

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI EX REL CHRIS KOSTER, MISSOURI ATTORNEY GENERAL

Respondent

v.

LLOYDE COWIN

Appellant

DOCKET NUMBER WD75059

DATE: January 15, 2013

Appeal From:

Circuit Court of Cole County, MO
The Honorable Daniel Richard Green, Judge

Appellate Judges:

Division One
Thomas H. Newton, P.J., Joseph M. Ellis, and Gary D. Witt, JJ.

Attorneys:

Michael Shipley, Liberty, MO

Counsel for Appellant

Attorneys:

Denise Gabel, Jefferson City, MO

Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI EX REL CHRIS KOSTER, MISSOURI
ATTORNEY GENERAL, Respondent, v. LLOYDE COWIN, Appellant

WD75059

Cole County

Before Division One Judges: Newton, P.J., Ellis, and Witt, JJ.

Cowin is serving three life sentences. In 2011, after Cowin inherited \$16,025, the State filed a petition for the costs of Cowin's care during his incarceration pursuant to the Missouri Incarceration Reimbursement Act (MIRA). The parties stipulated that the State had incurred \$60,305 in costs for Mr. Cowin's incarceration from November 2008 through February 2012. The trial court entered judgment in favor of the State for the costs of Cowin's incarceration "past, present, and future," ordered Cowin to pay the funds in his bank account to the State, and ordered that ninety percent of all future deposits received in Cowin's inmate account, excepting wages and bonuses, be paid to the MIRA Revolving Fund. Cowin appeals.

REVERSED AND REMANDED.

Division One Holds:

In his sole point, Cowin argues that the trial court erred in its order against him because MIRA does not authorize a general judgment. He contends that section 217.835 permits the State to recover only those assets that an inmate "has" at the time of the MIRA hearing and that the "[c]ourt's authority is limited to applying existing assets to incarceration costs."

MIRA was enacted to provide a means for the State to be reimbursed for the cost of caring for and maintaining prisoners in the Department of Corrections. It permits the Attorney General to seek reimbursement from offenders by filing a petition in circuit court if having good cause to believe that the action will yield a specified amount of recovery.

MIRA's plain language does not authorize a judgment against the inmate for property the inmate does not have at the present time. "[H]as any assets" within subsection 217.833.3 is plainly set in the present, not future, tense. "Assets" as defined by the legislature includes property "belonging to or due an offender," but the definition does not suggest that "assets" includes property rights the inmate has not yet acquired. While money or property not yet in the inmate's possession may be subject to MIRA recovery, MIRA permits this attachment only when a legal right to those assets can be identified at the time of hearing. Here, however, the trial court's judgment orders recovery from assets not identified and not in existence at the time of the judgment.

The statute's plain language does not give the trial court authority to order the inmate to reimburse the State from assets unidentified and unknown at the time of hearing. We are obligated to enforce the law as written. Cowin's sole point is granted. We reverse and remand for further proceedings consistent with this opinion.

Opinion by Thomas H. Newton, Presiding Judge

January 15, 2013

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