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STATE OF MICHIGAN

IN THE SUPREME COURT

Supreme Court Case Nos. 167501, 167503

In re Estate of Jennifer Fowler

SHELLIE SPACIL, Personal Representative of the ESTATE OF JENNIFER L. FOWLER,

Appellee,

Court of Appeals Case No. 365600

St. Clair County Probate Court Case No. 19-000085-DE

V

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

Appellant.

In re Jennifer L. Fowler Trust

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

Appellant,

Court of Appeals Case No. 365603

St. Clair County Circuit Court Case No. 22-000259-CZ

V

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

Appellee.

APPELLEE JULIE BROOKS, Personal Representative of the ESTATE OF HELEN FOWLER'S SUPPLEMENTAL BRIEF IN OPPOSITION TO THE BRIEF OF AMICUS CURIAE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

ORAL ARGUMENT REQUESTED

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STATEMENT OF THE STANDARDS OF REVIEW

The Appellee incorporates by reference the statement of the Standards of Review filed in the prior Appellee's Response to the Appellant's Application for Leave.

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STATEMENT OF QUESTIONS PRESENTED

A. Whether the 401(k) account funds at issue are exempt from attachment by the Estate of Helen Fowler (Helen's Estate)?

The Court of Appeals Answered:	No
The Appellee Answered:	No
The Appellant Answered:	Yes
The Amicus PEPS Answered	Yes

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STATEMENT OF FACTS

The Appellee incorporates by reference the Counter Statement of Facts filed in the prior Appellee's Response to the Appellant's Application for Leave.

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ARGUMENT

THE 401(K) LUMP SUM PAYMENT INTO THE REVOCABLE JENNIFER L. FOWLER LIVING TRUST DOES NOT EXEMPT THAT ASSET ONCE IT IS MADE, FROM BEING SUBJECT TO THE STATUTORY PROVISIONS OF EPIC, MTC AND THE TERMS OF THE DECEDENT JENNIFER FOWLER'S WILL AND REVOCABLE TRUST.

I. Probate and Estate Planning Section (PEPS) contention that the Court of Appeals "skipped past the critical language of this statute (MCL 700.7605) and instead relied upon case law from the State of Kansas (page 6)" is erroneous.

(a) "skipped past the critical language"

The Court of Appeals did not "skip past the critical language" of MCL 700.7605 but specifically addressed the specific language of MCL 700.7605 and its proper legal application herein. The Court of Appeals in its opinion made the critical distinction between the DTE Savings and Stock plan and the revocable Jennifer L. Fowler Trust.

The anti-assignment and anti-alienation provisions of ERISA are intended to ensuring that "if a worker has been promised a defined pension benefit upon retirement---and if he has fulfilled whatever conditions are required to obtain a vested benefit---he actually will receive it" *Nachman Corp. v Pension Benefit Guaranty Corp.,446 U.S. 359 (1980);* cited in *Patterson v Shumate,* 504 U.S. 753 (1992).

Under the circumstances herein, the settlor, Jennifer Fowler, will not be receiving any of the pension benefit **payments** under the retirement plan, nor are there any dependents (spouse or children) of the settlor, Jennifer Fowler, who shall receive any **payments** under the pension plan. Rather, the value of the Savings and Stock ownership plan, under both the terms of the DTE pension plan and the Jennifer Fowler

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Trust, are to be paid directly in a **one-time lump sum distribution** to the revocable Jennifer L. Fowler Living Trust.

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

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

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

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

> The probate court ruled that Jennifer's 401(k) account funds were not available to pay her creditors because the funds are part of a plan complying with the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1001 *et seq.* There is no dispute that the Savings and Stock Plan is a qualified 401(k) account that was intended to provide Jennifer with retirement income during her lifetime. However, the Savings and Stock Plan provides that, after Jennifer's death, any remaining funds are to be paid to the fund beneficiary's estate in a lump sum if there is no surviving beneficiary. *Therefore, under the Savings and Stock Plan, any 401(k) account funds remaining after Jennifer's death converted to a lump-sum payment. This asset no longer involved a retirement account administered by DTE. Upon the lump-sum conversion, the funds were no longer part of the Savings & Stock Plan subject to federal regulations for retirement accounts.* For this reason, the probate court erred by ruling that MCL 700.7605(2) applied to prohibit Helen's estate from reaching the lump-sum payment of the remaining 401(k) account funds.
>
> ***
>
> Although ERISA protects funds held by a retirement account, that protection is lost once the beneficiary receives the funds. In *State Treasurer v Abbott,*

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

Quite frankly, if anyone has "skipped by the critical language" of MCL 700.7605 it is the PEPS brief which attempts to argue that MCL 700.7605(2) exempts the revocable Jennifer Fowler Living Trust which clearly meets the definition of MCL 700.7605(1). MCL 700.7605(2) defines a "trust" which would be exempt from the required liability imposed by MCL 700.7605. That defined trust that is exempt is the 401(k) trust, to make direct payments to a creditor of funds that it has within that trust preserved for an employee under the 401(k) plan. The above quoted language from the Court of Appeals recognized the circumstances wherein the 401(k) Plan is still in place to provide retirement payments but also recognized when the 401(k) plan ceases to exist after the death of the employee and the plan assets are paid out in a lump sum payment to a revocable trust of the employee and the only trust remaining pertinent to the deceased employee's estate is a revocable trust as defined in MCL 700.7605(1).

MCL 700.7605(2) states:

> (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 not qualified under section 401 of the internal revenue code, 26 USC 401***, shall not be considered to be a trust described in subsection (1).***

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The Court of Appeals nor the Appellee takes issue that the 401(k) plan meets the definition of subsection (2) above. However, that does not change the definition of MCL 700.7605(1) which clearly states that the revocable Jennifer Fowler Living Trust is clearly defined as a revocable trust and its assets under the fact circumstance herein are subject to the statutory requirements of both EPIC and MTC which require transfer of assets within that trust (no matter how received) to be subject to satisfy valid claims against the Estate of Jennifer Fowler.

(b). "relied upon caselaw from the State of Kansas"

The Court of Appeals did not "rely" upon Kansas caselaw to make it decision. The Court of Appeals thoroughly reviewed the holding in *Commerce Bank, N.A. v Bolander,* 44 Kan.App.2d 1; 239 P.3d 83 (2007) which cited prominently the Michigan Court of Appeal decision in *In re Johannes Trust,* Mich App 514, 518, 479 NW2d 25 (1991).

The Court of Appeals, at page 9, held:

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

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

> The district court's decision is an application of the clear unambiguous intent of the legislature in K.S.A. 58a-505(a)(3) of making the assets of a revocable trust "subject to the claims of the settlor's creditors." A revocable living trust, such as the trust in this case, is a trust established during the settlor's lifetime in which the settlor reserves the right to alter, amend, or revoke the trust and may retain the right during his or her lifetime to direct

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the disposition of principal and income. At the death of the settlor, the trust assets are disposed of in accordance with the terms of the trust document. When a trust is created for the settlor's own benefit, the settlor's creditors can reach any trust assets and, for purpose of the present case, those nonexempt assets available to the settlor. **See *In re Johannes Trust,* 191 Mich App 514, 518, 479 NW2d 25 (1991);** *Vanderbilt Credit Corp. v Chase Manhattan Bank,* 100 App. Div. 2d 544, 546, 473 NYS2d 242 (1984); Restatement (Second) of Trusts 156, p 326 (1959). This rule promotes a valid public policy that a person ought not to be able to shelter his or her assets from creditors in a discretionary trust of which he or she is the beneficiary and thus be able to enjoy all the benefits of ownership of the property without any of the burdens. **See *In re Johannes Trust*, 199, Mich App at 518.**

***

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

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

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

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

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> "The right to an exemption exists solely by virtue of express constitutional or statutory provisions. Accordingly, any determination of persons or classes of persons who may claim exemptions in any particular state must be directed to that state's constitution and statutes and, unless the debtor claiming an exemption is one of the persons or classes of persons therein named, his claim cannot prevail, because a debtor's right to an exemption is a personal one which does not survive the death of the person in whose favor it exists."
>
> See also 31 Am. Jur 2d Exemptions § 239 (which provides that the right of exemption is limited to a natural, rather than a legal, person).
>
> ***
>
> We realize the benefit of naming specific individuals as beneficiaries of an IRA. However, that is not the estate planning devise selected by Wanda. Instead, Wanda named her revocable Trust as the beneficiary of her IRAs, and the legislature has determined that assets in a revocable trust are subject to the claims of creditors at the death of the settlor. K.S.A. 58a-505.

Assertion that MCL 600.6023(1) exempts the non-probate transfer of the revocable trust asset of the 401(k) lump sum payment to the revocable trust.

The PEPS brief asserts that "Michigan has a **statute directly on point**, which was not discussed by the Court of Appeals". The statute that PEPS asserts is MCL 600.6023(1)(k) which reads:

> **600.6023: Property exempt from *levy and sale under execution*; lien excluded from exemption; homestead exemption; rents and profits.**
> (1) The following property of a *judgment debtor* and the judgment debtor dependents is exempt from levy and sale under execution:
>
> (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…."

I trust that the Court of Appeals did not discuss MCL 600.6023(1)(k) for two very good reasons. First, that argument was never raised, and second, if it had been, it would have no application to the issues before the Probate Court, the Court of Appeals and now the Supreme Court. MCL 600.6001, et seq. regulates the involuntary payment

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of judgments. The Michigan Supreme Court in *Hinkle v Wayne Co Clerk,* 407 Mich 337, 342 n7 (2002) stated:

> "Execution refers to the coercive process for the collection of judgments. Regulations on coercive collection are imposed because direct attachment of a debtor's property is disfavored. *George v Sandor M. Gelman, P.C.,* 201 Mich App 474, 477, 506 N.W.2d 583(1993). Chapter 60 of the Revised Judicature Act, M.C.L. 600.6001 *et seq.,* regulates the involuntary payment of judgments."

The above stated statute under the Revised Judicature Act of 1961 is only "on point" if one is addressing the following:

1. "Property exempt from levy and sale under execution"

There is no action pending, nor will ever be an action pending seeking a "levy and sale under execution". This entire cause of action involves the authority of the St. Clair County Probate Court to apply the very specific statutory applications of MCL 700.7605, MCL 700.7606, MCL 700.3704, MCL 700.3805 and other relevant EPIC provisions, as well as the specific provisions of both the Jennifer Fowler will and revocable trust, which have been cited ad nauseum in the Appellee's previous filings with the Probate Court, Court of Appeals and this Court.

2. "Judgment Debtor"

The revocable Jennifer Fowler Living Trust is not a "judgment debtor" nor is it "a dependent of a judgment debtor" for whom MCL 600.6001 et seq. is intended to be applied in a collection levy and execution. The wrongful death judgment **against the Estate of Jennifer Fowler** was entered in the St. Clair County Court which was upheld on appeal to the Court of Appeals. The Appellant, by virtue of its defense and appeal exhausted all of the assets of the Estate of Jennifer Fowler, leaving the Estate insolvent.

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The Appellee is not, nor has it ever sought a levy and sale under execution against a "person" let alone the revocable Jennifer Fowler Living Trust.

The obligation of the Trustee of the Jennifer L. Fowler Living Trust is to transfer funds sufficient to allow the insolvent Estate of Jennifer Fowler to satisfy valid claims against the estate. That duty arises by operation of law, by virtue of the statutory provisions of EPIC and MTC set forth repeatedly in the Appellee's briefs filed in the trial court, the Court of Appeals and Supreme Court.

3. *"the right or interest of a **person**"*

Nowhere is there to be found in MCL 600.6001 et seq. a specific statutory definition of a "person". However, Black's Law Dictionary (4th Ed.) defines person as "a human being." as would any number of English dictionaries. The Michigan Supreme Court in *People v Rea*, 500 Mich 422 (2002) held:

> "When a word or phrase is not defined by the statute in question, it is appropriate to consult dictionary definitions to determine the plain and ordinary meaning of a word or phrase."

The above holding has been upheld and cited repeatedly as most recently in *In Re Barber/Espinoza,* Michigan Supreme Court Docket No. 167745(decided July 25, 2025) and in *Janetsky v County of Saginaw,* Michigan Supreme Court Docket No. 166478(decided July 25, 2025) which cited with approval:

> "We interpret the words in the statute in light of their ordinary meaning and their context within the statute and read them harmoniously to give effect to the statute as a whole. *Johnson v Recca,* 492 Mich 169 (2012)

This attempt to claim MCL 600.6023(1)(k) provides an exemption under the circumstances herein, is brand new and was not presented in any fashion by the Appellant nor by the PEPS motion for its application to file an amicus curiae brief. The Court of Appeals opinion in no manner asserted that the revocable Jennifer Fowler Living Trust was a "person" subject to the provisions of MCL 600.6001 et seq. and in

particular MCL 600.6023(1)(k). The PEPS brief assertion that property held in the "settlor's" revocable trust is still considered property of the "judgment debtor" is patently false.

EPIC provides specific provisions that apply to an estate when there is a valid claim against an estate and the estate becomes insolvent as spelled out in all of the previously cited EPIC statutory provisions. The Appellee is not seeking to enforce a wrongful death judgment under MCL 600.6001 et seq. against the revocable Jennifer Fowler Living Trust. That wrongful judgment has been determined to be a valid claim under EPIC against the Estate of Jennifer Fowler and is entitled to be considered and satisfied to the specific statutory constructs of EPIC and MTC which are repeatedly discussed in the prior briefs filed by the Appellee.

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CONCLUSION

The Legislature was well aware of the "context of the entire act" and the "judicial interpretations of the existing law" when it passed EPIC and the MTC.

EPIC contains a means by which the assets of a decedent's revocable trust are made available to satisfy the claims against the decedent's probate estate if there is no estate or the resources of the probate estate are insufficient to satisfy all of the claims which are found in MCL 700.3803-3805. The MTC retains these rules, which are found in MCL 700.7605-.7615 which require that a revocable trust asset is available to the two siblings pursuant to a wrongful claim who lost their mother due to the actions of the decedent Jennifer Fowler. The Appellant is only advocating on behalf of herself and the other non-dependent beneficiaries to deny the relief afforded to creditors of an insolvent estate contrary to EPIC and the MTC, as well as the terms of the decedent's will and revocable trust.

RELIEF REQUESTED

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

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CERTIFICATE OF COMPLIANCE WITH MCL 7.212

In compliance with MCL 7.212 and ADM File No. 2019-16, I certify that this brief contains 3,185 countable words and the typeface used in this brief is Arial, set in a 12-point font.

Dated: August 29, 2025

/s/ John B. McNamee
John B. McNamee

Respectfully submitted,

Dated: August 29, 2025

/s/John B. McNamee
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