

STATE OF MICHIGAN  
COURT OF APPEALS

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STATE TREASURER,

Plaintiff-Appellee,

v

TOD HOUTHOOFD,

Defendant-Appellant,

and

EDWARD JONES,

Defendant.

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UNPUBLISHED

July 16, 2015

No. 321975

Saginaw Circuit Court

LC No. 14-021865-CZ

Before: FORT HOOD, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Defendant, a state prisoner, appeals as of right a trial court order requiring remittance of 90% of the value of his individual retirement account (IRA) to plaintiff under the State Correctional Facilities Reimbursement Act (SCFRA), MCL 800.401, *et seq.* We affirm.

I. FACTUAL BACKGROUND

Defendant is a prisoner at a state correctional facility, incarcerated for solicitation to commit murder, MCL 750.157b. On January 13, 2014, plaintiff filed a complaint under the SCFRA, seeking 90 percent of the assets held in defendant's IRA account as reimbursement for defendant's cost of care. Plaintiff requested the court freeze his assets pending the outcome of the case.

Defendant was ordered to show cause why his assets should not be applied to reimburse the State for the cost of his confinement. He filed an answer to the complaint, contending that his IRA was protected by Employee Retirement Income Security Act's (ERISA's) anti-alienation provision, that the SCFRA violated the constitution, and that there were fatal discrepancies in plaintiff's pleadings.

At the show cause hearing, defendant raised several challenges including the fact that he was entitled to a trial by jury. He also contended that Judge Darnell Jackson had been recused from any proceeding relating to him.

The trial court ultimately denied all of defendant's claims and ruled in favor of the plaintiff. Defendant now appeals on several grounds.

## II. JUDICIAL DISQUALIFICATION

### A. STANDARD OF REVIEW

Defendant raises several challenges to the fact that Judge Jackson presided over this proceeding. He contends that Judge Darnell Jackson should have recused himself because of bias. Whether due process requires judicial recusal is a question of law, which we review de novo. *Okrie v State of Mich*, 306 Mich App 445, 469; 857 NW2d 254 (2014).

### B. ANALYSIS

"It is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process." *Caperton v AT Massey Coal Co, Inc*, 556 US 868, 876; 129 S Ct 2252; 173 L Ed 2d 1208 (2009) (quotation marks and citation omitted). However, only in an "extraordinary situation" does due process require a judge to recuse himself. *Id.* at 887. "A defendant claiming judicial bias must overcome a heavy presumption of judicial impartiality." *People v Jackson*, 292 Mich App 583, 598; 808 NW2d 541 (2011).

Here, the factual basis underlying defendant's claim of Judge Jackson's bias is a mystery. Nothing in Judge Jackson's behavior or rulings shows bias. Defendant highlights his prior criminal case.<sup>1</sup> In that case, we held that the circuit court had improperly reassigned a retired judge to defendant's case after we had remanded for resentencing. However, that opinion did not relate to Judge Jackson, nor is there any suggestion that the entire bench was prejudiced against defendant.

Defendant has presented no evidence, either in the lower court or on appeal, to suggest that Judge Jackson has a personal bias against him. Judge Jackson acknowledged on the record that defendant's resentencing had been assigned to him,<sup>2</sup> but noted that he had had no previous dealings with defendant. There was nothing to suggest that Judge Jackson held any personal bias against defendant. Thus, we find no merit to defendant's assertion of judicial bias.

## III. CLERICAL ERRORS

### A. STANDARD OF REVIEW

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<sup>1</sup> See *People v Houthoofd*, unpublished opinion per curiam of the Court of Appeals, issued February 18, 2014 (Docket No. 312977).

<sup>2</sup> Judge Jackson has since resentenced defendant. In *People v Houthoofd*, unpublished opinion per curiam of the Court of Appeals, issued May 14, 2015 (Docket No. 322592), a panel of this Court concluded that the trial court lacked jurisdiction because an application for leave to appeal was pending before the Supreme Court. Thus, the panel again remanded for resentencing.

Defendant next contends there are several clerical errors that he claims warrant reversal. First, he argues that plaintiff's claim is invalid because the attorney bar number listed in the signature line of the complaint did not match the bar number of the signing attorney, and the attorney used his shortened first name on the pleading. Defendant also highlights his proffered copy of the ex parte order to show cause, which required a person named Jeffrey L. Stack to show cause.

