NOT RECOMMENDED FOR PUBLICATION
File Name: 26a0390n.06

Case No. 26-1060

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 05, 2026
KELLY L. STEPHENS, Clerk

SHERRY CUNNINGHAM,
Plaintiff,

GARY DAY, et al.,
Plaintiffs-Appellants,

v.

ALLEGAN COUNTY, MICHIGAN, et al.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

OPINION

Before: MOORE, THAPAR, and HERMANDORFER, Circuit Judges.

THAPAR, Circuit Judge. When you're in debt, your obligation is usually straightforward: pay back what you owe. Yet when Denise Thompson faced a $3,000 tax debt, Allegan County didn't just take what she owed. Instead, it foreclosed on her home, sold it, and kept the entire $23,500 in proceeds—turning Thompson's small debt into a large profit for the County. So Thompson and other similarly situated residents sued the County for the surplus proceeds from their homes' foreclosure sales. But the district court dismissed their federal claims, concluding that they were time-barred. Because that court took some wrong turns along the way, we vacate and remand.

I.

Until recently, Michigan allowed counties to convert tax debts into windfalls. *See Rafaeli, LLC v. Oakland County*, 952 N.W.2d 434, 446 (Mich. 2020). Counties often satisfy tax debts by foreclosing on the debtor's home and selling it at auction. *See Pung v. Isabella County*, 609 U.S. 30, 33 (2026). That's what happened to Denise Thompson and Gary and Josette Day in 2013 and 2014.[1] But Allegan County didn't just keep the money the debtors owed. The County also retained the surplus proceeds from the sales—tens of thousands of dollars in each case.

To some Michiganders, that looked like theft. So a class of Michigan taxpayers sued a class of counties under § 1983 for the return of surplus proceeds, claiming that the counties had violated the Takings Clause. *See* 42 U.S.C. § 1983; Complaint, *Wayside Church v. County of Van Buren*, No. 1:14-CV-1274 (W.D. Mich. Dec. 11, 2014), R. 1. Thompson and the Days were unnamed members of *Wayside*'s plaintiff class, while Allegan County was an unnamed member of the defendant class. Complaint, *Wayside*, No. 1:14-CV-1274, R. 1, ¶¶ 4, 7.

The *Wayside* lawsuit was filed in December 2014 and dismissed in November 2015. *Id.* at 25; *Wayside*, No. 1:14-CV-1274, 2015 WL 13308900 (W.D. Mich. Nov. 9, 2015). Then, the district court reopened *Wayside* in March 2019 based on intervening precedent. *Wayside*, 2019 WL 13109311 (W.D. Mich. Mar. 26, 2019). Finally, Thompson and the Days opted out of the class settlement in July 2023. Why? They wanted to file their own individual actions against Allegan County—and they did so in March 2024. Several other former class members did the same.

While that timeline is complex, only three numbers are critical. All told, around 11 years passed between the earliest foreclosure (the Days') and this lawsuit. Of those 11 years, Thompson

[1] Sherry Cunningham, one of the original plaintiffs in this case, was dismissed from the appeal.

and the Days were part of the *Wayside* class action for just over 8.5 years—or about 5 years if you exclude the period between dismissal and reopening.

After Thompson and the Days filed individual actions, the County responded by saying the 3-year statute of limitations had expired for the federal claims. Thompson and the Days disagreed. They argued that their membership in the *Wayside* class action paused the timer for 8.5 of the 11 years between foreclosure and lawsuit, so only 2.5 years had run off the clock.

The district court sided with the County, dismissing the federal claims. The court gave two main reasons: First, *Wayside* didn't toll the statute of limitations during the 3.5 years between the case's dismissal and reopening, so the timer ran out in the interim. And second, *Wayside* couldn't toll the statute of limitations *at all* until Allegan County became a named defendant (rather than an unnamed class member). That didn't happen until January 2023, well after the clock would've hit zero. Second Amended Complaint, *Wayside*, No. 1:14-CV-1274 (W.D. Mich. Jan. 10, 2023), R. 187. Thompson and the Days appealed.

II.

The district court erred when it dismissed the case. To see why, start with choice of law. The district court led with federal law. But Michigan law, not federal law, answers the timing question. That's because Thompson and the Days filed claims under § 1983. And since § 1983 actions borrow state statutes of limitations, state tolling rules control unless they conflict with federal policies. *Heard v. Strange*, 127 F.4th 630, 633–34 (6th Cir. 2025). Michigan's tolling rules don't conflict with federal law. *See Perry ex rel. Perry v. St. Joseph County*, No. 25-2012, 2026 WL 2476333, at *3 (6th Cir. Aug. 24, 2026). So Michigan law answers both of this case's timing questions.

The first: Did the statute of limitations run out in the 3.5 years between *Wayside*'s dismissal and reopening? It didn't. In fact, there's a Michigan Court Rule directly on point: When a "circumstance" that would otherwise bring "about the resumption of the running of the statute is superseded by a further order of the trial court, . . . the statute of limitations shall be deemed to have been tolled continuously from the commencement of the action." MCR 3.501(F)(3).

Take that piece by piece. The 2015 dismissal of *Wayside* was a "circumstance" that would have "resum[ed]" the statute of limitations for Thompson's and the Days' claims. *See* MCR 3.501(F)(2). But the district court's 2019 reopening of the lawsuit (a "further order of the trial court") "superseded" the dismissal. *Perry*, 2026 WL 2476333, at *2. That means any *Wayside* tolling lasted "continuously from the commencement of the action"—for the 8.5 years from when *Wayside* was filed to when Thompson and the Days opted out. So if *Wayside*'s filing paused the clock for their individual suit, that clock ran for less than three years between accrual and filing, making this case timely.[2]

Turning to the second question, did *Wayside*'s filing toll the statute of limitations for claims against unnamed class defendants like Allegan County in the first place? Michigan law governs this issue too, but no Michigan case directly answers the defendant-class question. That's because Michigan procedure doesn't recognize defendant classes in damages actions. MCR 3.501(I)(1). The district court thus defaulted to federal law. But when there's no state case on point, that doesn't mean federal courts can substitute in federal law.

That's especially true here. For starters, this is a § 1983 case. In these cases, Congress requires us to apply state law when federal law is silent, not the other way around. 42 U.S.C.

[2] The parties debate when the cause of action accrued (at foreclosure, auction, or another time?) and which Michigan statute of limitations applies (3 years or 6?). But we need not resolve those disputes. This action is timely if and only if *Wayside*'s filing paused the clock for Thompson's and the Days' claims until they opted out.

§ 1988; *Heard*, 127 F.4th at 633–34. What's more, the Michigan Supreme Court has emphasized that tolling can apply to a class described in a complaint even if Michigan courts can't actually certify that class—say, because it isn't numerous or there's no subject-matter jurisdiction. *Cowles v. Bank W.*, 719 N.W.2d 94, 105 (Mich. 2006). So Michigan tolling principles are relevant even though a Michigan court couldn't have certified the *Wayside* defendant class. Our task is thus to examine those tolling principles and predict whether Michigan courts would apply them here. *See Lutz v. Chesapeake Appalachia, L.L.C.*, 717 F.3d 459, 464 (6th Cir. 2013).

That task starts with the text. Michigan pauses statutes of limitations "as to all persons within the class described in the complaint on the commencement of an action asserting a class action." MCR 3.501(F)(1). That language is broad. And there are no textual exceptions for defendant classes. But Michigan caselaw limits class-action tolling to cases when defendants have "notice of the class member's claim and the number and generic identities of the potential plaintiffs." *Cowles*, 719 N.W.2d at 105. The defendant needn't know every party's name "as long as [it's] generally aware of the claims and parties it would face." *Hill v. City of Warren*, 740 N.W.2d 706, 719 (Mich. App. 2007); *see Perry*, 2026 WL 2476333, at *3. We predict that Michigan courts would apply this same rule to a member of a putative defendant class.

Unnamed class members receive formal notice of class actions at the certification stage. *See* Fed. R. Civ. P. 23(c)(2)(B) (requiring notice to class members in damages actions, but not until certification). But no defendant class was ever certified in *Wayside*. Instead, the plaintiffs eventually amended their complaint to name each county. So it's not clear from *Wayside*'s record whether or not Allegan County had notice of the lawsuit before it was named in 2023. If not, the statute of limitations expired before the County had notice—and before tolling could save

Thompson's and the Days' individual claims. Thus, the notice question is both unclear and potentially dispositive.

For that reason, our court recently vacated and remanded a similar case for the district court to make a notice determination. *Perry*, 2026 WL 2476333, at *3. That case turned on whether the same *Wayside* class action tolled the same statute of limitations for claims that accrued around the same time—just with different members of the *Wayside* classes as parties. *Id.* at *1. The course *Perry* charted is prudent. On remand, the parties can flesh out Michigan's notice rule, brief whether Allegan County had notice under that rule, and identify any exhibits or records the district court should consider at this stage. *See Bassett v. NCAA*, 528 F.3d 426, 430 (6th Cir. 2008). So we follow *Perry*'s lead.

* * *

We vacate and remand for further proceedings consistent with this opinion.