STATE OF MICHIGAN

COURT OF APPEALS

GENERAL MOTORS CORPORATION,

Plaintiff-Appellee/Cross-Appellant.

v

ABRAHAM WEBERMAN, MARY HAMILTON, and STALBURG, FISCHER, WEBERMAN & VERROS, P.C.

Defendants-Appellants/Cross-Appellees.

UNPUBLISHED
October 3, 2000

No. 210441
Oakland Circuit Court
LC No. 96-532327-CZ

Before: Whitbeck, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendants appeal by right the amended order of judgment entered against them and the order denying defendants Weberman's and Hamilton's motion for mediation sanctions. Plaintiff cross appeals the trial court's amended judgment denying treble damages and attorney fees pursuant to MCL 600.2919a; MSA 27A.2919(1). We affirm.

Defendants first argue that the Workers' Disability Compensation Bureau had exclusive jurisdiction over this matter because it involved an overpayment of compensation and the employer-employee relationship. We disagree. Whether the circuit court had proper subject matter jurisdiction is a question of law for this Court to decide. *Dlaikan v Roodbeen*, 206 Mich App 591, 592-593; 522 NW2d 719 (1994); see, also, *Jackson Comm College v Michigan Dep't of Treasury*, ___ Mich App ___; ___ NW2d ___ (Docket no. 210887, issued 7/14/00), slip op p 3 ("This Court reviews jurisdictional questions de novo."). A question of law is reviewed de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

MCL 418.841(1); MSA 17.237(841)(1) provides in pertinent part:

> Any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau . . . .

Questions of workers' compensation, compensation procedure, and the remedy for failure to follow that procedure are statutorily established and are to be determined by the bureau. *Maglaughlin v Liberty Mutual Ins Co*, 82 Mich App 708, 712; 267 NW2d 160 (1978). "A circuit court may have concurrent jurisdiction over certain issues, particularly those involving determination of rights arising out of an entirely different relationship than that of employer-employee." *Lulgjuraj v Chrysler Corp*, 185 Mich App 539, 545; 463 NW2d 152 (1990). However, the jurisdiction of the bureau is exclusive in matters where the employer-employee relationship is "substantially involved." *Id*.

The case of *Panagos v North Detroit Gen'l Hosp*, 35 Mich App 554; 192 NW2d 542 (1971), cited by plaintiff, is instructive regarding whether the employer-employee relationship is merely incidental or unrelated to the cause of action. In *Panagos*, *supra* at 555, the plaintiff, an employee of the defendant hospital, cut her mouth during lunch on a foreign particle allegedly in a piece of pie that the plaintiff purchased in the hospital's cafeteria. The cut became infected, and the plaintiff allegedly lost teeth as a result of the infection. *Id*. The plaintiff was disabled from working for about fifteen weeks, during which time defendant voluntarily paid her workers' compensation benefits. *Id*. After returning to work, the plaintiff commenced a lawsuit against the defendant, claiming negligence and breach of warranty. *Id*. The defendant claimed that the trial court should have dismissed the matter because the Workers' Compensation Bureau had exclusive jurisdiction over the matter. *Id*. Finding for the plaintiff, this Court stated that the plaintiff's cause of action had nothing to do with the fact that the plaintiff also happened to be employed by the defendant. *Id*. at 559. The Court held that the plaintiff did not first have to seek relief from the Workers' Compensation Bureau because it was "clear that the employee-employer relationship [was] unrelated to the cause of action." *Id.*

In the present case, we conclude that the employer-employee relationship is not "at the heart" of plaintiff's claim in this matter nor is that relationship "substantially involved" to the extent that the Workers' Disability Compensation Bureau had exclusive jurisdiction. *Lulgjuraj, supra*. The circuit court was not deprived of jurisdiction in this case because the employer-employee relationship was "only incidentally involved." *Modeen v Consumers Power Co*, 384 Mich 354, 360-361; 184 NW2d 197 (1971), quoting *Bonney v Citizens' Mutual Auto Ins Co*, 333 Mich 435, 440; 53 NW2d 321 (1952).

