plan for Employees Represented by Local 223 of the Utility Workers Union of America clearly states what Internal Revenue Code sections are applicable to the plan, which is clearly not an annuity contract pursuant to section 403.

> "**1.3 Purpose of Plan**
>
> The purpose of the Plan is to allow eligible Employees to set aside a portion of their Compensation for their retirement and to encourage Employee savings by matching a portion of such Compensation for their retirement and to encourage Employee savings by matching a portion of such Compensation deferrals with Employer contributions. The Plan and any related trusts are intended to meet the requirements applicable to qualified profit-sharing plans under sections 401(a), 401(k), 401(m), and 501(a) of the Internal Revenue Code of 1986."

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(Joint Exhibit 5- Article 1, Section 1.3, Appellant's App'x p 151)

The 1st provision in MCL 700.7605(2) is perfectly in accord with current ERISA and Michigan law that would protect the employee Jennifer Fowler and or her dependents if they were to be the intended beneficiaries of an annuity contract that would provide installment payments over a course of years. However, under the facts before this Court, it has no application to the beneficiaries of a revocable trust. The term "payments" is restricted to "payments from an annuity described in section 403 of the internal revenue code". Herein, as described by the Court of Appeals at page 5-6 of its decision (Appellant's App'x pp 483-484):

> "This asset no longer involved a retirement account administered by DTE. Upon the lump-sum conversion, the funds were no longer part of the Savings & Stock Plan subject to federal regulations for retirement accounts. For this reason, the probate court erred by ruling that MCL 700.7605(2) applied to prohibit Helen's estate from reaching the lump-sum payment of the remaining 401(k) account funds.
>
> ***
>
> After Jennifer's death, the funds from the Savings & Stock Plan no longer are to be used to fund retirement benefits, but are payable in a lump sum. Jennifer named her trust the beneficiary of those funds instead of naming any individual beneficiary. ERISA is intended to protect retirement assets, but the lump-sum payment due to Jennifer's trust can no longer be considered a retirement account.

IRA, Keogh, HR-10 or other retirement plan under section 401

Since the DTE Plan is not a 403 plan with annuity payments, the balance of the separate plans described in MCL 700.7605(2) are at issue. The DTE Plan is not an IRA, Keogh or HR-10 plan but is a qualified retirement plan under section 401 of the internal revenue code as set forth in Section 1.3 of the DTE Plan (Appellant's App'x p 151) as identified above as a "qualified profit-sharing plan" under section 401. There is no provision to be found for "annuity payments" and there is no "annuity contract" between the employer DTE and the employee Jennifer Fowler.

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Counter Plaintiff/Appellant Estate of Helen Fowler does not assert that the DTE Plan is a trust described in subsection (1) of MCL 700.7605(1) and concedes that the DTE plan is a trust formed under section 401 which falls under section MCL 700.7605(2). As in *Bolander, supra,* if Jennifer Fowler had survived or she had listed the 4 trust beneficiaries as the beneficiaries of the DTE Plan, then MCL 700.7605(2) would be applicable and the Counter Plaintiff/Appellant would have no ability to collect any funds from the DTE Plan. But the Trust that is in question, is not the DTE plan, but rather the revocable Jennifer L. Fowler Living Trust, which is the Trust that the Counter Plaintiff/Appellant is entitled to seek funds to satisfy the estate of Jennifer Fowler's judgment creditor under Michigan statutes, case law and federal law governing ERISA plans. The four beneficiaries of the revocable Jennifer Fowler Living Trust are not the intended persons to fall under the protection of ERISA, MTC, EPIC or Michigan case law. Rather, once Jennifer Fowler died, the only recipient of any funds held in the DTE Plan became immediately payable to the Jennifer Fowler Revocable Living Trust as her sole beneficiary pursuant to the terms of the DTE Plan (See Article 8, section 8.3(b) p38 of Joint Trial Exhibit 5, Appellant's App'x p 189). Once received by the Jennifer Fowler Revocable Living Trust, they are then in a Trust identified and governed by MCL 700.7605(1) and therefore subject to the provisions of the MTC, EPIC and the terms of the Last Will and Testament and the revocable Jennifer Fowler Living Trust.

The wrongful death judgment creditor was never intended, under Michigan law, to have its claims subverted by the 4 non-spousal, non-dependent individuals of a revocable trust. The payment of a wrongful death claim takes priority and the beneficiaries of the revocable Jennifer Fowler Living Trust are only entitled to the

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remainder balance after the legal enforced claim is paid.

