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STATE OF MICHIGAN

IN THE SUPREME COURT

JENNIFER L. FOWLER TRUST,
under Agreement dated
August 17, 2002

Plaintiff/Appellant

vs.

JULIE BROOKS. Personal
Representative of the
ESTATE OF HELEN FOWLER,

Defendant/Appellee

Supreme Court Case No:

Court of Appeals No: 365603
Consolidated with 365600
and 365610

Lower Court No: 22-2059-CZ
St. Clair County Probate Ct

_____/

APPELLANT JENNIFER FOWLER TRUST'S APPLICATION FOR LEAVE TO APPEAL

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III. WHETHER THE LIFE INSURANCE PROCEEDS PAYABLE TO THE JENNIFER FOWLER TRUST ARE ASSETS SUBJECT TO THE CLAIMS OF CREDITORS OF THE ESTATE OF JENNIFER FOWLER PURSUANT TO MCL 700.7605(4)

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STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

The jurisdiction of this Court is pursuant to MCR 7.305.

The Michigan Court of Appeals correctly summarized by the trial court proceedings and the appeals filed in the Court of Appeals stating:

> "After the Estate of Helen Fowler ("Helen's estate") recovered a judgment in a wrongful-death action against the Estate of Jennifer L. Fowler ("Jennifer's estate"), Helen's estate filed a claim in probate court against Jennifer's estate in LC No. 19-000085-DE, seeking recovery of the judgment.
>
> In LC No. 22-000259-CZ, the Jennifer L. Fowler Trust ("Jennifer's trust") filed a petition for a declaratory judgment regarding whether assets in Jennifer's trust could be used to pay the claim of Helen's estate. {Helen's Estate also filed a Counter Complaint likewise seeking Declaratory Relief.] Following an evidentiary hearing, the probate court ruled that life insurance proceeds received by Jennifer's trust could be used to satisfy the claim of Helen's estate, but that proceeds from a 401(k) account owned by Jennifer could not be used to satisfy that claim.
>
> In Docket Nos. 365600 and 365610, Helen's estate appeals as of right the portion of the probate court's order disallowing recovery of the 401(k) proceeds.
>
> In Docket No. 365603, Jennifer's trust appeals as of right the portion of the probate court's order allowing recovery of the life insurance proceeds." Spacil v

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Brooks, (In Re Estate of Fowler, ___ Mich App ____ (2024) Appellant's Appendix 12.

The underlying appeals were consolidated by order of the Court of Appeals entered April 11, 2023 (Docket Nos. 365600; 365603; 365610).

Timely Claims of Appeal were filed with the Michigan Court of Appeals in all three (3) cases on April 5, 2023.

On July 18, 2024, the Michigan Court of Appeals issued its decision affirming the trial court's Opinion and Order. Appellant's Appendix 12.

Pursuant to MCR 7.305, Appellant now timely files its Application for Leave to Appeal regarding all three (3) underlying cases.

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GROUNDS FOR GRANTING OF THE APPLICATION

The issues presented in this Application For Leave to Appeal concerns the interpretation and application of MCL 700.7605(2), MCL 700.7605(4) as well as MCL 500.2207(2) and whether certain specific assets of the Jennifer Fowler Trust may be applied to satisfy an obligation of the Estate of Jennifer Fowler. See MCL 700.7605.

Prior to the Michigan Court of Appeals rendered its published decision, Spacil v Brooks, (In Re Estate of Fowler, ___ Mich App ____ (2024) 2024 Mich App Lexis 5613, there existed no appellate law regarding the interpretation of this subject under the Michigan Trust Code, MCL 700.7101, et seq. Further, prior to the Michigan Court of Appeals decision, there existed no Michigan appellate law regarding the interpretation of MCL 500.2207(2).

Now that the Court of Appeals has issued its Opinion, unless this Court grants Leave to Appeal and reviews these issues, the decision of the Court of Appeals will be binding precedent. CAF Investment Co v Saginaw Twp, 410 Mich 428, 453-455 (1981);, Catalina Marketing Sales Corp v Dep't of Treasury, 470 Mich 13, 23 (2004); MCR 7.215(J)(1).

While the facts of this case may be unique, the legal issues and the application of the those issues involve several legal principles of major significance to the state's jurisprudence as:

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a. The decision of the Michigan Court of Appeals affects estate planning principles in determining which assets of a Trust may be subject to liability to satisfy totally unrelated and unsatisfied claims against a Settlor's decedent Estate. A definitive ruling by this Court would greatly benefit the jurisprudence of the State of Michigan;

b. The decision of the Michigan Court of Appeals totally disregards the terms and provisions of MCL 700.7605(2) which grants a specific exemption to specific assets from liability for the unsatisfied claims against a Settlor's decedent Estate. A definitive ruling by this Court would benefit the jurisprudence of the State of Michigan;

c. The decision of the Michigan Court of Appeals is clearly at odds with the provisions of MCL 500.2207(2), and the Court of Appeals decision, if upheld, may significantly affect the use of life insurance policies in estate planning principles and determining which assets of a Trust may be subject to liability to satisfy totally unrelated claims of a decedent's Estate. A definitive ruling by this Court would benefit the jurisprudence of the State of Michigan;

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d. The decision of the Michigan Court of Appeals disregarding the separate entity of a Trust in applying MCL 500.2207(2) affects estate planning principles and determining which assets of a Trust may be subject to liability to satisfy totally unrelated claims of a decedent's Estate. A definitive ruling by this Court would benefit the jurisprudence of the State of Michigan;

e. While it is true, as recognized by the Michigan Court of Appeals that a Settlor of a Trust can avoid this issue by naming individuals as beneficiaries, rather than a Trust, Appellant Appendix 12, there are in fact estate planning reasons why a beneficiary of a life insurance should be a Trust rather than an individual. The decision of the Michigan Court of Appeals disregarding the separate entity of a Trust in applying MCL 500.2207(2) affects estate planning principles and determining which assets of a Trust may be subject to liability to satisfy totally unrelated claims of a decedent's Estate. A definitive ruling by this Court would benefit the jurisprudence of the State of Michigan.

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QUESTIONS PRESENTED

I. WHETHER THE DTE SAVINGS AND STOCK 401k PLAN PROCEEDS ARE EXEMPT FROM THE CLAIMS OF CREDITORS OF THE ESTATE OF JENNIFER FOWLER PURSUANT TO MCL 700.7605

Appellant says "Yes"
Appellee says "No"
The Trial Court said "Yes"
The Court of Appeals said "No"

II. WHETHER THE LIFE INSURANCE PROCEEDS PAYABLE TO THE JENNIFER FOWLER TRUST ARE EXEMPT FROM THE CLAIMS OF CREDITORS OF THE ESTATE OF JENNIFER FOWLER PURSUANT TO MCL 500.2207(2)

Appellant says "Yes"
Appellee says "No"
The Trial Court said "No"
The Court of Appeals said "No"

III. WHETHER THE LIFE INSURANCE PROCEEDS PAYABLE TO THE JENNIFER FOWLER TRUST ARE ASSETS PROTECTED FROM CLAIMS OF CREDITORS OF THE ESTATE OF JENNIFER FOWLER PURSUANT TO MCL 700.7605(4)

Appellant says "Yes"
Appellee says "No"
The Trial Court said "Did not address the issue"
The Court of Appeals said "No"

STANDARD OF REVIEW

The interpretation and application of a statute is reviewed de novo. Estes v Titus, 481 Mich 573, 578-579 (2008). Clam Lake Twp v Dep't of Licensing and Regulatory Affairs, 500 Mich 362, 373 (2017)

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INTRODUCTION

The issue before the Court concerns the obligation of the Jennifer Fowler Trust to pay a Judgment entered against the Estate of Jennifer Fowler. Appellant's Appendix 7.[1] This appeal is governed by MCL 700.7605 and MCL 500.2207(2).[2] The issue before this Court appears to be matter of first impression.

This Appeal follows the Complaints for Declaratory Relief filed by the Jennifer Fowler Trust Appellant's Appendix 8, and the Estate of Helen Fowler Appellant's Appendix 9, regarding whether an ERISA based DTE Electric Company Savings and Stock Ownership Plan 401k account Appellant's Appendix 5 and the proceeds from a Metropolitan Life Insurance death benefit, Appellant's Appendix 3, both of which are payable to the Jennifer Fowler Trust, as beneficiary, are responsible for, or conversely, exempt from liability for the allowed claims against the Estate of Jennifer Fowler pursuant to MCL 700.7605.[3]

---

[1] The Estate of Helen Fowler filed a wrongful death action against the estate of Jennifer Fowler, Following Judgment, Appellant's Appendix 7, the Estate of Helen Fowler has sought enforcement of the Judgment against the Jennifer Fowler Trust pursuant to MCL 700.7605.

