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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 REPLY BRIEF IN RESPONSE TO *AMICUS CURIE* PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN BRIEF

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STATEMENT OF FACTS IN SUPPORT OF REPLY TO *AMICUS CURIAE* BRIEF

Appellant incorporates the underlying facts of the case as set forth in the Briefs and Appendices already filed with the Court and will not be repeated.

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ARGUMENT

THE LIFE INSURANCE PROCEEDS ARE NOT SUBJECT TO THE CLAIMS OF CREDITOR'S OF THE ESTATE OF JENNIFER FOWLER

Appellant responds to the *Amicus Curiae* Brief of the Probate and Estate Planning Section of the State Bar of Michigan, hereinafter "PEPS". [1]

The underlying obligation at issue is that of the Estate of Jennifer Fowler. The Jennifer Fowler Trust owes no direct obligation to the Estate of Helen Fowler. The issue is to what extent assets of the Jennifer Fowler Trust may be invaded to satisfy the claims against the Estate of Jennifer Fowler.

At all times relevant hereto, Jennifer Fowler was an employee of DTE Energy. [Appellant's Appendix 5]. As part of her employment with DTE, Jennifer Fowler had an employee group whole life insurance policy which insured her life and had no cash value. [Appellant's Appendix 3-4]. The beneficiary of the life insurance policy was the Jennifer Fowler Trust. The group insurance policy, as a benefit of employment, 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. Jennifer Fowler never owned the life insurance proceeds.[2] It is further

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[1] Pursuant to MCR 7.312(E)(4)(b), Appellant responds only to the argument of the PEPS which was adverse to Appellant's position, namely, the disposition of the life insurance proceeds and does not respond to the issues raised regarding the 401(k) account.

[2] The rights of the named beneficiary vest at the instant of the insured's death, and cannot be affected by any subsequent act of the insurer. Dogariu v Dogariu, 306 Mich 392 (1943).

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admitted and undisputed that the assets of the Estate of Jennifer Fowler are insufficient to satisfy the claims against the Estate.

MCL 500.2207(2):

PEPS asserts that the group life insurance proceeds are not exempt from the claims for creditors pursuant to MCL 500.2207(2) and that they are payable to satisfy the claims against the Estate pursuant to MCL 700.3805(3) and MCL 700.700.7605(1). Appellant respectfully disagrees.

MCL 500.2207(2) provides in relevant part:

> 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. In arguing that the life insurance proceeds are subject to the claims of Jennifer's Estate, the PEPS argues the inclusion of the word "administrators" in MCL 500.2207(2), applies "to a trustee of a revocable living trust, who is a type of administrator."[3] PEPS argument is fatally flawed.

---

[3] PEPS Supplemental Brief pp. 9-10. In fact, PEPS bootstraps this argument and asserts:

> "Just As 2207 does not employ the recognized legal term for one who administers an estate (utilizing the term "executor" rather than "personal representative"), the less formal term of "administrator" still encompasses a person serving as "trustee." As such, because the trustee (i.e. settlor's "administrator") is the lawful beneficiary of the insurance proceeds, she cannot fit within the creditor protection pursuant to 2207, unless the trust that is being administered is for the benefit of a spouse or children."

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Contrary to the rationale of PEPS and 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 creditors of the insured provided the policy benefits are not payable to the **"insured ..., or his [her] executors or administrators...[.]"**

To support its argument, PEPS cites Americold Realty Trust v Conagra Foods, Inc, 577 US 378, 383; 136 S Ct 1012 (2016), asserting: "Traditionally, a trust was not considered a distinct legal entity, but a "fiduciary relationship' between multiple people." The issue in Americold concerned whether diversity of citizenship exited to grant jurisdiction to a federal court, and the citizenship of a trust. Issues then arose whether the citizenship of the Trustee, the Trust or all of the members of the Trust are to be considered in determining whether diversity of citizenship existed.

Contrary to the position asserted by the PEPS, modern law in fact treats trusts as legally distinct entities, "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. See, e.g., 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 rejecting Appellant's exemption claim, the Court of Appeals held:

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> "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.
>
> ***
>
> 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.** Appellant Appendix 12 [Emphasis added]

Respectfully, the Court of Appeals never addressed the issue. Contrary to the claim of the Court of Appeals, the payment of the life insurance benefits was NOT to the insured, (i.e. Jennifer Fowler or her Estate), rather, the payment is to her Trust.

While PEPS correctly notes that MCL 700.7801 and MCL 700.7802 provide that a trustee shall "administer" a Trust, that terminology does not apply to the definition of the phrase "other than the insured ..., or his executors or administrators" as found in MCL 500.2207(2).

Lastly, 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

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"shielded" from the claims of creditor provided the policy is not payable to the "insured ..., or his executors or administrators...[.]"

MCL 700. 1106 provides:

> (p) "Personal representative" includes, but is not limited to, an executor, administrator . . . 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.

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."

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,

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executor or administrator", the Trust is expressly excluded from the definition of personal representation which does include an "executor" and "administrator". MCL 700.1107.[4]

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, 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.[5]

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

---

[4] See Halton v Fawcett, 259 Mich App 699 (2003), where the Court of Appeals recognized that the Estates and Protected Persons Act, EPIC, expressly defined a "personal representative" to include "an executor, administrator...[.]"

[5] 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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> 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 ...[.].

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.

Based upon the foregoing, the policy proceeds are exempt from the claims of creditors of the Estate of Jennifer Fowler.

MCL 700.6101

MCL 700.6101 provides:

> (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of similar nature is nontestamentary. This subsection includes a written provision in the instrument that is intended to result in 1 or more of the following:
>
> (a) Money or another benefit due to, controlled by, or owned by a decedent before death is paid after the decedent's death to a person, including a trustee of a trust created by will, whom the decedent designates either in the instrument or in a separate

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writing, including a will, executed either before, at the same time as, or after the instrument.

(b) Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand.

(c) Property the decedent controls or owns before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before, at the same time as, or after the instrument.

(2) This section does not limit creditors' rights under another law of this state or another state or under federal law.

MCL 700.6101 provides no basis by which the life insurance proceeds may be seized to satisfy the debts of the Estate, but merely eliminates any issues concerning the need to comply with EPIC regarding the execution and/or administration of assets which are transferred outside of probate. MCL 700.6101 only is relevant when MCL 700.3805(3) is considered.

MCL 700.3805(3):

MCL 700.3805 provides in part:

"(3) If there are insufficient assets to pay all claims in full or to satisfy homestead allowance, family allowance, and exempt property, the personal representative shall certify the amount and nature of the deficiency to the trustee of a trust described in section 7605(1) for payment by the trustee in accordance with section 7606. **If the personal representative is aware of other nonprobate transfers that may be liable for claims and allowances,** then, unless the will provides otherwise, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each nonprobate transfer, including those made under a trust described in section 7605(1), bears a proportionate share or equitable share of the total burden." (Emphasis added)

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The sole application of MCL 700.3805(3) concerns "nonprobate" transfers which "may be liable for claims and allowances" of the underlying probate Estate. In the instant case, the insurance proceeds are exempt under both MCL 500.2207(2) and MCL 700.7605(1) and (4), and thus MCL 700.3805(3) is not applicable to this case.

MCL 700.7506(1)(2); MCL 700.7605(1), (4):

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. . . . [.].

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:
>
> * * *
>
> (4) For purposes of this section, **property held or received by a trust to the extent that the property**

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> **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.)

Clearly, MCL 700.7506 and MCL 700.6501, including subsection (4), provides an exemption to the insurance proceeds as the proceeds were not the property of the Trust at the time of Ms. Fowler's death, and the proceeds were clearly funds received by a trust and paid . . . "other than to the settlor's estate" and thus exempt under MCL 700.7605(4). The proceeds were payable to other than the settlor's estate, the policy has no cash value, and except for retaining the right to name 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.

RELIEF REQUESTED

WHEREFORE, Appellant requests this Court reverse the decision of the Michigan Court of Appeals and hold that both the 401(k) and the life insurance benefits are exempt to satisfy the claims on the Estate of Jennifer Fowler.

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

In compliance with MCR 7.305(A)(1), I hereby certify that Appellant's Reply Brief in Response to the Probate and Estate Planning Section *Amicus Curiae* Brief contains 2,805 countable words as determined by Microsoft Word "Wordcount"; the typeface used is Century Schoolbook set at a 12 point font except for footnotes.

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