As plaintiff accurately states, this is not a "controversy concerning compensation" as provided in MCL 418.841(1); MSA 17.237(841)(1), but rather defendant Weberman's and defendant law firm's retention of a $53,410.17 check erroneously made out to and sent only to the law firm. The funds that were sent to the law firm in error did not represent workers' compensation benefits or attorney fees. Compensation benefits had already been calculated to be $37,507, and defendants had accepted this calculation. Further, after receiving the $37,507 (less attorney fees and costs), defendant Hamilton agreed to accept $105,000 for future compensation benefits in a redemption agreement. Before plaintiff's request for a return of the $53,410.17, there is no indication that any of the defendants believed that defendant Hamilton was entitled to more benefits than what she had already received. In fact, defendant Weberman and the law firm had never released any of these funds to defendant

Hamilton, nor was she ever informed that such funds existed. Under these circumstances, it is apparent to this Court that the bureau did not have exclusive jurisdiction over this matter[1].

Further, defendant Hamilton also argues that she was prejudiced and denied due process in this matter. These assertions are without merit. Contrary to defendant Hamilton's assertions, she received the full amount of the workers' compensation benefits she was owed. With respect to the parties' assertion that the bureau itself agreed that it did not have jurisdiction over this matter, we conclude that regardless of why the bureau claimed that it did not have jurisdiction, the circuit court did not err in establishing jurisdiction over this matter.

Defendants argue that MCL 418.833(2); MSA 17.237(833)(2) precludes plaintiff from recovering the $53,410.17. We disagree. Statutory interpretation is a question of law that is reviewed de novo on appeal *Cardinal Mooney High School, supra* at 80; *Michigan Automotive Research Corp v Dep't of Treasury (After Remand)*, 222 Mich App 227, 231; 564 NW2d 503 (1997).

MCL 418.833(2); MSA 17.237(833)(2), known as the "one-year back rule," provides:

> When an employer or carrier takes action to recover overpayment of benefits, no recoupment of money shall be allowed for a period which is more than 1 year prior to the date of taking such action.

In the present case, the trial court determined that MCL 418.833(2); MSA 17.237(833)(2) was inapplicable because an overpayment of benefits was not involved. We agree with the trial court's conclusion. As previously stated, the $53,410.17 check was not an overpayment of benefits, but rather an erroneous payment made to defendant law firm. Examining the clear language of the statute, we conclude that the statute is inapplicable because this is not an "action to recover overpayment of benefits."

Defendant Hamilton also asserts that even if it is determined that the circuit court has jurisdiction and is not bound by the "one-year back rule," the doctrine of laches should apply in this case and prevent plaintiff from recovering the $53,410.17. Defendant Hamilton asserts that she has been severely prejudiced because she suffered a severe underpayment of workers' compensation benefits. We disagree. Defendant Hamilton was not severely prejudiced in this case. She had already received full benefits, including reduced benefits while benefits were being determined by the bureau and the WCAC, $37,507 (less attorney fees and costs) in 1995, and $105,000 (less attorney fees) as a settlement for future benefits in November, 1995. The November, 1995, agreement was a final settlement for workers' compensation benefits, and Hamilton signed a waiver releasing any further rights to Workers' Compensation benefits.

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[1] We note that unlike the circumstances in *Walley v Livonia Fire Dep't*, unpublished opinion per curiam of the Court of Appeals, entered June 6, 2000 (Docket No; 210436), the case cited by the parties at oral argument, the present case involved a redemption agreement.

Defendant Hamilton also asserts that the failure to enforce the one-year back rule would turn the entire Workers' Compensation Act into a meaningless piece of legislation. Defendant has failed to cite any authority to support this assertion; thus, this Court need not address this argument. *Weiss v Hodge (After Remand)*, 223 Mich App 620, 637; 567 NW2d 468 (1997).

Defendants Weberman and the law firm argue that under the election of remedies doctrine, plaintiff is prohibited from pursuing its legal and statutory claims of conversion and treble damages under MCL 600.2919a; MSA 27A.2919a because plaintiff has already prevailed on its equitable claim of unjust enrichment. We disagree. Because the election of remedies doctrine is "merely a procedural rule," *Riverview Co-op, Inc v The First Nat'l Bank and Trust Co of Michigan*, 417 Mich 307, 311; 337 NW2d 225 (1983), this issue presents a question of law that is reviewed de novo.

