UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRACI BRISTOL, *et al.*, Plaintiffs,	)	No. 1:23-cv-900
-v-	)	Honorable Paul L. Maloney
KENT COUNTY, *et al.*, Defendants.	)	

OPINION AND ORDER GRANTING IN PART MOTION FOR SUMMARY JUDGMENT

Plaintiffs neglected to pay their property taxes and lost their properties through tax foreclosure proceedings. Following the procedures then required by Michigan statutes, Kent County sold the properties and kept all of the proceeds, including the surplus (the amount that exceeded what Plaintiffs owed in taxes and fees). The Michigan Supreme Court subsequently found this tax foreclosure scheme violated the Michigan Constitution. *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 435 (Mich. 2020). The United States Supreme Court found a similar statutory scheme violated the United States Constitution. *Tyler v. Hennepin Cnty.* 596 U.S. 631 (2023). The Michigan Legislature has since amended the General Property Tax Act (GPTA).

Four plaintiffs sued Kent County, Peter MacGregor (the current County Treasurer), and Kenneth Parrish (the former County Treasurers). Two plaintiffs voluntarily dismissed their claims. Defendants filed a motion to dismiss, which the court granted in part. The court declined to exercise subject matter jurisdiction over the state law claims. The court

dismissed three of the five federal claims. Only Plaintiff Traci Bristol's and Plaintiff Donna Emanouil Trust's § 1983 takings and procedural due process claims remain.

Defendants filed a motion for summary judgment. ECF No. 39. Plaintiffs opposed the motion. ECF No. 42. Defendants seek dismissal of the official capacity claims against the County Treasurers. The court will dismiss the official capacity claims against the individual defendants. Defendants also argue that the statute of limitations expired for Plaintiffs' remaining federal claims. The court finds that Plaintiffs' federal claims were tolled and the statute of limitations did not expire.

I.

A trial court should grant a motion for summary judgment only in the absence of a genuine dispute of any material fact and when the moving party establishes it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the burden of showing that no genuine issues of material fact exist. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). To meet this burden, the moving party must identify those portions of the pleadings, depositions, answers to interrogatories, admissions, any affidavits, and other evidence in the record, which demonstrate the lack of genuine issue of material fact. Fed. R. Civ. P. 56(c)(1); *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 627–28 (6th Cir. 2018). The moving party may also meet its burden by showing the absence of evidence to support an essential element of the nonmoving party's claim. *Holis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 543 (6th Cir. 2014).

When faced with a motion for summary judgment, the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." *Pittman*, 901 F.3d at 628

(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)). The court must view the facts and draw all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Maben v. Thelen*, 887 F.3d 252, 263 (6th Cir. 2018) (citing *Matsushita Elec. Indust. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). In resolving a motion for summary judgment, the court does not weigh the evidence and determine the truth of the matter; the court determines only if there exists a genuine issue for trial. *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (quoting *Anderson*, 477 U.S. at 249). The question is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-252.

II.

Defendants argue that the official capacity claims against the County Treasurers should be dismissed. Defendants argue the County Treasurers enjoy immunity under the Eleventh Amendment. Defendants also argue that courts treat official capacity claims against a state agent as a claim against the state. Plaintiff contends that when Defendants removed the lawsuit from state court, they waived immunity. Plaintiffs do not address the redundancy argument.

The court will dismiss the official capacity claims against the County Treasurers as redundant. Courts treat claims brought against a government official in his or her official capacity as claims against the government entity. *Hafer v. Melo*, 502 U.S. 21, 25 (1991); *Briner v. City of Ontario*, 370 F. App'x 682, 699 (6th Cir. 2010). When a plaintiff sues the government entity and one of its officials in his or her official capacity, the claim against the

individual is "superfluous." *Faith Baptist Church v. Waterford Twp.*, 522 F. App'x 322, 327 (6th Cir. 2013). An official capacity lawsuit against a government official "is *not* a suit against the official personally, for the real party in interest is the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Thus, when a plaintiff pleads the same claim against a government entity and one of its officials in his or her official capacity, the court can dismiss the official capacity claim. *E.g., J.H. v. Williamson Cnty.*, 951 F.3d 709, 723 n.4 (6th Cir. 2020) ("The district court correctly dismissed these official capacity claims as superfluous of the claim against the county.") (citing *Foster v. Michigan*, 573 F. App'x 377, 390 (6th Cir. 2014)). The court dismisses all federal claims for damages against the individual defendants in their official capacities without prejudice. *See Ernst v. Rising*, 427 F.3d 351, 367 (6th Cir. 2005).

III.

Defendants argue that the statute of limitations expired for Plaintiffs' remaining federal claims. The Trust lost its property to tax foreclosure in 2018 and Bristol lost her property through tax foreclosure in 2019.[1] To avoid a statute of limitations defense, a plaintiff must commence the lawsuit within a prescribed period of time that begins when the claim accrues. *See Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 105 (2013). When analyzing a statute of limitations defense, a court must consider (1) when the claim accrued, (2) the date plaintiff filed the lawsuit, and (3) any permissible delay between those two events. *Future Now Enters., Inc. v. Foster*, 525 F. App'x 395, 398 (6th Cir. 2013).

[1] Defendants reference the opt-out notices filed by these two plaintiffs in *Wayside Church v. Van Buren County*, No. 1:14cv1274 (W.D. Mich. June 20, 2023) (ECF No. 297-1 PageID.4786 (Bristol) and PageID.4787 (Trust)). Plaintiffs do not disagree with these dates.

A.

Michigan's three-year statute of limitations for personal-injury claims applies to claims brought under 42 U.S.C. § 1983. Because Congress did not provide a statute of limitations for § 1983, the Supreme Court directs trial courts to use "a State's personal injury statute of limitations . . . for all § 1983 claims." *Nance v. Ward*, 597 U.S. 159, 174 (2022) (citing *Wallace v. Kato*, 549 U.S. 384, 387 (2007)); *see Reguli v. Russ*, 109 F.4th 874, 879 (6th Cir. 2024) ("At the outset, state law determines the *length* of § 1983's statute of limitations. The Supreme Court has held that the statute incorporates the limitations period for personal-injury torts from the State where the events occurred."). Michigan has a three-year statute of limitations for personal-injury claims, which the Sixth Circuit has held must be borrowed for § 1983 claims arising in the state. Mich. Comp. Laws § 600.5805(10); *Wolfe v. Perry*, 412 F.3d 707, 714 (6th Cir. 2005); *see, e.g., Lyndon's LLC v. City of Detroit*, No. 23–1895, 2024 WL 3427176, at *2 (6th Cir. July 16, 2024) (applying the three-year statute of limitations period to a Fifth Amendment takings claim).

B.

Plaintiffs' § 1983 claims accrued when the judgments of foreclosure became final. Federal law determines when a § 1983 claim accrues and when the statute of limitations begins to run. *Reguli*, 109 F.4th at 879. A claim accrues when "the plaintiff has a complete and present cause of action." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 810 (2024) (citation omitted). The Supreme Court has "explained that a cause of action does not become complete and present for limitations purposes—it does not *accrue*—until after the plaintiff can file suit and obtain relief." *Id.* (citation modified). "Put differently,

this 'injury-occurrence' or 'occurrence' rule triggers the limitations period on the first day that every element of a claim has occurred such that the plaintiff may sue in court over the claim." *Reguli*, 109 F.4th at 879. "A constitutional violation accrues the moment the government undertakes a constitutional act. For example, a violation of the Takings Clause occurs 'at the time of taking.'" *Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (quoting *Knick v. Twp. of Scott*, 588 U.S. 180, 194 (2019)).

The Fifth Amendment to the United States Constitution provides, in part, that private property shall not "be taken for public use without just compensation." U.S. Const. amend. V. "The paradigmatic taking requiring just compensation is a direct government appropriation or physical invasion of private property." *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537 (2005). The plain text of the amendment "does not prohibit the taking of private property, but instead places a condition on the exercise of that power." *Id.* at 536 (citation omitted). The clause does not "limit governmental interference with property rights *per se*," rather it "'secure[s] *compensation* in the event of otherwise proper interference amounting to a taking.'" *Id.* at 537 (citation omitted). The Takings Clause does not require payment prior to a taking. *Hurley v. Kincaid*, 285 U.S. 95, 104 (1923). The government must, however, provide some mechanism for compensation. *See Stringer v. United States*, 471 F.2d 381, 383 (5th Cir. 1973) ("It is well established that a property owner is not entitled to actual compensation before the Government takes possession of his land, but only to an adequate provision for compensation[.]"). Additionally, "the availability of state-law compensation remedies cannot delay or undo the accrual of a takings claim." *Wilson*, 145 S. Ct. at 20 (citing *Knick*, 588 U.S. at 193–94).

For § 1983 claims arising from tax foreclosures of property in Michigan prior to the recent amendments to the GPTA, the claims accrued on the date the circuit court entered a final judgment terminating all of the rights to the property held by the former property owner. Property owners generally possess an interest in the equity of their property. *Hall v. Meisner*, 51 F.4th 185, 190 (6th Cir. 2022); *see Tyler*, 598 U.S. at 638–39. "History and precedent" have established the "principle that a government may not take more from a taxpayer than she owes[.]" *Tyler*, 598 U.S. at 639. Following the public sale of a tax-foreclosed property, under "long-settled principles, the debtor would then be entitled to any surplus proceeds from the sale, which represented the value of the equitable title thus extinguished." *Hall*, 51 F.4th at 194. But under the GPTA at the time Kent County foreclosed on Plaintiffs' properties, they did not retain any interest at all to their properties. Under the earlier versions of the GPTA, when the circuit court entered a final judgment "[a]ll redemption rights to the property expire," Mich. Comp. Laws § 211.78k(5), and "fee simple title" to the property "vests absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property," *id.* § 211.78k(6). *See Hall*, 51 F.4th at 194. "Before that event, the plaintiffs held equitable title; after it, they held no title at all." *Id.* at 196. Importantly, prior to the recent amendments, the GPTA did not provide any mechanism by which a former property owner could obtain surplus proceeds following a tax foreclosure sale. *Rafaeli*, 952 N.W.2d at 447–48.

