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STATE OF MICHIGAN

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

In re ESTATE OF JENNIFER L. FOWLER.

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

v.

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

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

In re ESTATE OF JENNIFER L. FOWLER.

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

v.

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

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

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In re ESTATE OF JENNIFER L. FOWLER.

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

v.

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

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

APPELLANT JENNIFER FOWLER TRUST'S SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

DAVID R. HEYBOER (P-27975)
HEYBOER LAW PLC
Attorney for Appellant
3051 Commerce Drive, Suite 1
Fort Gratiot, MI 48059
(810) 982-9800
heyboerlaw@gmail.com

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STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

Appellant filed its timely Application for Leave to Appeal in this Court August 29, 2024 following the decision of the Michigan Court of Appeals, Spacil v Brooks, (In Re Estate of Fowler, ___ Mich App ____ (2024). In lieu of granting Appellant's Application, this Court entered an Order granting oral argument on the Application on March 28, 2025. This Court has jurisdiction pursuant to MCR 7.303(B)(1) and MCR 7.305(H)(1).

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QUESTIONS PRESENTED

I. WHETHER THE 401(k) ACCOUNT FUNDS AT ISSUE ARE EXEMPT FROM ATTACHMENT BY THE ESTATE OF HELEN FOWLER

II. WHETHER THE LIFE INSURANCE PROCEEDS AT ISSUE ARE SUBJECT TO THE CLAIMS BY HELEN'S ESTATE TO THE EXTENT THAT THE ESTATE OF JENNIFER L. FOWLER LACKS SUFFICIENT ASSETS TO SATISFY THE CLAIMS

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

This Court has requested supplemental briefing addressing whether: (1) the 401(k) account funds at issue are exempt from attachment by the Estate of Helen Fowler (Helen's Estate); and (2) the life insurance proceeds at issue are subject to the claims by Helen's Estate to the extent that the Estate of Jennifer L. Fowler lacks sufficient assets to satisfy the claims.

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STATEMENT OF FACTS

Appellant incorporates the Statement of Facts and Appellant's Appendix as set forth in the Application for Leave to Appeal.

As relevant to the issues on appeal, it is uncontroverted that Jennifer Fowler, who was an employee at DTE Energy, during her lifetime had an interest in the following:

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, the beneficiary of Jennifer's 401(k) Plan was the Jennifer L. Fowler Trust.

Additionally, the employee group whole life insurance policy which was a benefit of Jennifer Fowler's employment had no cash value. The beneficiary of the life insurance policy was the Jennifer L. Fowler Trust. [Appellant's Appendix 3-4].

Lastly, it is uncontroverted that the Estate of Jennifer Fowler lacks sufficient assets to satisfy the claims filed against it, including the claim of the Estate of Helen Fowler.

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SUPPLEMENTAL ARGUMENT

I. WHETHER THE 401(k) ACCOUNT FUNDS AT ISSUE ARE EXEMPT FROM ATTACHMENT BY THE ESTATE OF HELEN FOWLER

The issue before the Court is whether the 401(k) retirement account fund, which was a benefit of Jennifer Fowler's employment with DTE, and was owned by Jennifer Fowler during her lifetime, is subject to the claims of Jennifer Fowler's Estate, and particularly the Estate of Helen Fowler, pursuant to MCL 700.7605.

The beneficiary of the 401(k) account was the Jennifer Fowler Revocable Trust, (hereinafter referred to as "The Trust"). The 401(k) was covered under DTE 401(k) Plan which was and is governed by Employee Retirement Income Security Act of 1974, Pub. L No. 93-406, 88 Stat. 829 (codified at *29 U.S.C.A. §§ 1001, et seq.*, hereinafter referred to as ERISA. It is further admitted and undisputed that the assets of the Estate of Jennifer Fowler are insufficient to satisfy the claims against the Estate.

During her lifetime, the 401(k) account was owned by Jennifer Fowler and was not an asset of The Trust. Upon death, the 401(k) account transferred to the named beneficiary, The Trust.[1]

It is beyond dispute that during the lifetime of Jennifer Fowler, the 401(k) account was not an asset of The Trust and further, that during Jennifer's lifetime,

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as the 401(k) was held in the DTE Plan, the 401(k) account could not be used to satisfy the claim of judgment. See DaimlerChrysler Corporation and DaimlerChrysler-UAW Pension Agreement v. Cox, 447 F.3d 967, 972-974 (6th Cir. 2006).