We review de novo the question of whether a pleading comports with the court rule. *Cranbrook Professional Bldg, LLC v Pourcho*, 256 Mich App 140, 142; 662 NW2d 94 (2003). To the extent that defendant raises new arguments on appeal, we review unpreserved issues for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

## B. ANALYSIS

“Under Michigan’s notice-pleading standard, the primary function of a pleading is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position.” *Yono v Dep’t of Transportation (On Remand)*, 306 Mich App 671, 683; 858 NW2d 128 (2014) (quotation marks and citation omitted); MCR 2.113(C)(1)(e). Yet, defendant does not cite any support for the proposition that an error in the signing attorney’s bar number or use of a shortened first name constitutes such a serious defect in the pleadings that he is entitled to summary disposition. MCR 6.435(A). Rather, these are inconsequential clerical errors. They did not prevent defendant from understanding the nature of the complaint, nor did they prevent him from adequately responding. To the contrary, defendant filed a well-researched and well-written answer to the complaint. Moreover, even if the error had affected the content of the pleadings, it was easily corrected with a motion to amend.

Defendant next highlights a copy of the ex parte order to show cause, wherein the name Jeffrey L. Stack is whited out in the body of the order. Defendant claims that his copy of the order required that Jeffrey L. Stack show cause. Yet, any argument that this error prejudiced him is spurious.<sup>3</sup> Defendant answered the complaint and did not appear to be under the illusion that Jeffrey L. Stack was required to respond to the complaint. The reference to Stack is clearly a clerical error—the name Tod Houthoofd appears in the caption line of the complaint and in every other paragraph. In fact, it appears that defendant was not even aware of the error until after he had responded to the complaint. Therefore, this claim also fails.

## IV. JURY TRIAL

### A. STANDARD OF REVIEW

Defendant next argues that he had a right to a trial by jury. This contention involves issues of constitutional law and statutory interpretation, which are legal questions that we review *de novo*. *Madugula v Taub*, 496 Mich 685, 695; 853 NW2d 75 (2014).

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<sup>3</sup> Defendant’s reliance on MCL 750.505 is irrelevant, as this is not a criminal proceeding.

## B. ANALYSIS

“A right to a jury trial can exist either statutorily or constitutionally.” *Madugula*, 496 Mich at 696. As with all questions of statutory interpretation, our goal is to give effect to the Legislature’s intent through focusing on the plain language of the statute. *Id.* “When a statute’s language is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted.” *Id.* (quotation marks and citation omitted).

At issue in this case is MCL 800.403, which provides:

- (1) The attorney general shall investigate or cause to be investigated all reports furnished under section 2.
- (2) If the attorney general upon completing the investigation under subsection (1) 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 or 10% of the estimated cost of care of the prisoner for 2 years, whichever is less, the attorney general shall seek to secure reimbursement for the expense of the state of Michigan for the cost of care of that prisoner.
- (3) Not more than 90% of the value of the assets of the prisoner may be used for purposes of securing costs and reimbursement under this act.

Further, MCL 800.404 provides:

- (1) The circuit court shall have exclusive jurisdiction over all proceedings under this act. The attorney general may file a complaint in the circuit court for the county from which a prisoner was sentenced, stating that the person is or has been a prisoner in a state correctional facility, that there is good cause to believe that the prisoner has assets, and praying that the assets be used to reimburse the state for the expenses incurred or to be incurred, or both, by the state for the cost of care of the person as a prisoner.
- (2) Upon the filing of the complaint under subsection (1), the court shall issue an order to show cause why the prayer of the complainant should not be granted. . . .
- (3) At the time of the hearing on the complaint and order, if it appears that the prisoner has any assets which ought to be subjected to the claim of the state under this act, the court shall issue an order requiring any person, corporation, or other legal entity possessed or having custody of those assets to appropriate and apply the assets or a portion thereof toward reimbursing the state as provided for under this act.
- (4) The amount of reimbursement under this act shall not be in excess of the per capita cost of care for maintaining prisoners in the state correctional facility in which the prisoner is housed.

(5) At the hearing on the complaint and order and before entering any order on behalf of the state against the defendant, the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, or other dependents and any moral obligation to support dependents to whom the defendant is providing or has in fact provided support.

(6) If the person, corporation, or other legal entity shall neglect or refuse to comply with an order under subsection (3), the court shall order the person, corporation, or other legal entity to appear before the court at such time as the court may direct and to show cause why the person, corporation, or other legal entity should not be considered in contempt of court.

(7) If, in the opinion of the court, the assets of the prisoner are sufficient to pay the cost of the proceedings under this act, the assets shall be liable for those costs upon order of the court.

(8) The state may recover the expenses incurred or to be incurred, or both, by the state for the cost of care of the prisoner during the entire period or periods, the person is a prisoner in a state correctional facility. The state may commence proceedings under this act until the prisoner has been finally discharged on the sentence and is no longer under the jurisdiction of the department.

No express right to a jury trial is provided in the statutory language. *Madugula*, 496 Mich at 696. Nor is there language permitting “an award of damages,” which is indicative of a legal remedy typical of a jury trial. See *id.* at 701-702. Moreover, the remedy provided in the SCFRA is one of reimbursement, and we have previously recognized that an action for reimbursement is an equitable action. *Wayne Co Sheriff v Wayne Co Bd of Comm’rs*, 196 Mich App 498, 510; 494 NW2d 14 (1992). Generally, if a controversy is equitable in nature, it is resolved by a court, not a jury. *Madugula*, 496 Mich at 705-706. The remedy provided for in the SCFRA also is analogous to the equitable remedy of a constructive trust or an action for restitution. Rather than entitling the plaintiff to a money judgment, the SCFRA entitles the plaintiff to a percentage of specific assets defendant possesses. See *People v Houston*, 237 Mich App 707, 716; 604 NW2d 706 (1999) (“[A]n order of reimbursement is not a fine; it is a species of restitution.”).

Further, nothing in the statutory language contemplates “another fact-finder whose determinations the court may be effectuating.” *Madugula*, 496 Mich at 702. In fact, the opposite is true, as seen in the following provisions: *the court* must issue an order to show cause when the attorney general files a complaint, MCL 800.404(2); at the time of the hearing on the complaint *the court* must issue an order requiring the appropriate person to remit the assets if it appears that the prisoner has any assets that ought to be subject to the claim, MCL 800.404(3); at the hearing on the complaint and before entering an order, *the court* must take into consideration any legal obligation of the defendant regarding spousal or child support or other moral obligation to support dependents, MCL 800.404(5), and; “[i]f, in the opinion of the court, the assets of the prisoner are sufficient to pay the costs of the proceedings under this act, the assets shall be liable for those costs upon order of the court” MCL 800.404(7).

Nor has defendant demonstrated a constitutional right to a trial by jury. The Michigan Constitution provides: “The right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law.” Const 1963, art 1, § 14. See also MCR 2.508(A). “If the nature of the controversy would have been considered legal at the time the 1963 Constitution was adopted, the right to a jury trial is preserved. However, if the nature of the controversy would have been considered equitable, then it must be heard before a court of equity.” *Madugula*, 496 Mich at 705-706. To make this determination, courts look not only at the nature of the underlying claim, but also at the relief the claimant requests. *Id.* at 706.

Here, Michigan first adopted the prison reimbursement act in 1935. See *Auditor Gen v Olezniczak*, 302 Mich 336, 346-347; 4 NW2d 679 (1942) (“Prior to the enactment of the prison reimbursement act it was the policy of the State of Michigan to furnish its prisoners such keep and maintenance gratuitously. That policy was changed upon the effective date of Act No. 253, Pub.Acts 1935.”). In regard to the nature of the claim, it does not appear amenable to a jury trial. In fact, defendant does not even suggest what, precisely, the jury’s function would be considering the straightforward formula set forth in the statute. This is not a civil matter wherein a jury could adjudicate a defendant’s wrongdoing nor calculate resulting damage. As for the relief the claimant requests, as noted *supra*, the statute provides for the equitable remedy of reimbursement. MCL 800.403; *Wayne Co Sheriff*, 196 Mich App at 510.

## V. ERISA

### A. STANDARD OF REVIEW

Lastly, defendant contends that his IRA was protected under ERISA’s anti-alienation provision. Whether a trial court’s order improperly alienates an ERISA-protected fund is a question of law that we review de novo. *Selflube, Inc v JJMT, Inc*, 278 Mich App 298, 306; 750 NW2d 245 (2008).

### B. ANALYSIS

Defendant fails to recognize that IRAs are specifically exempted from ERISA, and are not subject to ERISA’s anti-alienation provision, 29 USC 1056(d)(1). In *Selflube*, 278 Mich App at 316, the Court recognized that “[o]nce the funds are in an IRA, they are no longer protected by ERISA.” Accordingly, there is no merit to defendant’s argument.

## VI. CONCLUSION

Defendant does not demonstrate that he is entitled to a different fact-finder, that any clerical errors warrant dismissal, that he is entitled to a jury trial, or that his IRA account is protected through ERISA. We have reviewed all remaining claims and find them to be without merit. We affirm.

/s/ Karen M. Fort Hood  
/s/ Henry William Saad  
/s/ Michael J. Riordan