No. SC88776

IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI, ex. rel., JEREMIAH W. (JAY) NIXON,
Attorney General, State of Missouri,

Respondent,

v.

RICHARD PETERSON,

Appellant.

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY, NINETEENTH JUDICIAL DISTRICT, DIVISION II, THE HONORABLE RICHARD G. CALLAHAN

RESPONDENT'S SUBSTITUTE BRIEF

JEREMIAH W. (JAY) NIXON
Attorney General

PAUL HARPER
Assistant Attorney General
Missouri Bar No. 52976

P.O. Box 899
Jefferson City, MO 65102
(573) 751-8826
(573) 751-4323 FAX
paul.harper@ago.mo.gov

ATTORNEYS FOR RESPONDENT

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Statement of Facts

On May 4, 2006, the State of Missouri, at the relation of Jeremiah W. Nixon, Missouri Attorney General, filed its petition for incarceration reimbursement under the Missouri Incarceration Reimbursement Act, §§ 217.825 to 217.841, RSMo, against Richard Peterson. (L.F. 1, 5-29). On May 5, 2006, the Circuit Court of Cole County, Missouri, issued a show cause order and ex parte order appointing receiver ordering Peterson to show cause why his assets should not be used to reimburse the State for his cost of care, and setting an initial show cause date of July 24, 2006. (L.F. 1, 30-32).

On May 30, 2006, Peterson filed a motion to quash due to insufficiency of service of process with a memorandum in support of his motion. (L.F. 1-2, 38-43). On the same day, Peterson filed a motion to dissolve the ex parte order. (L.F. 2, 44-45).

Peterson filed his answer to the petition on July 19, 2006. (L.F. 2, 49-54). In his answer, Peterson asserted that MIRA's definition of "assets" is unconstitutionally vague. (L.F. 50). But he asserted no affirmative defense nor counterclaim under § 536.150, RSMo, asking the court to review the Attorney General's administrative determination of good cause to file. (L.F. 49-54). Peterson merely alleged that the State failed to plead its claim because the State asserted no factual basis for its good cause determination. (L.F. 49-54). On July 20, 2006, Peterson filed a response to the show cause order. (L.F. 2, 68-97). This response also asserted that the State failed to establish a claim due to insufficient pleadings. (L.F. 74-76).

On July 19, 2006, the State filed its motion for summary judgment and its suggestions in support of summary judgment. (L.F. 2, 55-67; Supp. L.F. 2-21). Peterson

filed his response to the summary judgment motion on August 15, 2006. (L.F. 2, 107-44). The State filed its reply to the summary judgment response on August 22, 2007. (L.F. 3, 148-52).

On August 28, 2006, the trial court entered judgment in favor of the State, ordering that the funds in Peterson's inmate account and future deposits into that account, excluding wages and salary earned while incarcerated, be used to pay for his cost of care while incarcerated. (L.F. 3, 173-75).

Peterson filed his notice of appeal on September 24, 2006. (L.F. 3, 183-85).

Argument

I. Peterson's first point is moot. [Response to Point I]

In his first point, Peterson argues that the Circuit Court of Cole County should have transferred this case to the Missouri Supreme Court because of his constitutional challenges to MIRA. This point is moot; this matter is currently pending before the Missouri Supreme Court.

II. The trial court properly granted summary judgment because there is no genuine dispute as to a material fact and the State is entitled to judgment as a matter of law under the Missouri Incarceration Reimbursement Act (MIRA). [Response to Points II, III, & IV]

The State proved that it is entitled to summary judgment as a matter of law; the State demonstrated that Peterson is an offender with an asset. Peterson does not seem to be challenging these material facts. Rather, he argues that (1) the definition of "assets" in MIRA is vague, (2) the trial court did not afford him a post-deprivation hearing, and (3) the State did not prove that Attorney General had good cause to file this action. Each of these challenges fails as a matter of law because (1) a person of ordinary intelligence can understand the meaning of the word "assets" as defined in MIRA, (2) Peterson had sufficient opportunity to be heard, and (3) MIRA does not require that the State plead or prove facts supporting the Attorney General's administrative good cause determination.

