

2016

**Andrew Veysey, Petitioner/Appellee vs. Alexis Veysey,
Respondent/Appellant**

Utah Court of Appeals

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ANDREW VEYSEY,
Petitioner/Appellee

VS.

ALEXIS VEYSEY,
Respondent/Appellant.

BRIEF OF APPELLANT

Court of Appeals Case No. 20150609

APPEAL FROM THE THIRD DISTRICT COURT, SALT LAKE COUNTY,
JUDGE BARRY LAWRENCE

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ORAL ARGUMENT / PUBLISHED OPINION REQUESTED

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UTAH APPELLATE COURTS

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IN THE UTAH COURT OF APPEALS

ANDREW VEYSEY,
Petitioner/Appellee

vs.

ALEXIS VEYSEY,
Respondent/Appellant.

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Court of Appeals Case No. 20150609

BRIEF OF APPELLANT

JURISDICTION

This Court has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(h), resulting from a final Order by the Third Judicial District Court, Salt Lake County, the Honorable Barry Lawrence presiding, entered on July 16, 2015 (the “Order”).

DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS,

STATEMENT OF ISSUES PRESENTED ON APPEAL, AND

STANDARD OF REVIEW

1. **Issue I:** Did the Court act contrary to Utah law in applying laches as a defense to court-ordered child support?

Determinative Law:

Veysey v. Veysey, 2014 UT App 264, ¶ 15 (Ut. Ct. App. 2014): “[V]ariable daycare expenses constitute child support.”

French v. Johnson, 16 Utah 2d 360, 401 P.2d 315, 316 (Utah 1965): “[A] decree awarding child support payments cannot be avoided by parent’s conduct or agreement.”

McReynolds v. McReynolds, 787 P.2d 530, 533 (Utah App. 1990): “[E]ven contumacious actions by the custodial parent do not . . . preclude the custodial parent from recovering past due child support.”

Doit, Inc. v. Touche Ross & Co., 926 P.2d 835, 845 (Utah 1996): “[W]here the plaintiff’s claims are based in the law, the statute of limitations, not the doctrine of laches, governs the time surrounding a plaintiff’s filing of a complaint.”

Hammond v. Hammond, 14 P.3d 199, 201 (Wyo. 2000): “Laches does not apply to child support collection actions because suits for monetary judgments for child support arrearages are legal rather than equitable.”

In re Marriage of Johnson, 2014 CoA 145 (Colo. 2014): “Laches . . . does not apply to actions for the recovery of past due child support.”

In re Parentage of Shade ex rel. Shade, 126 P.3d 445 (Kan. App. 2006): “[D]efendants in child support actions may not invoke the defense of laches as a bar to the enforcement of . . . legal obligations to their minor children.”

Cowan v. Cowan, 19 P.3d 322 (Okla.Civ.App.Div. 1 2000): “[E]quitable defenses are not available to excuse noncompliance with a support order.”

Standard of Review:

Doyle v. Doyle, 2009 UT App 306, ¶ 6, citing *Huish v. Munro*, 2008 Ut. Ct. App. 283, ¶ 19, 191 P. 3d 1242 (Utah Ct. App. 2008): “Pure questions of law . . . are reviewed for correctness.”

State v. Pena, 869 P.2d 932, 936 (Utah 1994): “[C]orrectness’ means the appellate court decides the matter for itself and does not defer in any degree to the trial judge’s determination of law.”

2. **Issue II:** Did the Court violate the separation of powers doctrine by applying laches to shorten, by nearly two-thirds, the applicable statute of limitations of a case at law?

Determinative Law:

Jacobsen v. Deseret Book Co., 287 F. 3d 936, 951 (10th Cir. 2002): “Because laches is a judicially created equitable doctrine, whereas statutes of limitations are legislative enactments, . . . in deference to the doctrine of the separation of powers . . . when a limitation on the period for bringing suit has been set by statute, laches will generally not be invoked to shorten the statutory period.”

Veysey v. Veysey, 2014 UT App 264, ¶ 15 (Ut. Ct. App. 2014): “[V]ariable daycare expenses constitute child support and . . . the statute of limitations governing enforcement of child support orders applies to Mother’s claim for reimbursement.”

U.C.A. § 78B-5-202(6)(a)(i)(2003): A “child support order . . . may be enforced: (i) within four years after the date the youngest child reaches majority.”

Petrella v Metro-Goldwyn-Mayer, Inc., 134 S. Ct. 1962, 1973-74 (2014):

“[L]aches is a defense developed by courts of equity . . . and [applies] to claims of an equitable cast for which the Legislature has provided no fixed time limitation.”

Yeager v. Fort Knox Security Products, No. 14-4011, p. 13 (10th Cir. 2015):

“[C]ourts have looked to analogous state limitation provisions and invoked presumptions . . . against laches defenses to claims brought . . . inside the analogous limitations period.”

Fisher v. Davis, 291 P. 493, 494 (Utah 1930): “Laches apply to equitable demands. If a legal right gets into equity, the statute [of limitations] governs.”

Doit, Inc. v. Touche Ross & Co., 926 P.2d 835, 845 (Utah 1996): “[W]here the plaintiff’s claims are based in the law, the statute of limitations, not the doctrine of laches, governs the time surrounding a plaintiff’s filing of a complaint.”

Standard of Review:

Doyle v. Doyle, 2009 UT App 306, ¶ 6, citing *Huish v. Munro*, 2008 Ut. Ct. App. 283, ¶ 19, 191 P. 3d 1242 (Utah Ct. App. 2008): “Pure questions of law . . . are reviewed for correctness.”

State v. Pena, 869 P.2d 932, 936 (Utah 1994): “[C]orrectness’ means the appellate court decides the matter for itself and does not defer in any degree to the trial judge’s determination of law.”

3. **Issue III:** Did the Court act contrary to Utah law in finding unreasonable delay, despite also finding that Nelson brought the action well within the applicable statute of limitations?