[2] Appellant recognizes that the appeal of the Estate of Helen Fowler from the same Opinion and Order of the Honorable John D. Tomlinson is pending before this Court and that the appeals have been consolidated. While the Estate of Helen Fowler, as Appellant, case no: 365600 and 365610, has gone to great lengths to attack the actions of Ms. Spacil, those issues concern only the Petition to Remove Ms. Spacil as Personal Representative of the Estate of Jennifer Fowler, which was denied and from which no appeal has been taken.

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In advance of an evidentiary hearing, the parties did stipulation to the admission of:

1. Last Will and Testament of Jennifer L. Fowler; [Appellant's Appendix 1]

2. Living trust of Jennifer L. Fowler; [Appellant's Appendix 2]

3. Metropolitan Life Insurance Company Policy; [Appellant's Appendix 3]

4. Metropolitan Life Insurance Company Check. [Appellant's Appendix 4]

5. DTE Electric Company Savings and Stock Ownership Plan. [Appellant's Appendix 5]

6. Beneficiary Details for Empower Retirement. [Appellant's Appendix 6]

7. Judgment entered January 19, 2022 by Hon. Michael L. West. [Appellant's Appendix 7].

The trial court correctly summarized the issues before it stating:

> "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 trial, a judgment was entered in favor of Helen's Estate against Jennifer's Estate in the amount of $623,606.24. Exhibit 7.[Appellant's Appendix 7]
>
> On April I1, 2022, in File No. 2019-0085-DE,

[3] While the Estate of Helen Fowler's Judgment is the most significant claim against the Estate of Jennifer Fowler, there are also two (2) credit card claims under $5,000.00 each.

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> Helen's Estate filed a Petition for Removal of Personal Representative and Appointment of Successor, seeking to have Ms. Shellie Spacil ("Spacil"), the personal representative of Jennifer's Estate, removed and an independent successor appointed. Helen's Estate also sought an order of the court transferring certain assets to Jennifer's Trust, with the proceeds being held by Jennifer's Trust until further order of the court.
>
> On April 25, 2022, Jennifer's Trust filed a complaint for declaratory relief, seeking a determination from the court "as to whether and to what extent, assets of the Trust may be responsible for any debt owing" to Helen's Estate as a result of the wrongful death verdict. [Appellant's Appendix 8] Jennifer's Trust's Complaint, ¶4. Jennifer's Trust seeks to limit Helen's Estate's recovery to "clawing back" the pre-death assets which were expended in the defense of the wrongful death litigation, asserting that the assets assigned to the Trust as a result of Jennifer's death cannot be used to satisfy the judgment, using MCL 700.7605 in support of its argument." {Appellant's Appendix 11, pages 1-2}

In addressing the issues to be determined, the trial court concluded:

401k:

> "As set forth above, MCL 700.7605(2) excludes from the operation of MCL 700.7605(1) '"a trust established as part of; and all payments from ... a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401.'" MCL 700.7605(2). The payment to be received from Jennifer's 401(k) to Jennifer's Trust is clearly a payment '"from ... a retirement or either plan that is qualified under section 401 of the internal revenue code, 26 USC 401,"' and accordingly is excluded from application of MCL 700.7605(1).

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> Helen's Estate's reliance on *Abbott* and its progeny does not change the statutory scheme. In *Abbott,* there was no statutory provision that gave specific direction as to whether the proceeds could be used to satisfy the claims of creditors. Here, MCL 700.7605(2) specifically excludes "payments from ... a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401." This specific direction, that payments from a 401(k) are not subject to satisfying claims from an Estate under these circumstances, resolves this issue.
>
> Monies paid from Jennifer's 401(k) are not subject to satisfying the claims of Helen's Estate." [Appellant's Appendix 11, pps. 7-8

Regarding the life insurance benefit, the trial court held:

> "While Jennifer's Trust was the beneficiary, Jennifer's Trust falls within the category of beneficiaries excluded from protection under MCL 500.2207(2), which is "the insured or the person so effecting such insurance, or his executors or administrators." MCL 500.2207(2). Jennifer's Trust was a trust established by Jennifer. The trustee of Jennifer's Trust is someone designated by Jennifer to handle its affairs, a position akin to an executor or administrator. The court finds Jennifer's Trust is a beneficiary which falls within the class of beneficiaries excluded by the phrase "other than the insured ... or [her] executors or administrators." Accordingly, the court finds the Life Insurance proceeds are not entitled to exemption under MCL 500.2207, and are subject to satisfying the claim of Helen's Estate." [Appellant's Appendix 11, p 7.

On appeal, the Michigan Court of Appeals found the 401k proceeds were not exempt finding:

> "The probate court ruled that Jennifer's

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> 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 & Stock Plan is a qualified 40I(k) account that was intended to provide Jennifer with retirement income during her lifetime. However, the Savings & 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 & Stock Plan, any 401(k) account funds remaining after Jennifer's death converted to a lump-sum cash 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.

Regarding the life insurance benefit, the trial court held:

> "While Jennifer's Trust was the beneficiary, Jennifer's Trust falls within the category of beneficiaries excluded from protection under MCL 500.2207(2), which is "the insured or the person so effecting such insurance, or his executors or administrators." MCL 500.2207(2). Jennifer's Trust was a trust established by Jennifer. The trustee of Jennifer's Trust is someone designated by Jennifer to handle its affairs, a position akin to an executor or administrator. The court finds Jennifer's Trust is a beneficiary which falls within the class of beneficiaries excluded by the phrase "other than the insured ... or [her] executors or administrators." Accordingly, the court finds the Life Insurance proceeds are not entitled to exemption under MCL 500.2207, and are subject to satisfying the claim of Helen's Estate."

[Appellant's Appendix 11, p 7.

Regarding the life insurance the Court of Appeals held:

> "MCL 500.2207(2) plainly provides that the lawful beneficiary or assignee shall be entitled to the proceeds of a properly assigned insurance policy or insurance policy made payable to another.
>
> 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 to other policies obtained under legitimate circumstances. **However, MCL 500.2207(2) plainly provides that an exemption from creditors is 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 500.2207(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 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 creditors' claims, but she did not do so. See, e.g., *Ionia Co*

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Savings Bankv McLean, 84 Mich 625, 629-630; 48 NW 159 (1891). Appellant Appendix 12 [Emphasis added]

Appellant now seeks Leave to Appeal from the Opinion of the Michigan Court of Appeals.

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STATEMENT OF FACTS

In its Opinion, the trial court noted the relevant facts concerning the issues on appeal finding:

> "A combined evidentiary hearing and trial was conducted on August 5, 2022, and following the submission of post-hearing briefs, the court took the matter under advisement on September 16, 2022.
>
> Jennifer's Estate was modest. [SS p. 27][4] Following payment of various funeral expenses and attorney fees and costs to defend against the wrongful death action, Jennifer's Estate asserts it has no assets to satisfy the judgment obtained by Helen's Estate. [SS, p 27]
>
> Jennifer also had a revocable Trust, which she established on August 17, 2012. [Appellant's Appendix 2] Jennifer transferred her home into the Trust. She maintained her checking and savings accounts in the name of the Trust. The Trust became irrevocable as of Jennifer's death.
>
> Jennifer, as an employee of DTE Energy, was also entitled to benefits as part of her employment, including life insurance through an employee group life insurance plan (the "Life Insurance") [Appellant's Appendix 3] and an interest in the DTE Electric Company Savings and Stock Ownership Plan for Employees Represented by Local 223 UWUA (the "401(k)"). [Appellant's Appendix 5] Jennifer designated the Trust as beneficiary for both the Life Insurance and the 401(k). [Appellant's Appendix 2 and 5]
>
> As of the time of hearing, the Life Insurance proceeds, in the total amount of $438,385.20, were paid to the Trust as

[4] Evidentiary Hearing, Shellie Spacil.