II. THE COURT OF APPEALS AND THE PROBATE COURT PROPERLY APPLIED MCL 500.2207(2) IN RULING THAT THE METROPOLITAN LIFE INSURANCE PROCEEDS PAID TO THE REVOCABLE JENNIFER L. FOWLER LIVING TRUST, AS THE ONLY DESIGNATED BENEFICIARY OF THE LIFE INSURANCE POLICY, IS AN ASSET OF THE REVOCABLE JENNIFER FOWLER LIVING TRUST, SUBJECT TO THE TRANSFER OF FUNDS PURUSUANT TO MCL 700.3805, MCL 700.7605, MCL 700.7606 AND MCL 700.7607 AND THE EXPRESSED TERMS OF BOTH THE LAST WILL AND TESTAMENT OF JENNIFER FOWLER AND THE REVOCABLE JENNIFER FOWLER LIVING TRUST TO SATISFY THE WRONGFUL DEATH CLAIM OF THE APPELLANT ESTATE OF HELEN FOWLER.

A. Standard of Review

A trial court's decision involving statutory construction is reviewed de novo. *People v Babcock,* 469 Mich247, 253 (2003); *Veenstra v Washtenaw Country Club,* 465 Mich 155, 159 (2002).

B. Analysis

The Metropolitan Insurance Company provided under a Group Life insurance policy to DTE employees, and Jennifer Fowler participation in said life insurance benefit consisted of Basic Life in the amount of $175,000.00 and Optional Life in the amount of $263,000.00 which was paid after Jennifer Fowler's death per the life insurance contract between the Metropolitan Insurance Company and the decedent Jennifer Fowler. The provision of providing life insurance is considered part of a welfare benefit plan under ERISA and not an employee pension benefit plan. (See Evidentiary hearing exhibit 3 & 4, Appellant's App'x p 108, p 145)

The life insurance contract between the Metropolitan Insurance Company is governed by the terms of the contract and Jennifer Fowler had her insurable interest in the contract and the power to transfer said interest to the Jennifer Fowler Revocable Trust as occurred under Article Three of said Trust and the Trust is the recipient of the

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proceeds as the named beneficiary of that insurable interest. (See Evidentiary hearing exhibit 3 & 4, Appellant's App'x p 108, p 145)

The contract of life insurance was with decedent Jennifer Fowler, as she had the insurable interest, and she not only transferred the insurable interest and contract to the revocable Jennifer Fowler Living Trust, she also designated the Jennifer Fowler Revocable Trust as the beneficiary of the proceeds of said insurance contract. (See Evidentiary hearing exhibit 3 &4, Appellant's App'x p 108, p 145)

The decedent Settlor Jennifer Fowler chose Shellie Spacil as her Trustee to administer that portion of her estate planning- the revocable Jennifer Fowler Living Trust. The Trial Court recognized that designation in determining that "The trustee of Jennifer's Trust is someone designated by Jennifer to handle its affairs, a position akin to an executor or administrator." (page 7 of the Trial Court's Opinion and Order, Appellant's App'x p 485)

ERISA Section 514(b)(2)(A), 29U.S.C. Section 1444(b)(2)(A) provides that nothing in ERISA "shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities."

Michigan has enacted a comprehensive law titled the Insurance Code of 1956, Act 218 of 1956 which regulates life insurance in the State of Michigan.

MCL 700.7605(1) provides that the property of a revocable trust such as the Jennifer Fowler Trust are subject to and available for the payment of claims against the Settlor's (Jennifer Fowler) estate to the extent the settlor's property subject to probate administration is insufficient to pay the expenses, claims and allowances.

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MCL 500.2207(1) which is part of the Insurance Code of 1956, only provides that life insurance proceeds payable directly to a spouse or children of the deceased cannot be reached by the creditors of the deceased insured. Neither of those circumstances existed herein.

MCL 500.2207(2) only exempts life insurance benefits that are directly named in the insurance policy other than the person who procured the insurance or his/her personal representative or administrator. Jennifer Fowler established the beneficiary of the life insurance policy, her own estate planning vehicle, the revocable Jennifer Fowler Living Trust as the named beneficiary and thus the recipient of the insurance proceeds.