Determinative Law:

Lee v. Gaufin, 867 P.2d 572 (Utah 1993): Statutes of limitations are “designed . . . to necessarily allow a ‘reasonable’ time in which to file a lawsuit . . . What shall be considered a reasonable time must be settled by the judgment of the legislature.”

Jacobs v. Hafen, 917 P.2d 1078 (Utah 1996): “[Parties] have a right to rely on the certainty the statute [of limitations] provides.”

Standard of Review:

Doyle v. Doyle, 2009 UT App 306, ¶ 6, citing *Huish v. Munro*, 2008 Ut. Ct. App. 283, ¶ 19, 191 P. 3d 1242 (Utah Ct. App. 2008): “Pure questions of law . . . are reviewed for correctness.” .

State v. Pena, 869 P.2d 932, 936 (Utah 1994): “[C]orrectness’ means the appellate court decides the matter for itself and does not defer in any degree to the trial judge’s determination of law.”

4. **Issue IV:** Did the Court act contrary to Utah law by rendering a finding of prejudice with respect to expenses incurred prior to an arbitrary date of April, 2005?

Determinative Law:

Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg, 2010 UT 51, ¶ 28, 238 P.3d 1054, 1063 (Utah 2010): “Laches has two elements: (1) a party’s lack of diligence and (2) an injury resulting from that lack of diligence.”

Papanikolas Bros. Ent. v. Sugarhouse Shopping Center Assoc., 535 P.2d 1256, 1260 (Utah 1975): “Laches is not mere delay, but delay that works a disadvantage to another.”

Standard of Review:

Johnson v. Johnson, 2014 UT 21, ¶ 8, 330 P.3d 704 (Utah 2014): “[T]he question of laches presents a mixed question of law and fact.”

Anderson v. Doms, 984 P.2d 392, 396 (Ut. Ct. App. 2003): “[T]he determination of whether a party was prejudiced for purposes of the doctrine of laches is a legal conclusion that we review for correctness.”

Anderson v. Doms, 984 P.2d 392, 396 (Ut. Ct. App. 2003): “[W]e will not set aside a trial court’s findings of fact underlying that conclusion [of prejudice] unless they are clearly erroneous.”

STATEMENT OF THE CASE

A Decree of Divorce between the parties was entered on September 9, 1999. (R. 60). An Order Modifying Decree of Divorce (the “Modification Order”) was entered in February, 2013. (R. 305). The Modification Order includes a provision acknowledging that Appellant Alexis Nelson (“Nelson”) believes that Appellee Andrew Veysey (“Veysey”) is in arrearages for child support and day care, and that Nelson may pursue her claims with the court. (R. 311). In March, 2013, Nelson filed a Motion for Order to Show Cause for past-due child support and daycare expenses incurred from September 2002 – June 2006. (R. 316).

A hearing on the Motion was held on April 1, 2013 before Commissioner Blomquist. (R. 556). The Commissioner held that the statute of limitations on child care expenses and the principle of laches precluded consideration of child care expenses more than eight years old. (R. 556-557). Nelson filed an objection to the Commissioner's recommendation (R. 505), which was followed on June 20, 2013 by an evidentiary hearing before the Honorable L.A. Dever. (R. 575). On July 12, 2013, the trial court entered a minute entry approving the order of the Commissioner. (R. 577).

Nelson appealed the order in its entirety. (R. 593). On November 14, 2014, this Court vacated the district court's order and remanded for further proceedings. (R. 707). A second evidentiary hearing was held on June 16, 2015 before the Honorable Barry Lawrence. (R. 949). On July 16, 2015, the district court entered an order holding that although all of Appellant's claims for reimbursement fell within the applicable statute of limitations, the claims prior to April 2005 were barred by laches. (R. 964).

Specifically, with respect to the unreasonable delay element of laches, the Court found that Nelson's "knowledge as an attorney of the applicable statute of limitations does not excuse her delay, and is not applicable to a laches analysis . . . [Nelson] failed to adequately explain the reasons for the delay and failed to explain her lack of diligence in pursuing the claims, other than her assertion that she believed the statute of limitations had not yet run. The Court was not persuaded that her conduct was justified, reasonable, or diligent." (R. 965).

With respect to the undue prejudice element of laches, the Court found that “by failing to properly raise the issue at the time, [Veysey] was prevented from having an opportunity to contest the amount owed, [and that] the passage of time has also made it difficult to demonstrate the amount owed.” (R. 966). Despite this finding, the Court also found, with respect to the expenses incurred after April, 2005, “[Veysey] does not strenuously object to those costs [and] as a result, [Veysey] cannot demonstrate the same level of prejudice with respect to those amounts. Accordingly, laches does not bar those claims.” (R. 966).

Following the Court’s Order, Nelson filed a Motion to Alter or Amend Judgment Under Rule 59(e), based on an error in law. (R. 977). Specifically, Nelson submitted that the Court’s Order was erroneous because it failed to consider the seminal Utah Supreme Court case *Doit, Inc. v. Touche Ross & Co.*, 926 P.2d 835, 845 (Utah 1996), which prohibits application of laches to a claim based in law and governed by a statute of limitations. (R. 977). On September 23, 2015, the Court denied Nelson’s Motion. (R. 1035).

STATEMENT OF FACTS

Nelson incorporates those facts referenced above as they may be relevant to any issue stated here.

The Court of Appeals in this case found that the “commissioner’s recommendation contains no findings supporting a determination that laches applies,” (R. 714) and that, as a result, “the commissioner’s recommendation – and, accordingly, the district court’s

adoption of that recommendation – was erroneous.” (R. 715). This Court further held that “additional findings are necessary to determine which of [Nelson’s] expenses may be properly reimbursed.” (R. 716).

In dicta, this Court equivocated the point, opining that “[i]f supported by adequate findings, a determination that some portion of [Nelson’s] claims are barred by laches would not necessarily be inappropriate. Alternatively, based on adequate findings, the district court may exercise its discretion to deny [Nelson’s] claims if it determines that she failed to comply with Utah Code section 78B-12-214(2)(b), which outlines the verification requirements a parent must comply with to obtain reimbursement for daycare expenses . . . or with the requirements of the parties’ divorce decree. Or the district court may conclude that all of [Nelson’s] claims are reimbursable because they were brought within the statute of limitations.” (R. 716).

On remand, the district court found that “[a]ll of [Nelson’s] claims for reimbursement fall within the applicable statute of limitations.” (R. 964). The court also held that “Utah Code Ann. § 78B-12-214 [is] not dispositive of this case.” (R. 965). The court relied exclusively on a laches analysis to limit reimbursement to Nelson to the amount owed for the time period from April 2005 – June 2006. (R. 965-967). To this end, the court heard testimony from Nelson and Veysey to “make a determination concerning the reasonableness of Ms. Nelson’s actions and any prejudice to Mr. Veysey.” (R. 1039 at p. 7, ln. 6-8).

With respect to reasonableness, Nelson explained that she “was aware of the statute of limitations [and] didn’t think there was any urgency [to file her claim].” (R. 1039 at p. 29, ln. 18-20). She further testified that “[t]he main reason” she waited to bring the action was “that [Veysey] kept assuring me that he would pay or that he would get caught up on payments when he could[. And] because he was paying [at least something], I took him at his word that he would get caught up[.]” (R. 1039 at p. 29, ln. 29 - p. 30, ln. 3). Nelson further testified that when “[Veysey] relocated to Arizona[,] he told me that he was going to be seeking modification of the divorce decree and that all of the arrearages [could be taken care of] at that point.” (R. 1039 at p. 30, ln. 14-20).

Veysey’s testimony did not contradict Nelson’s in this regard. (R. 1039). The Court, however, found that “[w]ith respect to the element of unreasonable delay, [Nelson’s] knowledge as an attorney of the applicable statute of limitations does not excuse her delay, and is not applicable to a laches analysis . . . [Nelson] failed to adequately explain the reasons for the delay and failed to explain her lack of diligence in pursuing the claims, other than her assertion that she believed the statute of limitations had not yet run. The Court was not persuaded that her conduct was justified, reasonable, or diligent.” (R. 965, ¶ 5).

With respect to prejudice, Nelson testified that Veysey was on notice that the children were attending Challenger School, and that he was responsible to pay half. Nelson testified that she specifically discussed the daycare expense with Veysey prior to enrolling the children at Challenger School (R. 1039 at p. 28, ln. 6 – p. 29, ln. 11), that

she personally gave Veysey updated pricing sheets from Challenger prior to the beginning of each applicable school year (R. 1039 at p. 34, ln. 4-12), that Veysey was aware of and consented to the children's ongoing attendance at Challenger (R. 1039 at p. 34, ln. 1-3), and that Nelson regularly requested payment from Veysey (R. 1039 at p. 31, ln. 7 – p. 32, ln. 1).

Veysey testified that “[t]here may have been a handbook that she may have shown me[.]” (R. 1039 at p. 53, ln. 20-21). He also testified that he knew immediately when the children were enrolled at Challenger because he picked them up there and went to their programs. (R. 1039 at p. 54, ln. 8 – p. 55, ln. 4). When the Court asked Veysey how he could be aware the children were attending Challenger but not be aware that the child care payments he was making were going toward that expense, Veysey replied, “I don’t remember what I was paying for.” (R. 1039 at p. 55, ln. 5-10).

Veysey testified that Nelson never told him that he was not expected to pay towards the tuition costs of Challenger, but that tuition costs were never discussed (R. 1039, p. 48, ln. 17-21). Veysey testified that he did not recall whether he had ever objected to enrolling the children at Challenger. (R. 1039 at p. 45, ln. 17-19). Veysey testified that he “would have objected because [he] wasn’t making very much money,” (R. 1039 at p. 46, ln. 2-3). This testimony, however, contradicted Veysey’s testimony at the first evidentiary hearing where he testified that, “My bank records clearly show I had the money.” (R. 1039 at p. 57, ln. 5-13). Veysey testified that he understood that “under

the terms of the divorce, [Nelson] had sole custody of the children [and] the legal authority . . . to make decisions regarding their care.” (R. 1039 at p. 57, ln. 15-20).

Nelson presented a detailed accounting (R. 941) summarizing daycare and child support costs incurred, by month, and payments received from Veysey therefor. (R. 1039 at p. 10, ln. 4 – p. 11, ln. 8). This summary (R. 941) was nearly identical to the summary received into evidence as Exhibit R-B (R. 617) at the first evidentiary hearing and was supported by the same back-up documents, including the Challenger ledger (R. 596 at pp. 7-8) (received as Exhibit R-A at R. 596, p. 8), Nelson’s bank records from America First (R. 618), and Veysey’s bank records from America First (R. 635). (R. 1039 at p. 14, ln. 7-22, p. 18, ln. 10-18).

Nelson testified that the only differences between the summary (R. 941) presented on remand and the previous summary entered into evidence (R. 617) were: (1) calculation of Veysey’s portion of all-day kindergarten expenses, necessitated by the Court of Appeals’ ruling in this case (R. 1039 at p. 12, ln. 13-20); (2) exclusion of costs and late fees (R. 1039 at p. 15, ln. 1-5); and (3) inclusion of interest (R. 1039 at p. 32, ln. 5-16).

Nelson testified that Veysey always paid “child support and day care expenses by direct deposit from his America First account to my America First account.” (R. 1039 at p. 11, ln. 18-23). At the first evidentiary hearing, Nelson likewise testified that Veysey made payments by direct deposit, and that she never received cash payments from Veysey. (R. 596 at p. 24, ln. 14-17; p. 25, ln. 12-14). Veysey’s testimony did not contradict Nelson’s. Indeed, Veysey testified that he never paid “a penny” towards child

care expenses for the children while they attended Challenger. (R. 596 at p. 45, ln. 13-18) (R. 1039 at p. 57, ln. 5-10). Veysey's attorney, however, argued that there could have been one cash payment for child support on May 13, 2003. (R. 596 at p. 34, ln. 14 - p. 35, ln. 11)(R. 1039 at p. 77, ln. 1-2).

The Court found, with respect to prejudice, "that by failing to properly raise the issue at the time, [Veysey] was prevented from having an opportunity to contest the amount owed." (R. 966, ¶ 13). The Court also found that "[t]he passage of time has . . . made it difficult to demonstrate the amount owed. For example, [Nelson's] payment summary entered into evidence only dealt with credit card payments made by [Veysey]. If there were cash payments or some equitable adjustments that needed to be made, those would not have been able to be made because of the passage of time. If [Nelson] were now permitted to claim the child care expenses from 2002 to 2005, that would be unfair to [Veysey] . . . As a result . . . [Veysey] was prejudiced by the delay sufficient to support a finding of laches." " (R. 966, ¶¶ 14, 15).

The Court further held, however, that it was "not persuaded that the Commissioner's ruling allowing the April 2005 to June 2006 costs should be disallowed. Moreover, [Veysey] does not strenuously object to those costs. As a result, [Veysey] cannot demonstrate the same level of prejudice with respect to those amounts. Accordingly, laches does not bar those claims." (R. 966, ¶ 16).

The Court found Nelson's testimony persuasive regarding the "amount owed for the time period from April 2005 – June 2006," finding specifically that Nelson's payment

summary for this time period was “a reasonable approximation of the amount owed, and is consistent with the Court of Appeals’ mandate regarding the calculation of [Veysey’s] portion of kindergarten expenses.” (R. 967, ¶ 18).

With respect to Nelson’s Motion to Amend or Alter Judgment (R. 977), the parties agreed that “*Doit, Inc.* stands for the proposition that a claim based in law is governed by the applicable statute of limitations, not the doctrine of laches.” (R. 992, ¶ 6). The parties also agreed that “[Nelson’s] claims are based in the law.” (R. 992, ¶ 5).

SUMMARY OF ARGUMENT

First, applicable law precludes laches as a defense to court-ordered child support, including variable daycare expenses. This Court held that “variable daycare expenses constitute child support.” *Veysey v. Veysey*, 2014 UT App 264, ¶ 15 (Ut. Ct. App. 2014); (R. 714). Enforcement of court-ordered child support is based in the law. See *Hammond v. Hammond*, 14 P.3d 199, 201 (Wyo. 2000). “[W]here . . . claims are based in the law, the statute of limitations, not the doctrine of laches, governs the time surrounding a plaintiff’s filing of a complaint.” *Doit, Inc. v. Touche Ross & Co.*, 926 P.2d 835, 845 (Utah 1996). The statute of limitations, not laches, thus applies in this case.

Second, the separation of powers doctrine provides that laches should not be invoked where the legislative branch of the government has already made a clear policy judgment by establishing a statute of limitations. *Jacobsen v. Deseret Book Co.*, 287 F. 3d 936, 951 (10th Cir. 2002). Here, the Utah legislature established a limitations period

for child support arrearages, and to allow judges to equitably shorten that period would violate the separation of powers.

Third, Nelson's compliance with the applicable statute of limitations renders any delay reasonable per se. Statutes of limitations "necessarily allow a 'reasonable' time in which to file a lawsuit." *Lee v. Gaufin*, 867 P.2d 572, (Utah 1993). The Court found that Nelson relied on the applicable statute of limitations to determine when to bring suit. (R. 965, ¶ 5). Under Utah law, such reliance was per se reasonable. Accordingly, it was erroneous for the Court to find that Nelson was not reasonable in her delay.

Fourth, the finding of prejudice with respect to expenses incurred prior to April, 2005 is clearly erroneous. This finding goes against the weight of the evidence and the parties' testimony. Further, there are no facts on record to support the apparently arbitrary cutoff date of April, 2005. Rather, this date seems to originate from the Commissioner's initial recommendation based on an erroneous statute of limitations, which was later reversed by this Court. Using this date to support a finding of prejudice only perpetuates already-established legal error.

ARGUMENT

I. UTAH LAW PRECLUDES LACHES AS A DEFENSE TO COURT-ORDERED CHILD SUPPORT, INCLUDING VARIABLE DAYCARE EXPENSES.

This Court established that "variable daycare expenses constitute child support and that the statute of limitations governing enforcement of child support orders applies to [Nelson's] claim for reimbursement." *Veysey v. Veysey*, 2014 UT App 264, ¶ 15 (Ut. Ct.

App. 2014); (R. 714, ¶ 15). Under Utah law, a “child support order . . . may be enforced: (i) within four years after the date the youngest child reaches majority.” U.C.A. § 78B-5-202(6)(a)(i)(2003).

Child support is defined as “the money legally owed by one parent to the other for the expenses incurred for children of the marriage.” (R. 714). Enforcement of court-ordered child support, including variable daycare expenses, is thus based in law, not equity. *See Hammond v. Hammond*, 14 P.3d 199, 201 (Wyo. 2000)(“Laches does not apply to child support collection actions because suits for monetary judgments for child support arrearages are legal rather than equitable.”). The parties agree on this point. (R. 992, ¶ 5).

The Utah Supreme Court has specifically rejected the application of laches as a defense to legal claims. *“[W]here the plaintiff’s claims are based in the law, the statute of limitations, not the doctrine of laches, governs the time surrounding a plaintiff’s filing of a complaint.”* *Doit, Inc. v. Touche Ross & Co.*, 926 P.2d 835, 845 (Utah 1996)(citing *United States v. Mack*, 295 U.S. 480, 489 (1935)(“Laches within the term of the statute of limitations is no defense at law.”))(emphasis added).

The parties agree that claims for daycare expense arrearages arising from a child support order are legal rather than equitable. (R. 992, ¶ 5). Since a statute of limitations has been enacted to apply to such claims, laches cannot be invoked against claims brought within the limitations period. This result is consistent with other Utah law acknowledging that “a decree awarding child support payments cannot be avoided by

parent's conduct or agreement," and that "even contumacious actions by the custodial parent do not . . . preclude the custodial parent from recovering past due child support." *French v. Johnson*, 16 Utah 2d 360, 401 P.2d 315, 316 (Utah 1965); *McReynolds v. McReynolds*, 787 P.2d 530, 533 (Utah App. 1990).

This result also comports with the large majority of courts within the Tenth Circuit, which specifically hold that laches is not available as a defense to court-ordered child support. See *Hammond*, 14 P.3d at 201; *In re Marriage of Johnson*, 2014 CoA 145 (Colo. 2014)("Laches . . . does not apply to actions for the recovery of past due child support"); *In re Parentage of Shade ex rel. Shade*, 126 P.3d 445 (Kan. App. 2006)("[D]efendants in child support actions may not invoke the defense of laches as a bar to the enforcement of . . . legal obligations to their minor children."); *Cowan v. Cowan*, 19 P.3d 322 (Okla.Civ.App.Div. 1 2000)("[E]quitable defenses are not available to excuse noncompliance with a support order.").

In this case, Veysey's obligation to reimburse Nelson for daycare expenses arises from the 1999 support order. (R. 79). The parties agree that enforcement of that order is an action at law, not in equity. (R. 992, ¶ 5). Accordingly, "the statute of limitations, not the doctrine of laches, governs the time surrounding Nelson's filing of a complaint." *Doit*, 926 P.2d at 845. "All of [Nelson's] claims . . . fall within the applicable statute of limitations." (R. 964). Accordingly, all of Nelson's claims, including interest, are valid and reimbursable.

II. APPLYING LACHES TO SHORTEN A STATUTE OF LIMITATIONS VIOLATES THE SEPARATION OF POWERS DOCTRINE.

In deference to the separation of powers doctrine, an equitable principle such as laches should not be invoked where the legislative branch of the government has already made a clear policy judgment by establishing a statute of limitations. *See Jacobsen v. Deseret Book Co.*, 287 F. 3d 936, 951 (10th Cir. 2002). In this case, “[t]he statute of limitations governing enforcement of child support orders applies to Mother’s claim for reimbursement.” *Veysey v. Veysey*, 2014 UT App 264, ¶ 15 (Ut. Ct. App. 2014). This statute provides that a “child support order . . . may be enforced: (i) within four years after the date the youngest child reaches majority.” U.C.A. § 78B-5-202(6)(a)(i).

Even under extraordinary circumstances (such as Lanham Act claims where there is “no fixed time limitation” and the doctrine of laches performs a “gap-filling” function) (see *Petrella v Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1629, 1643 (2014)), “courts have looked to analogous state limitation provisions and invoked presumptions . . . against laches defenses to claims brought . . . inside the analogous limitations period.” *Yeager v. Fort Knox Security Products*, No. 14-4011, p. 13 (10th Cir. 2015).

Moreover, the Utah Supreme Court has specifically addressed this issue, holding that “where the plaintiff’s claims are based in the law, the statute of limitations, not the doctrine of laches, governs the time surrounding a plaintiff’s filing of a complaint.” *Doit*, 926 P.2d at 845; see also *Fisher v. Davis*, 291 P. 493, 494 (Utah 1930)(“Laches apply to equitable demands. If a legal right gets into equity, the statute [of limitations] governs.”).

In this case, this Court specifically found that all of Nelson's claims fall within the applicable statute of limitations. (R. 714). The parties agree that Nelson's claims are based in the law. (R. 992, ¶ 5). The Utah legislature established a limitations period, and to allow judges to equitably shorten that period would violate the separation of powers. It was thus clearly erroneous for the district court to apply laches to Nelson's legal claims for daycare expense reimbursement, which were brought well within the statute of limitations. All of Nelson's claims, plus interest, should be deemed valid and reimbursable.

III. NELSON'S COMPLIANCE WITH THE APPLICABLE STATUTE OF LIMITATIONS RENDERS ANY DELAY REASONABLE PER SE.

Statutes of limitations "necessarily allow a 'reasonable' time in which to file a lawsuit." *Lee v. Gaufin*, 867 P.2d 572, (Utah 1993); see also *McHenry v. Utah Valley Hosp.*, 724 F.Supp. 835 (D. Utah 1989)((citing *Brubaker v. Cavanaugh*, 741 F.2d 318, 321 (10th Cir. 1984)(A "statute [of limitations] provides a reasonable length of time in which to bring suit.")). "What shall be considered a reasonable time must be settled by the judgment of the legislature." *Id.* (citing *Wilson v. Iseminger*, 185 U.S. 55, 63 (1902)).

A statute of limitations provides certainty, uniformity and predictability by prescribing what constitutes a "reasonable time" for bringing suit. *Jacobs v. Hafen*, 917 P.2d 1078, 1081 (Utah 1996); see also *State of Utah v. Canton*, 308 P.3d 517, 522 (Utah 2013) ((citing *Johnson v. Nedeff*, 192 W. Va. 260, (W. Va. 1994)(rejecting a request to read an equitable exception into a statute of limitations because "[d]efendants have a

right to rely on the certainty the statute provides,” in accordance with “the legislative intent underlying such provisions”)).

Nelson testified, and the Court found, that Nelson relied on the applicable statute of limitations to determine when to bring suit. (R. 965, ¶ 5). The Court held, however, that “[Nelson’s] knowledge . . . of the applicable statute of limitations does not excuse her delay, and is not applicable to a laches analysis.” (R. 965, ¶ 5). This is a misapplication of Utah law. To the contrary, compliance with a statute of limitations renders any delay within that established time period as reasonable per se, and even desirable as a matter of public policy. It was thus erroneous for the Court to find that Nelson “was not reasonable in her delay.” (R. 965, ¶ 12).

IV. THE FINDING OF PREJUDICE WITH RESPECT TO EXPENSES INCURRED PRIOR TO APRIL, 2005 IS CLEARLY ERRONEOUS.

“Laches has two elements: (1) a party’s lack of diligence and (2) an injury resulting from that lack of diligence.” *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg*, 2010 UT 51, ¶ 28, 238 P.3d 1054, 1063 (Utah 2010) “Laches is not mere delay, but delay that works a disadvantage to another.” *Papanikolas Bros. Ent. v. Sugarhouse Shopping Center Assoc.*, 535 P.2d 1256, 1260 (Utah 1975).

Here, the Court held that Veysey was “prejudiced by the delay sufficient to support a finding of laches” with respect to the child care expenses from 2002 to 2005, but that “[Veysey] cannot demonstrate the same level of prejudice with respect to [the child care expenses from April, 2005 to June, 2006].” (R. 966, ¶¶14-16). There are,

however, no facts on record to support the apparently arbitrary cutoff date of April, 2005. The only finding the Court makes to justify this date is that “[Veysey] does not strenuously object to those costs. (R. 966, ¶ 16). This finding fails to demonstrate how the April, 2005 cutoff date marks separates a “delay that works a disadvantage to [Veysey]” from a delay that does not.

In fact, the April, 2005 date seems to originate from the Commissioner’s initial recommendation, and the district court’s adoption thereof, of an erroneous statute of limitations. (R. 556-557). Since this holding was later reversed by this Court of Appeals (R. 714, ¶ 15), the April, 2005 cutoff date used to support the district court’s finding of prejudice only perpetuates already-established legal error.

Moreover, the findings of fact used to support the Court’s holding of prejudice with respect to the 2002 – 2005 amounts are contradicted by the record, as well as by the findings of fact used to support the Court’s holding of no prejudice with respect to the post-April, 2005 expenses. First, for example, the Court found that “[Veysey] was prevented from having an opportunity to contest the amount owed. [This] should have been brought to [Veysey’s] attention so that he could have challenged that at the time, and perhaps cause the parties to agree to a less expensive provider.” (R. 966, ¶ 13). The record, however, shows that Veysey understood that Nelson had sole custody of the children, and hence “the legal authority . . . to make decisions regarding their care.” (R. 1039, at p. 57, ln. 15-20). In other words, Veysey was not legally entitled to challenge

the selection of a particular child care provider. A finding of prejudice on this basis is thus unsupported by facts in evidence.

Further, no fact in evidence supports the cutoff date of April, 2005 with respect to a prejudice analysis. The child care provider and all other facts concerning the children's enrollment there were consistent from September, 2002 until June, 2006. (R. 938)(Ex. R-A). Both parties testified that Veysey was on notice that the children were enrolled at Challenger and incurring costs there from their initial enrollment in 2002. (R. 1039 at p. 54-55). Moreover, all of the testimony from Nelson and Veysey at the evidentiary hearing and on remand covered the entire time period in question, from 2002 – 2006. (R. 596, 1039). There was never any mention of any material fact happening in April, 2005. It was thus clearly erroneous to arbitrarily set a cutoff date of April, 2005 to support a finding of prejudice.

Second, the Court found that “[t]he passage of time has also made it difficult to demonstrate the amount owed. For example, [Nelson’s] payment summary entered into evidence only dealt with credit card payments made by [Veysey]. If there were cash payments or some equitable adjustments that needed to be made, those would not have been able to be made because of the passage of time. If [Nelson] were now permitted to claim the child care expenses from 2002 through 2005, that would be unfair to [Veysey].” (R. 966).

This finding of fact is clearly erroneous as it goes against the weight of the evidence and the parties’ testimony. Nelson consistently testified that Veysey always

paid “child support and day care expenses by direct deposit from his America First account to my America First account” and that she never received cash payments from Veysey. (R. 1039 at p. 11, ln. 18-23) (R. 596 at p. 25, ln. 12-14). While Veysey’s attorney argued that it was possible that one cash payment was made for child support in May 2003, Veysey personally testified that he never paid “a penny” toward the child care expenses at issue. (R. 596 at p. 34, ln. 14 - p. 35, ln. 11) (R. 596 at p. 45, ln. 13-18). Indeed, Veysey repeatedly admitted that no cash payments, or any payments whatsoever, were made for child care expenses. (R. 596 at p. 45, ln. 13-18) (R. 1039 at p. 57, ln. 5-10). As a result, the amount owed for child care expenses is easily determined by reconciling the parties’ bank records, as clearly set forth in Nelson’s payment summary. (R. 941).

The Court also found that “[b]ased upon [Nelson’s] testimony, the amount owed for the time period from April 2005 – June 2006 . . . is a reasonable approximation of the amount owed, and is consistent with the Court of Appeals’ mandate regarding the calculation of [Veysey’s] portion of kindergarten expenses.” (R. 967). There is absolutely nothing in the record and no finding of fact which would support treating the amount owed from September 2002 – April 2005 any differently from the amount owed from April 2005 – June 2006. Nelson relied on the same underlying documents and methodology to calculate all amounts due from 2002 – 2006, and the Court indicated that it understood the methodology, and that the amounts were reasonably accurate. (R. 1039 at p. 14, ln. 6-22; p. 20, ln. 21-22)(R. 967).

Indeed, the Court's holding of prejudice with regard to the child care expenses from 2002 through 2005 based on the finding that "[t]he passage of time has . . . made it difficult to demonstrate the amount owed" does not comport with the Court's contemporaneous finding that "[b]ased upon [Nelson's] testimony, the amount owed for the time period from April 2005 – June 2006 . . . is a reasonable approximation of the amount owed." Since the amount owed from April 2005 – June 2006 is reasonable, then all amounts owed from 2002 -2006 should be deemed reasonable and reimbursable to Nelson, including interest.

CONCLUSION


Laches cannot be applied to deny or limit Nelson's claims for child care expense arrearages. Utah law provides that variable daycare expenses constitute child support. Laches does not apply to Nelson's claims because suits for monetary judgments for child support arrearages are legal rather than equitable. The Utah Supreme Court has held that "where the plaintiff's claims are based in the law, the statute of limitations, not the doctrine of laches, governs the time surrounding a plaintiff's filing of a complaint." Moreover, the Utah legislature established a limitations period, and to allow judges to equitably shorten that period would violate the separation of powers.

