

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STATE TREASURER,

Plaintiff-Appellee,

v

WILLIAM T. LETZGUS,

Defendant-Appellant,

and

CHERYL L. BLAIN, CATHERINE S. TOWNE  
a/k/a CATHERINE S. DOWNING, and  
CHEMICAL BANK,

Defendants.

UNPUBLISHED  
January 15, 2013

No. 306679  
St. Clair Circuit Court  
LC No. 11-001765-CZ

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Before: TALBOT, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Defendant William T. Letzgus, a prison inmate, appeals as of right a September 26, 2011, trial court order entered pursuant to the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 *et seq.*, wherein the trial court ordered defendant to direct his pension plan to send his pension checks to his prison address and ordered the warden to direct 90-percent of the benefits from defendant's prison account to the state on a monthly basis. For the reasons set forth in this opinion, we affirm.

## I. BACKGROUND

This case involves the State Treasurer's (Treasurer's) attempt to recover pension payments from defendant<sup>1</sup> under the SCFRA. Defendant is a prison inmate at the Lakeland Correctional Facility serving a 20 to 40-year prison sentence that commenced in 2004. The SCFRA allows the Treasurer to file a complaint in the circuit court requesting that the court order a prisoner's assets be used to reimburse the state for expenses related to the prisoner's incarceration. MCL 800.404(1). The SCFRA defines "assets" to include "pension benefits" "belonging to or due a prisoner." MCL 800.401a(a). Upon the filing of a complaint, the circuit court must issue an order to show-cause why the prisoner's assets should not be applied to the cost of incarceration. MCL 800.404(2).

In 2006, the trial court ordered defendant to direct his pension plan to mail his pension benefit checks to his prison address and ordered the warden to direct 90-percent of the pension benefits from defendant's prison account to the state. Defendant failed to comply with the 2006 order and the trial court entered another order on March 19, 2007, awarding the state 90-percent of the assets in defendant's account at Eastern Michigan Bank.

On July 22, 2011, the Treasurer filed a complaint with the trial court alleging that defendant had again failed to comply with the court's previous orders. The Treasurer alleged that defendant had Cheryl L. Bain, his power of attorney, deposit his pension checks into an account at Chemical Bank. The Treasurer requested that the court freeze defendant's assets, appoint a receiver, order defendant to show-cause as to why his assets should not be used to reimburse the state under the SCFRA, and order defendant to have his pension checks sent to his prison address so that the warden could direct 90-percent of the benefits to the state.

On July 26, 2011, the trial court entered an order requiring defendant to show-cause as to why his assets should not be directed to the state under the SCFRA. The court also appointed a receiver over defendant's assets including his bank account and scheduled a show-cause hearing for September 26, 2011. In the order, the trial court indicated that, upon defendant's request, it would accommodate defendant if he needed assistance attending the hearing.

Defendant filed a written response on August 23, 2011, arguing that any alienation or assignment of his pension funds would violate the anti-alienation provision of the Employee Retirement Income Security Act (ERISA),<sup>2</sup> 29 USC 1056(d)(1), which provides that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." Defendant also argued that ERISA "pre-empts any state laws that relate to an employee benefit plan. . . ."

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<sup>1</sup> We will refer to William T. Letzgas as "defendant." The other defendants in this case are not involved in this appeal.

<sup>2</sup> It is not disputed that defendant's pension plan is covered by ERISA.

In response, the Treasurer argued that our Supreme Court in *State Treasurer v Abbott*, 468 Mich 143; 660 NW2d 714 (2003), held that a trial court could order a warden to direct a prisoner's pension benefits from his prison account to the state under the SCFRA without violating ERISA.

Following a hearing, the trial court ordered all of the assets in defendant's prison account and his checking account at Chemical Bank be disbursed to the state. The court also ordered Blain to forward to the state any of defendant's pension benefits that she had in her possession. In addition, the court ordered defendant to direct his pension fund to mail his pension benefits to his prison address, and it ordered the warden to make monthly distributions of 90-percent of the assets in defendant's prison account to the state.

On October 6, 2011, defendant signed a document notifying his pension fund of his prison address. Thereafter, defendant filed this claim of appeal.

## II. ANALYSIS

On appeal, defendant contends that the trial court alienated and assigned his retirement funds in violation of ERISA and in violation of his due process rights under the Fourteenth Amendment.