The Appellant argues at page 35 of the Appellant's brief that "through no process should the Trust [revocable Jennifer L. Fowler Living Trust] be stripped of its rights to the insurance proceeds." No one is stripping the revocable Jennifer L. Fowler Living Trust or its rights to insurance proceeds. In fact, the insurance proceeds have been paid into the Jennifer L. Fowler Living Trust.

Both the Trial Court and the Court of Appeals recognized the distinction. The Court of Appeals held at page 10 the following:

> The purpose behind MCL 500.2207(1) is to shield from creditors insurance policies procured to protect an insured's dependents MCL 500.2207(2) extends the exemption toother policies obtained under legitimate circumstances. However, MCL 500.2207(2) plainly provides that an exemption from creditors in not available when "a policy of insurance….is effected by any person on his own life" and is payable to the insured. Thus, MCL 500.2207(2) does not allow an insured to obtain coverage on his or her own life and shield the policy proceeds from the insured's creditors. Jennifer obtained the insurance coverage through her employment with DTE and named her revocable trust as the beneficiary of the policy. Jennifer's trust cannot avoid the requirements of MCL 500.22207(2) by arguing that Jennifer's trust is a separate entity. As the probate court noted, MCL 500.2207(2) provides that policy proceeds paid to an insured's executors or administrators are not exempt from creditors. Given that

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> provision the probate court correctly held that the proceeds from Jennifer's life insurance policy, which were payable to Jennifer's trust and were to be administered by a trustee, are not protected from creditors, and therefore, can be reached by Helen's estate to satisfy the wrongful-death judgment. Jennifer could have named the individual beneficiaries of her trust as direct beneficiaries of the life insurance policy to avoid this asset from being subject to her creditor's claims, but she did not do so. See, *e.g. Ionia Co Savings Bank v McLean,* 84 Mich 625, 629-630, 48 NW 159 (1891).
>
> (Appellant's App'x p 498)

Once those insurance proceeds are paid into the Trust, the disposition of those proceeds are subject to the terms of the Trust as well as the statutory provisions enacted by the legislature which requires a mechanism to be applied to the trust proceeds to satisfy a deficiency in the decedent's estate.

MCL 700.7605, only exempts life insurance proceeds payable to a revocable trust created by a decedent pursuant to which the trustee is directed to pay the proceeds from the policy to the deceased settlor's spouse and/or children from the creditors of the deceased settlor.

The Estates and Protected Individuals Code (EPIC) defines an "Estate" as follows in MCL 700.1104(b):

> "(b) 'Estate' **includes** the property of the decedent, **trust,** or other person whose **affairs are subject to this act as the property is originally constituted and as it exists throughout administration.** Estate also includes the rights described in sections **3805**,3922 and **7606** to collect from others amounts necessary to pay claims, allowances and taxes."

The revocable Jennifer Fowler Living Trust is part of the Estate of Jennifer Fowler and is subject to the statutory construct as to the payment of claims. The Michigan Trust Code (MTC) is part and parcel (Article 7) of EPIC and subject to the applicable statutes "throughout administration."

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The successful wrongful death claim of the Appellee Estate of Helen Fowler is a valid claim under MCL 700.3803(1).

Thus, the revocable Jennifer Fowler Living Trust, is defined as part of the Estate of Jennifer Fowler as stated in

MCL 700.1104(b):

> "(b) 'Estate' **includes** the property of the decedent, **trust,** or other person whose **affairs are subject to this act as the property is originally constituted and as it exists throughout administration.** Estate also includes the rights described in sections **3805**,3922 and **7606** to collect from others amounts necessary to pay claims, allowances and taxes."

The Appellant, revocable Jennifer Fowler Living Trust, argues that the Court's determination that the Trust is a beneficiary which falls within the class of beneficiaries excluded by phrase "other than the insured…or (her) executors or administrators" is an incorrect determination.