A. The standard of review is de novo.

On appeal, the propriety of summary judgment is purely a question of law, making review essentially de novo. *I.T.T. Commercial Finance Corp. v. Mid-America Marine Supply Corp*., 854 S.W.2d 371, 376 (Mo. banc 1993). The record is reviewed in the light most favorable to the party against whom judgment was entered. *Id*. For a moving party to prevail at summary judgment, the moving party must show that: "(1) there was no genuine dispute as to the material facts on which he relies for summary judgment; and (2) based on those facts, he was entitled to judgment as a matter of law." *Parshall v.*

Buetzer, 121 S.W.3d 548, 553 (Mo. App. W.D. 2003) (citing *I.T.T.*, 854 S.W.2d at 380). Here, there is no dispute as to a material fact, and the State is entitled to judgment.

B. The State is legally entitled to summary judgment because Peterson has assets that are subject to MIRA.

MIRA authorizes the State, through the Office of the Attorney General, to seek to secure reimbursement from a current or former offender for the expense of the State for the costs of care incurred while the offender is or was maintained in a state correctional facility. §§ 217.825 – 217.841, RSMo. The cost of care incurred by the State includes the cost to the Department of Corrections for providing an offender's transportation, room, board, clothing, security, medical, and other normal living expenses. § 217.827.2, RSMo.

Under MIRA, an offender's cost of care is reimbursed to the State from the offender's assets. MIRA specifically states that property, real or personal, belonging to or due an offender, from any source whatsoever, constitutes assets obtainable by the State for the purposes of securing costs and reimbursement. § 217.827.1, RSMo. Specifically, the assets of an offender include "property, tangible or intangible, real or personal, belonging to or due an offender or a former offender, including income or payments to such offender from . . . any other source whatsoever." § 217.827.1(a), RSMo. The only exclusions to assets involve $50,000.00 of the value of a homestead and up to $2,500.00 of savings from wages and salary earned while the offender is in the state correctional center. § 217.827(1)(b), RSMo. The State may collect up to 90% of the value of an

offender's assets for the purposes of securing costs and reimbursement under MIRA. § 217.833.1, RSMo.

Under Rule 74.04, a summary judgment movant must support each statement of fact with "specific references to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue as to such facts." Rule 74.04(c)(1). The State supported its statement of material facts as provided by Rule 74.04.

The undisputed facts show that Peterson has assets that are subject to incarceration reimbursement. The undisputed facts show that he receives regular deposits into his inmate account such that he received $1,767.50 in deposits from sources other than wages and salary from October 1, 2005, to April 14, 2006. (Supp. L.F. 4, 18-21). These deposits into his inmate account are subject to incarceration reimbursement. *See, e.g.*, *State ex. rel. Nixon v. Koonce*, 173 S.W.3d 277, 286 (Mo. App. W.D. 2005) (affirming a MIRA judgment securing incarceration reimbursement through payments into an inmate account). Therefore, the funds in, and deposits into, his inmate account are subject to incarceration reimbursement.

C. Summary judgment was proper because no material facts are in dispute.

Under Rule 74.04(c)(2), "A denial may not rest upon the mere allegations or denials of the party's pleadings. Rather the response shall support each denial with specific references to the discovery, exhibits or affidavits that demonstrate specific facts showing that there is a genuine issue for trial." Rule 74.04 (c)(2). And "[a]ttached to the response shall be a copy of all discovery, exhibits or affidavits on which the response

relies." Rule 74.04(c)(2). When a response does not comply with Rule 74.04, the movant's statement is considered an admission of the truth of the statement by the responding party. Rule 74.04(c)(2); *Reese v. Ryan's Family Steakhouses, Inc.*, 19 S.W.3d 749 (Mo. App. S.D. 2000); *Mothershead v. Greenbriar Country Club, Inc.*, 994 S.W.2d 80, 85 (Mo. App. E.D. 1999).

Peterson admitted all of the material facts because he did not support his denial with reference to any exhibits or other documents filed with his summary judgment response. (L.F. 115). Moreover, in his response to the summary judgment motion, and on appeal, Peterson disputes the validity of the legal basis for judgment rather than the material facts. Therefore, because there was no dispute as to any material fact, the trial court did not err in granting the State's summary judgment motion.

D. Peterson's constitutional challenges fail as a matter of law. [Response to Points II & III]

Peterson's second and third points are essentially the same point alleging the same two constitutional violations: that MIRA is vague and uncertain, and that MIRA violates due process. In his second point, he argues that the trial court declined to rule on his constitutional challenges, while in his third point he argues that the trial court implicitly ruled on his challenges by granting judgment to the State. Nonetheless, his constitutional challenges fail as a matter of law.

