

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

MICHAEL A. GIUCHICI,

Defendant-Appellant.

UNPUBLISHED

March 22, 2002

No. 228445

Lapeer Circuit Court

LC No. 00-028156-CZ

Before: Neff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant, a prison inmate, appeals by right from a judgment for plaintiff on plaintiff's complaint for reimbursement of costs for incarcerating defendant. We affirm.

We have combined defendant's stated issues for ease of discussion. We first address defendant's argument that plaintiff's complaint was frivolous and poorly grounded in fact and law, according to MCR 2.114(D)-(F), 2.625(A)(2), and MCL 600.2591. We review this issue for clear error. *Aguirre v Secula*, 194 Mich App 22, 24; 486 NW2d 60 (1992). To the extent that the circuit court may have ruled on this case pursuant to defendant's summary disposition motion under MCR 2.116(C)(7), (8), and (10), we review the issue de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Contrary to defendant's argument, a majority of the pertinent facts in the complaint are undisputed by defendant. Defendant concedes that he received a substantial inheritance in his prisoner account, and that plaintiff incurred some expense on his behalf, as the record shows. The State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 *et seq.*, provides:

If the attorney general . . . has good cause to believe that a prisoner has sufficient assets to recover not less than 10% of the estimated cost of care of the prisoner . . . , the attorney general shall seek to secure reimbursement for the expense of the state of Michigan for the cost of care of that prisoner. [MCL 800.403(2); *State Treasurer v Sheko*, 218 Mich App 185, 189; 553 NW2d 654 (1996).]

Defendant counters that he paid the costs of his incarceration, pursuant to the Correctional Industries Act (CIA), MCL 800.321 *et seq.*, which states its intent in part: "to . . . [u]tilize the labor of inmates . . . for reimbursing the state for expenses incurred by reason of their crimes and imprisonment" MCL 800.331. Defendant misinterprets this section to

mean that because he was employed at the prison during his incarceration at below minimum wage, the balance has served to pay off his incarceration costs. Initially, we note that defendant is not entitled to a minimum wage while incarcerated. *Manville v Bd of Governors of Wayne State University*, 85 Mich App 628, 631-632; 272 NW2d 162 (1978). Defendant's claim is unfounded for two more reasons. First, adhering to the principle that statutes should be interpreted as consistent with each other, the more specific SCFRA provisions allowing appropriation control the more general provision in the CIA. *In re Brown*, 229 Mich App 496, 501; 582 NW2d 530 (1998); *Manville, supra* at 635-636. The CIA's stated purpose of "reimbursement" likely refers to the general concept of repaying a societal debt rather than a specific accounting of a prisoner's daily wages earned versus the prison's daily expenses incurred.

Second, defendant admitted he had not calculated the balance of his reduced wage, and whether it approached the \$269,550 estimated cost of incarcerating defendant since 1979. In his summary disposition motion, defendant was responsible for establishing facts to indicate that he had paid the debt, a fact indicating that the complaint failed to state a claim, or a genuine issue of material fact in his favor. MCR 2.116(C)(7), (8), (10); MCL 800.406(2); *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Because defendant failed to do so, we conclude that the trial court did not err in sustaining the complaint under MCR 2.116(C)(8). MCR 2.114(D)-(F); MCR 2.625(A)(2); MCL 600.2591; *Aguirre, supra* at 24.

Defendant also argues that a Department of Corrections (DOC) administrative rule, 1999 AC, R 791.6639, which has the force of law, created a protected liberty interest in his prisoner account. *Town & Country Lanes Inc v Liquor Control Comm*, 179 Mich App 649, 658; 446 NW2d 335 (1989). This is a legal issue which we review de novo. *Michigan United Conservation Clubs v Dep't of Treasury*, 239 Mich App 70, 76; 608 NW2d 141 (1999), *aff'd* 463 Mich 995 (2001). Although prisoners are generally allowed to maintain funds in their accounts under 1999 AC, R 791.6639(1)-(4)(c), the rule also specifically allows withdrawal of the funds by the state pursuant to court order, 1999 AC, R 791.6639(8), as allowed under the SCFRA, MCL 800.404. Federal law suggests that "[p]risoners do have a property interest in the funds in their prison account, and the court must determine as a matter of law what process is due before an inmate's account can be docked by prison authorities." *Johnson v Dep't of Public Safety and Correctional Services*, 885 F Supp 817 (D Md, 1995); see also *Quick v Jones*, 754 F2d 1521, 1523 (CA 9, 1984). Due process generally requires some form of hearing before the deprivation of a property interest. *Brandon Twp v Tomkow*, 211 Mich App 275, 282-283; 535 NW2d 268 (1995). In the instant case, defendant had a hearing before the deprivation at issue, in compliance with the SCFRA, MCL 800.404(2), (5).

Further, we review a deprivation of a prisoner's property to determine if it was reasonably related to penological interests. *Bazzetta v Dep't of Corrections Director*, 231 Mich App 83, 88; 585 NW2d 758 (1998). Clearly, appropriating prison account funds for incarceration costs incurred by reason of defendant's crime is reasonably related to the valid penological goal of reimbursement and cost effectiveness. See *id.* A prisoner may not impede the state's clear statutory right to reimbursement by claiming that he would prefer to use his assets to pay the obligation of his choice. *Sheko, supra* at 189. Therefore, the court's order of appropriation for reimbursement was constitutional. 1999 AC, R 791.6639(8); MCL 800.401 *et seq.*; *Bazzetta, supra* at 88.

Finally, defendant alleges that his individual cost of incarceration cannot be determined with certainty, thus making plaintiff's assessment based on an estimation unconstitutional. In three places in the SCFRA, MCL 800.402, 800.403(2), and 800.406(2), the act specifically provides for an estimation of incarceration costs for reimbursement purposes. *State Treasurer v Schuster*, 456 Mich 408, 421 n 3; 572 NW2d 628 (1998).

The department of treasury may determine the amount due the state in cases under this act and render statements thereof, and such sworn statements shall be considered *prima facie evidence* of the amount due. [MCL 800.406(2) (emphasis added).]

Plaintiff did offer an affidavit of a department official indicating the cost of incarceration for defendant. MCL 800.406(2).

The Attorney General must have good cause to believe that (1) a prisoner has enough assets to recover at least ten percent of the *estimated* cost of care of the prisoner or (2) ten percent of the *estimated* cost of care of the prisoner for two years, whichever is less. [*Schuster, supra* at 421 n 3 (emphasis added).]

Similarly, plaintiff did allege "good cause" regarding defendant's assets and the estimated costs of defendant's care. *Id.*

The specific statute at issue here authorizes an estimation of incarceration costs. MCL 800.402, 800.403(2), 800.406(2); *Schuster, supra* at 421 n 3. There does not appear to be a fair chance of uncovering factual support for defendant's claim that the actual cost of care will not exceed the amount appropriated. *Sheko, supra* at 190. Considering that statutes are presumed constitutional, a per capita estimation of costs is proper in reimbursement cases, particularly where defendant has offered no evidence to the contrary. *Schuster, supra* at 413; *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999).¹

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

¹ Defendant cites *Dep't of Revenue of Montana v Kurth Ranch*, 511 US 767; 114 S Ct 1937; 128 L Ed 2d 767 (1994), for his position that the estimated cost assessed to defendant is unconstitutional. However, that case is inapposite because it addressed a double jeopardy issue concerning the nature of a civil sanction. *Id.* Moreover, case law does allow civil damage awards to be estimated with reasonable certainty. *Bonelli v Volkswagen of America, Inc.*, 166 Mich App 483, 512; 421 NW2d 213 (1988); *McNabb v Green Real Estate Co.*, 62 Mich App 500, 517; 233 NW2d 811 (1975).