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> beneficiary and were being held by the Trust. Exhibit 4. [Appellant's Appendix 4]. The 401(k), with a balance of approximately $850,000, remains on account with the plan administrator and had not yet been paid to the Trust.". [Appellant's Appendix 6]

Both Helen Fowler and Jennifer Fowler died on November 10, 2018. [SS p 13]. Following the death of Helen Fowler, the Estate of Helen Fowler did file a Wrongful Death Action against the Estate of Jennifer Fowler in the St. Clair County Circuit Court Estate of Helen Fowler v Estate of Jennifer Fowler, (hereinafter "Wrongful Death action"), #19-001327-NO. [SS, p 12-13][Appellant's Appendix 7] The Wrongful Death Action did proceed to trial and following trial, a Judgment was entered on January 19, 2022, in the amount of $623,606.24. [Appellant's Appendix 7]. The sole Defendant in the Wrongful Death action was the Estate of Jennifer Fowler. [Appellant's Appendix 7].

On or about August 17, 2012, Jennifer Fowler did create the Jennifer Fowler Revocable Trust. [SS 10], [Appellant's Appendix 2]. Jennifer Fowler was the settlor of the Trust and Jennifer Fowler did Jennifer Fowler retain the right to amend and/or revoke the Trust. [Appellant's Appendix 2].

At all times relevant hereto, Jennifer Fowler was an employee of DTE Energy. [SS 7] [Appellant's Appendix 5]. As part of her employment with DTE, Jennifer Fowler had an interest in the following:

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a. An employee group whole life insurance policy, and; [Appellant's Appendix 3-4].

b. The DTE Electric Company Savings & Stock Ownership Plan For Employees Represented by Local 223 UWUA. (Hereinafter Savings & Stock Plan). [Appellant's Appendix 5].

At the time of her death, Jennifer had a vested interest in the DTE Electric Company Savings & Stock Ownership Plan for Employees Represented by Local 223 UWUA, plan numb150095-02 ("the 401(K) Plan"). [Appellant's Appendix 5]. The beneficiary of the Plan was the Jennifer L. Fowler Trust. [Appellant's Appendix 5]. At the time of her death, the 401k assets were on deposit under the Plan with the Plan Administrator, Empower. [Appellant's Appendix 6]. Jennifer's 401(K) proceeds have remained in the 401(K) Plan since her death. [Appellant's Appendix 6]. The employee group whole life insurance policy was a benefit of Jennifer Fowler's employment and was governed by ERISA. [Appellant's Appendix 3-4]. The life insurance policy was a benefit of employment and had no cash value. [Appellant's Appendix 3-4].

Following an evidentiary hearing on August 5, 2022, [Appellant's Appendix 10], the trial court issued its Opinion and Order on March 15, 2023, [Appellant's Appendix 11], finding:

Regarding the 401k proceeds, the trial court concluded:

"As set forth above, MCL 700.7605(2) excludes

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> from the operation of MCL 700.7605(1) '"a trust established as part of; and all payments from ... a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401.'" MCL 700.7605(2). The payment to be received from Jennifer's 401(k) to Jennifer's Trust is clearly a payment '"from ... a retirement or either plan that is qualified under section 401 of the internal revenue code, 26 USC 401,"' and accordingly is excluded from application of MCL 700.7605(1).
>
> Helen's Estate's reliance on *Abbott* and its progeny does not change the statutory scheme. In *Abbott,* there was no statutory provision that gave specific direction as to whether the proceeds could be used to satisfy the claims of creditors. Here, MCL 700.7605(2) specifically excludes "payments from ... a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401." This specific direction, that payments from a 401(k) are not subject to satisfying claims from an Estate under these circumstances, resolves this issue.
>
> Monies paid from Jennifer's 401(k) are not subject to satisfying the claims of Helen's Estate." [Appellant's Appendix 11, pps. 7-8

On appeal, the Michigan Court of Appeals found the 401k proceeds were not exempt finding:

> "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 & Stock Plan is a qualified 40I(k) account that was intended to provide Jennifer with retirement income during her lifetime. However, the Savings & Stock Plan provides that, after Jennifer's

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> 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 & Stock Plan, any 401(k) account funds remaining after Jennifer's death converted to a lump-sum cash 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.

Regarding the life insurance benefit, the trial court held:

> "While Jennifer's Trust was the beneficiary, Jennifer's Trust falls within the category of beneficiaries excluded from protection under MCL 500.2207(2), which is "the insured or the person so effecting such insurance, or his executors or administrators." MCL 500.2207(2). Jennifer's Trust was a trust established by Jennifer. The trustee of Jennifer's Trust is someone designated by Jennifer to handle its affairs, a position akin to an executor or administrator. The court finds Jennifer's Trust is a beneficiary which falls within the class of beneficiaries excluded by the phrase "other than the insured ... or [her] executors or administrators." Accordingly, the court finds the Life Insurance proceeds are not entitled to exemption under MCL 500.2207, and are subject to satisfying the claim of Helen's Estate." [Appellant's Appendix 11, p 7.

Regarding the life insurance the Court of Appeals held:

> "MCL 500.2207(2) plainly provides that the lawful beneficiary or assignee shall be entitled to the proceeds of a properly

assigned insurance policy or insurance policy made payable to another.

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 to other policies obtained under legitimate circumstances. **However, MCL 500.2207(2) plainly provides that an exemption from creditors is 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 500.2207(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 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 creditors' claims, but she did not do so. See, e.g., *Ionia Co Savings Bankv McLean,* 84 Mich 625, 629-630; 48 NW 159 (1891). Appellant Appendix 12 [Emphasis added]

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ARGUMENT

I. WHETHER THE DTE SAVINGS AND STOCK 401k PLAN PROCEEDS ARE EXEMPT FROM THE CLAIMS OF CREDITORS OF THE ESTATE OF JENNIFER FOWLER PURSUANT TO MCL 700.7605

The issue before the Court is whether the proceeds of a 401k retirement account owned by Jennifer Fowler, the beneficiary of which is her Revocable Trust, is subject to the claims of Jennifer Fowler's decedent Estate pursuant to MCL 700.7605, where the assets of the Estate are insufficient to satisfy the claim against the Estate.

It is admitted and undisputed that the assets of the Estate are insufficient to fully satisfy the valis claims against it.

MCL 700.7605 provides in part:

> (1) **The property of a trust over which the settlor has the right** without regard to the settlor's mental capacity, at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself **is subject to all of the following, but only to the extent that the settlor's property subject to probate administration is insufficient to satisfy the following expenses,** claims, and allowances:
>
> * * *
>
> (2) **A trust established as part of, and all payments from,** an employee annuity described in section 403 of the internal revenue code, 26 USC 403, an individual retirement account described in section 408 of the internal revenue code, 26 USC 408, a Keogh, or HR-10, plan, **or a retirement or other plan that is qualified under section 401 of the internal**

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> **revenue code, 26 USC 401, shall not be considered to be a trust described in subsection (1).** [Emphasis added]

Despite the exclusion found in MCL 700.7605(2), and applied by the trial court, the Michigan Court of Appeal found the 401k proceeds which came into the Jennifer Fowler Trust upon her death were subject to the claims of Jennifer's Estate and that the exemption set forth in MCL 700.7605(2) did not apply.

Standard of Review: The interpretation and application of a statute is reviewed de novo. Estes v Titus, 481 Mich 573, 578-579 (2008). Clam Lake Twp v Dep't of Licensing and Regulatory Affairs, 500 Mich 362, 373 (2017).

Analysis: This Court interprets statutes to discern and give effect to the Legislature's intent, and in doing so we focus on the statute's text." Clam Lake Twp, 500 Mich at 373. De novo review means that this Court independently reviews the issue without deference to the lower court. People v Posey, 512 Mich 317, 332 (2023) In interpreting a statute, our primary goal is to ascertain the Legislature's intent, the foremost indicator of which is the statutory language. ACLU of Mich v Calhoun Co Sheriff's Office, 509 Mich 1, 8 (2022). This Court's point of beginning is to "start by examining the words of the statute, which 'should

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be interpreted on the basis of their ordinary meaning and the context within which they are used in the statute.'" People v Harris, 499 Mich 332, 345 (2016). "When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature." Whitman v City of Burton, 493 Mich 303, 311 (2013). Where the language of the statute is unambiguous, it is concluded that the Legislature intended the meaning clearly expressed, and the statute must be enforced as written and no further judicial construction is required or permitted. Sun Valley Foods, 460 Mich at 236. The 401k at issue was a benefit of Jennifer Fowler's employment with DTE. Jennifer Fowler was covered under DTE 401(k) Plan which was and is governed by Employee Retirement Income Security Act of 1974, Pub. L No. 93-406, 88 Stat. 829 (codified at *29 U.S.C.A. §§ 1001, et seq.*, hereinafter referred to as ERISA.[1] [appellee's appendix 5]. The beneficiary was the Jennifer Fowler Trust.