Shellie Spacil, as both the Personal Representative of the Estate of Jennifer Fowler, and as the Trustee of the revocable Jennifer Fowler Living Trust has clearly been administering the Estate of Jennifer Fowler, including the decision to transfer all of the assets of the Estate into the Trust and then, subject to all of the statutory provisions in administering of the Estate and Trust as set forth in both EPIC and the MTC.
A" trustee" is clearly an administrator who is obligated to perform "administration" in the handling of the "estate" of Jennifer Fowler which is defined by MCL 700.1104(b):

> "(b) 'Estate' **includes** the property of the decedent, **trust,** or other person whose **affairs are subject to this act as the property is originally constituted and as it exists throughout administration.** Estate also includes the rights described in sections **3805**,3922 and **7606** to collect from others amounts necessary to pay claims, allowances and taxes."
>
> MCL 700.7606 specifically requires:

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> "(1) A trustee of a trust described in section 7605(1) shall pay to the personal representative of the settlor's estate the amount that the personal representative certifies in writing to the trustee is required to pay the administration expenses of the settlor's estate; an enforceable and timely presented claim of the settlor, ……

The term "administration" as it relates to a trustee's duties and obligations is pervasive throughout the MTC including MCL 700.7801, 700.7802, MCL 700.7709, MCL 700.7108 etc.

It is clear that the role of the Trustee is to administer the estate planning document known as the revocable Jennifer Fowler Living Trust, in accordance with the stated intent of the Settlor Jennifer Fowler as stated in her Trust subject to the provisions that are required under EPIC and the MTC.

The estate plan that the decedent Jennifer Fowler chose consists of two documents, a will and a revocable trust. Both documents set forth that the valid claims against her estate are to be paid. The Jennifer Fowler Last Will and Testament (Joint Exhibit 1, Article 6, Section 1, Appellant's App'x p 4) states:

> "I direct my Personal Representative to consult with the Trustee of my Trust to determine whether any expense or tax shall be paid from my trust or from my probate estate. I direct that all my just debts, claims, funeral expenses, expenses of administration of my estate, income taxes, inheritance, taxes, death taxes and succession duties of every kind and nature, that may be assessed or become payable because of my death, shall be paid as soon after my death as may be found convenient."

The Jennifer Fowler Revocable Trust (Joint Exhibit 2- Article 6 Section 2, Appellant's App'x p 4) states:

> "My Trustee is authorized, but not directed to pay the following:
>
> ***
>
> Legally enforceable claims against me or my estate. "

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The revocable Jennifer Fowler Living Trust clearly addressed the circumstances which occurred herein, wherein the Estate of Jennifer Fowler has inadequate assets to satisfy a valid claim against her estate.

Retirement Plans

> "Despite any conflicting provisions in my trust, no expenses, claims, or death taxes shall be paid out of any retirement plan assets which become trust property as a result of my death, unless my Trustee has first used all other assets available to my Trustee".

(Joint Trial Exhibit 2-Article 6 Section 6(a)-pg 6-4, Appellant's App'x p 35)

The above trust provision is in accord with Michigan case law and MCL 700.7605(1) which provides that a revocable trust asset is subject to the claims of creditor against Jennifer Fowler's estate.

The Appellant, revocable Jennifer Fowler Living Trust argues that "Trusts are a legally distinct entity distinguishing between the trustee personally or as an individual and the trustee in a fiduciary or representative capacity" and cites two cases at page 35 of Appellant's brief which supposedly support this proposition. Those cited cases deal with the question of the individual liability of a Trustee for failing to properly "administer" a trust versus the Trust being liable for the improper administration.

The Appellant also cites an Arizona case, *Difilippo v Reed (In Re Estate of King),* 269 P3d 1189 (2012) stating the Arizona "Court addressed the issue of whether life insurance benefits payable to a Trust as a beneficiary, was protected from the insured's estate creditors" (Page 9 of Appellant's brief).

A subsequent Arizona case *Woerth v Reese (In Re Estate of Gottier)* 475 P3d 1144(2020) determined that "Because the proceeds are property of the estate, and not exempt from creditors' claims under Arizona Revised Statutes (A.R.S.) Section 20-

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1131(2020) ", the Arizona court determined that the insurance proceeds paid to the estate were not exempt from creditor's claims.

In *Woerth, supra,* the court distinguished the reliance upon two cases including the *Difilippo, supra,* cited by Appellant.

> "Woerth argues the proceeds are exempt under Section 20-1131(A), also relying on *May v Ellis, 208 Ariz. 229, 92 P.3d 859 (2004) and In re Estate of King, 228 P.3d 1189 (App.2012)…".*

The *May* case involved a matter where "the insurance proceeds were paid directly to the **surviving spouse** who was the named beneficiary in the insurance policy, meaning the proceeds never became an asset of the estate." Woerth, supra at page 1147.