The election of remedies doctrine precludes "one to whom there are available two inconsistent remedies from pursuing both." *Id.* The purpose of the doctrine is to prevent double recovery for a single injury and not to prevent recourse to alternate remedies. *Id*. at 312; *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 91; 443 NW2d 451 (1989). If the wrongs for which the plaintiff seeks redress are separate and consistent, the doctrine of election of remedies does not bar the plaintiff's cause of action. *Riverview*, *supra* at 322. Further, a plaintiff may simultaneously pursue all available remedies regardless of legal consistency, as long as the plaintiff is not awarded a double recovery. *Jim-Bob, supra* at 92, quoting *Walraven v Martin*, 123 Mich App 342, 348; 333 NW2d 569 (1983).

The election of remedies doctrine requires satisfaction of three prerequisites: (1) the existence of two or more remedies; (2) the inconsistency between such remedies; and (3) a choice of one of them. *Riverview*, *supra* at 313. The test for inconsistency of remedies is as follows:

> For one proceeding to be a bar to another for inconsistency, the remedies must proceed from opposite and irreconcilable claims of right and must be so inconsistent that a party could not logically assume to follow one without renouncing the other. Two modes of redress are inconsistent if the assertion of one involves the negation or repudiation of the other. In this sense, inconsistency may arise either because one remedy must allege as fact what the other denies, or because the theory of one must necessarily be repugnant to the other. More particularly, where the election of a remedy assumes the existence of a particular status or relation of the party to the subject matter of litigation, another remedy is inconsistent if, in order to seek it, the party must assume a different and inconsistent status or relation to the subject matter. [*Production Finishing Corp v Shields*, 158 Mich 479, 494-495; 405 NW2d 171 (1987), quoting 25 Am Jur 2d, Election of Remedies, § 11, pp 653-654.]

In the present case, the election of remedies doctrine does not apply because the remedies sought by plaintiff are concurrent and cumulative rather than inconsistent. *Production Finishing Corp, supra* at 495. Under plaintiff's unjust enrichment claim, plaintiff sought a return of the $53,410.17 erroneous payment that defendant Weberman and the law firm had improperly retained. Contrary to defendant Weberman's and the law firm's assertion, once the $53,410.17 judgment was satisfied because of the trial court's judgment in favor of plaintiff on the unjust enrichment claim, plaintiff was not

barred from pursuing its additional claims. Under the claim of conversion that plaintiff continued to pursue after the $53,410.17 judgment was satisfied, plaintiff was not seeking a return of the $53,410.17, but rather additional damages, including treble damages and attorney fees pursuant to MCL 600.2919a; MSA 27A.2919(1). Plaintiff did not seek a double recovery in this case. Although the unjust enrichment claim and the conversion claim arose out of the same course of conduct by defendant Weberman and the law firm, each claim also sought different damages, e.g., the conversion count requested damages and fees under MCL 600.2919a; MSA 27A.2919(1) while the unjust enrichment count did not. Thus, defendant's assertion is without merit.

Defendant law firm asserts that the trial court erred in awarding mediation sanctions to plaintiff. We disagree. This Court reviews the trial court's decision whether to grant mediation sanctions de novo because it involves a question of law, not a discretionary matter. *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997).

MCR 2.403(O) provides, in relevant part:

> (1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation evaluation. . . .
>
> (2) For the purpose of this rule "verdict" includes,
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> (a) a jury verdict,
>
> (b) a judgment by the court after a nonjury trial,
>
> (c) a judgment entered as a result of a ruling on a motion after rejection of the mediation evaluation.

Before mediation, the trial court granted summary disposition in favor of plaintiff on plaintiff's unjust enrichment claim in the amount of $53,410.17 plus interest. The law firm satisfied the judgment. Thereafter, the trial court entered an order limiting the mediation to plaintiff's fraud and conversion claims. Mediation resulted in an award of $19,000 against defendant law firm, which plaintiff accepted and defendant law firm rejected. The jury trial resulted in a verdict against defendant law firm in the amount of $53,410.17.

Although defendant law firm asserts that mediation sanctions are unavailable because the jury verdict is not payable (i.e., it has already been satisfied), we disagree that mediation sanctions were improperly awarded. Defendant law firm argues that the decision whether to award mediation sanctions under MCR 2.403(O) should be based on the jury verdict against it in the amount of $53,410.17 reduced by the amount already paid (i.e., $53,410.17). However, applying the clear language of MCR 2.403(O) as written, *Great Lakes Gas*, *supra* at 130, this setoff is not allowed. MCR 2.403(O)(3) specifically enumerates those adjustments allowed to a jury verdict. MCR 2.403(O)(3) states, in relevant part:

> For the purpose of subrule (O)(1), a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the mediation evaluation, and, if applicable, by making the adjustment of future damages as provided by MCL 600.6306; MSA 27A.6306.

