

Summary of SC91341, *William Wentworth Foster v. State of Missouri*

Appeal from the Cole County circuit court, Judge Paul C. Wilson

Submitted on briefs April 5, 2011; opinion issued Aug. 30, 2011

Attorneys: Foster, who is incarcerated in the department of corrections, represented himself. The state was represented by Megan Fewell of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An inmate appeals the circuit court's dismissal of his petition seeking a judgment declaring that the state could not seize funds deposited into his prison account under the state's incarceration reimbursement act because the act was passed after he committed the crimes for which he is incarcerated. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the judgment dismissing the inmate's suit. The inmate's petition was premature because it does not allege sufficient facts to show that the state's authority to seek reimbursement would be triggered under the act.

Facts: William Wentworth Foster was convicted in 1977 of capital murder, first-degree robbery and armed criminal action and was sentenced to the department of corrections, where he remains incarcerated. In 2009, department personnel notified Foster that any funds that anyone deposited into his prison account to pay for college correspondence courses or an attorney would be subject to seizure by the state, pursuant to the incarceration reimbursement act, section 217.825, RSMo 2000, *et seq.*, to reimburse the state for the cost of his incarceration. Foster, acting pro se, sought a judgment declaring that any funds deposited into his prison account would not be subject to seizure by the state. He claimed that applying the act to him would violate the state constitution because the act was passed after he committed the crimes that resulted in his incarceration. The state moved to dismiss Foster's petition. The circuit court ultimately dismissed Foster's petition, finding there was no controversy for it to adjudge because the state had not yet filed an action under the act seeking reimbursement from Foster for the cost of his incarceration. Foster appeals.

AFFIRMED.

Court en banc holds: (1) This Court reviews the trial court's grant of a motion to dismiss *de novo* (anew, not being bound by the trial court's findings). To the extent that *Schaefer v. Koster*, ___ S.W.3d ___, 2011 WL 2347507 *1 (Mo. banc), can be read as changing the standard of review from *de novo* to abuse of discretion in the context of a trial court's grant of a motion to dismiss, it no longer should be followed.

(2) Foster's petition is not ripe for review. A controversy can be ripe for review before a statute is enforced if the facts necessary to adjudicate the underlying claims are developed fully and the law at issue affects the plaintiff in a manner that gives rise to an immediate, concrete dispute. Here, the facts necessary to adjudicate Foster's constitutional claims are not developed fully because his petition does not allege that he will receive sufficient assets to trigger the state's

authority to seek reimbursement under the incarceration reimbursement act. Before filing a claim under the act, the attorney general must have good cause to believe that an offender has sufficient assets to recover not less than 10 percent of the offender's estimated cost of care or 10 percent of the offender's estimated cost of care for two years, whichever is less. Section 217.831.3. Here, Foster alleges only that someone might deposit money into his prison bank account to pay for a college correspondence course or to allow him to retain an attorney. It does not allege how much money he expects to receive, nor does it allege how much money presently is in his prison account. As a result, whether the anticipated gifts or other monies that may be deposited into Foster's account will be sufficient to trigger the state's authority to seek reimbursement under section 217.831.3 remains speculative.