The issue presented to the trial court by both parties was whether the proceeds of the 401k account where subject to the claims of the Estate of Jennifer Fowler pursuant to

[1] There is no dispute that the DTE Plan is a 401(k) under ERISA. Appellant's Brief, pp 9-10.

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MCL 700.7605(2). In its ruling, Appellant's Appendix 11, the trial court found the 401k proceeds were exempt reasoning:

> "As set forth above, MCL 700.7605(2) excludes from the operation of MCL 700.7605(1) '"a trust established as part of, and all payments from ... a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401.'" MCL 700.7605(2). The payment to be received from Jennifer's 401(k) to Jennifer's Trust is clearly a payment '"from ... a retirement or either plan that is qualified under section 401 of the internal revenue code, 26 USC 401,"' and accordingly is excluded from application of MCL 700.7605(1).
>
> Helen's Estate's reliance on *Abbott*[2] and its progeny does not change the statutory scheme. In *Abbott,* there was no statutory provision that gave specific direction as to whether the proceeds could be used to satisfy the claims of creditors. Here, MCL 700.7605(2) specifically excludes "payments from ... a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401." This specific direction, that payments from a 401(k) are not subject to satisfying claims from an Estate under these circumstances, resolves this issue.
>
> Monies paid from Jennifer's 401(k) are not subject to satisfying the claims of Helen's Estate." [Appellee's Appendix 11, pps. 7-8]

On appeal, the Michigan Court of Appeals found the proceeds were not exempt holding:

> "The probate court ruled that Jennifer's 401(k) account funds were not available to pay her creditors because the funds are

[2] State Treasurer v Abbott, 468 Mich 143 (2003).

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> 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 & Stock Plan is a qualified 40I(k) account that was intended to provide Jennifer with retirement income during her lifetime. However, the Savings & 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 & Stock Plan, any 401(k) account funds remaining after Jennifer's death converted to a lump-sum cash 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." Appellant Appendix 12.

Respectfully, the Court of Appeals erred.

- **MCL 700.7605(2) Exemption:**

MCL 700.7605 provides in part:

> (2) **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:
>
> * * *

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

While the Court of Appeals held that the 401k Plan proceeds were not exempt, the Court of Appeals did correctly note the status of ERISA Plan funds and payments noting:

- State laws that relate to qualified employee benefit plans are superseded by ERISA. *Self Lube, Inc v JJMT, Inc,* 278 Mich App 298, 305; 750 NW2d 245 (2008).
- ERISA provides that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 USC 1056(d)(1).
- ERISA's antialienation provision only obligates protecting benefits up to the point of payment.
- Once a pension plan has sent payments to the beneficiary, relinquishing control over the payments, attachment of those funds by a creditor does not involve alienation of the benefits. *DaimlerChrysler Corp v Cox,* 447 F3d 967, 974 (CA 6, 2006).
- A different result occurs if funds are diverted before they are paid out. *Id.* at 974-975.
- 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 (2003).

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Unfortunately, the Court of Appeals never analyzed MCL 700.7605(2), and rather, held that once the 401k proceeds are received, that lose their protection under ERISA and are subject to judgment execution. Appellant Appendix 12. The trial court noted that fact, however, the trial court, unlike the Court of Appeals, correctly applied MCL 700.7605(2).

Rather than apply MCL 700.7605(2), the Court of Appeals, relied upon Commerce Bank, N.A. v Bolander, 239 P.3d 83 (2007), holding:

> "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 the probate court's order to the extent that it holds that the 401(k) account funds could not be used to satisfy the judgment debt owed by Jennifer's estate to Helen's estate." Appellant Appendix 12.

Not only did the Court of Appeals err in not addressing MCL 700.7605(2), the Court misapplied the Kansas Court of Appeals Bolander holding.

Analysis:

The goal when interpreting a statute is to give effect to legislative intent by examining the plain language of the words of the statute. People v Calloway, 500 Mich 180, 184 (2017). When

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the language of a statute is unambiguous, it is presumed that the Legislature intended the meaning expressed, and the statute must be enforced as written. People v Calloway, 500 Mich at 184. It is presumed that the Legislature acts with knowledge of existing law. People v Schultz, 435 Mich 517, 543-544 (1990).

Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory. Wickens v Oakwood Healthcare System, 465 Mich. 53, 60 (2001). Further, undefined statutory terms their plain and ordinary meanings. Oakland Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n, 456 Mich. 590, 604 (1998).

The language within a statute must not be construed in a vacuum. See Koontz v Ameritech Services, Inc, 466 Mich 304, 318 (2002) "Proper syntax provides that commas usually set off words, phrases, and other sentence elements that are parenthetical or independent." Dale v Beta-C, Inc, 227 Mich App 57, 69 (1997).

The controlling statute is MCL 700.7605 which provides, in pertinent part:

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

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

Ironically, the Court of Appeals completely failed to address MCL 700.7605(2), rather, it concluded that the trial court erred, and then analyzed the facts of this case, absent and consideration of MCL 700.7605(2) pursuant to the logic of the Kansas Court of Appeals in Commerce Bank, N.A. v Bolander, 239 P.3d 83 (2007).

- **Commerce Bank, N.A. v Bolander:**

The Court of Appeals relied upon Commerce Bank, N.A. v Bolander, 239 P.3d 83 (2007) to support its claim that once the proceeds from an ERISA Plan are received, even if paid to a Trust, the protections under ERISA are lost and the proceeds can be seized to satisfy the debt of the Estate of Jennifer Fowler. While Appellant agrees that the protections under ERISA are lost upon receipt of the funds, MCL 700.7605(2) provides protection from the claims against Jennifer's Estate. More importantly,

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under the fact of this case, and upon the application of MCL 700.7605(2), the Bolander decision has no application in the case at bar.

The Kansas statutory authority which was at issue in Bolander was K.S.A. 58a-505, provides in relevant part:

> "(a) Except as provided by K.S.A. 33-101 et seq. and 33-201 et seq., and amendments thereto, whether or not the terms of a trust contain a spendthrift provision, the following rules apply:
>
> (1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.
>
> * * *
>
> (3) **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 was revocable at the settlor's death is subject to claims of the settlor's creditors**, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, the homestead, homestead allowance, the elective share rights of the surviving spouse pursuant to K.S.A. 59-6a209, and amendments thereto, and statutory allowance to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. (Emphasis added).

Based upon the expressed language of the Kansas statute, it is clear that no exemptions exist and that the Bolander decision was correct. However, we are not in Kansas and the Michigan statute is clearly dissimilar to K.S.A. 58a-505.

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A simple reading of K.S.A. 58a-505 reflects that the statute contains no exemption provisions whatsoever. Contrary to K.S.A 58a-505, MCL 700.7605(2) provides expressed exemptions. For this reason alone, Bolander has no application in the case at bar.

In Bolander, the issue was the ability of a creditor of the deceased to seize an IRA held by the Trust as beneficiary. The settlor had passed away and her Estate was insufficient to satisfy the claims being asserted against her Estate. Citing K.S.A. 58a-505, the Kansas Court of Appeals held:

> "There is no dispute by any of the parties that the Trust was clearly a revocable trust. K.S.A. 58a-505(a)(1) provides that during the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. The critical statute in this case is K.S.A. 58a-505(a)(3), which controls the limitations on assets held in trust:
>
> > "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 was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, the homestead, homestead allowance, the elective share rights of the surviving spouse pursuant to K.S.A. 59-6a209, and amendments thereto, and statutory allowance to a surviving spouse and children to the extent the settlor's probate estate is inadequate

> to satisfy those claims, costs, expenses, and allowances."

The Trust claims that its accounts became irrevocable after Wanda's death for benefit of the educational needs of her grandchildren and great grandchildren. The Trust claims case law supports its position, but the express language of K.S.A. 58a-505 dictates otherwise.

***

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 N.W.2d 25 (1991); Vanderbilt Credit Corp. v. Chase Manhattan Bank, 100 App. Div. 2d 544, 546, 473 N.Y.S.2d 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, 191 Mich. App. at 518*.

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A simple review of K.S.A. 58a-505 and Bolander itself is sufficient to determine that Bolander is irrelevant in interpreting MCL 700.7605(2) and provides no support to defeat Appellant's claim of an exemption. Unlike MCL 700.7605(2), K.S.A. 58a-505 has no exemptions to the assets which are liable for the debts of the Estate where the Estate's assets are insufficient to satisfy the claims of the Estate.