This Court has previously held that when determining whether mediation sanctions are warranted, adjustments to a verdict other than those listed in MCR 2.403(O)(3) are not allowed. For example, in *Marketos v American Employers Ins Co*, 240 Mich App 684, 698-701; 612 NW2d 848 (2000), this Court reversed the trial court's denial of mediation sanctions to the plaintiff after the trial court improperly deducted a setoff from the verdict before determining if mediation sanctions were warranted. The *Marketos* Court stated that the "plain language of MCR 2.403(O) requires the trial court to award mediation sanctions if the jury verdict itself, *adjusted only as set forth in MCR 2.403(O)(3)*, is not more favorable to the rejecting party then [sic] the mediation evaluation." *Id* at 700 (emphasis added). In addition, in *Frank v Kibbe & Associates, Inc.*, 208 Mich App 346, 352; 527 NW2d 82 (1995), this Court concluded that the trial court erred in reducing future damages to present cash value before determining if mediation sanctions were appropriate. The Court stated that the trial court "should have considered the amount of the jury verdict, adjusted only as permitted by MCR 2.403(O)(3), when determining if sanctions were required." *Id*. Applying the law to the present case requires the conclusion that for purposes of determining the propriety of mediation sanctions, the jury verdict of $53,410.17 against defendant law firm cannot be adjusted by deducting the amount already paid. Hence, the trial court did not err in awarding mediation sanctions to plaintiff because "the jury verdict of $53,410.17 was more favorable to Plaintiff than [the] mediation award [of $19,000] rejected by defendant law firm."

Defendants Weberman and Hamilton also argue that the trial court erred in failing to award them mediation sanctions. We disagree and conclude that regardless of whether the prior version or the amended version of MCR 2.405 applies here, Weberman and Hamilton are not entitled to an award of costs or sanctions.[2] This Court reviews the trial court's decision whether to grant sanctions de novo because it involves a question of law, not a discretionary matter. *Great Lakes Gas, supra* at 129. Further, the "interpretation and application of court rules presents a question of law that this Court reviews de novo." *Reitmeyer v Schultz Equipment & Parts Co, Inc,* 237 Mich App 332; 602 NW2d 596 (1999)

The May, 1997, mediation resulted in an award of $0 against defendants Weberman and Hamilton. Both defendants accepted; plaintiff rejected. On June 27, 1997, plaintiff made an offer

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[2] Although defendant Weberman asserts that he is entitled to mediation sanctions under MCR 2.403(O), MCR 2.403(O) is inapplicable because an offer of judgment was made and thus, MCR 2.405 applies. In any event, although the mediation resulted in an award of $0 against defendant Weberman, the jury found him liable for the $53,410.17 that he knowingly converted. The jury verdict cannot be reduced by the amount already paid, and, thus, the jury verdict was not more favorable to Weberman than the zero mediation award rejected by plaintiff. Therefore, mediation sanctions under MCR 2.403(O) are not warranted.

of judgment to defendant Weberman to dismiss its action against Weberman for entry of judgment in the amount of $19,000. Plaintiff also made an offer of judgment to defendant Hamilton, offering to dismiss its action against Hamilton with prejudice and without costs. Weberman and Hamilton made no response to plaintiff's offer. At trial, in August, 1997, a directed verdict was entered in favor of defendant Hamilton, and the jury found that Weberman had knowingly converted plaintiff's funds in the amount of $53,410.17. However, the $53,410.17 repayment to plaintiff had already been satisfied, so Weberman did not have to repay this amount. On March 4, 1998, defendants Weberman and Hamilton moved for mediation sanctions.

At the hearing on defendants Weberman's and Hamilton's motion, because plaintiff had made an offer of judgment after mediation that was rejected by defendants Weberman and Hamilton, the issue was raised regarding whether the prior version or the amended version of MCR 2.405 should be followed in this case. The trial court recognized that the amended MCR 2.405 became effective after the mediation, offer of judgment, and trial in this case. The court indicated that plaintiff had relied on the prior version of MCR 2.405 in making decisions regarding its case, and the court would not now penalize plaintiff. The trial court found that the prior version of MCR 2.405 controlled in this matter and that, pursuant to the prior version of MCR 2.405, Weberman and Hamilton were precluded from being awarded costs. Further, the court stated that defendants Weberman's and Hamilton's request for costs would still be precluded under the amended version of MCR 2.405.