Appellee argues, and the Michigan Court of Appeals so found, that the DTE 401k Plan proceeds, upon liquidation, are not afforded the protection under ERISA, or any exemptions under MCL 700.7506 or MCL 700.7605, and that as the trial court erred in finding the 401(k) proceeds exempt from the claims against the Estate of Jennifer Fowler under MCL 700.7605(2). The Michigan Court of Appeals concluded that the 401(k) account was subject to the claims against the Estate of Jennifer Fowler. Unfortunately, at no time did the Court of Appeals address MCL 700.7506 or the exemptions found in MCL 700.7605(2) and (4), as well as the fact that the 401(k) account was never an asset of the Jennifer Fowler Trust during her lifetime.

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

[1] At this time, the funds have not been transferred to the Trust and remain in possession and control

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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 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.

MCL 700.7506 provides in relevant part:

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

MCL 700.7506(1)(a) merely codified Michigan common law where a creditor can of a settlor can satisfy claims against the settlor's revocable trust. Colman v Department of Mental Health, (In Re Hertzberg Inter Vivos Trust), 457 Mich 430; 578 NW2d 289 (1998).

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of the Plan Administrator, Empower.

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Further, by its own terms, Subsection (b) applies only to the property of a revocable trust at the time of the settlor's death and subject to the provisions of MCL 700.7506 or MCL 700.7605.

MCL 700.7605 provides in relevant part:

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

The trial court found the 401(k) to be exemption pursuant to MCL 700.7605(2) as it was "a payment from...a retirement or other plan that is qualified

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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)."

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 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 401(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.

Of interest, the Court of Appeals did not analyze MCL 700.7506, MCL 700.7605(2) or MCL 700.7605(4), and merely found that once the 401(k) funds are paid to the beneficiaries, all protection under ERISA is lost.

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The 401(k) proceeds were not property of The Trust during Jennifer Fowler's lifetime. At the time of her death, the 401(k) was the property of Ms. Fowler, subject to the rights of the beneficiary of the account, which happened to be The Trust. As the 401(k) account was not an asset of the Trust, the account proceeds as subsequently transferred to the Trust are not subject to the claims of the Estate of Jennifer Fowler, MCL 700.7506; MCL 700.7605.

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

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

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

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> 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]

The Court of Appeals did not address MCL 700.7505(2) and merely concluded that the trial court was wrong and the 401(k) was available to satisfy the claims of the Estate of Jennifer Fowler. As the trial court correctly found, MCL 700.7605(2) exempts "all payments from ... 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)," the Court of Appeals erred in reversing the trail court holding that the 401(k) funds were exempt pursuant to MCL 700.7605(2).

- **MCL 700.7605(4) Exemption:**

MCL 700.7605(4) provides:

> (4) For purposes of this section, property held or received by a trust to the extent that the property would not have been subject to a claim against the settlor's estate if it had

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

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> been paid directly to a trust created under the settlor's will or other than to the settlor's estate, or property received from a trust other than a trust described in this section, shall not be considered trust property available for the payment of the administration expenses, a claim against the settlor's estate, or an allowance described in subsection (1).

Clearly, subsection (4) provides an exemption for property if it had been paid directly to a trust created under the settlor's will [a testamentary trust] "or other than to the settlor's estate...[.]. The 401(k) funds are clearly funds received by a trust and paid "other than to the settlor's estate".

The only other case which has interpreted MLC 700.7605(4) is United States v Estate of Chicorel, United States District Court for the Eastern District of Michigan January 17, 2017, Decided; January 17, 2017, Case No. 16-10894, 2017 U.S. Dist. LEXIS 229139, Supplemental Appendix **3.** In Chicorel, the trial court addressed the liability of a Trust for tax liability of the settlor of the Trust. Addressing the issue, the Court stated:

> "The government seeks to add Ralph Chicorel as trustee to the decedent's trust and argues that the property of the trust is subject to its claim under Michigan statute. (Dkt. # 13, Pg. ID 70.) Defendant argues that claims against the trust would be futile because Michigan law does not subject the trust's property to claims by creditors of the estate. (Dkt. # 14, Pg. ID 101-02.) Because the court agrees with this contention by Defendant, it will not address Defendant's other arguments regarding futility.
>
> ***

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Central to the futility question is whether Michigan law authorizes creditors to collect on a revocable trust made irrevocable by the death of the settlor. On this point, the parties dispute the proper interpretation of Michigan statute. First, MCL 700.7506(1)(b) provides:

> After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.

In turn, MCL 700.7605(1) states:

> The property of a trust over which the settlor has the right . . . at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself is subject to . . . . (b) An enforceable and timely presented claim of a creditor of the settlor[.]

When interpreting statutory language, Michigan courts "must ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Fradco, Inc. v. Dep't of Treasury, 495 Mich. 104, 112, 845 N.W.2d 81 (2014)* (quoting *Koontz v. Ameritech Servs., Inc., 466 Mich. 304, 312, 645 N.W.2d 34 (2002))* (internal quotation marks omitted). This requires courts to consider "the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Id.* (quoting *Sun Valley Foods Co. v. Ward*, 4660 Mich. 230, 237 (1999)).