Additionally, while K.S.A. 58a-505 may not include exemptions, Bolander itself noted:

> "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 N.W.2d 25 (1991); Vanderbilt Credit Corp. v. Chase Manhattan Bank, 100 App. Div. 2d 544, 546, 473 N.Y.S.2d 242 (1984); Restatement (Second) of Trusts § 156, p. 326 (1959).*" Bolander, 239 P.3d at 92.

See also Redmond v Kester, 159 P3d 1004, 1019 (2007) where

the Kansas Supreme Court, addressing K.S.A. 58a-505 and

exemptions available under the statute noted:

"Moreover, our legislature has established a statutory protection for creditors against the fraudulent conveyance

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of property into a self-settled revocable trust. *K.S.A. 58a-505(a)(1)* provides:

> "(a) Except as provided by *K.S.A. 33-101 et seq.* [fraudulent conveyances] and *33-201 et seq.* [Uniform Fraudulent Transfer Act], and amendments thereto, whether or not the terms of a trust contain a spendthrift provision, the following rules apply:
>
> "(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors."... "We note, however, that *K.S.A. 58a-505* contains no language excluding the property held by the *trust* from the application of the *exemptions* found in *K.S.A. 60-2301*. Thus, the property held by a self-settled, *revocable trust* is available to satisfy the settlor's *creditors* unless the property is specifically *exempted* from levy, attachment, or execution by another statutory provision." Redmond v Kester, 159 P3d at 1019.

From the foregoing, while the relevant statute in Bolander did not contain any exemptions, the Kansas Supreme Court recognized that exemption, if applicable under any statute, are available, and as MCL 700.7605(2) contains expressed statutory exemptions, Bolander does not support the denial of the exemption.

- **ERISA:**

In analyzing the ability to seize and/or garnish ERISA Plan payments, once paid, the Court of Appeals noted the pre-emption afforded to ERISA Plans assets and the loss of that protection upon receipt, stating:

"State laws that relate to qualified employee benefit plans are superseded by ERISA. *Self Lube, Inc v JJMT, Inc,* 278 Mich App 298, 305; 750 NW2d 245 (2008). ERISA provides that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 USC 1056(d)(1). ERISA's antialienation provision only obligates protecting benefits up to the point of payment. Once a pension plan has sent payments to the beneficiary, relinquishing control over the payments, attachment of those funds by a creditor does not involve alienation of the benefits. *DaimlerChrysler Corp v Cox,* 447 F3d 967, 974 (CA 6, 2006).[3] A different result occurs if funds are diverted before they are paid out. *Id.* at 974-975.

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 BRISA does not protect pension funds after the beneficiary receives them. While *Abbott* involves a prisoner account, the rationale of *Abbott* applies equally to this case. 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. BRISA is intended to protect retirement assets, but the lump-sum payment due to Jennifer's trust can no longer be considered a retirement account." Appellant's Appendix 12.

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The protect afford ERISA retirement plans is beyond question. See DaimlerChrysler Corporation and DaimlerChrysler-UAW Pension Agreement v. Cox, 447 F.3d 967, 972-974 (6th Cir. 2006), where the Court noted the ERISA protection as well as the loss of protection once a pension plan has sent benefit payments to a beneficiary and relinquished control of those payments, stating:

> "ERISA, *29 U.S.C. §§ 1001-1461*, is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 90, 103 S. Ct. 2890, 77 L. Ed. 2d 490 (1983)*. The statute does not require employers to provide any particular benefits to their employees, but sets forth uniform, federal standards that control their administration. *Id. at 91*. The Supreme Court has frequently reviewed cases involving ERISA's preemption of state laws due to the "comprehensive nature" of ERISA, "the centrality of pension and welfare plans in the national economy, and their importance to the financial security of the Nation's work force." *Boggs v. Boggs, 520 U.S. 833, 839, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997)*.
>
> ***
>
> ERISA contains an anti-alienation provision that requires each pension plan to "provide that benefits provided under the plan may not be assigned or alienated." *29 U.S.C. § 1056(d)(1)*.
>
> ***
>
> ERISA's anti-alienation provision reflects a policy choice on the part of Congress "to safeguard a stream of income for pensioners (and their dependents, who may be, and

perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them." *Patterson v. Shumate, 504 U.S. 753, 765, 112 S. Ct. 2242, 119 L. Ed. 2d 519 (1992)*. To that end, the anti-alienation provision requires that every pension plan include a prohibition on assigning or alienating benefits provided under the plan. *29 U.S.C. § 1056(d)(1)*.

This circuit, along with a majority of the other circuits, has held that once benefit payments have been disbursed to a beneficiary, creditors may encumber the proceeds. *See Cent. States, S.E. & S.W. Areas Pension Fund v. Howell, 227 F.3d 672, 679 (6th Cir. 2000)*. In *Central States*, this court allowed a constructive trust to be imposed upon benefit payments "once the benefits ha[d] been released to the properly designated beneficiary." *Id.* As the Second Circuit has explained, the "requirement that pension plans contain a provision against assignment or alienation of benefits does not read comfortably as a prohibition against creditors reaching pension benefits once they have left the hands of the administrator." *Robbins v. DeBuono, 218 F.3d 197, 203 (2d Cir. 2000)* (holding that the Monroe County Department of Social Services did not violate ERISA's anti-alienation provision when it included as part of the wife's income the benefit payments already received by her husband).

The legislative history of ERISA's anti-alienation provision obligates a plan to protect benefits from alienation "at least up to the point of payment." *Guidry v. Sheet Metal Workers Nat'l Pension Fund (Guidry II), 39 F.3d 1078, 1082 (10th Cir. 1994)* (en banc) (holding that, once paid, pension benefits in a beneficiary's bank account are subject to garnishment). Circuit precedent thus stands for the proposition that once a pension plan has sent benefit payments to a beneficiary and relinquished control of those

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> payments, the attachment of those funds by a creditor does not constitute an alienation." 447 F3d 971 974

Oddly enough, while the Court of Appeals correctly noted that plan funds once received lose the protection of ERISA, the Court stopped and failed to address the exemptions found in MCL 700.7605(2).

- **The Trial Court was Correct:**

The Court of Appeals incorrectly concluded that the 401k funds, upon distribution of the proceeds to the Trust, would be responsible for the unfunded debt of the Estate of Jennifer Fowler based upon State Treasurer v Abbott, 468 Mich 143 (2003) as recognized in Self Lube, Inc v JJMT, Inc, 278 Mich App 298, 305 (2008). Unfortunately, upon holding that the proceeds lose their protection under ERISA upon receipt, the Court stopped its analysis of the issue.

The parties all acknowledged that the 401(k) monies remain in the account of Empower, the DTE Plan administrator. [Appellee Appendix 6]. The parties further acknowledged that the DTE 401(k) Plan is a qualified Plan under ERISA. See Appellant Brief, pp 9-10. Rather than address whether the 401k funds were protected while they were held by the Plan Administer, and put off the distribution issue for another day, the trial judge correctly addressed the status of the 401k funds based upon the

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eventual disbursement and distribution from the Plan to the Trust. In fact, this ruling by the trial court is in direct response to Appellee's Complaint for Declaratory Relief, ¶4, where Appellee requested:

> "4. That this action seeks a judicial determination as to whether and to what extent, assets of the Trust may be responsible for any debt owing to Defendant by the Estate of Jennifer Fowler, St. Clair County Probate Court #2019-0085-DE, arising from a Wrongful Death verdict in the St. Clair County Circuit Court Estate of Helen Fowler v Estate of Jennifer Fowler, (hereinafter "Wrongful Death action"), #19-001327-NO." [Appellee's Appendix 8.

In addressing this exact question, the trial court recognized both the holding in Abbott as well as the provisions of MCL 700.7605(2), stating:

> "Helen's Estate's reliance on *Abbott*[3] and its progeny does not change the statutory scheme. In *Abbott*, there was no statutory provision that gave specific direction as to whether the proceeds could be used to satisfy the claims of creditors. Here, MCL 700.7605(2) specifically excludes "payments from ... a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401." This specific direction, that payments from a 401(k) are not subject to satisfying claims from an Estate under these circumstances, resolves this issue." [Appellee's Appendix 11, p 7.

Unfortunately, having reached the conclusion that the 401k funds lost their ERISA protection upon payment/distribution, the Count

[3] State Treasurer v Abbott, 468 Mich 143 (2003).

of Appeals concluded its analysis of the issue and failed to address MCL 700.7605(2).