Whether a trial court's order constitutes an improper alienation or assignment of pension funds under ERISA involves a question of law that we review de novo. *Abbott*, 468 Mich at 148. We also review issues of statutory interpretation and constitutional issues de novo. *Id.*; *Kampf v Kampf*, 237 Mich App 377, 381; 603 NW2d 295 (1999).

The SCFRA permits a trial court to utilize a prisoner's "assets" to reimburse the state for costs associated with incarceration. MCL 800.404(3). The statute defines "assets" to include "income or payments to such prisoner from . . . pension benefits. . . ." MCL 800.401a(a). ERISA precludes alienation or assignment of a person's pension benefits as follows: "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 USC 1056(d)(1). ERISA does not define the terms "assignment" or "alienation," but United States Treasury regulations define the terms as "any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit which is, or may become, payable to the participant or beneficiary." 26 CFR 1.401(a)-13(c)(1)(ii); *Abbott*, 468 Mich at 149-150. Defendant argues that the trial court's order amounted to an assignment or alienation of his pension benefits in violation of ERISA.

In *Abbott*, our Supreme Court addressed an argument similar to the one defendant raises on appeal. Specifically, in that case, the trial court ordered the defendant prisoner to have his pension benefits sent to his prison address and it ordered the pension plan itself to send the benefits to the prison address in the event that the defendant failed to ask the fund to do so. *Id.* at 146. The trial court also ordered the warden to allocate a portion of the pension benefits to the state under the SCFRA. *Id.* at 145-146. On appeal, the defendant argued that the trial court's order violated ERISA's anti-alienation provision and this Court agreed. *Id.* at 146-147. In

reversing this Court's opinion, our Supreme Court held that the trial court's order did not amount to an assignment or alienation in violation of ERISA and reasoned as follows:

Sending a pension payment to a beneficiary *at his own address*, and *depositing it in his own account*, does not assign that payment. Neither the warden nor any other third person acquires a right or interest enforceable against the plan when the pension proceeds are sent to defendant at his current address.

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A property interest is assigned or alienated when it has been transferred to another person. The trial court here did not order defendant to have his pension proceeds sent to *another person's* address, [but rather] the court ordered defendant to receive the benefits *at his own address*. [*Id.* at 150-151 (footnote omitted) (emphasis in original).]

The Court concluded that the warden's access to the defendant's prison account "did not transfer any legal title to, or interest in, the funds to another person," where the account was in the defendant's name and legal title was not conveyed to the warden. *Id.* at 151.

In this case, like in *Abbott*, the trial court's order did not constitute an alienation or assignment of pension benefits in violation of 29 USC 1056(d)(1). Here, as in *Abbott*, the trial court did not order defendant to have his funds sent to another person, but instead, simply ordered him to have the benefits sent to his prison address. Furthermore, the trial court did not transfer legal title in the pension benefits to the warden or any other person and no other person had rights enforceable against the plan itself. Rather, the trial court ordered the warden to direct a portion of the funds to the state only after defendant received the funds at his prison address and deposited them into his prison account. Like in *Abbott*, the trial court's order in this case did not constitute alienation or assignment of defendant's pension benefits and it therefore did not violate ERISA.

Defendant contends that ERISA's anti-alienation provision extends to benefits once they have been disbursed to the beneficiary and he cites a dissenting opinion in *Guidry v Sheet Metal Workers Int'l Assn (Guidry II)*, 10 F 3d 700 (CA 10, 1993) (BROWN, J., dissenting), in support of his argument. However, defendant's argument was addressed and resolved in *Abbott*, where our Supreme Court explained, "[t]he prevailing view is that ERISA does not protect pension funds after the beneficiary receives them. We adopt this view and hold that *ERISA does not preclude distribution pursuant to the SCFRA after the funds are deposited in an inmate's account.*" *Abbott*, 468 Mich at 153-154 (emphasis added). Given that we are bound by our Supreme Court's precedent, the trial court did not violate ERISA when it ordered pension benefits held in defendant's bank account or prison account be directed to the state under the SCFRA. See *Paige*

*v Sterling Hts*, 476 Mich 495, 524; 720 NW2d 219 (2006) (all lower courts and tribunals are bound by decisions and orders issued by our Supreme Court).<sup>3</sup>