The *King* case involved a matter wherein the "sole beneficiary was **King's minor son**". *King, supra,* at page 1193.

Neither of those circumstances exist herein.

Woerth, supra, at page 1147 stated:

> "Under Arizona's Probate Code, which is contained in A.R.S. Title 14, "an estate is a collection of the decedent's assets and liabilities"

Although stated a bit differently, the definition of "estate" pursuant to MCL 700.1104(b) is essentially the same, with the specific designation that a "trust" is part of the "estate" of Jennifer Fowler.

The Court of Appeals at page 10 held (Appellant's App'x p 498):

> The Arizona cases cited by Jennifer's trust simply stand for the rule that life insurance proceeds should not be available to an insured's creditors, through the insured's trust, if the insurance was intended to support the insured's dependents or other named beneficiaries, **which is consistent with Michigan law**. In this case, none of the beneficiaries of Jennifer's trust are her dependents, and she did not name any individual as a beneficiary of her life insurance policy. **Thus, public policy does not support exempting the life insurance proceeds from Jennifer's creditors'**

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claims. The probate court correctly held that the life insurance proceeds were available to satisfy the judgment owed to Helen's estate.

III. THE COURT OF APPEALS AND THE PROBATE COURT PROPERLY DETERMINED THAT MCL 700.7605(4) DOES EXEMPT THE METROPOLITAN LIFE INSURANCE PROCEEDS PAID TO THE REVOCABLE JENNIFER L. FOWLER LIVING TRUST, WHERE JENNIFER FOWLER'S LIFE INSURANCE POLICY DID NOT NAME A DEPENDENT OR ANOTHER INDIVICUAL AS A BENEFICIARY, BUT INSTEAD NAMED THE TRUST AS THE BENEFICIARY

A. Standard of Review

A trial court's decision involving statutory construction is reviewed de novo. *People v Babcock,* 469 Mich247, 253 (2003); *Veenstra v Washtenaw Country Club,* 465 Mich 155, 159 (2002).

B. Analysis

Under MCL 700.7605(4) the revocable Jennifer L. Fowler Living Trust does not hold or have received property "paid directly to a trust created under the settlor's will or other than to settlor's estate, or property received from a trust other than a trust described in this section."

The first phrase "paid directly to a trust created under the settlor's will" describes a **testamentary trust**, which is not the fact circumstance herein. The most common use of a testamentary trust is to provide for the testator's minor children during their minority.

The second phrase "or property received from a trust other than a trust described in this section" describes an **irrevocable trust** which is not described in MCL 700.7605. The revocable Jennifer L. Fowler Living Trust, is not a testamentary trust and is a **revocable trust** specifically described in MCL 700.7605(1).

The Court of Appeals after review of the argument of the Appellant determined at page 11"

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> Although this commentary refers to MCL 500.2207, as discussed earlier, that statute does not exempt the life insurance proceeds in this case where Jennifer's life insurance policy did not name a dependent or another individual as a beneficiary, but instead named the trust as the beneficiary. Accordingly, the probate court did not err by ruling that the life insurance proceeds could be used to satisfy the judgment obtained by Helen's estate to the extent that other assets in Jennifer's estate were insufficient to satisfy the claim.
>
> The attempt to apply MCL 700.7604(4) is without merit.

CONCLUSION

After the payment of all valid expenses and claims, then, and only then would Jane Korth, Name Madeline Korth, Terri Brennan and Shellie Spacil be entitled to the distribution of the residue balance of the revocable Jennifer L. Fowler Living Trust. The four individuals named in the revocable Jennifer L. Fowler Living Trust may have preferred that Jennifer Fowler had left them as direct beneficiaries of the insurance policy and then those insurance proceeds would have been outside of the estate of Jennifer Fowler as a non-probate transfer. They may have even preferred that their names were placed on the title of her home as joint survivors for the very same reason. But Jennifer Fowler did not. Rather Jennifer Fowler left an estate plan involving her created revocable Jennifer L. Fowler Living Trust that is in accord with Michigan case law and statute that requires that all valid claims against her estate be satisfied before the four individual named beneficiaries of the revocable Jennifer L. Fowler Living Trust receive their distribution under these facts wherein, they are not spouses, children, dependents, or named beneficiaries of the insurance policy. The Trial Court's decision is consistent with the long-standing application of Michigan law and the statutory provisions which have been enacted to regulate circumstances such as are found in this matter.