Defendant argues that MCL 700.7506(1) and 7605(1) "plainly make the assets of a *revocable* trust subject to the claims of creditors under certain circumstances. However, trust funds are only subject to claims of a decedent's creditors to the extent that these funds existed in a *revocable* trust at the date of decedent's death." (Dkt. # 14, Pg. ID 102 (double emphasis in original). Because the trust received the death benefit

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proceeds only after the trust became irrevocable and not otherwise part of the estate, Defendant argues those proceeds are unreachable by Decedent's creditors. (*Id.*)

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

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

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

Had Decedent used a testamentary trust instead of a revocable living trust, sections 7605(1) and 7506(1) unambiguously would not apply and the death benefit proceeds would not be subject to claims of the estate's creditors. In effect, Defendant's assertion that the statute does not apply to property held outside of a revocable trust at the time of Decedent's death is correct. The government cannot reach the death benefit proceeds held by Decedent's now-irrevocable trust. As a

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> result, the government's proposed amendment would be futile with respect to its claims against the trustee."

The interpretation of the statute in Chicorel is clearly consistent with the terms of provisions of MCL 700.7605(4).

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

To justify its holding, the Court of Appeals, relied upon Commerce Bank, N.A. v Bolander, 239 P.3d 83 (2007). Bolander has no application to Michigan law.

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).

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Based upon the expressed language of the Kansas statute, it is clear that no exemptions exist and that the Bolander decision was correct in its application of Kansas law. However, given the Michigan statutes, Bolander has no application to Michigan law.

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), (4) provide 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

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> 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.*

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) or (4) and provides no support to defeat Appellant's claim of an exemption.

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For the foregoing reasons, as the 401(k) account was never an asset of the Jennifer Trust during her lifetime, the asset is exempt from being attached to satisfy the claims of the Estate of Jennifer Fowler.

Further, the 401(k) account is exempt pursuant to both MCL 700.7605(2) and MCL 700.7605(4).

II. WHETHER THE LIFE INSURANCE PROCEEDS AT ISSUE ARE SUBJECT TO THE CLAIMS BY HELEN'S ESTATE TO THE EXTENT THAT THE ESTATE OF JENNIFER L. FOWLER LACKS SUFFICIENT ASSETS TO SATISFY THE CLAIMS

Both the trial court and the Court of Appeals held that the death benefits were not protected under MCL 500.2207(2) or MCL 700.7605(4).

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.

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> **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]

- **MCL 500.2207(2)**

As relevant to the facts and issues in this case, 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.

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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...[.]"

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). Not only is the Trust not the "insured, executor or administrator", the Trust is expressly excluded from the definition of personal representation which does include an "executor" and "administrator". MCL 700.1107.

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).

While Michigan does not have a case on point where a Trust is the beneficiary of a life insurance death benefit, the Arizona Court of Appeals addressed such an issue in Difilippo v Reed (In re Estate of King), 269 P3d 1189 (2012). In Difilippo,

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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.[3]

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)

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

[3] 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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> "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 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. Difilippo clearly supports the exemption of these proceeds from the claims of creditors.

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- **MCL 700.7605(4) Exemption:**

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).

Clearly, subsection (4) provides an exemption for property if it had been paid directly to a trust created under the settlor's will [a testamentary trust] "or other than to the settlor's estate...[.]. The employee group benefit life insurance policy, of which the Trust was the beneficiary, are clearly funds received by a trust and paid "other than to the settlor's estate" and thus exempt under MCL 700.7605(4); see also the rationale as set forth in United States v Estate of Chicorel, *supra*.

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).

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

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and Protected Individuals Code with Reporters' Commentary (IC1E, February 2022 update), pp. 618-619.][4]

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 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 and hold that both the 401(k) and the life insurance benefits or exempt from attachment to satisfy the claims on the Estate of Jennifer Fowler, including those of the Estate of Helen Fowler.

HEYBOER LAW PLC
Attorney for Appellant

/s/ David R. Heyboer
DAVID R. HEYBOER (P-27975)
3051 Commerce Drive, Suite 1
Fort Gratiot, MI 48059
(810) 982-9800
heyboerlaw@gmail.com

[4] 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).

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

In compliance with MCR 7.305(A)(1), I hereby certify that Appellant's Supplemental Brief in Support of Application for Leave to Appeal contains 5,836 countable words as determined by Microsoft Word "Wordcount"; the typeface used is Century Schoolbook set at a 12 point font except for footnotes.

HEYBOER LAW PLC
Attorney for Appellant

/s/ David R. Heyboer
David R. Heyboer (P27975)
3051 Commerce Drive, Suite 1
Fort Gratiot, MI 48059
(810) 982-9800

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