At the time of mediation, the offer of judgment, and trial, MCR 2.405(E) provided:

> In an action in which there has been both the rejection of a mediation award pursuant to MCR 2.403 and a rejection of an offer under this rule, the cost provisions of the rule under which the later rejection occurred control, except that if the same party would be entitled to costs under both rules costs may be recovered from the date of the earlier rejection.

However, MCR 2.405(E) was amended, effective October 1, 1997, to significantly change the costs that a party could expect where mediation was unanimous:

> Costs may not be awarded under this rule in a case that has been submitted to mediation under MCR 2.403 unless the mediation award is not unanimous.

We conclude that regardless of which version of MCR 2.405 is applied here, the trial court properly denied defendants Weberman's and Hamilton's motion. The prior version of MCR 2.405 provides that "an offeree who has not made a counteroffer may not recover actual costs."

MCR 2.405(D)(2). Both defendants Weberman and Hamilton failed to counteroffer after they rejected plaintiff's offers; thus, they have no claim for "actual costs."[3] Further, with respect to Weberman, the adjusted verdict[4] (i.e., $53,410.17 plus interest and costs) was more favorable to plaintiff, the offeror, than the average offer[5] (i.e., $19,000); thus, plaintiff would be entitled to actual costs against Weberman, rather than Weberman being entitled to costs against plaintiff. MCR 2.405(D)(1).

Additionally, under the amended version of MCR 2.405, defendant Weberman is not entitled to costs because, as previously stated, the adjusted verdict ($53,410.17 plus interest and costs) was more favorable to the offeror than the average offer ($19,000). MCR 2.405(D)(1). Moreover, because the mediation award was unanimous in this case, neither Weberman nor Hamilton is entitled to an award of costs. MCR 2.405(E).

Relying on the doctrine of accord and satisfaction, defendant Hamilton argues that plaintiff's action is barred because the parties entered into an agreement to redeem liability. We disagree. The interpretation of contractual language is an issue of law that is reviewed de novo on appeal. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

MCL 418.835(1); MSA 17.237(835) provides in relevant part:

> After 6 months' time has elapsed from the date of a personal injury, any liability resulting from the personal injury may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of a worker's compensation magistrate.

In the present case, pursuant to the MCL 418.835(1); MSA 17.237(835), the parties entered into an agreement to redeem liability on November 30, 1995. "Accord and satisfaction is based on contract principles and is generally contractual in nature." *Nationwide Mutual Ins Co v Quality Builders, Inc*, 192 Mich App 643, 646; 482 NW2d 474 (1992). Generally, the construction of a redemption agreement is governed by the same rules as other settlements. *Beardslee v Michigan Claim Services, Inc*, 103 Mich App 480, 485; 302 NW2d 896 ((1981). "Further, the intent of the parties to a release, expressed in the terms of the agreement, governs the scope of the release." *Id*. The agreement itself must be examined to determine its meaning, and the contract will be enforced as written if it fairly allows only one interpretation. *Morley, supra*.

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[3] "Actual costs" means "the costs and fees taxable in a civil action and a reasonable attorney fee for services necessitated by the failure to stipulate to the entry of judgment." MCR 2.405(A)(6).

[4] "Adjusted verdict" equals "the verdict plus interests and costs from the date of filing of the complaint through the date of the offer." MCR 2.405(A)(5).

[5] "Average offer" equals the offer ($19,000 in this case) when no counteroffer has been made. MCR 2.405(A)(3).

The contractual language of the redemption agreement in question clearly indicates that the agreement was made for the purpose of releasing General Motors from all liability for Hamilton's workers' compensation benefits in exchange for $105,000.00. There is no indication in the agreement that General Motors agreed to release any rights, much less a future claim to an erroneous payment. Moreover, defendant Weberman and the law firm were not parties to the settlement agreement, so obviously General Motors did not agree to release them from any claim. There is no requirement that a redemption agreement settle all controversies between the parties. *Bugg v Fairview Farms, Inc.*, 385 Mich 338, 352; 189 NW2d 291 (1971); *Nunley v Practical Home Builders, Inc*, 173 Mich App 675, 681; 434 NW2d 205 (1988) ("A redemption agreement settling a workers' compensation claim would not necessarily bar a subsequent civil rights claim."). Defendant Hamilton's argument is without merit.

Plaintiff asserts that it is entitled to recover treble damages and attorney fees under MCL 600.2919a; MSA 27A.2919(1). Specifically, plaintiff argues that defendant Weberman is liable for treble damages and attorney fees under the statute because he aided the converter, defendant law firm, in concealing the funds. We disagree. Statutory interpretation is a question of law that is reviewed de novo on appeal. *Cardinal Mooney High School, supra* at 80; *Michigan Automotive Research Corp, supra* at 231.

In the present case, the trial court denied plaintiff's claim under MCL 600.2919a; MSA 27A.2919(1), which provides:

> A person damaged as a result of another person's buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property when the person buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney's fees. This remedy shall be in addition to any other right or remedy the person may have at law or otherwise.

Relying on *People v Kyllonen*, 402 Mich 135; 262 NW2d 2 (1978), and *Hovanesian v Nam*, 213 Mich App 231; 539 NW2d 557 (1995), the trial court reviewed the statute and concluded that no relief was available under the statute because defendant Weberman and the law firm had not bought, received, or aided in the concealment of stolen, embezzled, or converted property. The court concluded that the statute protected against "so called 'fencing' operations rather than the actual converter."

We agree with the trial court's legal analysis and conclusion to deny treble damages. In *Hovanesian, supra*, the plaintiff sued his landlord for the return of his security deposit. The plaintiff claimed that the landlord converted the security deposit and that treble damages were warranted pursuant to MCL 600.2919a; MSA 27A.2919(1). *Id*. at 237. Although this Court found that the landlord had wrongfully retained the security deposit, the landlord did not know that he had wrongfully retained the deposit when he did so. *Id*. Thus, the statute was inapplicable. The Court further stated: "Moreover, the act of retaining the security deposit did not amount to buying, receiving or aiding in the

concealment of stolen, embezzled or converted property." *Id*. Applying this statement to the instant case, defendant Weberman's act of wrongfully retaining the $53,410.17 check also did not amount to buying, receiving, or aiding in the concealment of stolen, embezzled or converted property.

The case of *Kyllonen, supra*, also supports the trial court's conclusion that there is no viable claim for treble damages. In *Kyllonen*, our Supreme Court addressed the application of a prior version of MCL 750.535; MSA 28.803 to thieves who conceal stolen property. The statute in question in the present case, MCL 600.2919a; MSA 27A.2919(1), mirrors the prior version of MCL 750.535; MSA 28.803. Specifically, the Supreme Court addressed the issue whether the criminal statute, which proscribed "aid[ing] in the concealment of . . . stolen property," was intended to exclude thieves who conceal property they have stolen. *Id*. at 139-140, 148. The Court stated that the statute was "directed towards those who assist the thief or others in the disposition or concealment of stolen property." *Id.* at 145. The Court further stated that "[t]o interpret the words 'buys', 'receives' or 'aids in the concealment' of stolen property to mean buying or receiving from one's self or aiding one's self in concealment is needlessly to corrupt a forthright and harmonious statute." *Id*. The Court held that the statute excluded thieves who concealed property they have stolen. *Id*. at 148.

After this Court's decision in *Kyllonen*, the Legislature amended the criminal statute to include the acts of "possessing" and "concealing" stolen or converted money or property, thereby including the actual converter or thief. *People v Hastings*, 422 Mich 267, 270-271; 373 NW2d 533 (1985). However, the civil statute, MCL 600.2919a; MSA 27A.2919(1), was not amended. The Legislature is presumed to know of existing legislation on the same subject. *Robinson v Shatterproof Glass Corp*, 238 Mich App 374, 380; 605 NW2d 677 (1999). Thus, as the trial court correctly stated in the instant case, when the Legislature amended the criminal statute, it presumably knew of the existence of MCL 600.2919a; MSA 27A.2919(1) and chose not to amend it. Consistent with the reasoning in *Kyllonen*, the language in MCL 600.2919a; MSA 27A.2919(1), which mirrors that of the prior criminal statute, applies only to those who buy, receive, or aid in the concealment of stolen, embezzled, or converted property. Because defendant Weberman personally converted the funds, he cannot buy, receive, or aid in the concealment of such property from himself. The trial court properly denied treble damages.

We affirm.

/s/ William C. Whitbeck
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey