

CASE NO. A-25-750

**IN THE COURT OF APPEALS
FOR THE STATE OF NEBRASKA**

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

Plaintiff-Appellant

vs.

DAVID S. SACKSCHEWSKY,

Defendant-Appellee

APPEAL FROM THE DISTRICT COURT
OF HALL COUNTY, NEBRASKA
IN AND FOR THE NINTH JUDICIAL DISTRICT

Honorable Andrew C. Butler, District Judge

BRIEF OF APPELLEE
David S. Sackschewsky

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BASIS OF JURISDICTION

Appellee, David Sackschewsky ("Sackschewsky") accepts Appellant's basis of jurisdiction as true.

*Note: Sackschewsky believes that the "evidence index" of Volume 2 of the Bill of Exceptions incorrectly transposed Exhibit 1 and 2. This brief will utilize the exhibit number of the exhibit sticker rather than the number on the exhibit index. Any citations to an exhibit will then identify the specific page of Volume 2 of the Bill of Exceptions that is at issue (i.e. p.x/124)

STATEMENT OF THE CASE

(1) Nature of the case:

In its "Nature of the Case" section, Appellant ("School District" or "the School District") states that "Sackschewsky . . . stipulated to \$150,000 in restitution to the School District." To be clear, the evidence presented at hearing in this matter was that Sackschewsky stipulated that *the amount of* restitution was \$150,000 (E1,85:6, Vol.2 p.88/124). He explicitly did *not* agree that he had the ability to pay that figure of restitution and, accordingly, whether that figure should be ordered to be paid in the form of restitution as part of a sentencing order (E1,85:6, Vol.2 p.88/124). In other respects, Sackschewsky does not dispute the nature of the case as set forth by the Appellant.

(2) Issues tried in the court below:

Sackschewsky largely accepts the School District's characterization of the issues tried in the court below as true. However, at hearing on Sackschewsky's motion to dismiss, the School District offered evidence thus converting the nature of hearing from a motion to dismiss to a motion for summary judgment (4:4-25; 5:1-25; 6:1-7). *See Britton v. City of Crawford*, 282 Neb. 374, 379-80 (2011)

(3) How the issues were decided:

Sackschewsky accepts the Appellant School District's characterization of how the issues were decided as true.

4) Scope of review:

Sackschewsky accepts the Appellant School District's characterization of the scope of review as true. While the nature of the motion was technically converted from a motion to dismiss to a motion for summary judgment following

the School District's offer of evidence outside of the pleadings, the nature and scope of review is the same.

PROPOSITIONS OF LAW

I.

"The following actions can only be brought within four years: (1) An action for trespass upon real property; (2) an action for taking, detaining or injuring personal property, including actions for the specific recovery of personal property; (3) an action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated; and (4) an action for relief on the ground of fraud, but the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud, except as provided in sections 30-2206 and 76-288 to 76-298."

Neb. Rev. Stat. §25-207 (emphasis added).

II.

With regard to the concept of equitable estoppel, the Nebraska Supreme Court has stated that:

[t]he gist of equitable estoppel is that a party who has, by his statements or conduct, asserted a claim based on the assumption of the truth of certain facts whereby he has obtained a benefit from another party, cannot later assert that those facts are not true if, by reason of that assertion, the other party will be prejudiced. Equitable estoppel is, to that extent, like fraud and cannot be confined within any strict definition.

Williams v. Williams, 206 Neb. 630, 637 (1980).

III.

The six "necessary elements" for a claim of equitable estoppel are: [a]s to 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, (4) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (5) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (6) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his injury, detriment, or prejudice.

Williams, 206 Neb. at 637 (quoting *Chappelear v. Grange & Farmers Ins. Co.*, 190 Neb. 589, 592 (1973)).

IV.

“The 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. Equitable tolling requires due diligence on the part of the claimant.” *State v. Hill*, 310 Neb. 647, 652 (2021).

V.

“[T]he fact that restitution was required or paid shall not be admissible as evidence in a civil action and shall have no legal effect on the merits of a civil action.” *Neb. Rev. Stat.* §29-2287 (2).

VI.

“[Neb. Rev. Stat.] [s]ections 29-2280 to 29-2289 shall not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action.” *Neb. Rev. Stat.* §29-2287 (1).

VII.

“Upon completion of the term of probation . . . the probationer shall be relieved of any obligations imposed by the order of the court and shall have satisfied the sentence for his or her crime.” *Neb. Rev. Stat.* §29-2264 (4) (a).

STATEMENT OF FACTS

*Note: Sackschewsky believes that the “evidence index” of Volume 2 of the Bill of Exceptions incorrectly transposed Exhibit 1 and 2. This brief will utilize the exhibit number of the exhibit sticker rather than the number on the exhibit index. Any citations to an exhibit will then identify the specific page of Volume 2 of the Bill of Exceptions that is at issue (i.e. p.x/124)

For the purposes of this appeal, Sackschewsky largely agrees with the “Statement of Facts” presented by the Appellant School District. To be clear, however, the School District alleges that “Sackschewsky stipulated with the State to restitution to the School District in the amount of \$150,000” when, in reality, Sackschewsky stipulated only that the *amount of* restitution was \$150,000 but did not stipulate that he should be ordered to pay that amount (Brief of Appellant, p. 9; E1,85:6, Vol.2 p.88/124). Ultimately, the School District contends that, “Sackschewsky still owed \$51,350 of the \$150,000 to the School District as a result of his criminal conduct.” (Brief of Appellant, p. 9). While the School District is correct insofar as its damages may have been \$150,000, the sentencing court ordered Sackschewsky to pay \$1,700 per month for 60 months, an obligation Sackschewsky undisputedly met (E1,105-106:6, Vol.2 p. 108-109/124). Accordingly, Sackschewsky disputes the School District’s contention that this money was “still owed” following his release from probation.

In response to the School District’s complaint, Sackschewsky filed a motion to dismiss pursuant to Neb. Ct. R. Plead. §6-1112 (b) (6), alleging that the School District’s complaint failed to state a claim for which relief could be granted due to the applicable statute of limitations having lapsed (T6).

At hearing on Sackschewsky’s motion to dismiss, the School District offered exhibits, thus technically converting the nature of the hearing from a motion to dismiss to a motion for summary judgment (4:4-25; 5:1-25; 6:1-7).

ARGUMENT

There appears to be agreement that, absent the School District's equitable arguments, *Neb. Rev. Stat.* §25-207 is controlling. That statute reads, in full, as follows:

[t]he following actions can only be brought **within four years**: (1) An action for trespass upon real property; (2) an action for taking, detaining or injuring personal property, including actions for the specific recovery of personal property; (3) an action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated; and (4) an action for relief on the ground of fraud, but the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud, except as provided in sections 30-2206 and 76-288 to 76-298.

Neb. Rev. Stat. §25-207 (emphasis added).

The nature of the School District's allegations clearly fall under the causes of action contemplated in §25-207. Accordingly, in the absence of equitable remedies that would toll the four-year time period in which to bring a civil cause of action, the School District's complaint, which was filed June 27, 2025, would not have been timely filed because the School District was aware of Sackschewsky's conduct at least at the time criminal proceedings against Sackschewsky were filed in 2019 (T1-5).

At its core, the School District contends that the District Court erred in rejecting its arguments in support of equitable estoppel and equitable tolling to extend the applicable statute of limitations—*Neb. Rev. Stat.* §25-207—in a manner that would render its complaint to have been timely filed. The School District maintains that various equitable principles should serve to excuse its failure to file a civil action against Sackschewsky to recoup damages that Sackschewsky was not ordered to pay as part of his criminal probation and restitution order.

I. THE DISTRICT COURT DID NOT ERR IN DISMISSING THE SCHOOL DISTRICT'S COMPLAINT WITH PREJUDICE BECAUSE NEITHER EQUITABLE PRINCIPLE NOTED BY THE SCHOOL DISTRICT IS APPLICABLE.

The District Court correctly dismissed the matter with prejudice because the School District failed to allege facts sufficient to implicate equitable remedies that would extend the four-year limitations period set forth in *Neb. Rev. Stat.* §25-207. With regard to the concept of equitable estoppel, the Nebraska Supreme Court has stated that:

[t]he gist of equitable estoppel is that a party who has, by his statements or conduct, asserted a claim based on the assumption of the truth of certain facts ***whereby he has obtained a benefit from another party***, cannot later assert that those facts are not true if, by reason of that assertion, the other party will be prejudiced.

Equitable estoppel is, to that extent, like fraud and cannot be confined within any strict definition.

Williams v. Williams, 206 Neb. 630, 637 (1980) (emphasis added).

In *Williams*, the court also identified six “necessary elements” for a claim of equitable estoppel, stating:

[a]s to 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, (4) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (5) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (6) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his injury, detriment, or prejudice.

Id. at 637 (quoting *Chappelear v. Grange & Farmers Ins. Co.*, 190 Neb. 589, 592 (1973)).

Finally, “[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. ***Equitable tolling requires due diligence on the part of the claimant.***” *State v. Hill*, 310 Neb. 647, 652 (2021) (emphasis added).

While it does not appear as though the Nebraska appellate courts have specifically addressed whether restitution payments made pursuant to an order in criminal proceedings serve to toll a civil statute of limitations period, that issue has been the subject of litigation throughout the United States with the overwhelming weight of authority concluding that they do ***not***. For example, in *Church Mut. Ins. Co. v. Rison*, 16 Kan. App. 315 (1991), the court considered a case with nearly equivalent facts to the matter at hand. In that case, the defendant was ordered to pay \$26,031.02 in criminal restitution as part of a criminal sentence he received after a conviction for embezzlement. *Id.* at 315. After completing probation, the defendant stopped paying restitution and the recipient subsequently filed suit. Like here, the statute of limitations had run and the plaintiff argued that the limitations period should be equitably tolled in light of the restitution order and subsequent payments made by the defendant during the term of criminal probation. The trial court found in favor of the plaintiff and concluded that the statutory limitations period should be tolled under the circumstances. *Id.* at 315. On appeal, the court in *Rison* first provided significant authority in support of the notion that “restitution is inherently different than a civil award” and that “an imposition of restitution does not affect, and is not *affected by*, the victim’s right to institute a civil action against the defendant based on the same conduct.” *Id.* at 318 (emphasis in original). Ultimately, the *Rison* court concluded that the doctrine of equitable estoppel did not apply to toll the statutory limitations period, stating:

[t]he doctrine of equitable estoppel is based on the principle that
"a person is held to a representation made or a position assumed

when otherwise inequitable consequences would result to another who, having the right do so under all the circumstances, has in good faith relied thereon." *Hustead v. Bendix Corp.* 233 Kan. 870, 873, 666 P.2d 1175 (1983). Among the elements necessary to apply equitable estoppel, Rison must be shown to have committed inequitable conduct. *Bowen v. Westerhaus*, 224 Kan 42, 45-46, 578 P.2d 1102 (1978). ***While Rison is guilty of embezzlement (theft), it is not the underlying crime to which such a requirement refers. The inequitable conduct must cause the delay in filing the civil complaint and not relate to the underlying claim.*** Church Mutual has provided no facts that would indicate Rison in any way acted to induce Church Mutual to delay its civil cause of action. Rison's inability to discharge the court-ordered restitution fails to constitute inequitable conduct necessary to invoke equitable estoppel.

Id. at 319 (emphasis added).

While the state of Kansas subsequently enacted a statute characterizing a criminal restitution order as a civil judgment, thus rendering the holding in *Rison* moot, Nebraska law explicitly does **not** do this, and instead states that restitution ordered as part of a criminal sentence “shall not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action.” *Neb. Rev. Stat.* §29-2287. Accordingly, while *Rison* may no longer be binding law in Kansas, its rationale remains squarely on point.

In a similar case from Indiana—*Martin v. Brown*, 716 N.E.2d 1030 (Ind. Ct. App. 1999)—the Indiana Court of Appeals came to the same conclusion, holding that payments made pursuant to a criminal restitution order did not serve to toll the civil statute of limitations period. In that case, the defendant, Martin, had made restitution payments for ten years pursuant to a criminal restitution order. After his probation term ended, Martin stopped making the monthly payments and Brown filed a civil lawsuit, which was well past the statute of limitations period. In rejecting the idea that the limitations period should be equitably tolled because of the “voluntary” payments made by Brown, the court concluded:

[t]he cases cited by Brown are inapposite to the instant case. Martin's restitution payments made pursuant to a plea agreement were not in the nature of, or equivalent to, "voluntary" or "unconditional" partial payments of an admitted debt. Martin's guilty plea was in lieu of an eight-year prison sentence and his restitution payments were a condition of his suspended sentence. Restitution payments paid through the clerk's office are neither voluntary nor unconditional payments on a debt to one who is entitled to receive them.

. . .

[w]e note that it is not uncommon for a criminal restitution order and a civil cause of action to arise from the same transaction or occurrence. But, as in this case, the restitution ordered may not be coextensive with the civil remedy, whether the civil action is based on tort, contract or statute. ***If restitution payments were deemed to toll the statute of limitations in a related civil matter, the statute would be routinely avoided, if not thwarted.***

Id. at 1034-35 (emphasis added).

A) The district court correctly determined that the School District failed to establish the necessary elements set forth in *Williams* to support its claim of equitable estoppel.

Starting first with an application of the factors from *Williams* pertaining to the doctrine of equitable estoppel, there is no allegation that Sackschewsky received any benefit whatsoever from Northwest that would justify an equitable estoppel claim under the language of *Williams*. The School District was not a party to Sackschewsky's plea agreement with the State and there is no allegation that the School District was involved in negotiations that ultimately led to the formation of that agreement, or the School District otherwise provided something of value to Sackschewsky in exchange for his agreement to stipulate to the restitution figure in his criminal case. Because *Williams* makes clear that a party must have "obtained a benefit from another party" in order to be estopped from

asserting a claim against that party, the principle of equitable estoppel is plainly inapplicable. *Williams*, 206 Neb. at 637

Moreover, **none** of the necessary elements explicitly set forth in *Williams* as prerequisites for the application of equitable estoppel are present here. With regard to (1), there is no allegation that Sackschewsky rendered a false representation or concealed any material fact whatsoever. While Sackschewsky did stipulate that the appropriate figure for restitution purposes in the criminal case was \$150,000, there is no allegation that this was false, misleading, or is contrary to any position he now asserts.

Throughout its brief, the School District places great significance on Sackschewsky's stipulation of \$150,000 as the appropriate **amount of** restitution. The School District's argument essentially amounts to a claim that Sackschewsky's stipulation of the amount of restitution "lulled the School District into a false sense of security that it would receive full recompense for the wrongs committed against it by Sackschewsky." (Brief of Appellant, p. 11). Because, the School District argues, Sackschewsky knew he would cease making restitution payments when lawfully allowed to do so at the end of his probation term, he effectively misled the School District into opting not to pursue a civil case. This is wrong both factually and as a matter of law.

First, while Sackschewsky did stipulate as to the amount of restitution, he expressly did **not agree** that the criminal sentencing court should order him to pay that figure; as he preserved his ability in the plea agreement to argue against his ability to pay that amount and, in turn, the imposition of a restitution order at the \$150,000 level. (E1,85:6, Vol.2 p. 88/124). Thus, it was plainly evident from the date in which he entered a change of plea in the criminal case—October 18, 2019—that Sackschewsky opposed the imposition of an order requiring him to pay \$150,000 and there is no allegation that Sackschewsky ever entered into a stipulation **to pay** \$150,000.

Throughout its brief, the School District equates Sackschewsky's stipulation as to the appropriate amount of restitution as an agreement to pay that figure. However, an agreement as to the amount of restitution (i.e. the amount of damages) is an entirely separate thing from an agreement to pay that amount. Had

Sackschewsky agreed in a stipulation *to pay* the School District \$150,000, then its equitable arguments would be on somewhat more solid ground. That, however, plainly did not happen. While Sackschewsky's stipulation in the criminal proceedings certainly could have been used by the School District as a statement by a party opponent in furtherance of proving up its damages had it timely initiated a civil proceeding, the stipulation was not an agreement by Sackschewsky to pay that figure and it was inherently unreasonable for the School District to have relied upon the notion that this stipulation alleviated the necessity of initiating a proceeding to protect its interests.

The first "necessary element" from *Williams* is even more inapplicable as a legal matter. Neb. Rev. Stat. §29-2287 (2) explicitly states that "the fact that restitution was required or paid shall not be admissible as evidence in a civil action and ***shall have no legal effect on the merits of a civil action.***" As a matter of law, the School District was on notice that the imposition of restitution in Sackschewsky's criminal case was of no legal consequence to the merits of a potential civil action that the school district may bring. Neb. Rev. Stat. §29-2287 (1) also explicitly indicated that the School District's ability to pursue a civil action was not impaired by the restitution order imposed in the criminal case. There simply is no basis—factually or legally—for the School District's claim that Sackschewsky engaged in conduct intended to lure it into a sense of complacency. The School District chose to be complacent on its own volition.

With regard to element (2) from *Williams*, there is no evidence that Sackschewsky intended for Northwest to rely upon a stipulation Sackschewsky made in another case with another entity. Similarly, with regard to (3), Northwest makes no allegation that the stipulation entered into by Sackschewsky was anything other than the "real facts." Again, Sackschewsky entered into a stipulation only specifying the ***amount of*** restitution; he disagreed with the notion that he should be ordered to pay that amount and never entered into a stipulation to pay that amount. The School District maintains that Sackschewsky "knew he would stop making payments once his probation period ended" and goes on to claim that because "he is likely the only one who knew of his plans," he effectively lured the School District into a false sense of security so as to preclude

it from effectuating a timely civil lawsuit (Brief of Appellant, pgs. 12-13).