With respect to the elements of laches, the Court's finding of unreasonable delay is clearly erroneous since Nelson relied on the statute of limitations to determine when to file suit. Statutes of limitations are specifically enacted to define what period of time is reasonable for bringing suit, and parties have a right to rely on the certainty the statute

provides. Nelson's compliance with the statute of limitations renders any delay within that established time period as reasonable per se. The Court's finding of prejudice with respect to expenses incurred prior to April, 2005 is also clearly erroneous. There are no facts on record to support the apparently arbitrary cutoff date of April, 2005. Rather, the April, 2005 date seems to stem from the Commissioner's recommendation of an erroneous statute of limitations, thereby perpetuating already-established legal error. The findings of fact used to support the holding of prejudice contradict the weight of the evidence, and other findings of fact.

The Court's order in this case should be reversed and all of Nelson's claims for child expense arrearages from 2002 – 2006 should be deemed reimbursable, plus interest, because they were brought within the statute of limitations.

SIGNED and DATED this 19th day of February, 2016.



Alexis V. Nelson
Pro Se

CERTIFICATE OF MAILING

I hereby certify that I submitted the Original and Seven Copies (eight copies total), with attachments, of the foregoing Brief of Appellant to the clerk of the Appellate Court, and that I mailed two true and correct copies, postage pre-paid, of the foregoing Brief of Appellant, with attachments, on this 19th day of February, 2016, to the following:

Jenna Hatch
Pearson, Butler & Carson
1682 Reunion Avenue, Suite 100
South Jordan, Utah 84095



EXHIBIT A

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Alpine, Utah 84004
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alexis@nnpatentlaw.com

The Order of Court is stated below:

Dated: July 16, 2015
08:47:14 AM

/s/ BARRY LAWRENCE
District Court Judge



IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ANDREW VEYSEY,
Petitioner,

vs.

ALEXIS VEYSEY nka ALEXIS NELSON,
Respondent.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Case No. 984907587

Judge: Barry Lawrence
Commissioner: Michelle Blomquist

THIS MATTER comes before the Court on following Respondent Alexis Nelson's ("Respondent's") Objection to Commissioner Recommendation on the Respondent's Motion for Order to Show Cause regarding reimbursement for daycare expenses incurred for the parties' minor children between 2002 and 2006. The Court, having received testimony and evidence by the parties, now enters in its FINDINGS OF FACT and CONCLUSIONS OF LAW:

1. The Court recognizes that variable daycare expenses constitute child support, and that the statute of limitations governing enforcement of child support orders applies to Respondent's claims for reimbursement. *Veysey v. Veysey*, 2014 UT App 264, ¶ 15.
2. All of Respondent's claims for reimbursement fall within the applicable statute of limitations.

3. Respondent's claims for reimbursement prior to April 2005, however, are barred by laches.
4. Under Utah case law, a laches analysis requires a determination of: (1) whether Respondent delayed unreasonably; and (2) whether Petitioner was prejudiced by that delay. In order for laches to bar any of Respondent's claims, both elements must be found.
5. With respect to the element of unreasonable delay, Respondent's knowledge as an attorney of the applicable statute of limitations does not excuse her delay, and is not applicable to a laches analysis.
Respondent waited for over a decade to seek reimbursement of the requested expenses. And, she failed to adequately explain the reasons for the delay and failed to explain her lack of diligence in pursuing the claims, other than her assertion that she believed the statute of limitations had not yet run. The Court was not persuaded that her conduct was justified, reasonable or diligent.
6. The Court found Utah Code Ann. § 78B-12-214, while ~~is not~~ dispositive of this case, ~~but is~~ was persuasive with respect to the reasonableness of Respondent's actions.
7. Under this statute, a party needs to provide written notification of the costs and identity of the provider, and notify the other party if anything changes within 30 days of the change. Essentially, this statute establishes a policy of keeping the other party informed when you are going to seek costs.
8. Prior to September 2002, the parties' children were enrolled in daycare at the University of Utah. At some point, the children were moved to Challenger School.
9. Petitioner was aware that the children were enrolled in Challenger School and incurring costs there, but based on the record, there are questions as to whether he knew specifically the amount of costs, whether the costs were significantly more than the University of Utah costs, and what his obligations were with respect to those costs.
10. The only evidence of any written verification given by Respondent to Petitioner was a handbook that was not provided to the Court. There has never been anything in writing given to Petitioner other than that handbook to support Respondent's claims. And, there was nothing presented to the Court indicating that any increased child care expense was ever communicated to Petitioner. The passage of time has made it difficult for Respondent to support her claims.
11. From an email presented to the Court by Petitioner, it appears that Respondent never truly intended to

pursue her claims, but did so as a sort of retribution against Petitioner. That inference is supported by the fact that there was nothing done by Respondent from the time the expenses were incurred until the date of the email ~~over that period of time~~ that indicated an intent to collect these costs from Petitioner.

12. As a result, the Court finds that Respondent was not reasonable in her delay.

13. With respect to prejudice, the Court finds that by failing to properly raise the issue at the time, Petitioner was prevented from having an opportunity to contest ~~contesting~~ the amount owed. If, for example, costs of Challenger School were significantly more than those of the University of Utah, that should have been brought to Petitioner's attention so that he could have challenged that at the time, and perhaps cause the parties to agree to a less expensive provider.

14. The passage of time has also made it difficult to demonstrate the amount owed. For example, Respondent's payment summary entered into evidence only dealt with credit card payments made by Petitioner. If there were cash payments or some equitable adjustments that needed to be made, those would not have been able to be made because of the passage of time. If Respondent were now permitted to claim the child care expenses from 2002 through 2005, that would be unfair to the Petitioner. Moreover, the passage of time has contributed to Respondent's inability to properly and reasonably support the amount of her claims, as demonstrated by the confusion surrounding her explanation of her methodology in computing the amount owed.