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In *Lee v Smith,*310 Mich App 507 (2015) the Court of Appeals held:

> The interpretation of a statute is reviewed de novo, as a question of law. *Driver v Naini,* 490 Mich 239, 246; 802 NW2d 311 (2011). A court's primary goal when interpreting a statute is to discern legislative intent first by examining the plain language of the statute. *Id.* at 246- 247. **Courts construe the words in a statute in light of their ordinary meaning and their context within the statute as a whole.** *Johnson v Recca,* 492 Mich 169,177; 821 NW2d 520 (2012). A court must give effect to every word, phrase, and clause, and avoid an interpretation that renders any part of a statute nugatory or surplusage. *Id.* **Statutory provisions must also be read in the context of the entire act**. *Driver,* 490 Mich at 247. **It is presumed that the Legislature was aware of judicial interpretations of the existing law when passing legislation**. *People v Likine,* 492 Mich 367, 398 n 61; 823 NW2d 50 (2012). When statutory language is clear and unambiguous, courts enforce the language as written. *Lafarge Midwest, Inc v eDetroit,* 2QO Mich App 240. 246-247; 801 NW2d 629 (2010). A statutory provision is ambiguous only when it irreconcilably conflicts with another provision or is equally susceptible to more than one meaning. *Id.* at 247.

The Legislature was well aware of the "context of the entire act" and the "judicial interpretations of the existing law" when it passed EPIC and the MTC. The Legislature clearly encapsulated the "existing law" as it applied to revocable trusts and creditors in MCL 700.7506.

700.7506 Creditor's claim against settlor; "settlor" explained

> (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.

The Commentary further highlights the statutory construct which was intended to provide creditors with relief involving revocable trusts.

> Subsection (1) provides a series of rules dealing with revocable trusts, claims following death, and irrevocable trusts. A spendthrift provision cannot

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> be used to override these rules. §7506(1). Subsection (2) describes the amount that can be reached when more than one settlor contributes to a trust. Subsections (3) and (4) address issues that arise in the context of more sophisticated planning techniques.
>
> Paragraph (1)(a) codifies the common-law rule that a creditor of the settlor can reach the assets of the settlor's revocable trust. *See* Restatement (Second) of Trusts §156; *Colman v Department of Mental Health (In re Hertsberg Inter Vivos Tr)*, 457 Mich 430, 578 NW2d 289 (1998).
>
> From its enactment, EPIC contained a means by which the assets of a decedent's revocable trust are made available to satisfy the claims against the decedent's probate estate if there is no estate or the resources of the probate estate are insufficient to satisfy all of the claims. The MTC retains these rules, which are found in MCL 700.7605-.7615. Paragraph 7506(1)(b) confirms that the settlor's revocable trust remains subject to expenses, claims, and allowances after the settlor's death.
>
> 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).

The Appellant is arguing that this Appellate Court, should overturn the Court of Appeals and Trial Court's determination, that taken as a whole, under both EPIC and the MTC, and the terms of the Trust, that the Trustee Shellie Spacil is engaged as an administrator of the decedent Jennifer Fowler, in administering the trust of the decedent Jennifer Fowler in order to fulfill the intent of the decedent Jennifer Fowler.

The Estate of Helen Fowler is **not a creditor** with a claim against the Jennifer L. Fowler Living Trust and has never claimed it is. Rather, **the obligation of the Trustee of the Jennifer L. Fowler Living Trust is not to pay the judgment against the Estate of Jennifer L. Fowler, but rather to transfer funds sufficient to allow the insolvent Estate of Jennifer L. Fowler to satisfy the judgment --- which duty arises by operation of law, by virtue of the statutory provisions of EPIC and the MTC set forth in the Appellant's post evidentiary brief.**

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RELIEF REQUESTED

The Appellee, the Estate of Helen Fowler respectfully requests this Honorable Court to deny the Appellant revocable Jennifer Fowler Living Trust's application for leave to appeal.

CERTIFICATE OF COMPLIANCE WITH MCL 7.212

In compliance with MCL 7.212 and ADM File No. 2019-16, I certify that this brief contains 15,270 countable words and the typeface used in this brief is Arial, set in a 12-point font except for footnotes.

Dated: September 30, 2024

/s/ John B. McNamee
John B. McNamee

Respectfully submitted,

Dated: September 30, 2024

/s/John B. McNamee
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