Another way of saying all this, of course, is that Sackschewsky was aware of the details of his probation order and its implications under governing Nebraska law; and he intended to comport his actions in a manner advantageous to his interests while also consistent with the law. The fact that Sackschewsky may have known that he was going to cease tendering restitution payments when legally authorized by law would not—even if true—necessitate equitable remedies for an opposing litigant who, with equivalent access to all the relevant information, elected not to protect its interests by timely initiating civil litigation.

Perhaps the most glaring failures of Northwest's position, however, relate to elements (4), (5), and (6) from *Williams*. First, the reality is that the sentencing order from Sackschewsky's criminal case was a publicly filed document governed by applicable statutes. The School District had access to all the information necessary to extrapolate the monthly restitution figures and conclude that the court's sentencing order ultimately amounted to payments that fell short of the gross restitution figure. Moreover, the implications of this discrepancy were evident from clear and unambiguous statutes insofar as the court was precluded from collecting restitution beyond the maximum probation period of five years. *See Neb. Rev. Stat.* §29-2264 (4) (a) (“[u]pon completion of the term of probation . . . the probationer ***shall be relieved of any obligations imposed by the order of the court*** and shall have satisfied the sentence for his or her crime.”) (emphasis added).

Immediately following the 2019 sentencing order the School District had unfettered access to the same information Sackschewsky had, which was sufficient to have identified the need for civil litigation (thus failing to satisfy element (4)). Northwest does not allege that Sackschewsky said or did ***anything*** to cause reliance on the part of Northwest other than to stipulate to an amount of restitution and then fully comply with the district court's probation order. This is far short of the sort of conduct and/or representations contemplated in elements (5) and (6).

B) The district court correctly determined that the School District failed to establish that equitable tolling was appropriate.

The balance of Northwest's arguments in favor of equitable tolling remain fundamentally flawed because they rest on several incorrect assumptions. First, as noted previously Northwest gives significantly outsized importance to Sackschewsky's stipulation of the **amount of** restitution; Sackschewsky's stipulation to the **amount of** restitution simply is not the same thing as stipulating that he should have been ordered to pay that amount. Even assuming that Sackschewsky's stipulation in the criminal case to be as significant as the School District contends, the court in *Martin v. Brown* explained that, "a stipulation made by a defendant in a criminal case to avoid a prison term is not equivalent to the "voluntary" or "unconditional" payment of a debt that can serve to toll a civil limitations period. 716 N.E.2d at 1034-35. Moreover, to the extent that the School District contends that Sackschewsky's monthly partial payments served to toll the statute of limitations, the Nebraska legislature has codified the principal of part payment serving to toll a limitations period and has explicitly limited that concept to causes of action "**founded on contract**." See *Neb. Rev. Stat.* §25-216. Because this is not a case alleged to have been "founded on contract," the equitable principal of part payment does not apply.

Finally, Northwest claims that the sentencing order reflected "considerable confusion regarding what the court ordered," and thus argues that its failure to timely file litigation should be excused. To the extent there was confusion, that was not of Sackschewsky's making. The court's failure—intended or not—to order monthly payments sufficient to equal the total restitution figure was readily apparent in the document itself. That reality, coupled with clear and unambiguous statutes clarifying that a criminal restitution order does **not** constitute a civil judgment (*Neb. Rev. Stat.* 29-2287), and that the criminal sentencing court becomes powerless to enforce a restitution order following a defendant's completion of a probation term (29-2264 (4) (a)) placed Northwest on notice of its need to file a timely civil lawsuit in order to recoup the difference from what it claims to be owed and what the sentencing court actually ordered. Sackschewsky did nothing to dissuade Northwest from filing such a lawsuit and the School District has only itself to blame for its decision not to do so.

CONCLUSION

For the reasons set forth herein, the District Court's order dismissing the School District's complaint with prejudice should be affirmed.

Respectfully Submitted,

/s/ Mark Porto

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that pursuant to §2-103(c)(4), this brief of appellants complies with the word count and typeface as required by this rule. This brief was prepared using Word Perfect X6 and contains 4,773 words.

/s/ Mark Porto

Certificate of Service

I hereby certify that on Friday, February 27, 2026 I provided a true and correct copy of this *Brief of Appellee* to the following:

Hall County School District 40-0082 represented by Justin Joseph Knight (25267) service method: Electronic Service to **jknight@perrylawfirm.com**

Signature: /s/ Mark T. Porto (23448)