

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

CHARLES WILSON,

Defendant-Appellant.

UNPUBLISHED

September 10, 2009

No. 286612

Oakland Circuit Court

LC No. 2007-086532-CZ

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court's order granting judgment in favor of plaintiff and requiring defendant to notify his pension administrator of a change in address. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant is an inmate in the custody of the Michigan Department of Corrections (DOC). The State Correctional Facility and Reimbursement Act (SCFRA), MCL 800.401 *et seq.*, authorizes the state to attach a prisoner's assets to reimburse the state for the cost of the prisoner's incarceration. MCL 800.403. Plaintiff filed suit in circuit court alleging that defendant's monthly pension of approximately \$2,600 from Chrysler Corporation was an "asset" as that term is defined in MCL 800.401a(a) and seeking an order directing that defendant notify his pension plan of a change in his address and that he direct the pension administrator to send pension payments to his prison account. The trial court entered such an order on June 30, 2008 from which defendant appeals.

Whether an order effectuates an alienation or assignment of pension funds under the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1056(d), and CFR 1.401(a)-13(c)(ii), is a question of law that we review de novo. *State Treasurer v Abbott*, 468 Mich 143, 148; 660 NW2d 714 (2003).

Defendant correctly states that his pension benefits are protected by the non-alienation and non-assignment provision of ERISA. Defendant then argues that *DaimlerChrysler v Cox*, 447 F3d 967 (CA 6, 2006) held that allowing the state to direct him where to have those benefits sent violates that provision. Defendant recognizes our Supreme Court's holding in *Abbott*, *supra*, but argues that *DaimlerChrysler* should control to the degree they conflict. We disagree.

As this Court noted in *State Treasurer v Sprague*, ___ Mich App ___; ___ NW2d ___ (Docket No. 281961, issued June 4, 2009), slip op at 3, there is no conflict between *Abbott* and *DaimlerChrysler* as to whether the state can order a defendant to direct that his pension be placed into his prison account. This Court noted that while our Supreme Court in *Abbott* “clearly held that such an order does not violate ERISA,” the Sixth Circuit in *DaimlerChrysler* specifically declined to address this issue. *Id.* Absent any determination by the Sixth Circuit, there is no conflict and *Abbott* controls.

Accordingly, the circuit court in this case correctly held that *Abbott* was controlling and allowed plaintiff to compel defendant to direct Chrysler to send his pension benefits directly to his inmate account.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro