

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

ROY O. YARYAN and TERRY L. YARYAN,
POA,

Defendants-Appellants,

and

CHARLES SCHWAB & COMPANY, INC.,

Defendant.

UNPUBLISHED

October 5, 2010

No. 292524

Oakland Circuit Court

LC No. 2008-093843-CZ

Before: WILDER, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

Defendants Roy and Terry Yaryan appeal as of right from the circuit court's order allowing plaintiff to recover Roy Yaryan's assets pursuant to the State Correctional Facility Reimbursement Act ("SCFRA"), MCL 800.401 *et seq.* We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant Roy Yaryan is a state prisoner. Plaintiff obtained orders of reimbursement for the cost of his care under the SCFRA. Assets recoverable under the SCFRA include pension and retirement benefits. MCL 800.401a(a). The trial court determined that Yaryan's pension benefits and 401(k) plan funds were subject to plaintiff's right to reimbursement and ordered Yaryan to inform his plan administrator to send his benefits to his prison address for deposit into his prisoner account. Relying on *DaimlerChrysler Corp v Cox*, 447 F3d 967 (CA 6, 2006), defendants contend that the trial court's orders violate 29 USC 1056(d)(1), the anti-alienation provision of the Employee Retirement Income Security Act ("ERISA"), 29 USC 1056(d)(1), *et seq.* We disagree.

Whether a trial court's order effectuates an assignment or alienation of pension funds is a question of law that is reviewed de novo on appeal. *Selflube, Inc v JJMT, Inc*, 278 Mich App 298, 306; 750 NW2d 245 (2008). Statutory interpretation is also a question of law that is

reviewed de novo on appeal. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003).

The law is clear that the state can obtain reimbursement from pension funds in a prisoner's possession. *State Treasurer v Abbott*, 468 Mich 143, 153-154; 660 NW2d 714 (2003); *DaimlerChrysler*, 447 F3d at 976. In *Abbott*, 468 Mich at 150-151, the Supreme Court held that the state can order a prisoner to direct his plan administrator to send his pension benefits to his prison account and can order the plan administrator to send the benefits to the prisoner's account if the prisoner does not do so himself without violating ERISA's anti-alienation provision. In *DaimlerChrysler*, the Sixth Circuit Court of Appeals held that a state order directing the plan administrator to send the benefits to the prisoner's account violates the anti-alienation provision, but it declined to consider whether the anti-alienation provision precludes the state from ordering the prisoner to direct his plan administrator to send his pension benefits to his prison account. *DaimlerChrysler*, 447 F3d at 976. Therefore, the two cases do not conflict with respect to the latter issue, on which *Abbott* is controlling. *State Treasurer v Sprague*, 284 Mich App 235, 240-242; 772 NW2d 452 (2009). Therefore, the trial court did not err in so ruling.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly