

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

TIMOTHY SPRAGUE,

Defendant-Appellant,

and

JOHN GILMAN,

Defendant,

and

DOW CHEMICAL EMPLOYEES CREDIT
UNION,

Defendant-Appellee.

FOR PUBLICATION

June 4, 2009

No. 281961

Bay Circuit Court

LC No. 07-003569-CZ

Advance Sheets Version

Before: Bandstra, P.J., and Whitbeck and Shapiro, JJ.

SHAPIRO, J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusion that under *State Treasurer v Abbott*, 468 Mich 143; 660 NW2d 714 (2003), the State Treasurer had the authority to require defendant to notify his former employer, Dow Chemical Company, that his pension benefits should be mailed to his prison address rather than deposited directly into his credit union account. I also agree that once pension funds have been deposited into a prisoner's account, whether that is a prison account or an account held in an outside financial institution, the State Treasurer may obtain an order directing that institution to disburse the appropriate portion of those funds to the state. However, I do not agree that the state itself may direct the pension plan where to disburse the prisoner's pension benefits. As set forth in *DaimlerChrysler Corp v Cox*, 447 F3d 967 (CA 6, 2006), the Employee Retirement Income Security Act, (ERISA), 29 USC 1056(d)(1), contains an anti-alienation provision that "obligates a plan to protect benefits from alienation 'at least up to the

point of payment.” *Id.* at 974, quoting *Guidry v Sheet Metal Workers Nat’l Pension Fund*, 39 F3d 1078, 1082 (CA 10, 1994) (en banc). I believe that the reasoning of *DaimlerChrysler* is persuasive particularly in its conclusion that a state order to the pension fund to deposit the disbursements into a prison account is a “mere formalism that is not dispositive of whether an alienation has occurred.” *Id.* at 976.

Accordingly, I respectfully dissent from that portion of the opinion approving an order directing the pension fund to direct the monies to the prison account. I concur in all other respects.

/s/ Douglas B. Shapiro