Defendant also cites *Guidry v Sheet Metal Workers Nat'l Pension Fund (Guidry I)*, 493 US 365; 110 S Ct 680; 107 L Ed 2d 782 (1990), in support of his contention that the United States Supreme Court “held specifically that it is inappropriate to approve any generalized equitable exceptions to [29 USC 1056(d)(1)].” Defendant’s reliance on *Guidry I* is misplaced. In that case, the Supreme Court held that a constructive trust imposed on future *unpaid* pension benefits violated ERISA’s anti-alienation provision. See *id.* at 367, 372, 376. Unlike in *Guidry I*, in this case, the trial court did not impose a constructive trust on defendant’s unpaid pension benefits and its order did not impact the plan itself. Rather the trial court order impacted pension benefits that had already been sent to defendant and deposited into his prison account. As previously noted, ERISA’s anti-alienation provision does not extend to pension benefits that have been disbursed to the pensioner. *Abbott*, 468 Mich at 153-154; see also *Guidry II*, 39 F 3d at 1083.

Next, defendant contends that ERISA pre-empts “any state laws that relate to an employee benefit plan” and “displaces all state laws that fall within the sphere of the provision.” To the extent defendant contends that the SCFRA is pre-empted by ERISA, defendant’s argument lacks merit. ERISA pre-empts “any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” covered by the statute. 29 USC 1144(a); *Mackey v Lanier Collection Agency & Serv*, 486 US 825, 829; 108 S Ct 2182; 100 L Ed 2d 836 (1988). In this case, the SCFRA is not pre-empted by ERISA because it is not a state law that “relates to” an employee benefit plan. Rather, as discussed above, SCFRA allows a trial court to “provide reimbursement to the state from ‘assets’ owned by a prisoner for expenses incurred in caring for the prisoner.” *Abbott*, 468 Mich at 149. Here, pursuant to SCFRA, the trial court ordered the warden to direct defendant’s pension benefits to the state only after they had been disbursed by the plan and received by defendant. The court’s order did not burden or infringe on the benefit plan itself. Thus, because the SCFRA does not relate to or have any impact on an employee benefit plan, it is not pre-empted by ERISA.

Finally, defendant contends that the trial court’s order violated his due process rights under the Fourteenth Amendment. Defendant fails to provide any meaningful analysis in support of this aspect of his appeal other than stating, “[d]ue process under an invalid court procedure is

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<sup>3</sup> Defendant acknowledges *Abbott*, but he contends that this Court’s holding in that case, i.e. *State Treasurer v Abbott*, 249 Mich App 107; 640 NW2d 888 (2001), reversed 468 Mich 143 (2003), and Justice Kelly’s dissent in *Abbott*, 468 Mich at 160 (KELLY, J., dissenting), “are the more rational paths toward compliance with the ERISA and the United States Supreme Court.” However, as this Court has previously recognized, the majority opinion in *Abbott*, 468 Mich at 143 is binding precedent upon this Court “until such time as our Supreme Court instructs otherwise.” *State Treasurer v Sprague*, 284 Mich App 235, 242; 772 NW2d 452 (2009); see also *Paige*, 476 Mich at 524. Accordingly, given that *Abbott* is binding precedent, this aspect of defendant’s argument lacks merit.

no due process at all.” To the extent defendant contends his substantive due process rights were violated, defendant’s argument fails where, as discussed above, the trial court’s order did not violate ERISA’s anti-alienation provisions and where defendant has failed to articulate any other grounds on which the SCFRA is unconstitutional. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) (“It is not sufficient for a party ‘simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.’”).

Similarly, defendant has failed to show that his procedural due process rights were violated. “The basic requirements of due process in a civil case include notice of the proceeding and a meaningful opportunity to be heard.” *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). In this case, defendant was served with a copy of the complaint and the order to show cause, a hearing date was set for more than 30 days after service, and defendant was given an opportunity to respond. Additionally, in the order to show-cause, the trial court informed defendant that he could request an opportunity to participate in any hearing and the court indicated that it would fashion a method for the hearing to accommodate defendant. While defendant submitted a written response to the Treasurer’s complaint and motion to show-cause, nothing in the record shows that he requested an opportunity to participate in the hearing. In sum, defendant has failed to show that his procedural due process rights were violated where he was given notice and a meaningful opportunity to be heard. *Al-Maliki*, 286 Mich App at 485.

Affirmed. No costs awarded to either party.

/s/ Michael J. Talbot  
/s/ Kurtis T. Wilder  
/s/ Cynthia Diane Stephens