1. The definition of "asset" in MIRA is neither vague nor uncertain.

For his first constitutional challenge, he contends that MIRA is unconstitutional because the term "asset" is vague and uncertain. But MIRA defines term "asset" such that a person of ordinary intelligence may understand its meaning.

The standard for determining whether a statute is unconstitutionally vague is whether the terms are understandable by persons of ordinary intelligence. *AG Processing, Inc. v. South St. Joseph Indus. Sewer Dist*., 937 S.W.2d 319, 322 (Mo. App. W.D. 1996). Courts, however, presume statutes to be constitutional and the burden is on the person challenging the statute. *Reproductive Health Services of Planned Parenthood of St. Louis Region, Inc. v. Nixon*, 185 S.W.3d 685, 688 (Mo. banc 2006). In reviewing the constitutionality of a statute, courts "resolve all doubt in favor of the acts validity" and "make every reasonable intendment to sustain the constitutionality of the statute." *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984).

MIRA has a very specific 193-word definition of "assets" that defines the term broadly. Essentially, assets include all property belonging to or due an offender, with only two exceptions. Specifically, under MIRA, assets are

> property, tangible or intangible, real or personal, belonging to or due an offender or a former offender, including income or payments to such offender from Social Security, workers' compensation, veterans' compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, or from any other source whatsoever, including any of the following:

a. Money or other tangible assets received by the offender as a result of a settlement of a claim against the state, any agency thereof, or any claim against an employee or independent contractor arising from and in the scope of said employee's or contractor's official duties on behalf of the state or any agency thereof;

b. A money judgment received by the offender from the state as a result of a civil action in which the state, an agency thereof or any state employee or independent contractor where such judgment arose from a claim arising from the conduct of official duties on behalf of the state by said employee or subcontractor or for any agency of the state;

c. A current stream of income from any source whatsoever, including a salary, wages, disability, retirement, pension, insurance or annuity benefits or similar payments;

§ 217.827(1)(a), RSMo. The only exclusions to assets involve $50,000.00 of the value of a homestead and up to $2,500.00 of savings from wages and salary earned while the offender is in the state correctional center. § 217.827(1)(b), RSMo.

Peterson seems to be challenging the statute on the basis that the definition of assets is unclear because the State did not exclude wages and salary earned while incarcerated, arguing that this definition is somehow vague because the funds in his inmate account include money earned though his prison wages and "hobby-craft projects" sold while incarcerated. (Appellant's Substitute Brief, p. 33). He argues that the statute "does not give a person of ordinary intelligence sufficient warning as to the

prohibited behavior." (Appellant's Brief, p. 32). Contrary to his arguments, MIRA prohibits no behavior and proscribes no conduct. MIRA is merely a statutory procedure for the reimbursement of costs of incarceration.

To support the contention that MIRA is vague, he provided an affidavit alleging that $2,875.50 of the $15,601.77 deposited into his inmate account from October 1, 1999, to July 2, 2006, was from salary and woodworking projects. (L.F. 128-29, 131-44). In its summary judgment motion, the State acknowledged the wage and salary exemption, specifying only the amount in the inmate account that came from other than wages and salary—the State excluded the salary earned monthly in its calculations. (Supp. L.F. 4, 19-21). And the judgment reflects these exclusions, specifically excluding wages and salary earned while incarcerated. (L.F. 174).

Because the term asset is defined such that a person of ordinary intelligence can understand it and because the trial court followed this definition, Peterson's vagueness challenge fails as a matter of law.

2. The trial court did not violate Peterson's due process rights because he had a sufficient opportunity to be heard on the matter.

For his second constitutional challenge, Peterson contends that MIRA violates his constitutional right of his due process by not providing for a post-deprivation hearing. But the process outlined in MIRA does not violate any constitutional requirements for due process.

MIRA includes a provision that gives the trial court the authority to appoint a receiver to protect and maintain an offender's assets pending the resolution of the proceedings. § 217.837.2, RSMo. The State requested this relief in its petition and the court granted it in the order to show cause. (L.F. 8, 30).

Peterson is not specifically challenging § 217.837, the initial freezing of his assets, or his notice of the action. His only challenge is that he did not receive a post-deprivation hearing. The record, however, reflects that had a reasonable opportunity to be heard in a reasonable manner.

