FILED

January 30, 2026
IMAGE ID N2603011SNSC, FILING ID 0000043627

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

No. A 25-750

IN THE NEBRASKA COURT OF APPEALS

HALL COUNTY SCHOOL DISTRICT 40-0082,
a/k/a NORTHWEST PUBLIC SCHOOLS,

Plaintiff-Appellant,

v.

DAVID S. SACKSCHEWSKY,

Defendant-Appellee.

APPEAL FROM AN ORDER OF THE DISTRICT COURT
OF HALL COUNTY, NEBRASKA

The Honorable Andrew C. Butler

BRIEF OF APPELLANT

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STATEMENT OF THE BASIS OF JURISDICTION

The Court may hear this appeal pursuant to Neb. Rev. Stat. § 25-1912. This appeal addresses the district court's September 12, 2025, order granting motion to dismiss filed by Defendant, David S. Sackschewsky ("Defendant" or "Sackschewsky"); specifically, the trial court found that it would not apply the doctrines of equitable tolling or equitable estoppel to Sackschewsky's statute of limitations defense. (T25–30) Plaintiff, Hall County School District 40-0082, a/k/a Northwest Public Schools ("Plaintiff" or the "School District") filed its Notice of Appeal on October 3, 2025, within thirty days after entry of the September 12, 2025 order. (T32) The docket fee was paid on October 3, 2025. (Certificate of Appeal to the Nebraska Court of Appeals).

STATEMENT OF THE CASE

I. Nature of the Case.

This case involves the School District's civil claims for fraud, conversion, embezzlement, breach of fiduciary duties, and unjust enrichment against Sackschewsky. (T1–4) These claims arise out of Sackschewsky's actions while he was employed by the School District. (T1–2) In 2019, Sackschewsky was criminally charged for such conduct and stipulated to $150,000 in restitution to the School District. (T2) In November 2024, Sackschewsky stopped making restitution payments to the School District and has refused to make any further payments. (T2) Sackschewsky still owes $51,350, plus interest and costs, to the School District as a result of his criminal conduct. (T2)

When the School District brough this suit to collect, Sackschewsky moved to dismiss the claims as barred by the statute of limitations under Neb. Rev. Stat. § 25-207. (T6) The School District opposed the dismissal based on the doctrines of equitable estoppel and equitable tolling, due to Sackschewsky's stipulation to pay restitution in the related criminal proceeding. (T10–13)

II. The Issues Tried Below.

This matter is before the Court on an order granting Sackschewsky's motion to dismiss. Sackschewsky argued that the School District's lawsuit is barred by the statute of limitations under Neb. Rev. Stat. § 25-207, while the School District responded that equitable estoppel prevents Sackschewsky from

claiming the statute of limitation defense and that the statute of limitations was equitably tolled.

III. How the Issues Were Decided.

The district court determined that the School District's suit was untimely under Neb. Rev. Stat. § 25-207. While the district court noted that it "is also not content with the outcome of this matter," it determined it could not apply equitable estoppel or equitable tolling to the School District's claims. It dismissed the School District's claims with prejudice, finding amendment would be futile.

IV. The Scope of Review.

This appeal of the district court's order granting Sackschewsky's motion to dismiss presents questions of equity, specifically, whether the district court should have applied equitable estoppel or equitable tolling to Sackschewsky's statute of limitations defense against the School District's claims. "A challenge that a pleading is barred by the statute of limitations is a challenge that the pleading fails to allege sufficient facts to constitute a claim upon which relief can be granted." *Bonness v. Armitage*, 305 Neb. 747, 753 (2020) (citation omitted). "A district court's grant of a motion to dismiss on the pleadings is reviewed de novo, accepting the allegations in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party." *Id.* (citation omitted).

This appeal also challenges the district court's decision to dismiss the School District's Complaint with prejudice instead of giving the School District opportunity to amend. "[A]n appellate court reviews de novo an underlying legal conclusion that the proposed amendments would be futile." *Eadie v. Leise Props., LLC*, 300 Neb. 141, 146 (2018).

ASSIGNMENTS OF ERROR

1. The district court erred in determining amendment would be futile and therefore dismissing the School District's Complaint with prejudice.

2. The district court erred in failing to accept the School District's factual allegations in the Complaint as true and failing to draw all reasonable inferences in the School District's favor.

3. The district court erred in determining that the School District's reliance on the 2019 Sentencing Order was not reasonable and therefore refusing to apply the doctrine of equitable estoppel.

4. The district court erred in failing to equitably toll the statute of limitations while Sackschewsky was making restitution payments.

PROPOSITIONS OF LAW

1. A court should allow a party to amend its pleading in the absence of "undue delay, bad faith, unfair prejudice, or futility" because this is "consistent with the rationale for the liberal pleading standard in civil cases." *Eadie v. Leise Props., LLC*, 300 Neb. 141, 150 (2018).

2. "If a plaintiff has moved for leave to amend before the court rules on a motion to dismiss, the court must first consider and rule upon the pending motion to amend" and "the same rule should apply where the plaintiff did not move for leave." *Id.* at 149–50 (citations omitted).

3. Amendment is not futile if the amended pleading can "withstand a rule 12(b)(6) motion to dismiss." *Bailey v. First Nat'l Bank*, 16 Neb. App. 153, 169 (2007).

4. "The elements of equitable estoppel are, as to the party estopped: (1) conduct which amounts to a false representation or concealment of material facts, or at least which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention, or at least the expectation, that such conduct shall be acted upon by, or influence, the other party or other persons; and (3) knowledge, actual or constructive, of the real facts. As to the other party, the elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his or her injury, detriment, or prejudice." *Rauscher v. City of Lincoln*, 269 Neb. 267, 275 (2005) (citing *Olsen v. Olsen*, 265 Neb. 299 (2003)).

5. "The doctrine of equitable estoppel may be applied to prevent an inequitable resort to a statute of limitations" such as "when one lulls his or her adversary into a false sense of security, thereby causing that person to subject his or her claim to the bar of the statute of limitations, and then pleads the very delay caused by his or her conduct as a defense to the action when it is filed." *Manker v. Manker*, 263 Neb. 944, 959–60 (2002) (citation omitted); *see Bolden v. Bd. of Regents*, 30 Neb. App. 767, 790 (2022) (citations omitted).

6. "Equitable estoppel is a bar which precludes a party from denying or asserting anything to the contrary of those matters established as the truth by his or her own deeds, acts, or representations." *Omaha Police Union Local 101, IUPA v. City of Omaha*, 292 Neb. 381, 389 (2015) (citation omitted).

7. Equitable estoppel "is based on the grounds of public policy and good faith, and is interposed to prevent injustice and inequitable consequences." *Koop v. Omaha*, 173 Neb. 633, 641 (1962) (citation omitted); *see Williams v. Williams*, 206 Neb. 630, 636–637 (1980) (citation omitted).

8. "Equitable estoppel rests largely on the facts and circumstances of the particular case and will be applied where the wisdom and justice of the principle are founded upon equity, morality, and justice in accordance with good conscience, honesty, and reason. Under such circumstances, the doctrine of equitable estoppel subserves its true purpose as a practical, fair, and necessary rule of law." *Bolden v. Bd. of Regents*, 30 Neb. App. 767, 770 (2022) (citation omitted).

9. "Equitable estoppels cannot in the nature of things be subjected to fixed and settled rules of universal application like legal estoppels, nor be hampered by the narrow confines of a technical formula." *Bolden v. Bd. of Regents*, 30 Neb. App. 767, 770 (2022) (citation omitted).

10. "[A] person is held to a representation made or a position assumed, where otherwise inequitable consequences would result to another who, having the right to do so under all the circumstances of the case, has, in good faith, relied thereon." *Bolden v. Bd. of Regents*, 30 Neb. App. 767, 770 (2022) (citation omitted).

11. "[E]quitable tolling permits a court to excuse a party's failure to comply with the statute of limitations where, because of disability, irremediable lack of information, or other circumstances beyond his or her control, the plaintiff cannot be expected to file suit on time" when the plaintiff shows due diligence. *State v. Hill*, 310 Neb. 647, 652 (2021) (citation omitted); *State v. Conn*, 300 Neb. 391, 398 (2018).

12. A "stipulation" is "an agreement between parties to a proceeding, or their attorneys, relating to some business before the court." *State v. Lenhart*, 317 Neb. 787, 796 (2024) (citation omitted).

13. "Any restitution paid by the defendant to the victim shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution." Neb. Rev. Stat. § 29-2287(3).

14. Equitable tolling "permits a court to excuse a party's failure to comply with the statute of limitations where, because of disability, irremediable lack of information, or other circumstance beyond his or her control, the plaintiff cannot be expected to file suit on time." *In re Estate of Fuchs*, 297 Neb. 667, 679 (2017) (citation omitted).

15. When claims had been filed with a city, related § 1983 actions were tolled, because the related actions would have been extinguished if the city paid the claims. *Bauers v. City of Lincoln*, 245 Neb. 632, 647 (1994).

16. While "a defendant may…raise the statute of limitations as part of a motion to dismiss for failure to state a claim upon which relief can be granted," the motion should be denied when "the complaint does not disclose on its face that it is barred by the statute of limitations" or the complaint "allege[s] facts to avoid the bar of the statute of limitations." *Bonness v. Armitage*, 305 Neb. 747, 755 (2020) (citations omitted).

17. At the motion to dismiss stage, the district court was required to "accept[] the allegations in the complaint as true and draw[] all reasonable inferences in favor of the nonmoving party." *Id.* at 753 (citation omitted).

18. "The point at which a statute of limitations begins to run must be determined from the facts of each case …." *Irving F. Jensen Co. v. State*, 272 Neb. 162, 166 (2006) (citation omitted).

19. "[A] party cannot recover for unjust enrichment until the allegedly inequitable benefits have been received and retained." *Ag Servs. of Am., Inc. v. Empfield*, 255 Neb. 957, 962 (1999) (citations omitted).

STATEMENT OF FACTS

Defendant-Appellee Sackschewsky was previously employed by the School District as a music teacher. (T1) While employed, Sackschewsky defrauded the School District by, among other things, making improper ATM withdrawals from the School District's bank account, wrongfully addressing checks to himself, stealing booster club money, forging service provider invoice records, and wrongfully taking School District money for personal use. (T1–2)

In 2019, Sackschewsky was criminally charged and sentenced to probation for the aforementioned conduct. (T2) In the criminal proceeding, Sackschewsky stipulated with the State to restitution to the School District in the sum of $150,000. (T2) The criminal court found that Sackschewsky had the ability to pay restitution of $150,000. (E1, p. 104) The criminal court entered a sentencing order for probation, which required Sackschewsky to pay the School District at the rate of $1,700 for 60 months after his release from incarceration. (T26)

Sackschewsky made restitution payments to the School District roughly once a month from late 2019 until late 2024. (E2) In November 2024, Sackschewsky stopped making payments to the School District and has since refused to make any further payments. (E2, p. 4-5) Sackschewsky still owed $51,350 of the $150,000 to the School District as a result of his criminal conduct. (E2, p. 5)

SUMMARY OF THE ARGUMENT

The district court erred in determining amendment would be futile and therefore dismissing the School District's complaint with prejudice. The School District has a plausible claim that equitable estoppel precludes Sackschewsky from asserting a statute of limitations defense and that equitable tolling applied while Sackschewsky was making restitution payments. Nebraska law supports liberal amendment when justice requires, such as when equitable doctrines could prevent an inequitable resort to statute of limitations defenses. It would be inequitable to foreclose the School District's ability to recover the remaining amounts due.

ARGUMENT

I. The district court erred in determining amendment would be futile and therefore dismissing the School District's Complaint with prejudice.

The district court stated in the final paragraph of its order that "any amendment to the School District's current complaint would be futile" and therefore granted Sackschewsky's motion to dismiss with prejudice. (T30) The trial court erred in determining that amendment would be futile.

Under Nebraska law, "when a court grants a motion to dismiss for failure to state a claim, a party should be given leave to amend absent undue delay, bad

faith, unfair prejudice, or futility." *Eadie v. Leise Props., LLC*, 300 Neb. 141, 150 (2018); *see also Spear T Ranch, Inc. v. Knaub*, 269 Neb. 177, 195 (2005) ("Leave to amend should be granted liberally when justice so requires." (citation omitted)). Additionally, "[g]ranting leave to amend is consistent with the rationale for the liberal pleading standard in civil cases." *Eadie*, 300 Neb. at 150. In fact, "[i]f a plaintiff has moved for leave to amend before the court rules on a motion to dismiss, the court must first consider and rule upon the pending motion to amend" and "the same rule should apply where the plaintiff did not move for leave." *Id.* at 149–50 (citations omitted). At this early stage of proceedings, amendment would only be futile if the amendment "cannot withstand a rule 12(b)(6) motion to dismiss." *Bailey v. First Nat'l Bank*, 16 Neb. App. 153, 169 (2007).