15. As a result, the Court finds that Petitioner was prejudiced by the delay sufficient to support a finding of laches.

16. The Court, however, is not persuaded that the Commissioner's ruling allowing the April, 2005 to June, 2006 costs should be disallowed. Moreover, Petitioner does not strenuously object to those costs ~~The parties, however, agree that costs from April 2005 to June 2006 are legitimate and supportable.~~ As a result, Petitioner cannot demonstrate the same level of prejudice with respect to those amounts. Accordingly, laches does not bar those claims.

17. Petitioner is not responsible for the cost of regular half-day kindergarten tuition, but is responsible for any extra tuition paid for full-day kindergarten as an extended care expense. *See Veysey*, 2014 UT App 264 at ¶ 20.

18. Based upon Respondent's testimony, the amount owed for the time period from April 2005 – June 2006 is \$875.00. This amount is a reasonable approximation of the amount owed, and is consistent with the Court of Appeals' mandate regarding the calculation of Petitioner's portion of kindergarten expenses.

19. However, given the unreasonableness of Respondent's delay, it would be inequitable to allow for the collection of interest for that time period. The Court thus denies any award of interest in this case.

20. The Court also denies fees or costs to either party.

21. The Court rules in favor of Respondent, in the amount of \$875.00.

Dated: July 4, 2015

[DOCUMENT ENDS HERE; SIGNATURES ARE FOUND ON FIRST PAGE]

EXHIBIT B

	<u>Year</u>	<u>Month</u>	<u>Amt Pd</u>	<u>Daycare</u>	<u>Total</u>	<u>Difference</u>	<u>Interest</u>	<u>Int. Rate</u>	
Halle & Chloe	2002	Sep	898	488	988	90			
		Oct	898	488	988	90			
		Nov	898	488	988	90			
		Dec	898	488	988	90	200.3	4.28%	
	2003	Jan	898	488	988	90			
		Feb	898	504.8	1004.8	106.8			
		Mar	898	488	988	90			
		Apr	298	488	988	690			
		May	0	488	988	988			
		Jun	898	488	988	90			
		Jul	0	488	988	988			
		Aug	898	524	1024	126			
Halle - ADK	2004	Sep	0	387.75	887.75	887.75			
		Oct	0	387.75	887.75	887.75			
		Nov	500	387.75	887.75	387.75			
		Dec	500	387.75	887.75	387.75	2340.54	3.41%	
		Jan	500	387.75	887.75	387.75			
		Feb	500	387.75	887.75	387.75			
		Mar	0	387.75	887.75	887.75			
		Apr	0	387.75	887.75	887.75			
		May	500	387.75	887.75	387.75			
		Jun	500	115.06	615.06	115.06			
		Jul	500	0	500	0			
		Aug	500	296	796	296			
Halle ends	2005	Sep	300	296	796	496			
		Oct	400	296	796	396			
		Nov	400	296	796	396			
		Dec	400	296	796	396	1816.2	3.28%	
		Jan	400	296	796	396			
		Feb	0	312.8	812.8	812.8			
		Mar	0	296	796	796			
		Apr	400	296	796	396			
		May	400	296	796	396			
		Jun	500	0	500	0			
		Jul	500	0	500	0			
		Aug	500	71.7	571.7	71.7			
Chloe - ADK	2006	Sep	597	88.5	588.5	-8.5			
		Oct	580	88.5	588.5	8.5			
		Nov	585	88.5	588.5	3.5			
		Dec	500	93.5	593.5	93.5	1414.54	4.77%	
		Jan	585	88.5	588.5	3.5			
		Feb	585	93.5	593.5	8.5			
		Mar	585	98.5	598.5	13.5			
		Apr	633	93.5	593.5	-39.5			
		May	585	98.5	598.5	13.5			
		Jun	585	0	500	-85	-85.5	n/a	
		Total		22400	13393.61	36393.61	13993.61	5686.237	19679.69
		Costs on Appeal							807.16
Attorney Fees							337.46		
TOTAL							20824.31		

EXHIBIT C

78B-5-202. Duration of judgment -- Judgment as a lien upon real property -- Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child support orders.

(1) Judgments shall continue for eight years from the date of entry in a court unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of judgment by a district court creates a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) An abstract of judgment issued by the court in which the judgment is entered may be filed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in the small claims division of any court may not qualify as a lien upon real property unless abstracted to the civil division of the district court and recorded in accordance with Subsection (3).

(5) (a) If any judgment is appealed, upon deposit with the court where the notice of appeal is filed of cash or other security in a form and amount considered sufficient by the court that rendered the judgment to secure the full amount of the judgment, together with ongoing interest and any other anticipated damages or costs, including attorney fees and costs on appeal, the lien created by the judgment shall be terminated as provided in Subsection (5)(b).

(b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court shall enter an order terminating the lien created by the judgment and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

(6) (a) A child support order or a sum certain judgment for past due support may be enforced:

- (i) within four years after the date the youngest child reaches majority; or
- (ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.

(b) The longer period of duration shall apply in every order.

(c) A sum certain judgment may be renewed to extend the duration.

(7) (a) After July 1, 2002, a judgment entered by a district court or a justice court in the state becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78B-5-201(4) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of the judgment and a separate information statement of the judgment creditor as described in Subsection 78B-5-201(5) is recorded in the office of the county recorder.

(b) The judgment shall run from the date of entry by the district court or justice court.

(c) The real property subject to the lien includes all the real property of the judgment debtor:

(i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs;
and

(ii) owned or acquired at any time by the judgment debtor during the time the judgment is effective.

(d) State agencies are exempt from the recording requirement of Subsection (7)(a).

(8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the judgment debtor in the judgment index in the office of the county recorder as required in Section 17-21-6.

(b) A judgment containing a legal description shall also be abstracted in the appropriate tract index in the office of the county recorder.

(9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (9)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

(ii) the name of any judgment creditor, debtor, assignor, or assignee; and

(iii) for the county in which the document is recorded in accordance with

Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Amended by Chapter 88, 2011 General Session