Absent a period of delay, the statute of limitations expired for Plaintiffs' § 1983 claims. Plaintiffs' claims accrued in March 2018 and 2019. Their statute of limitations expired three years later in 2021 and 2022. Plaintiffs filed this lawsuit in June 2023.

C.

Plaintiffs argue that the *Wayside* class action lawsuit tolled the statute of limitations for their claims. The *Wayside* lawsuit began on December 11, 2014. *Wayside* involved both a plaintiff class and a defendant class. The complaint pled a class of former owners of real property in Michigan who lost property for non-payment of real property taxes, where the property was then sold for an amount in excess of the amount owed, and where the property owners were denied the surplus proceeds. The court preliminarily approved the proposed class action settlement on March 24, 2023.

In addition to borrowing Michigan's statute of limitations, federal courts also apply state tolling rules for class action lawsuits, so long as the tolling rules are not "inconsistent with the federal policy underlying the cause of action under consideration." *Wershe v. City of Detroit*, 112 F.4th 357, 370 (6th Cir. 2024) (citation omitted). Michigan Court Rule 3.501 sets forth the procedures for class actions and subrule (F) provides for tolling. Rule 3.501(F)(1) states that the statute of limitations "is tolled as to all persons within the class described in the complaint." Rule 3.501(F)(2) identifies events that cause the statute of limitations to resume running. And Rule 3.501(F)(3) provides that if the event identified in (F)(2) is superseded by an order of the trial court, "the statute of limitations shall be deemed to have been tolled continuously from the commencement of the action."

Applying Rule 3.501(F), the *Wayside* lawsuit tolled Plaintiffs' statute of limitations. On November 5, 2015, in the *Wayside* lawsuit, the court granted a motion to dismiss and entered judgment. In February 2017, the Sixth Circuit vacated the court's opinion and order and remanded the action with instructions to dismiss the lawsuit for lack of subject matter

jurisdiction. In March 2017, this court reopened the case and then promptly dismissed the action for lack of subject matter jurisdiction. The court granted a motion to reopen the lawsuit in March 2019 based on new authority issued by the Supreme Court. In a companion case also involving a *Wayside* opt-out, the Sixth Circuit looked at this series of events and found that the statute of limitations for the claims of the members of the *Wayside* class were tolled upon the filing of the *Wayside* lawsuit in December 2014. *Perry v. St. Joseph Cnty.*, No. 25-2012, 2026 WL 2476333, at *2 (6th Cir. Aug. 24, 2026). Following this court's order reopening the case in 2017, Rule 3.501(F)(3) applied so that the class members' claims were tolled continuously until the plaintiff in *Perry* opted out. *Id.* at *2.

Following *Perry*, the statute of limitations for Plaintiffs' claims had not yet expired when they filed this lawsuit. Like the plaintiff in *Perry*, Plaintiffs were members of the class described in the initial *Wayside* complaint. When Plaintiffs opted out of the *Wayside* lawsuit and filed this action, they were still within the three-year limitation period.[2]

IV.

The court grants Defendants' motion for summary judgment in part. The court dismisses the official capacity claims brought against the individual defendants (County Treasurers). The official capacity claims are redundant with the claims brought against Kent County. Defendants have not established that Plaintiffs' three-year statute of limitations

[2] In *Perry*, the Sixth Circuit did not determine whether St. Joseph County had the notice required by the Michigan Court Rule. *Perry*, 2026 WL 247633, at *3. The circuit court left the issue for this court to resolve in the first instance. Although Plaintiffs discussed notice in their response, Defendants did not raise the notice issue as part of this motion.

expired. The Sixth Circuit recently found that Michigan's tolling rules operate to toll the statute of limitations for members of the *Wayside* plaintiff class. That finding applies here.

ORDER

For the reasons provided in the accompanying Opinion, the court **GRANTS** Defendants' motion for summary judgment in part. ECF No. 39. The court DISMISSES the § 1983 takings and procedural due process claims against the County Treasurers in their official capacities. The claims against the County Treasurers in their individual capacities remain. The court finds that the statute of limitations for Plaintiffs' § 1983 claims did not expire. **IT IS SO ORDERED.**

Date: September 30, 2026

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge