

STATE OF MICHIGAN
COURT OF APPEALS

TANYA JABER-VARBEDIAN,

Plaintiff-Appellee,

v

MICHAEL J. MCCOY,

Defendant-Appellant.

UNPUBLISHED

September 16, 2026

8:43 AM

No. 376273

Wayne Circuit Court

LC No. 94-453896-DS

Before: LETICA, P.J., and RICK and GARRETT, JJ.

PER CURIAM.

Defendant, Michael J. McCoy, appearing *in propria persona*, appeals by leave granted the order that denied his motion for reconsideration of the conclusion that he waived his statute of limitations defense applicable to the child support arrearage owed to the mother of his four children, plaintiff Tanya Jaber-Varbedian. *Jaber-Varbedian v McCoy*, unpublished order of the Court of Appeals, entered October 22, 2025 (Docket No. 376263). We reverse and remand.

I. FACTUAL AND PROCEDURAL HISTORY

The record reflects that in October 1994, plaintiff filed an action against defendant seeking child support. The court action referral alleged that paternity established defendant as the father of MJJ (d/o/b 3/1990), IAJ (d/o/b 5/1991), and twins JJJ-I and JJJ-II (d/o/b 7/11/1992). It was asserted that defendant, the absent father, was employed by Foodland Distributors in Livonia, Michigan. In 1995, 1996, and 1997, efforts were made to collect child support. A bench warrant was issued in 1995, and a hearing was held in 1996. According to notes of the disposition, defendant claimed that he failed to pay because he did not receive any mail at his grandmother's home and he was told that he would get a payment coupon book but never did.

In November 2007, defendant filed a motion to have the surcharge amount subtracted from the arrearage and a corresponding adjustment made to the arrearage amount. In December 2007, defendant reportedly owed \$75,025.40 in child support. The following month, the child support weekly amount of \$435 per month accumulated to an arrearage of \$92,057.68. Defendant then filed a request for relief from the surcharge. On a standard form entitled “Objections to Referee Recommendation,” defendant wrote that he sought relief from the “substantial burden of the

surcharge” in addition to a request for an accurate record of the arrearage, but neither request was granted. Defendant alleged that the referee stated that she did not have the discretion to cancel the past surcharge amounts. He asked the court for relief from the surcharges and an accurate arrearage amount to move forward with eliminating the balance. The referee made a recommendation that the surcharges terminate effective February 1, 2008.

In 2008, the Friend of the Court (FOC) sent a notice to the parties that defendant had requested a decrease in his current child support obligation on “03/21/1995.” Additionally, plaintiff failed to respond to the court’s request for her earnings for a 12-month period. It was noted that defendant was ordered to pay \$435 per month for the four minor children since March 21, 1995.¹ It was recommended that defendant pay plaintiff \$320 per month for the four minor children effective December 1, 2007. On February 22, 2008, defendant filed an objection to the FOC recommendation. He alleged that he had been unemployed since “early 2006” and had been aggressively seeking employment both in and out of state. Because of the economic downturn, defendant requested relief from the “overburdensome” support payment.

The FOC determined that defendant had worked in late 2007. It calculated his monthly child support obligation for the four minor children at \$320 per month. Defendant submitted a statement to the FOC acknowledging that he “must begin to pay support” as ordered by the court. But he continued to assert that he was unemployed and sought to enter community college to expand his career options. He sought to reduce his child support to \$75 per week.

Then, on January 8, 2024, defendant² filed a motion seeking an order to terminate the income withholding order. In the section of the motion form seeking court ordered relief, defendant asked:

That the FOC’s Income withholding action be immediately terminated and that all improperly seized monies be immediately returned. I am also requesting that sanctions are placed upon FOC to ensure that no further erroneous and egregiously unfair prosecutive actions can be initiated in the future.

With the form motion, defendant submitted a brief seeking to terminate the income withholding order. Defendant alleged that the four children reached the age of majority in 2008, 2009, and 2010. The FOC and Michigan Department of Health and Human Services acknowledged that the age of majority was 18. Moreover, court-ordered child support typically ended once the child reached the age of majority, resulting in case closure. Despite all of the children reaching the age of 18 by 2010, the child support case did not close until 2022. And, by statute, the period of limitations to collect child support was 10 years from the date the last support payment was due regardless of when the last payment was made. The statute was consistent with Michigan’s child support manual, and the statute of limitations precluded enforcement for arrearages. If the court

¹ The March 21, 1995 order required defendant to \$4 per week for each child until he was employed. Once employed, he was to pay \$100 per week for all four children.

² In this motion, defendant identified himself as plaintiff. For purposes of consistency, we will continue to address him as defendant.

allowed the FOC to continue income withholding, defendant asserted that his due process rights would be violated. Therefore, he requested the trial court to grant his motion to terminate the income withholding order, to order the return of any and all monies improperly withheld, and to order sanctions to prevent any further erroneous and egregiously unfair prosecutorial action.

On March 18, 2024, a referee heard defendant's motion. Only defendant appeared. The referee had reviewed defendant's motion and noted that she could not hear statute of limitations issues. The referee scheduled a court hearing for July 29, 2024. In the interim, the referee advised defendant that she would suspend the income withholding order and "put a hold on the account."

On March 19, 2024, the referee filed an interim order and recommendation. This recommendation stated:

Defendant/Father filed a motion for cancellation of the support arrears on this case based upon the Statute of Limitations. Essentially, that law says that once a debt becomes too old, it is unenforceable. This is an affirmative defense. In the case of child support the statute of limitations generally runs from the date the youngest child turned age 18. In this case, the youngest children (twins) turned age 18 in 2010.

Court records show that no payments of child support were made through the Court between September 2008 and January 2024. The Court began receiving payments from an income withholding order to the [defendant's employer] in January 2024. Defendant filed his motion for statute of limitations defense 1/8/24. The praecipe was filed 2/22/24 and the Scheduling Office sent out Notice of Hearing on the matter 2/24/24.

Per Docket Directive 2013-26, Statute of Limitations issues must be heard by the Judge. The Referee made no recommendation on the substance of the motion. The only action taken by the Referee was to preserve monies pending the hearing before the Judge.

The referee adjourned defendant's motion for cancellation of the support arrears to July 29, 2024, to be heard by the trial court. The referee recommendation provided that the order was only an interim order.

On July 29, 2024, a court hearing was held on defendant's motion. Plaintiff and defendant appeared in pro per, and an attorney appeared on behalf of the Wayne County FOC. When asked his position, defendant stated, "[T]he statute of limitations has passed on that debt and the state law says that that debt is unenforceable."

The FOC argued that the youngest children turned 18 years old in 2010, and the statute of limitations would have expired in July 2020. FOC records further revealed that there were no payments received between September 2008 and January 2, 2024. But on January 2, 2024, the FOC received a payment through an income withholding order. Because of the receipt of that payment, the statute of limitations was "revived or extended[.]" The FOC argued that defendant did not file his motion until January 8, 2024, which was after the FOC had already received payment under the income withholding order. Furthermore, the referee did not make a

recommendation addressing the “substance of the issue.” Thus, the FOC argued that the January 2, 2024 payment extended the statute of limitations such that defendant’s motion should be denied.

The trial court inquired of the FOC attorney whether 10 years of inactivity was sufficient or whether a motion had to be filed because “[i]t’s not anything that’s automatic.” The FOC attorney stated that because the statute of limitations was an affirmative defense, defendant “would’ve had to file a motion.”

The court then advised that defendant had to file a motion and “that would be your defense” to a payment that was made. Defendant interjected, stating that his understanding was a payment made before the statute of limitations expired “reinvigorates or restarts the tally of the clock” but not before that. The trial court advised defendant that because a payment occurred on January 2, 2024, and his motion was not filed until January 8, 2024, he could not succeed. It further advised that “there has to be literally no activity before you file your motion.” Defendant asserted that the court misunderstood the law. The trial court ruled that defendant’s motion was denied, and his remedy was to appeal to a higher court, stating:

I’m going to deny your motion for the reasons that I’ve stated on the record is that because the payment was received on January 2nd, 2024, the statute of limitations restarts and that you, [defendant], have to do something.

Now, had you filed your motion prior to that January 2nd, 2024 date, we’d be dealing with another issue, then it would qualify. But because your motion wasn’t filed until after that payment, then it doesn’t qualify, okay?

So that’s the ruling of the Court today. You will receive an order to that effect.

On July 29, 2024, the court entered an order denying defendant’s motion.³

On August 15, 2024, defendant moved for reconsideration of his motion to terminate income withholding. He argued that the court erroneously interpreted the clear and unambiguous language of the applicable statutes.

The clerk and scheduling office assigned the motion to the referee’s docket for hearing. However, because it was a motion for rehearing of the issue decided before the court on July 29, 2024, the referee referred the matter back to the judge.

On February 28, 2025, a hearing was held on “the motion for reconsideration of motion to terminate income withholding.” Plaintiff and defendant appeared in pro per, and the FOC was represented by the same counsel. Defendant argued that the court improperly imposed “an obligation or duty” to file a motion raising the statute of limitations. He argued that he had no such obligation, and the statute of limitations expired. Therefore, he owed no obligation to the

³ The court’s denial order reflected defendant’s erroneous designation of himself as the plaintiff when he filed his motion.

FOC or plaintiff. The FOC attorney answered that “the statute of limitations, it’s an affirmative defense so that he would have a duty to file a motion to invoke his - - the statute of limitations defense.” The FOC received payments between January and April of 2024, even though it stopped charging defendant in August 2010. And, again, caselaw held that the payment of an arrearage waived any statute of limitations defense.

After swearing the parties in, plaintiff advised that her youngest twins were born in 1992. The FOC concluded that the twins turned 18 years old on July 11, 2010. The trial court advised that the governing statutes were not automatically invoked. Defendant noted that the referee was in disagreement with that position and offered to read the statute to the court. Defendant also acknowledged that the FOC attorney referred to caselaw, but he claimed that it was distinguishable because there was a distinction between collection of arrears before the statute of limitations period expired. The trial court continued to assert that defendant was not entitled to an automatic elimination of the arrearage but had to bring an action before the court. (“I’m telling you, you have to file an action and assert statute of limitations as a defense. *** And you did not bring an action.”). After defendant questioned the trial court’s ruling and whether collusion was involved, the trial court advised defendant to appeal to a higher court, and the hearing ended.

On February 28, 2025, an order denying defendant’s motion for reconsideration of the motion to terminate income withholding was entered. On March 4, 2025, the trial court entered a second order, concluding that defendant’s payment on his arrearages waived his statute of limitations defense, the FOC was to reinstate the income withholding order, and any money on hold in the account was to be released.

II. STANDARD OF REVIEW

“Where no factual dispute exists . . . whether a claim is barred by the statute of limitations is a question of law that we review de novo.” *Wayne Co Social Servs Dir v Yates*, 261 Mich App 152, 154; 681 NW2d 5 (2004). “Issues involving statutory interpretation present questions of law that are reviewed de novo.” *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 495; 948 NW2d 452 (2019).

III. ANALYSIS

Defendant asserts that the trial court erred in concluding that he was required to file an original action and, as a plaintiff, raise the statute of limitations as an affirmative defense. Additionally, he contends that the trial court erred by determining the 10-year statute of limitations did not apply. We agree.

“A statutory limitations period represents a legislative determination of that reasonable period of time that a claimant will be given in which to file an action.” *Lothian v Detroit*, 414 Mich 160, 166; 324 NW2d 9 (1982). Although limitations periods were initially disfavored because of the harsh result, the modern view deems them “wise and beneficial.” *Id.* A number of public policy considerations support enforcement of limitations periods:

They encourage the prompt recovery of damages; they penalize plaintiffs who have not been industrious in pursuing their claims; they afford security against stale demands when the circumstances would be unfavorable to a just examination and

decision; they relieve defendants of the prolonged fear of litigation; they prevent fraudulent claims from being asserted; and they remedy *** the general inconvenience resulting from delay in the assertion of a legal right which it is practicable to assert. [*Id.* at 166-167 (quotation marks and citations omitted)].

A maxim in law concludes “that nothing can interrupt the running of the statute of limitation,” *id.* at 167 (quotation marks and citation omitted), but exceptions have been developed by the Legislature and the courts. The running of the statute of limitations may be suspended because of disabilities such as infancy, insanity, or imprisonment. *Id.*; see also MCL 600.6851. Additionally, the affirmative defense of the statute of limitations may be waived premised on a failure to plead it, by the parties’ agreement not to raise it, or by conduct which prevents a defendant from interjecting it. *Lothian*, 414 Mich at 167.

MCL 600.5809 addresses actions to enforce noncontractual money obligations and the time limitation to pursue such litigation, with subsection (4) applicable to child support:

(1) A person shall not bring or maintain an action to enforce a noncontractual money obligation unless, after the claim first accrued to the person or to someone through whom he or she claims, the person commences the action within the applicable period of time prescribed by this section.

(2) The period of limitations is 2 years for an action for the recovery of a penalty or forfeiture based on a penal statute brought in the name of the people of this state.

(3) Except as provided in subsection (4), the period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record of this state, or in a court of record of the United States or of another state of the United States, from the time of the rendition of the judgment or decree

(4) For an action to enforce a support order that is enforceable under the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 522.601 to 522.650 of the Michigan Compiled Acts, the period of limitations is 10 years from the date that the last support payment is due under the support order regardless of whether or not the last payment is made.

“The primary goal of statutory interpretation is to give effect to the intent of the Legislature.” *Briggs Tax Serv, LLC v Detroit Pub Schs*, 485 Mich 69, 76; 780 NW2d 753 (2020). Legislative intent must be discerned from the plain statutory language. *Perkovic v Zurich American Ins Co*, 500 Mich 44, 53; 893 NW2d 322 (2017). “When the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted.” *Id.* (quotation marks and citation omitted). The court’s interpretation of the statutory language “must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory.” *South Dearborn Environmental Improvement Ass’n, Inc v Dep’t of Environmental Quality*, 502 Mich 349, 361; 917 NW2d 603 (2018). “The courts may not read into the statute a requirement that the Legislature has seen fit to omit.” *Menard Inc v Dep’t of Treasury*, 302 Mich App 467, 471-472; 838 NW2d 736 (2013). “When the Legislature fails to

address a concern in the statute with a specific provision, the courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose." *Id.* at 472 (quotation marks and citation omitted).

As an initial matter, we note that the trial court denied defendant's motion by concluding that, to avail himself of the 10-year period of limitations, defendant was required to file a complaint and then raise the affirmative defense of the statute of limitations. The 10-year period addressing the statute of limitations in MCL 600.5809(4) for support actions contains no such requirement. The trial court read into the statute prerequisites that simply do not exist. *Menard Inc.*, 302 Mich App at 472. Moreover, the trial court failed to identify the cause of action that defendant would file to obtain relief, and how as a *plaintiff*, he would raise an affirmative defense. Because the trial court erroneously read conditions into the plain language of MCL 600.5809(4) not dictated by the Legislature and required defendant to take action not reflected in the legislative intent, we reverse the trial court's decision. The basis of the trial court's ruling did not have a statutory legal foundation.

We now turn to caselaw addressing the 10-year statute of limitations applicable to child support arrearages. In *Alpena Friend of the Court ex rel Paul v Durecki*, 195 Mich App 635, 636; 491 NW2d 864 (1992), the respondent appealed an opinion and order that essentially denied his motion to dismiss enforcement proceedings involving the payment of his child support arrearage. Specifically, the respondent and his wife divorced in 1962. At that time, the couple had two minor children and the respondent was ordered to pay \$10 a week for each child. Despite repeated collection attempts, the respondent was chronically in arrears on his child support obligation. Apparently, the petitioner and the respondent engaged in negotiations in an attempt to obtain payment of the arrearage. Toward that goal, in 1988, the respondent made ten payments. In June 1989, a bench warrant was issued for the respondent when his child support arrearage was \$8,400. *Id.*

At the bench warrant hearing, the respondent asserted that his last child support payment was due on August 21, 1977, the date his youngest child reached the age of majority. Consequently, the respondent claimed that the proceedings against him should be dismissed because enforcement was sought more than ten years after the statute of limitations expired as set forth in MCL 600.5809(3).⁴ *Durecki*, 195 Mich App. at 636-637. The petitioner alleged that the ten-year period of limitations did not apply to the case. Alternatively, the petitioner argued that even if the ten-year period of limitations did apply, the respondent's payment that occurred after the expiration of the limitation period waived the statute of limitations defense. *Id.* at 637.

The trial court agreed that the ten-year period of limitations applied but adopted the petitioner's view that payments made after the limitations period acknowledged the child support

⁴ It should be noted that a large part of defendant's argument is that prior cases addressing the 10-year limitations dealt with MCL 600.5809(3), when at issue in this case is MCL 600.5809(4). Defendant does not recognize that in 1992 when the *Durecki* and other cases were decided, MCL 600.6809 did not have a subsection (4). Rather, MCL 600.5809(3) applied a 10-year period to "judgments" or "decrees" by courts of record. MCL 600.5809 was amended by 1996 PA 27, immediately effective June 17, 1996 with § 2 effective January 1, 1997.

obligation and waived the defense of the statute of limitations. The respondent alleged that partial payment did not revive the obligation and he did not voluntarily pay because he was under the duress of potentially being held in contempt of court. But this Court rejected the respondent's position:

In *Collateral Liquidation, Inc v Palm*, 296 Mich 702; 296 NW 846 (1941), our Supreme Court again explained that a payment is equivalent to a new promise to pay on an obligation and extends the application of the statute of limitation. More recently, this Court held in *Federal Deposit Ins Corp v Garbutt*, 142 Mich App 462; 370 N.W.2d 387 (1985), that a partial payment made on a note after it matures serves to revive the statute of limitation, and a cause of action begins to accrue on that date. See also *Bonga v Bloomer*, 14 Mich App 315; 165 N.W.2d 487 (1968). Consistent with these authorities, we find no error in the trial court's ruling in this case. [The r]espondent had a legal obligation to make child support payments, and his acknowledgment of the continuing vitality of that debt waived the defense of the statute of limitation and allowed enforcement of the obligation.

[The r]espondent's claim, that the rule of *Miner* [*v Lorman*, 56 Mich 212, 216; 22 NW 265 (1885),] and its progeny does not apply in this case because his payments were involuntary, is without merit. The basis of [the] respondent's claim of involuntariness – that the 1988 payments were made under duress because they were made to avoid being held in contempt of court – is without both record and legal support. [*Durecki*, 195 Mich App at 638-639.]

Although this case was relied upon by the FOC in the trial court, it is factually distinguishable from defendant's factual scenario. In *Durecki*, the respondent's child support obligation ended on August 21, 1977, when his youngest child reached the age of majority. Applying the ten-year period of limitations, the respondent was no longer obligated to pay the arrearage as of August 21, 1987. Despite the statute of limitations, the respondent negotiated with the petitioner and made 10 payments in 1988. This Court concluded that the respondent's legal obligation to make child support payments was given continued vitality by the respondent's acknowledgment of the debt and his recent payments that allowed for enforcement of the obligation as well as the waiver of the statute of limitations. *Id.*

In this case, however, defendant's obligation to pay child support ended July 11, 2010. The ten-year period of limitations expired on July 11, 2020. Defendant made no payments during that ten-year period. In December 2023, the FOC sent an income withholding order to defendant's employer and was able to secure funds through that order. The FOC failed to present evidence that defendant voluntarily made payments between 2010 and 2024 or that he negotiated with plaintiff or the FOC or notified them of his employment and consented to the income withholding order. Stated otherwise, the FOC presented no evidence that defendant's actions between July 11, 2020 and January 2024 revived or extended the period.