The trial court correctly found that MCL 700.7605(2) "specifically excludes 'payments from ... a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401." This specific direction, that payments from a 401(k) are not subject to satisfying claims from an Estate under these circumstances, resolves this issue." [Appellee's Appendix 11, p 7.]

A plan reading of subsection (2) clearly establishes that all payments from 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, are exempt from the claims of the creditors of the Settlor's Estate. The eventual payments to the Jennifer Fowler Trust will be from the 401(k) account of the Plan. [Appellee Appendix 6]. Upon receipt, the 401k payments, while outside of the protection of ERISA, are exempt pursuant to MCL 700.7605(2).

MCL 700.7605(2) protects "payments" which are received from an ERISA employee benefit plans under the limited circumstance where a probate Estate is seeking to impose liability on a Trust pursuant to MCL 700.7605. If a Plan is not qualified under ERISA then the payment is not protected under MCL 700.7605(2).

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Contrary to the claims of Appellee and the Court of Appeals, MCL 700.7605(2) clearly allows and exempts payments received from one of the qualified ERISA retirement funds despite the claim that once the funds are received they lose all of the protections under ERISA.

The Helen Fowler Estate does not have Judgment against the Jennifer Fowler Trust. Upon receipt, the proceeds while not protected under ERISA, are exempt from the claims of the Estate's creditors under MCL 700.7605(2). As such, the trail court correctly found that Abbott does not apply.

In Self-Lube, Inc. v JJMT, Inc. 278 Mich App 298, 308-309 (2008), this Court noted the prevailing law regarding ERISA, the anti-alienation and the effect of receiving funds stating:

> "While the anti-alienation provision is subject to no exceptions, except those stated by Congress, the prevailing view is that the provision does not apply to pension funds after the funds are received by the beneficiary:
>
> Four of the five courts of appeals to consider the question [whether ERISA's antialienation provision is violated by a court order that applies only after pension benefits are disbursed] have construed § 1056(d)(1)[29 USC 1056(d)(1)] [antialienation provision] *as applying to benefits only while held by the plan administrator and not after they reach the hands of the beneficiary. Wright v. Riveland, 219 F.3d 905, 919-21 (9th Cir. 2000); Robbins v. DeBuono, 218 F.3d 197, 203 (2d Cir. 2000); Guidry v. Sheet Metal*

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Workers Nat'l Pension Fund, 39 F.3d 1078, 1081-83 (10th Cir. 1994) (en banc). [4]

All state regulations of ERISA Plan funds are preempted by federal law, 29 USC 1144(a), and as long as the funds remain in the Plan, they are protected. 29 USC 1056. However, and consistent with this Court's holding in Self-Lube, Inc., once the funds pass into the hands of the beneficiary, they lose the ERISA exempt status. But for MCL 700.7605(2), once the ERISA exempt status is lost, judgment creditors may seize assets. Abbott. MCL 700.7605(2) precludes the application of Abbott.

There is nothing that precludes the Michigan Legislature from exemption from the claims of an Estate's creditors certain specified assets. In fact, MCL 700.7605(2) is very specific in what it applies to, namely:

(2) ...[a]ll 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.

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[4] See also DaimlerChrysler Corp. v Cox, 447 F.3d 967 (6th Cir. 2006); Hoult v Hoult, 373 F.3d 47, 54 (1st Cir. 2004); Trucking Employees of North Jersey Welfare Fund, Inc. v Colville, 16 F.3d 52, 53-56 (3d Cir. 1994), which hold that ERISA's anti-alienation provisions cease to protect benefits after they are paid to the beneficiary.

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This language exempts the 401(k) proceeds upon turn-over to the Jennifer Fowler Trust from any claim of the creditors of the Estate of Jennifer Fowler.

- **Post ERISA Distribution Protection:**

The trial court's recognition that MCL 700.7605(2) provided post-distribution protection to ERISA assets is further supported by the United States Bankruptcy Court ruling in the Western District of Michigan.

In In re Cross, 640 BR 388 (WD MI, 2022), the Court addressed the issue of bankruptcy exemptions claimed regarding rights in ERISA Plans under MCL 600.5451 and whether the exemptions applied only to monies in a Plan or also to monies received or upon receipt. The statutory exemptions in question where:

> **MCL 600.5451:**
>
> **(j) Money or other benefits paid, provided, allowed to be paid or provided, or allowed,** by a stock or mutual life, health, or casualty insurance company because of the disability due to injury or sickness of an insured person, whether the debt or liability of the insured person or beneficiary was incurred before or after the accrual of benefits under the insurance policy or contract, except that this exemption does not apply to actions to recover for necessities contracted for after the accrual of the benefits.
>
> **(k) All individual retirement accounts,** including Roth IRAs, or individual retirement

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> annuities as defined in section 408 or 408a of the internal revenue code, *26 USC 408* and *408a*, **and the payments or distributions from those accounts or annuities.** ...[.].
>
> **(l) The right or interest of a person in a pension,** profit-sharing, stock bonus, or other plan that is qualified under section 401 of the internal revenue code, *26 USC 401*, or an annuity contract under section 403(b) of the internal revenue code, *26 USC 403*, if the plan or annuity is subject to the employee retirement income security act of 1974, Public Law 93-406, 88 Stat. 829. ...[.].

In addressing the exemptions, the Court in Cross noted and held:

> "As the Trustee correctly argues, it is "generally presumed" that the legislature "acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." ... (citations omitted)... **This court agrees that if the Michigan legislature intended for pension funds that were already paid to be included in the § 600.5451(1)(l) exemption,** it could have specifically included language indicating that intention, as it did in subsections (1)(k) and (1)(j).
>
> The fact that the legislature chose not to do so strongly supports the inference that such pension plan payments are not subject to exemption under subsection (1)(l) as a **"right or interest"** in a pension plan after they are received by a debtor.
>
> **Again, if the Michigan legislature intended for the exemption in § 600.5451(1)(l) to extend beyond a debtor's interest in a pension plan and to also include payments or proceeds traceable to such plans, it could have easily included language to that effect.** Its failure to do so justifies the inference

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> that the legislature intended for such proceeds to be excluded from the exemption."

See also MCL 600.6023 which provides:[5]

> (1) The following property of a judgment debtor and the judgment debtor's dependents is exempt from levy and sale under an execution:
>
> ***
>
> (j) An individual retirement account or individual retirement annuity as defined in section 408 or 408a of the internal revenue code of 1986, *26 USC 408* and 408a, **and the payments or distributions from the account or annuity.** This exemption applies to the operation of the federal bankruptcy code as permitted by section 522(b)(2) of the bankruptcy code, 11 USC 522. This exemption does not apply to any amounts contributed to the individual retirement account or individual retirement annuity if the contribution occurs within 120 days before the debtor files for bankruptcy. This exemption does not apply to an individual retirement account or individual retirement annuity to the extent that any of the following occur:
>
> ***
>
> (k) The right or interest of a person in a pension, profit-sharing, stock bonus, or other plan that is qualified under section 401 of the internal revenue code of 1986, *26 USC 401*, or an annuity contract under section 403(b) of the internal revenue code of 1986, *26 USC 403*, if the plan or annuity is subject to the employee retirement income security act of 1974, Public Law 93-406, 88 Stat. 829. This exemption applies to the operation of

[5] MCL 600.6023(j) provides an exemption for IRA payments received from judgment execution. MCL 600.6023(k) does not provide an exemption from garnishment for payments received from 401kPlans. However, MCL 700.7605(2) expressly exemptions payments a 401k from liability against payments to satisfy claims against a decedent estate.

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> the federal bankruptcy code, as permitted by section 522(b)(2) of the bankruptcy code, 11 USC 522. This exemption does not apply to any amount contributed to a pension, profit-sharing, stock bonus, or other qualified plan or a 403(b) annuity if the contribution occurs within 120 days before the debtor files for bankruptcy...[.]"

The rationale behind the holding in Cross equally applies in the case at bar. Under MCL 700.7605(2), the Michigan legislature chose to specifically exempt:

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

Nothing could be clearer.

As the funds to be paid in the future will be from a trust established under one of the designation Plans, {401(k), Court of Appeals holding must be reversed and the trial court's interpretation of the statute must be affirmed and reinstated.

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II. WHETHER THE LIFE INSURANCE PROCEEDS PAYABLE TO THE JENNIFER FOWLER TRUST ARE EXEMPT FROM THE CLAIMS OF CREDITORS OF THE ESTATE OF JENNIFER FOWLER PURSUANT TO MCL 500.2207(2)

The issue presented in this argument is whether the proceeds of a life insurance policy, where a Trust is the beneficiary, are exempt from the claims of Jennifer Fowler's decedent Estate creditors pursuant to MCL 500.2207(2). The issue presented in this Argument is a matter of first impression under Michigan law and is of significant importance to the jurisprudence of this State.

Both the trial court and the Court of Appeals held that the death benefits were not protected under MCL 500.2207(2).

Standard of Review: The interpretation and application of a statute is reviewed de novo. Estes v Titus, 481 Mich 573, 578-579 (2008). Clam Lake Twp v Dep't of Licensing and Regulatory Affairs, 500 Mich 362, 373 (2017).

Analysis: In addressing the life insurance issue, the trial Court held:

> "While Jennifer's Trust was the beneficiary, Jennifer's Trust falls within the category of beneficiaries excluded from protection under MCL 500.2207(2), which is "the insured or the person so effecting such insurance, or his executors or administrators." MCL 500.2207(2). Jennifer's Trust was a trust

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established by Jennifer. The trustee of Jennifer's Trust is someone designated by Jennifer to handle its affairs, a position akin to an executor or administrator. The court finds Jennifer's Trust is a beneficiary which falls within the class of beneficiaries excluded by the phrase "other than the insured ... or [her] executors or administrators." Accordingly, the court finds the Life Insurance proceeds are not entitled to exemption under MCL 500.2207 and are subject to satisfying the claim of Helen's Estate." [Appellant's Appendix 11, p 7.

On appeal, the Court of Appeals held:

"MCL 500.2207(2) plainly provides that the lawful beneficiary or assignee shall be entitled to the proceeds of a properly assigned insurance policy or insurance policy made payable to another.

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 to other policies obtained under legitimate circumstances. **However, MCL 500.2207(2) plainly provides that an exemption from creditors is 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 500.2207(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 provision, the

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> 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 creditors' claims, but she did not do so. See, e.g., *Ionia Co Savings Bankv McLean,* 84 Mich 625, 629-630; 48 NW 159 (1891). Appellant Appendix 12 [Emphasis added]

Argument: This Court interprets statutes to discern and give effect to the Legislature's intent, and in doing so we focus on the statute's text." Clam Lake Twp, 500 Mich at 373. De novo review means that this Court independently reviews the issue without deference to the lower court. People v Posey, 512 Mich 317, 332 (2023) In interpreting a statute, our primary goal is to ascertain the Legislature's intent, the foremost indicator of which is the statutory language. ACLU of Mich v Calhoun Co Sheriff's Office, 509 Mich 1, 8 (2022). This Court's point of beginning is to "start by examining the words of the statute, which 'should be interpreted on the basis of their ordinary meaning and the context within which they are used in the statute.'" People v Harris, 499 Mich 332, 345 (2016). "When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and

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give effect to the intent of the Legislature." Whitman v City of Burton, 493 Mich 303, 311 (2013), citing Sun Valley Foods Co v Ward, 460 Mich 230, 236 (1999). Where the language of the statute is unambiguous, it is concluded that the Legislature intended the meaning clearly expressed, and the statute must be enforced as written and no further judicial construction is required or permitted." Sun Valley Foods, 460 Mich at 236.

In rejecting Appellant's claim that the life insurance proceeds are exempt from the claims of creditors, the trial court concluded that the Jennifer Fowler Trust is within the same class of beneficiaries as the "insured, executors or administrators" as referenced in MCL 500.2207(2). Appellant respectfully disagrees.

Removing the unnecessary language within the provisions of the statute, the relevant portions of MCL 500.2207(2) provides:

> 2) If a policy of insurance, ... is effected by any person on his own life ... in favor of a person other than himself, ..., **the lawful beneficiary or assignee thereof (other than the insured ..., or his executors or administrators) shall be entitled to the proceeds and avails (including the cash value thereof) against the creditors and representatives of the insured and of the person effecting the same,...[.]** (Emphasis added.)

The beneficiary of the Met Life life insurance policy was the Jennifer Fowler Trust. Appendix 3, pp 115, 142. Pursuant to

MCL 500.2207(2), the beneficiaries shall receive the policy proceeds against the claims of creditors, provided the beneficiary is not the insured or [her] executor of administrator. The trial court incorrectly concluded that Jennifer's Trust, as beneficiary, fell "within the class of beneficiaries excluded by the phrase ""other than the insured ... or [her] executors or administrators,"' and therefore held that the insurance proceeds were not exempt from the claims of creditors of the Estate of Jennifer Fowler.

In affirming the trial court, the Court of Appeals reasoned:

> "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 to other policies obtained under legitimate circumstances. **However, MCL 500.2207(2) plainly provides that an exemption from creditors is 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 500.2207(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

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> from creditors. Given that 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 creditors' claims, but she did not do so. See, e.g., *Ionia Co Savings Bankv McLean,* 84 Mich 625, 629-630; 48 NW 159 (1891)." Appellant Appendix

Contrary to the rationale of the Court of Appeals, MCL 500.2207(2) does allow the proceeds of a life insurance policy on the insured life, to be "shielded" from the claims of creditor provided the policy is not payable to the **"insured ..., or his executors or administrators...[.]"**

Insured, Executor, Administrator:

In Ionia County Savings Bank v McLean, 84 Mich 625 (1891), the Court recognized that a life insurance policy payable to the "insured, his executors, administrators" was in fact property belonging to the insured just as any other tangibles or intangibles property. See also Equitable Life Assurance Society of the United States v Hitchcock, 270 Mich. 72 (1935).

MCL 500.114 provides:

> "Person" as used in this code includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal or inter-insurance exchange, partnership,

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> syndicate, business trust, corporation, and any other legal entity.

MCL 700. 1106 provides:

> (p) "Personal representative" includes, but is not limited to, an executor, administrator, successor personal representative, and special personal representative, and any other person, **other than a trustee of a trust subject to article VII**, who performs substantially the same function under the law governing that person's status. (Emphasis added)

MCL 700. 1107 provides:

> (n) "Trust" includes, but is not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created. Trust includes, but is not limited to, a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust does not include a constructive trust or a resulting trust, conservatorship, personal representative, custodial arrangement under the Michigan uniform transfers to minors act, 1998 PA 433, MCL 554.521 to 554.552, business trust providing for a certificate to be issued to a beneficiary, common trust fund, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or another arrangement under which a person is a nominee or escrowee for another.
>
> (o) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by the court."

Not only is the Trust not the "insured, executor or administrator", the Trust is expressly excluded from the

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definition of personal representation which does include an "executor" and "administrator". MCL 700.1107.

In Halton v Fawcett, 259 Mich App 699 (2003), this court recognized that the Estates and Protected Persons Act, EPIC, expressly defined a "personal representative" to include "an executor, administrator...[.]"

Trusts are a legally distinct entity, "distinguishing between the trustee personally or as an individual and the trustee in a fiduciary or representative capacity." 1 Restatement Trusts, 3d, § 2, comment a, p 17. Michigan has a long history of recognizing this distinction. Bankers' Trust Co of Muskegon v Forsyth, 266 Mich 517, 519-521 (1934); Hein v Hein, 214 Mich App 356, 358 (1995).

Michigan courts honor the separate existence of an "artificial entities" unless a court sitting in equity has pierced the corporate veil and disregarded the entity's separate existence. See Green, Hendrickson, Esper, and Libwag, LLC v Ziegelman, 310 Mich App 436, 450-451 (2015). In the case at bar, there are no claims that the Jennifer Fowler Trust is not a separate legal entity. Further, at no time was there a claim that the "corporate veil" of the Trust should be pierced and the trial court did not do so.

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Contrary to the claim of the trial court and the Court of Appeal, the Jennifer Fowler Trust is not a mere instrumentality of Jennifer Fowler. Further, the trial court's finding that the Trust "falls within the class of beneficiaries excluded by the phrase '"other than the insured ... or [her] executors or administrators"' is unsupported by the facts and law.

The "insured" is Jennifer Fowler, the "executor" and/or "administrator" are the personal representative of Jennifer Fowler's Estate after death. The Jennifer Fowler Trust is neither the insured, executor nor administrator, and through no process should the Trust be stripped of its rights to the insurance proceeds.

This conclusion is further supported by the statutory doctrine of *ejusdem generis*.

> " *Ejusdem generis* is a rule whereby in a statute in which general words follow a designation of particular subjects, the meaning of the general words will ordinarily be presumed to be and construed as restricted by the particular designation and as including only things of the same kind, class, character or nature as those specifically enumerated." People v Brown, 406 Mich 215, 221, (1979).

Clearly, a Trust is in no way affiliated with an executor or administrator. See EPIC, MCL 700.1106; MCL 700.1109.

While Michigan does not have a case on point where a Trust is the beneficiary of a life insurance death benefit, the Arizona

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Court of Appeals addressed such an issue in Difilippo v Reed (In re Estate of King), 269 P3d 1189 (2012). In Difilippo, the Court addressed the issue of whether life insurance benefits payable to a Trust as beneficiary, was protected from the insured's estate's creditors.[6]

The Court of Appeals rejected recognizing Difilippo contending that the Arizona decision was based upon the fact that the beneficiary of the Trust was a dependent and thus the life insurance was protected. Appellant's Appendix 12. Contrary to the claim of the Court of Appeals, the holding in Difilippo and the statutory provisions clearly apply in the instant case and support the claim that the insurance proceeds are exempt.

The Arizona statute in question, A.R.S 20-1131, provided:

> "A. If a policy of life insurance is effected by any person on the person's own life or on another life in favor of another person having an insurable interest in the policy, or made payable by assignment, change of beneficiary or other means to a third person, **the lawful beneficiary or such third person, other than the person effecting the insurance or the person's legal representatives, is entitled to its proceeds against the creditors and representatives of the person effecting the insurance."** (Emphasis added)

[6] The insured and settlor of the Trust, Kathryn L. King was dead. Her Trust was the beneficiary of her life insurance policy. Ms. King's Estate was financially "upside down" and had insufficient funds to pay the claims pf its creditors. 269 P3d at 1191.

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In addressing whether the Trust as beneficiary of the life insurance proceeds would receive the proceeds over the claims of Ms. King's creditors, the Court held:

> "Life insurance proceeds paid to a decedent's beneficiary are exempt from claims of creditors of the decedent's estate pursuant to A.R.S. § 20-1131(A). *See* May v Ellis, 208 Ariz. 229, 230, 231, ¶¶ 1, 11, 92 P.3d 859, 860, 861 (2004). We hold that the language of § 20-1131 is broad enough to also protect such proceeds when they are paid to a trust created by the insured in which the beneficiary is a third party." 269 P3d @ 1192.
>
> * * *
>
> We disagree with Creditors' argument that A.R.S. § 20-1131(A) does not protect the life insurance proceeds because King was the trustee of the Trust at the time she effected the policy, the Trust was the owner and beneficiary of the policy, and the policy was an asset of the Trust. As the Louisiana Court of Appeals aptly stated, an insured's creditors cannot reach life insurance proceeds on the life of the insured because the proceeds "do not come into existence during his life, never belong to him, and pass by virtue of the contractual agreement between the insured and the insurer to the named beneficiary." *T. L. James & Co. v. Montgomery, 332 So. 2d 834, 847 (La. 1976).*
>
> The proceeds of the life insurance proceeds were never King's nor Reed's. Although King bought the life insurance policy and named the Trust as beneficiary when she was the trustee, only her death triggered payment of the proceeds and a change in the trustee to Reed, her personal representative. However, Reed was not the beneficiary of the life insurance proceeds, the Trust was the

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> beneficiary. Neither Reed nor King was the beneficiary of the Trust; the sole beneficiary was King's minor son. Although the policy may have been an asset of the Trust, that does not affect the applicability of § 20-1131(A). Therefore, neither King (who purchased the policy) nor her personal representative (Reed) was the beneficiary of the policy proceeds and § 20-1131(A) protects the policy proceeds." 269 P3d 1192-1193.

See also ML Servicing Co v Coles, 334 P3d 745 (2014).

The rationale in Difilippo applies to the case at bar. Jennifer Fowler never owned the life insurance policy. She was not a beneficiary. Her Trust is a separate legal entity, and the beneficiary is clearly not the "insured, executor or administrator" of Jennifer Fowler. Additionally, there is nothing in MCL 500.2207(2) which addresses a "class" of beneficiaries, and if in fact the "insured, [her] executor or administrator" can be considered a class, a third-party life insurance beneficiary is not a mention of that class.

The Court in Difilippo clearly addressed whether life insurance benefits payable to a Trust as beneficiary, were protected from the insured's estate's creditors.[7] In fact, addressing the issue before the Court, the Court noted:

> "King died in November 2008. King had created the Trust of which her minor son, Nicholas, was the

[7] The insured and settlor of the Trust, Kathryn L. King was dead. Her Trust was the beneficiary of her life insurance policy. Ms. King's Estate was financially "upside down" and had insufficient funds to pay the claims pf its creditors. While the son of the deceased was the sole beneficiary of the Trust, the holding in Difilippo focused on the beneficiary of the life insurance, the Trust, and not the beneficiary of the Trust.269 P3d at 1191.

> sole beneficiary. King designated the appellant, Reed, as the personal representative of her estate and the trustee of the Trust. King had also purchased a life insurance policy, which she designated an asset of the Trust, and named the Trust as the beneficiary of the policy." 269 P3d at 1191.

Difilippo clearly supports the exemption of these proceeds from the claims of creditors.

From the foregoing, it is clear that the life insurance proceeds are exempt from the claims of the creditors pursuant to MCL 500.2207(2).

III. WHETHER THE LIFE INSURANCE PROCEEDS PAYABLE TO THE JENNIFER FOWLER TRUST ARE ASSETS PROTECTED FROM CLAIMS OF CREDITORS OF THE ESTATE OF JENNIFER FOWLER PURSUANT TO MCL 700.7605(4)

In addition to MCL 500.2207(2), the life insurance proceeds are protected from the claims of the creditors of the Estate of Jennifer Fowler pursuant to MCL 700.7605(4).

Subsection (4) provides:

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

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Standard of Review: The interpretation and application of a statute is reviewed de novo. Estes v Titus, 481 Mich 573, 578-579 (2008). Clam Lake Twp v Dep't of Licensing and Regulatory Affairs, 500 Mich 362, 373 (2017).

Analysis: As with the other issues presented in this Application for Leave to Appeal, there is no appellate case law to provide guidance. The Jennifer Fowler Trust has no direct liability to the creditors of the Estate of Jennifer Fowler. The "obligation" of the Trust is pursuant to MCL 700.7605, which codified Michigan common law. Pursuant to MCL 700.7605(4), the life insurance proceeds are clearly "property held or received by a trust to the extent that the property would not have been subject to a claim against the settlor's estate...[payable to] other than to the settlor's estate." MCL 700.7605(4).

In rejecting Appellant's reliance on MCL 700.7605(4), the Court of Appeals stated:

> "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

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> insufficient to satisfy that claim." Appellant's Appendix 12.

Contrary to the holding of the Court of Appeals, nowhere is MCL 700.7605(4) conditioned on the beneficiary being "a dependent or another individual as a beneficiary."

The application of subsection (4) was recognized in Reporter's Comment to MCL 700.7605, [Martin & Harder, Estates and Protected Individuals Code with Reporters' Commentary (IC1E, February 2023 update), which provided:

> "[A]dditionally, assets are not to be used to pay the items described in subsection (1) if those assets would not have been subject to creditors' claims if paid to a testamentary trust **or to other than the probate estate....**[.]" (Emphasis added)
>
> "Life insurance proceeds paid directly to the trustee of the revocable trust pursuant to a beneficiary designation also may be exempted. *See* MCL 500.2207. [Martin & Harder, Estates and Protected Individuals Code with Reporters' Commentary (IC1E, February 2022 update), pp. 618-619.][8]

Clearly, the life insurance proceeds in the case at bar clearly fits within the exemption provisions of MCL 700.7605(4). The proceeds are payable to other than the settlor's estate, the policy has no cash value, except for naming a beneficiary, Jennifer Fowler has no interest in the policy and the policy

[8] While not binding, the reporter's comments concerning EPIC may "aid in the interpretation of a statute or rule. In Re Lundy Estate, 291 Mich App 347, 355 (2011). see also Bittner-Korbus v Bittner (In Re Bittner) 312 Mich App 227 (2015).

proceeds are not otherwise subject to the claims of the creditors of the Estate.

The argument and/or logic allowing the invasion of trust assets simply does not apply as the life insurance policy had no value until the death and is not within the assets subject to the scope of MCL 700.7605(1).

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, Appellant requests this Court Reverse the decision of the Michigan Court of Appeal, affirm and reinstate the decision of the trial court regarding the 401k and reverse the trail court regarding the life insurance benefits.

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