The district court dismissed this case based on its determination that the School District's claims were barred by the statute of limitations under Neb. Rev. Stat. § 25-207. As further described in the following sections, however, the School District can plausibly allege that equitable estoppel and/or equitable tolling apply so the School District's claims are not barred. Therefore, as described further in the following sections, amendment is not futile and the School District should have been granted leave to amend.

A. The Complaint could be amended to plausibly allege the applicability of equitable estoppel.

Under Nebraska law, equitable estoppel is appropriate when the following elements are present:

> [A]s to the party estopped: (1) conduct which amounts to a false representation or concealment of material facts, or at least which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention, or at least the expectation, that such conduct shall be acted upon by, or influence, the other party or other persons; and (3) knowledge, actual or constructive, of the real facts. As to the other party, the elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction

> based thereon of such a character as to change the position or status of the party claiming the estoppel, to his or her injury, detriment, or prejudice.

Rauscher v. City of Lincoln, 269 Neb. 267, 275 (2005) (citing *Olsen v. Olsen*, 265 Neb. 299 (2003)). In Nebraska, "[t]he doctrine of equitable estoppel may be applied to prevent an inequitable resort to a statute of limitations." *Manker v. Manker*, 263 Neb. 944, 960 (2002).

The first element of equitable estoppel involves showing the party to be estopped engaged in "conduct which amounts to a false representation or concealment of material facts, or at least which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert." *Rauscher*, 269 Neb. at 275. In Nebraska, this element "is met when one lulls his or her adversary into a false sense of security, thereby causing that person to subject his or her claim to the bar of the statute of limitations, and then pleads the very delay caused by his or her conduct as a defense to the action when it is filed." *Manker*, 263 Neb. at 959 (citation omitted).

In this case, the "conduct" Sackschewsky engaged in was stipulating to restitution in the sum of $150,000. (E1, p. 85) A "stipulation" is "an agreement between parties to a proceeding, or their attorneys, relating to some business before the court." *State v. Lenhart*, 317 Neb. 787, 796 (2024) (citation omitted). In other words, Sackschewsky agreed that $150,000 in restitution was due. By stipulating that $150,000 was due, Sackschewsky lulled the School District into a false sense of security that it would receive full recompense for the wrongs committed against it by Sackschewsky. This sense of security was reinforced by Sackschewsky every month during his probationary period, when he made restitution payments to the School District.

Unlike the stipulation to $150,000 in restitution that involved Sackschewsky's active participation, it was the criminal court that ***ordered*** Sackschewsky to pay the restitution "at the rate of $1,700 per month…for 60 months." (E1, p. 102) It appears there was some confusion on this front before the district court; however, the exhibits offered by the School District at the motion to dismiss hearing, which were ultimately accepted by the district court, show that Sackschewsky *stipulated* to $150,000 in restitution, while the criminal court *ordered* the probation conditions. (E1, pp. 85, 102) It was the court-ordered

probation conditions where the confusing and contradictory restitution terms were introduced. But the court-imposed probation conditions are not in fact relevant to the current question of whether Sackschewsky should be equitably estopped from asserting a statute of limitations defense. After all, Sackschewsky, not the criminal court, is the "party to be estopped." The actions of Sackschewsky are thus the relevant actions to consider.

Additionally, Sackschewsky's stipulation to pay $150,000 in restitution is inconsistent with his subsequent assertion in this case that he will not pay the full $150,000 because the statute of limitations has run. Therefore, the School District could clearly state a plausible claim for the first element of equitable estoppel and the district court erred in not giving leave to amend to do so.

The second element of equitable estoppel is "the intention, or at least the expectation, that such conduct shall be acted upon by, or influence, the other party or other persons." *Rauscher*, 269 Neb. at 275 (citing *Olsen*, 265 Neb. 299). Sackschewsky's stipulation to pay restitution to the School District necessarily carries the intention or expectation that such conduct would influence the School District. After all, why would the School District expend resources to sue Sackschewsky in civil court when he already agreed to full restitution? Nebraska's statutes reinforce that civil judgments are offset by criminal restitution payments. *See* Neb. Rev. Stat. § 29-2287(3) ("Any restitution paid by the defendant to the victim shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution."). By stipulating to $150,000 in restitution to the School District, Sackschewsky received the benefit of not facing the time and expense of defending a separate, civil lawsuit. Thus, this element too can be plausibly alleged.

Equitable estoppel next involves showing the party to be estopped had "knowledge, actual or constructive, of the real facts." *Rauscher*, 269 Neb. at 275 (citing *Olsen*, 265 Neb. 299). Sackschewsky knew he would stop making payments once his probation period ended. In fact, he is likely the only one who knew of his plans. A defendant cannot be allowed to claim ignorance of limitation periods that would affect their own liability, particularly when making formal stipulations regarding the amount owed. Again, amendment regarding this element is not futile.

Finally, equitable estoppel involves three elements relating to the party seeking equitable estoppel:

> (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his or her injury, detriment, or prejudice.

Id. (citing *Olsen*, 265 Neb. 299).

These remaining elements of equitable estoppel focus on the plaintiff's reasonable reliance on the defendant's stipulation. When Sackschewsky stipulated to $150,000 in restitution, the School District did not know he would refuse to pay that full amount. Instead, it relied in good faith on Sackschewsky's stipulation and his monthly payments during his probation period and changed its position by forbearing from immediate civil collection efforts. Thus, these elements too are present and can be plausibly alleged.

Nebraska's equitable estoppel doctrine "is based on the grounds of public policy and good faith, and is interposed to prevent injustice and inequitable consequences." *Koop v. Omaha*, 173 Neb. 633, 641 (1962) (citation omitted). Allowing a defendant to stipulate to a restitution amount and then invoke statute of limitations defenses to avoid paying that stipulated amount would create manifest injustice. Such conduct undermines the integrity of stipulations and judicial proceedings, while rewarding defendants who act in bad faith. Rather than requiring victims to pursue separate civil litigation to recover their losses, the restitution stipulation provides a mechanism for compensation within the criminal case itself. This consolidation of remedies serves judicial economy by preventing duplicative proceedings and conflicting determinations regarding damages. The School District seeks to make itself whole after suffering significant losses because of Sackschewsky's criminal conduct. Allowing Sackschewsky to evade making the remaining agreed upon payments by invoking the statute of limitations would undermine the purpose of restitution and would be unjust.

In summary, the district court erred in its determination that allowing the School District to amend its Complaint would be futile. Sackschewsky's motion to dismiss was based solely on the statute of limitations under Neb. Rev. Stat.

§ 25-207. Equitable estoppel prevents Sackschewsky from raising that defense. Without that, the School District's claims can move forward.

B. The Complaint could be amended to plausibly allege the applicability of equitable tolling.

Equitable tolling "permits a court to excuse a party's failure to comply with the statute of limitations where, because of disability, irremediable lack of information, or other circumstance beyond his or her control, the plaintiff cannot be expected to file suit on time." *In re Estate of Fuchs*, 297 Neb. 667, 679 (2017) (citation omitted).

In one case involving suit by former firefighters over their pensions with the City of Lincoln, the Nebraska Supreme Court held that "while the firefighters filed their claims with the City" their related § 1983 actions were tolled, because "[h]ad the City paid the claims, the firefighters' § 1983 actions would have been extinguished." *Bauers v. City of Lincoln*, 245 Neb. 632, 647 (1994).

Similarly, if Sackschewsky had paid the School District the full, stipulated amount, the School District's civil causes of action would have been extinguished. *See* Neb. Rev. Stat. § 29-2287(3) ("Any restitution paid by the defendant to the victim shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution."). Logic similar to that in *Bauers* should therefore be applicable to toll to the School District's Complaint seeking the remaining unpaid amount from the stipulated restitution of $150,000. This also aligns with notions of judicial economy and prevention of duplicative lawsuits. It does not make sense to require the School District to bring a lawsuit that would become moot upon performance of the restitution to which Sackschewsky already stipulated. At the very least, the Complaint could be amended to plausibly allege the applicability of equitable tolling. Therefore, the district court erred for this additional reason in dismissing the case without leave to amend.

II. The district court erred in failing to accept the School District's factual allegations in the Complaint as true and failing to draw all reasonable inferences in the School District's favor.

Sackschewsky raised his statute of limitations defense in a motion to dismiss. While "a defendant may…raise the statute of limitations as part of a

motion to dismiss for failure to state a claim upon which relief can be granted," the motion should be denied when "the complaint does not disclose on its face that it is barred by the statute of limitations" or the complaint "allege[s] facts to avoid the bar of the statute of limitations." *Bonness v. Armitage*, 305 Neb. 747, 755 (2020) (citations omitted). At the motion to dismiss stage, the district court was required to "accept[] the allegations in the complaint as true and draw[] all reasonable inferences in favor of the nonmoving party." *Id.* at 753 (citation omitted).

The School District included the following allegations in its Complaint, which the district court was required to accept as true:

> 9. In 2019, Sackschewsky plead guilty to crimes regarding the aforementioned conduct, and was sentenced to probation and required to pay $1,700 per month ($150,000 in total restitution) to the School District.
>
> 10. In November 2024, Sackschewsky stopped making payments to the School District and has refused to make any further payments.
>
> 11. Sackschewsky still owes $51,350, plus interest and costs, to the School District as a result of his criminal conduct.

(T2) It is reasonable to infer from these allegations that equitable principles may affect the statute of limitations. At the very least, it is not clear from the face of the Complaint when the School District's cause of action accrued, and whether it was equitably tolled (such as until November 2024 when the payments stopped). Therefore, it was error for the district court to dismiss the Complaint.

III. The district court erred in determining that the School District's reliance on the 2019 Sentencing Order was not reasonable and therefore refusing to apply the doctrine of equitable estoppel.

The doctrine of equitable estoppel is "based upon the principle that one who has previously taken a position with reference to a transaction and thereby obtained a benefit from the other party cannot thereafter take an inconsistent position which would result in prejudice to the party who relied on the original position." *Williams v. Williams*, 206 Neb. 630, 636–637 (1980) (citation omitted). "Equitable estoppel is a bar which precludes a party from denying or asserting

anything to the contrary of those matters established as the truth by his or her own deeds, acts, or representations." *Omaha Police Union Local 101, IUPA v. City of Omaha*, 292 Neb. 381, 389 (2015) (citation omitted). "The doctrine applies where, as a result of conduct of a party upon which another person has in good faith relied to his or her detriment, the acting party is absolutely precluded, both at law and in equity, from asserting rights which might have otherwise existed." *Id.* at 389 (citation omitted). Equitable estoppel "may, in a proper case, be applied to prevent a fraudulent or inequitable resort to a statute of limitations and a defendant may, by his representations, promises, or conduct be so estopped where the other elements of estoppel are present." *Bolden v. Bd. of Regents*, 30 Neb. App. 767, 790 (2022) (quoting *Muller v. Thaut*, 230 Neb. 244, 253-54 (1988)) (additional citation omitted).

Furthermore, the Nebraska Supreme Court has engaged in the following discussion of the doctrine:

> Equitable estoppel rests largely on the facts and circumstances of the particular case and will be applied where the wisdom and justice of the principle are founded upon equity, morality, and justice in accordance with good conscience, honesty, and reason. Under such circumstances, the doctrine of equitable estoppel subserves its true purpose as a practical, fair, and necessary rule of law. *Koop v. City of Omaha*, 173 Neb. 633, 114 N.W.2d 380 (1962).
>
> Equitable estoppels cannot in the nature of things be subjected to fixed and settled rules of universal application like legal estoppels, nor be hampered by the narrow confines of a technical formula.
>
> Equitable estoppel rests largely on the facts and circumstances of the particular case…
>
> …a person is held to a representation made or a position assumed, where otherwise inequitable consequences would result to another who, having the right to do so under all the circumstances of the case, has, in good faith, relied thereon. *National Union Fire Ins. Co. v. Bruecks*, 179 Neb. 642, 139 N.W.2d 821 (1966).

Bolden v. Bd. of Regents, 30 Neb. App. 767, 770 (2022) (quoting *Muller v. Thaut*, 230 Neb. 244, 253–54 (1988) (internal quotation marks omitted).

In this case, it is undisputed that Sackschewsky stipulated to pay over $50,000 more to the School District than what he has paid. The School District reasonably relied on the sentencing order (and the judgement entered therein) that required Sackschewsky to make monthly payments to the School District. The School District had no need to file suit earlier since a Court already entered a restitution order in favor of the School District. Although the parties and Court were confused by the sentencing order in 2024, the School District reasonably relied on the Court's restitution order against Sackschewsky and in favor of the School District.

In this matter, the doctrine of equitable estoppel exists to prevent Defendant from now claiming that he need not pay the amount he previously stipulated to pay. It would be inequitable to foreclose the School District's ability to recover the remaining judgment owed because the School District reasonably relied on the sentencing order and Sackschewsky's ongoing partial payments through his plea agreement. This situation is precisely the basis for equitable estoppel, and the district court erred in failing to find that Sackschewsky is equitably estopped from asserting a statute of limitations defense.

IV. The district court erred in failing to equitably toll the statute of limitations while Sackschewsky was making restitution payments.

The applicable statute of limitations should have been equitably tolled while Sackschewsky was making restitution payments. "The point at which a statute of limitations begins to run must be determined from the facts of each case …." *Irving F. Jensen Co. v. State*, 272 Neb. 162, 166 (2006) (citation omitted). "[A] party cannot recover for unjust enrichment until the allegedly inequitable benefits have been received and retained." *Ag Servs. of Am., Inc. v. Empfield*, 255 Neb. 957, 962 (1999) (citations omitted). Under Nebraska law, "[t]he doctrine of equitable tolling permits a court to excuse a party's failure to comply with the statute of limitations where, because of disability, irremediable lack of information, or other circumstances beyond his or her control, the plaintiff cannot be expected to file suit on time." *State v. Hill*, 310 Neb. 647, 652 (2021) (citation omitted). Equitable tolling likewise involves the claimant showing due diligence. *State v. Conn*, 300 Neb. 391, 398 (2018).

The parties in the criminal proceeding stipulated that Sackschewsky owed $150,000 to the School District. It is uncontroverted that the sentencing court

approved the plea agreement where Sackschewsky agreed that he owed $150,000. Sackschewsky made partial payments for years as required under that plea agreement. Yet, Sackschewsky now apparently claims that he has no legal obligation to pay the remaining restitution amount. In the present case, Defendant's restitution payments were paid during the term of his parole, which lasted through his discharge in December of 2024. While the Court Order indicated that Defendant satisfied the conditions of his felony probation, the Order acknowledged that a sum in the amount of $51,350 was left unpaid to the School District. At that point, the School District became aware that Sackschewsky would no longer pay the money he previously stipulated he owes.

The School District did not need to file any type of collection action during Defendant's five-year probationary period because the sentencing order already found (and Defendant agreed) that Defendant owed $150,000 to the School District. The cessation of payments upon Defendant's parole release in 2024 created a sudden and unexpected change in circumstances, leaving the School District with no alternative to collect on the remainder of the amount already stipulated. Up until Defendant's release in 2024, the School District was given no reason to believe filing the claim was necessary. The Court's December 2024 Order itself shows that there was considerable confusion regarding what the court ordered in 2021. This situation constitutes an extraordinary circumstance warranting the application of equitable tolling.

Furthermore, the School District acted diligently upon discovery in pursuing its claim. Upon Sackschewsky's failure to continue payments, the School District promptly sought to enforce and collect on the unpaid judgment through the present debt collection lawsuit. This shows that the School District did not sit on its rights but acted in a timely and reasonable manner once Defendant's position became apparent. For these reasons, the district court erred in failing to equitably toll the statute of limitations.

CONCLUSION

The district court erred in granting Sackschewsky's motion to dismiss and dismissing Plaintiff's Complaint with prejudice. Plaintiff thus asks this Court to reverse the decision of the trial court and remand for further proceedings.

Dated: January 30, 2026.

By: */s/ Justin J. Knight*

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing *Brief of Appellant* complies with the word count requirements for a brief and the typeface requirements request of Neb. Ct. R. App. § 2-103(A) and (C); was prepared using Microsoft Word – Microsoft 365 Apps for Business; and contains 6,167 words above this certification, including the cover page, table of contents, table of authorities, headings, quotations, and signature block.

/s/ Justin J. Knight
Justin J. Knight

Certificate of Service

I hereby certify that on Friday, January 30, 2026 I provided a true and correct copy of this *Brief of Appellant SD Hall County* to the following:

David S Sackschewsky represented by Mark Thomas Porto (23448) service method: Electronic Service to **mporto@giattorneys.com**

Signature: /s/ Justin Knight (25267)