Additionally, in *Wayne Co Social Servs Director v Yates*, 261 Mich App 152, 153; 681 N.W.2d 5 (2004), the defendant appealed the denial of his motion to extinguish his child support arrearage premised on the expiration of the statute of limitations. The defendant and his spouse divorced in 1977. Although their divorce judgment did not address child support, the petitioner

filed a complaint for support on behalf of the children because of their receipt of state aid. In 1978, the defendant was ordered to pay \$60 per week in child support. In 1979 and 1988, modest payments were received. The defendant relocated to Florida where he was self-employed. Wayne County filed a reciprocal support action in Florida. As a result, the defendant was required to pay \$72.10 a week for current support and arrearages. In 1990, 1996, 1997, and 1998, amounts were recouped. Nonetheless by April 2002, the arrearage was nearly \$41,000. *Id.* at 153-154.

The youngest child turned 18 in 1990. In 2002, the defendant moved to extinguish the child support arrearage, alleging that the period of limitations had expired. This Court noted that the defendant made payments through income withholding between 1990 and 1998, *after* the children turned 18 years of age but *before* the period of limitations expired. Nonetheless, it held that partial payments within the period of limitations operated to extend the period and rejected the contention that the nature of the payments, through income withholding, were involuntary. *Id.* at 154-157.

The *Yates* case does not support affirming the trial court's decision. In the present case, after defendant's twins turned 18 on July 11, 2010, there is no indication that defendant made any payments. The period of limitations expired on July 11, 2020. Thus after the children turned 18 and before the period of limitations expired, defendant made no payments that would have served to revive his child support obligation.

In fact, it is undisputed that defendant did not pay child support for more than 10 years (at least from August 2010 through January 1, 2024), when suddenly an income withholding order addressed to defendant's employer caused a child support payment to be made on January 2, 2024.⁵ Furthermore, neither plaintiff nor the FOC presented any evidence that defendant could have contested the amount withdrawn before a court hearing.⁶

⁵ We note that defendant provided a July 12, 2020 letter from the FOC addressed to him with his application for leave to appeal. This letter explained that the child support case under Title IV-D of the Social Security Act would be closed within 60 days after it was "identified for possible closure because no payments [had been made] in 10 years and the child(ren) are adults." In addition, the letter stated that the FOC case "may also close at a later date" and that FOC could destroy its file. Although this letter arguably supports defendant's position, it is not contained in the lower court record provided to this Court, and therefore, we cannot consider it. See *Magley v M & W Inc*, 325 Mich App 307, 322 n 8; 926 NW2d 1 (2018) (A litigant may not expand the record on appeal.); MCR 7.210(A)(1).

⁶ Defendant provided a copy of the income withholding order with his application for leave to appeal. That order is dated December 18, 2023, a Monday. Defendant filed his motion to terminate the income withholding order 21 days later, on January 8, 2024. Notably, the Wayne Circuit Court typically closes for two weeks during the holidays. See <https://www.3rdcc.org/Documents/Administration/General/Notice_2023-12-21-2023-2024HolidayOperations.pdf> (accessed September 14, 2026). And without information about when defendant was notified of the income withholding order, it would be questionable how he could have objected and stopped the withdrawal order directed at his employer any earlier than he

For these reasons, we reverse the trial court's order denying defendant's requested relief and we remand for entry of an order granting defendant's motion to terminate the income withholding order and direct repayment of monies obtained under it. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Michelle M. Rick
/s/ Kristina Robinson Garrett

did. But, again, the income withholding order is not contained in the lower court file provided to this Court, and therefore, we cannot consider it. *Magley*, 325 Mich App at 322 n 8; MCR 7.210(A)(1).