For procedural due process to be satisfied, the person being deprived of a property interest "must receive notice and an opportunity for a hearing appropriate to the nature of the case. Due process contemplates the opportunity to be heard at a meaningful time and in a meaningful manner." *Moore v. Board of Educ. of Fulton Public Schools*, 836 S.W.2d 943, 947 (Mo. 1992). To determine whether a violation of due process has occurred, courts generally perform a two-step analysis: first, the court determines whether the individual was deprived of a constitutionally protected right; and, second, the court determines whether the procedures followed in the specific case were sufficient to satisfy due process requirements. *Laubinger v. Laubinger*, 5 S.W.3d 166, 174 (Mo. App. W.D. 1999). In this case, there is no dispute as to Peterson's protected interest in his inmate account. Therefore, the review of this case depends on whether the procedures followed in this case sufficiently satisfied the due process requirements.

When a court decides a case based on the filings of the parties, due process requires neither a formal hearing, nor an oral argument. *Id*. at 175-76. "The opportunity

to 'present reasons, either in person or in writing, why [a] proposed action should not be taken' is sufficient to satisfy due process." *Laubinger*, 5 S.W.3d at 176 (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985)) (emphasis in original).

Peterson's due process challenge is similar to the due process challenge in *State ex. rel Nixon v. Overmyer*, 189 S.W.3d 711, 716 (Mo. App. W.D. 2006). In *Overmyer*, the offender challenged the *ex parte* appointment of a receiver. The Court of Appeal, Western District, held that MIRA provides sufficient post-deprivation process for an offender because under MIRA the offender receives notice and has a sufficient opportunity to be heard. *Id.*

Peterson, like Overmyer, received notice and had sufficient opportunity to be heard. Peterson filed numerous documents during the course of the action, including his response to the State's summary judgment motion. (L.F. 38-45, 49-54, 68-97, 107-44, 145-47, 153-54). Given Peterson's numerous filings and that he was able to respond to the summary judgment motion, the risk of erroneous deprivation was slight. *See Laubinger*, 5 S.W.3d at 175-76. Moreover, given the fact that the petition and the trial court's order is subject to review upon the final dispensation of the case, additional process is not necessary because any other process would merely be superfluous, in that all issues are settled upon the final order of the court. *See id*. (holding that orders depriving an individual the use of her financial assets pending the entry of final dissolution of marriage was not a significant factor in determining what process is due such that an oral pre-deprivation hearing was not necessary). Peterson received all the process that was due to him.

The trial court did not violate Peterson's due process rights because Peterson had a sufficient opportunity to be heard under the procedure outlined in MIRA.

E. Peterson's good cause challenge fails as a matter of law because the State is not required to plead or prove good cause to prevail under MIRA. [Response to Point IV]

In Peterson's fourth point, he claims that the State did not prove that it had good cause to file the petition. But, the State does not need to plead or prove good cause to obtain a judgment under MIRA. *State ex. rel. Nixon v. Watson*, 204 S.W.3d 716, 720-21 (Mo. App. W.D. 2006).

Under MIRA, the process of incarceration reimbursement begins with the Attorney General making a determination, followed by his filing a petition. §§ 217.831 and 217.835, RSMo. Before the State may obtain reimbursement for an offender's cost of care, the Attorney General must make a determination that he has

> good cause to believe that an offender or former offender has sufficient assets to recover not less than ten percent of the estimated cost of care of the offender or ten percent of the estimated cost of care of the offender for two years, whichever is less, or has a stream of income sufficient to pay such amounts within a five-year period.

§ 217.831.3, RSMo.

1. The State does not need to plead facts supporting good cause to prevail under MIRA.

The Court of Appeals, Western District, addressed the issue of whether the State must prove good cause under MIRA in *State ex. rel. Nixon v. Watson,* 204 S.W.3d 716 (Mo. App. W.D. 2006). In *Watson,* an offender challenged a summary judgment motion on the basis that the State had not proven that it had good cause to file the petition. *Id.* at 718. The Court of Appeals, Western District, held that proof of the good cause amount is not an element of the State's claim under MIRA and that facts supporting good cause do not need to be pled or proven for the State to pursue and obtain incarceration reimbursement against an offender. *Id*. at 720-21. The Court of Appeals was correct in Watson.

Under MIRA, the issues before the trial court are limited. MIRA specifically mandates,

> At the time of the hearing on the complaint and order, if it appears that the person has any assets which ought to be subjected to the claim of the state pursuant to the provisions of sections 217.825 to 217.841, the court shall issue an order requiring any person, corporation, or other legal entity possessed or having custody of such assets, to appropriate and apply such assets or a portion thereof to satisfy such claim.

§ 217.835.3, RSMo. To prove its prima facie case under MIRA, the State needs to prove that the defendant is an offender who has assets. *Koonce,* 173 S.W.3d at 284. And good

cause is not an element of the State's claim. *Koonce*, 173 S.W.3d at 284-85; *Watson*, 204 S.W.3d at 720-21.

Here, Peterson does nothing more than Watson—he challenges the State's good cause to file based on the pleadings of the State, arguing that the State did not plead or prove good cause. In his response to the petition, he merely states that the State did not show that it had established good cause, but does not assert a defense based on a challenge to the State's good cause to file. (L.F. 52-53). And in his summary judgment response he reasserts the objection that the State failed to prove that the Attorney General had good cause to file without asserting sufficient facts to support this defense. (L.F. 114-16). Here, as in *Watson*, the judgment should be upheld because the State does not need to plead or prove good cause to prevail on a summary judgment motion.

Moreover, even if an offender may challenge good cause as a condition precedent, the State would merely need to allege that the Attorney General has determined that good cause exists to file the petition. Rule 55.16. Under Rule 55.16, "it is sufficient to aver generally that all conditions precedent have been performed or have occurred." And, in its petition, the State plead that this condition precedent has been satisfied. (L.F. 8).[1]

[1] Peterson argues that it is apparent from the face of the petition that the State did not have good cause to file. (Appellant's Substitute Brief, p. 35). But the State specifically alleged that Peterson "receives regular deposits into his inmate account" and attached a detailed inmate account statement showing those deposits. (L.F. 7, 20-22). *See* Rule 55.12 ("An exhibit to a pleading is a part thereof for all purposes"). The detailed inmate

Nonetheless, even if Peterson sufficiently raised a good cause challenge, the trial court does not have authority to review the Attorney General's good cause determination.

2. The Legislature never intended a defense based on good cause provision of MIRA.

MIRA has no provision for the court to review the State's good cause and does not list good cause as a defense to an action under MIRA. *See* §§ 217.825 to 217.841, RSMo. Instead, MIRA lists its defenses and exemptions in §§ 217.827, 217.835, and 217.837, RSMo. *See Overmyer*, 189 S.W.3d at 711 (holding that the exemptions in MIRA are the exclusive, all encompassing exemptions in an action under MIRA such that Chapter 513 exemptions do not apply).

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account statement shows the history of deposits from October 1, 2005, to April 14, 2006. Though the State did not need to plead or prove good cause, this inmate account statement, incorporated by reference in the petition, showed that the State was aware that Peterson received deposits into his account totaling $1,760.00 in this six-month period from sources other than wages and salary earned while incarcerated. Certainly, a reasonable person would conclude that an offender has a sufficient stream of income to believe that the State could recover $2,800 when an offender receives over $1,700 in six months—extrapolated to 5 years, this amount would be over $17,000. *See Koonce*, 173 S.W.3d at 279, 286 (discussing that the State had good cause to file when an offender received approximately $2,700 per year into his inmate account, which extrapolates to over $13,500 in five years).

Contrary to Peterson's argument, "the 'good cause' requirements of § 217.831.3 was never intended to serve 'as a protection to the offender by limiting the extent to which the State could deplete his assets in recovering the cost of incarceration.'" *Watson*, 204 S.W.3d at 720 (quoting *Koonce*, 173 S.W.3d at 285). The good cause provision is merely a cost-effectiveness measure and was never intended as a defense to the action under MIRA. As stated in *State ex. rel. Nixon v. Koonce*,

> Logically, the legislature did not want the Attorney General expending the State's limited resources in seeking reimbursement without some reasonable expectation of a minimum return. That being said, it would make no sense that at the hearing stage, after the Attorney General has already committed time and money to pursue the action, that the limitation would then be invoked to deny reimbursement, defeating the very purpose of the limitation -- to prevent the Attorney General from pursuing offenders from whom there was no reasonable likelihood of a recovery sufficient to justify the State's expenses in pursuing him.

Koonce, 173 S.W.3d at 284-85. There is no rationale for requiring the State to plead or prove facts supporting good cause. And, as set forth in *Koonce* and upheld in *Watson*, at the hearing a defendant in a MIRA action has no defense based on the good cause provision. *Koonce*, 173 S.W.3d at 285; *Watson*, 204 S.W.3d 720-21.

Admittedly, *Koonce* may be read to suggest that an offender may affirmatively void a petition if the offender takes some affirmative act to void the petition or the judgment; but *Koonce* provides no authority as to the procedure an offender may use to void the petition, nor does it establish an affirmative defense to the MIRA action.

Koonce, 173 S.W.3d at 284-85. The question then becomes how an offender can challenge the Attorney General's good cause determination, if at all.

3. No provision of law permits an individual to obtain review of the Attorney General's good cause determination.

As discussed above, MIRA does not provide a method for the review of the Attorney General's administrative good cause determination. Therefore, it is necessary to look beyond MIRA to find the procedure for the review of this decision. The procedures for review of administrative decisions are in Chapter 536, the Missouri Administrative Procedures Act. Specifically, when an administrative body renders a decision affecting the legal rights of an individual, where no other provision of law provides for the review of that decision, the individual may request a review of that decision under § 536.150, RSMo. *See State ex rel. Martin-Erb v. Missouri Com'n on Human Rights*, 77 S.W.3d 600, 605 (Mo. banc 2002) (discussing the review of the executive director's probable cause determination).

In a review under § 536.150, a court's review is limited. The reviewing court may not substitute its own discretion for that of the administrative body. § 536.150.1, RSMo. Rather, the reviewing court may only set aside the administrative decision if it "is unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion." § 536.150.1, RSMo; *Missouri Nat. Educ. Ass'n v. Missouri State Board. of Educ*., 34 S.W.3d 266, 274 (Mo. App. W.D. 2000). Peterson seems to be arguing this standard of review for the Attorney General's good cause determination. (Appellant's Substitute Brief, p. 37-38).

In *Martin-Erb*, the Missouri Supreme Court held that a probable cause determination could be challenged under § 536.150, RSMo. *Martin-Erb*, 77 S.W.3d at 605. But that holding does not apply here. The Missouri Supreme Court based its holding on the language of § 536.150, RSMo, applied to the particular facts of that case. The judicial review statute applies when an agency makes a "decision affecting the legal rights of an individual." The executive director's finding of a lack of probable cause—a "decision"—affected Martin-Erb's rights because of its timing. Had the decision been made earlier, Martin-Erb could have obtained a "right to sue" letter and asserted her discrimination claim in court. But, by the time the executive director ruled, the time for filing a circuit court action had run; Martin-Erb was able to pursue a claim only through the Commission; and the Commission's jurisdiction was dependent on a finding of probable cause. *Id*. at 607-08. While the finding as to probable cause thus affected Martin-Erb's legal rights, the finding of good cause by the Attorney General here did not. This case is parallel to the issuance by the Missouri Human Rights Commission of a decision before the deadline for filing a private action. In the case where the Commission issues a letter before the deadline, there can be no effect on the person's rights until the court acts. Similarly, under MIRA, the mere act of determining if the State has good cause to file has no effect on an offender's rights until a court acts on the State's petition.

4. The only issues properly before the trial court were those issues that may have been determined under MIRA because Peterson filed no counterclaims to challenge the good cause determination and asserted no factual basis for his alleged defense.

If Peterson could have invoked § 536.150, RSMO, he was required to do so through a counterclaim. Under Rule 55.32(a), a "pleading shall state as a counterclaim any claim that at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transactions or occurrence that is the subject matter of the opposing party's claim." And the failure to plead a counterclaim bars the pleader from having their claims heard. *Shinn v. Bank of Crocker*, 803 S.W.2d 621, 630 (Mo. App. S.D. 1990). Peterson never filed a counterclaim to review the Attorney General's administrative decision.

The good cause determination is the administrative decision the Attorney General makes to file the petition. § 217.831.3, RSMo. This determination arises out of the same transaction and occurrences that are plead in the petition: issues related to the assets of an offender. As such, any § 536.150 claim challenging the Attorney General's administrative decision would be an action that must be stated as a counterclaim to the MIRA petition under Rule 55.32(a).

