

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI, EX REL.,
CHRIS KOSTER, ATTORNEY GENERAL,

Appellant-Respondent

v.

MARK BAILEY.

Respondent-Appellant

DOCKET NUMBER WD78947 and WD78982

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 24, 2016

Appeal From:

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

Appellate Judges:

Division Three
Gary D. Witt, P.J., James Edward Welsh, and Anthony Rex Gabbert, JJ.

Attorneys:

Michael Morris, Jefferson City, MO

Counsel for Appellant-Respondent

Attorneys:

Michael Shipley, Liberty, MO

Counsel for Respondent-Appellant

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

**STATE OF MISSOURI, EX REL., CHRIS KOSTER, ATTORNEY GENERAL,
Appellant-Respondent, v. MARK BAILEY, Respondent-Appellant**

WD78947 and WD78982

Cole County

Before Division Three Judges: Witt, P.J., Welsh, and Gabbert, JJ.

The State of Missouri appeals the circuit court's judgment in its lawsuit against Mark Bailey seeking reimbursement for the cost of Bailey's incarceration under Missouri's Incarceration Reimbursement Act ("MIRA"). The State contends that the circuit court erred in finding that Bailey's IRA was exempt from judgment under ERISA's anti-alienation provision. Bailey claims, on cross-appeal, that the circuit court erred in considering the State's "Certification of Costs" which was submitted the day after trial.

Affirmed in part; reversed and remanded in part.

Division Three holds:

The circuit court erred as a matter of law in holding that Bailey's IRA was protected by the anti-alienation provision in section 1056(d) of ERISA and that the resulting conflict between Missouri law and federal law compelled pre-emption. The applicable federal statutes, regulations, and case law establish that Bailey's IRA is excluded from coverage under ERISA, and, thus, MIRA is not pre-empted by ERISA as to this IRA. The judgment as to Bailey's IRA is reversed, and the cause is remanded for further proceedings on that issue.

The circuit court did not err in entering judgment against Bailey on the State's MIRA action due to the State's failure to present its estimated costs of care at trial. The State alleged in its petition that "the inmate costs per capita at [the facility where he was being held] were \$21,490.00" for 2012. Bailey failed to deny that allegation, and, thus, is deemed to have admitted it. In light of that, there is no justification for reversing the circuit court's judgment on that basis.

Opinion by James Edward Welsh, Judge

May 24, 2016

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