Peterson took no steps to affirmatively void the petition. In his answer, Peterson neither asserted a counterclaim under § 536.150 challenging the administrative decision of the Attorney General, nor alleged facts that would void the petition. (L.F. 49-54). Furthermore, if indeed the good cause provision is a condition precedent that is

reviewable by the trial court, then under Rule 55.16, the denial "shall be made specifically and with particularity." Peterson did not state any denials with particularity. Instead, he merely stated that the State had "failed to establish" that the Attorney General had good cause to file such that it did not state a claim for with relief may be granted. (L.F. 52). Therefore, the only issues properly before the trial court were those issues that may be raised under MIRA. And the State proved its prima facie case under MIRA

Here, there is no dispute that Peterson is an offender who had funds in his inmate account. And there is no dispute that the funds in the inmate account, other than wages and salary earned while incarcerated, are in fact Peterson's assets. Because Peterson is a offender who has assets, § 217.835.3 mandates that those assets be appropriated and applied to satisfy the State's claim. Therefore, the trial court properly entered judgment in favor of the State.

5. If Peterson is correct and he has a remedy based on the good cause provision, this matter should be remanded for an evidentiary hearing.

If indeed a defense exists based on the good cause provision of MIRA, and if Peterson has sufficiently raised this defense, then ambiguity exists as to the standard for reviewing the State's good cause determination.

Peterson seems to be arguing that in a review of the State's good cause to file the petition the trial court may consider information not before the Attorney General at the time he made his good cause decision. Considering such information is impractical and beyond the contemplation of the language of MIRA, which merely requires *good cause to*

believe that the inmate has income from which reimbursement is possible. To determine whether the State had good cause to file, the only information considered must be information before the Attorney General at the time of the decision.

In determining the meaning of statutes, courts may take into consideration similar statues to assist in the meaning of the statute under consideration. *Citizens Elec. Corp. v. Director of Dept. of Revenue*, 766 S.W.2d 450, 452 (Mo. banc 1989). The term "good cause to believe" is also found in § 302.291.1, RSMo. Under § 302.291, the director of revenue may require a person to submit to an examination when the director has "good cause to believe" the person is incompetent or unqualified to retain his or her driver's license. § 302.291.1, RSMo.[2] In determining if the director of revenue had good cause to believe, the only evidence that may be considered is the information that the director considered. *Pous v. Director of Revenue*, 998 S.W.2d 129, 130 (Mo. App. W.D. 1999). "Whether the director abused her discretion in the case at bar turns on what facts were before her to be considered as the basis of 'good cause,' not what could have been presented to her." *Id.*

The good cause provision in MIRA "by its express terms, does not deal with what assets of the offender are subject to MIRA reimbursement, but deals solely with the

[2] One notable difference between the good cause determinations in §§ 302.291 and 217.831 is that § 302.291.10, RSMo, specifically provides for the review of the director's decision while MIRA does not specifically provide for the review of the Attorney General's decision.

authority of the Attorney General to file a MIRA petition." *Koonce*, 173 S.W.3d at 284. If an offender may invoke the good cause provision as a defense, as in § 302.291, the question is not what became known during the pendency of action, but rather what the Attorney General knew upon filing. The trial court should not consider any information unknown, or potentially unknowable, to the Attorney General at the time of filing. This court, however, does not need to reach these conclusions because Peterson is not entitled to a defense based on the good cause provision.

Conclusion

The judgment of the trial court should be affirmed.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

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PAUL HARPER
Assistant Attorney General
Missouri Bar No. 52976
P.O. Box 899
Jefferson City, MO 65102
(573) 751-8826
(573) 751-4323 FAX
paul.harper@ago.mo.gov

ATTORNEYS FOR RESPONDENT

Certificate of Service

The undersigned counsel hereby certifies that the foregoing brief was mailed, postage prepaid, this 2nd day of January 2008, to Michael T. George, Law Firm of Michael T. George, 7730 Carondelet Ave, Suite 303, St. Louis, MO 63105.

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PAUL HARPER
Assistant Attorney General

Certificate of Compliance

This brief includes the information required by Missouri Supreme Court Rule 55.03, and pursuant to Rule 84.06(b), the undersigned counsel hereby certifies that Respondent's brief complies with the type-volume limitation, in that, it was prepared with Microsoft Word (Times New Roman, 13-point font), and contains 6,127 words. In addition, the undersigned counsel hereby certifies that the enclosed diskette has been scanned for viruses and found virus free.

_____
PAUL HARPER
Assistant Attorney General