

NOT RECOMMENDED FOR PUBLICATION

File Name: 26a0415n.06

Nos. 25-1888/25-1892

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

25-1888

FREDERICK GRAINGER, JR.,

Plaintiff-Appellant,

v.

OTTAWA COUNTY, MICHIGAN, by its Board
of Commissioners,

Defendant-Appellee.

25-1892

ULDIS FELKERS, et al.,

Plaintiffs-Appellants,

v.

KENT COUNTY, MICHIGAN, a Governmental
Unit,

Defendant-Appellee.

FILED

Oct 19, 2026

KELLY L. STEPHENS, Clerk

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

OPINION

Before: CLAY, GIBBONS, and GRIFFIN, Circuit Judges.

CLAY, Circuit Judge. In these consolidated cases, Plaintiff Frederick Grainger and Plaintiffs Uldis Felkers, Karen Kacynski, the Estate of Terry Sczesny, and Ramon Virella appeal the district court's dismissal of their suits against Ottawa County and Kent County, respectively. Plaintiffs brought takings and procedural due process claims under 42 U.S.C. § 1983, alleging that the Counties kept the surplus proceeds of tax-foreclosure sales of their properties. Because the district court erred, we **VACATE** and **REMAND**.

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No. 25-1892, *Felkers, et al. v. Kent County*

I. BACKGROUND

A. Factual Background

Ottawa County, Michigan, and Kent County, Michigan, had a policy of foreclosing on homes and selling them at auction to recover outstanding property taxes. Plaintiffs Uldis Felkers, Karen Kacynski, the Estate of Terry Sczesny by his heir and representative Keith Sczesny (“Sczesny”), and Ramon Virella (“*Felkers* Plaintiffs”) and Plaintiff Frederick Grainger (together with *Felkers* Plaintiffs, “Plaintiffs”) allege that Kent County and Ottawa County, respectively, also had a policy of retaining all the proceeds of the auction, even if those proceeds vastly exceeded the homeowners’ unpaid property taxes.

Grainger owned property in Ottawa County. He owed \$21,500 in unpaid property taxes on his home, and Ottawa County seized the property on April 1, 2013. On or about September 6, 2013, Ottawa County sold Grainger’s property for \$392,000 and never returned the difference between Grainger’s outstanding taxes and the proceeds of the sale—\$370,500—to Grainger.

Similarly, Felkers, Kacynski, Sczesny, and Virella owned properties in Kent County that had accrued unpaid property taxes of \$12,250, \$8,000, \$9,800, and \$8,400, respectively. The Kent County treasurer foreclosed on Felkers’, Kacynski’s, and Virella’s properties on or around March 31, 2013, and on Sczesny’s property on or around March 31, 2015. Kent County sold Felkers’, Kacynski’s, Sczesny’s, and Virella’s properties, generating surplus proceeds of \$17,750, \$18,750, \$24,484.15, and \$39,350, respectively, which it did not return.

B. Procedural History

Grainger filed a complaint on June 23, 2019, and *Felkers* Plaintiffs did so on January 23, 2024. Both suits alleged, among others, 42 U.S.C. § 1983 takings and procedural due process claims. Although Plaintiffs’ actions followed different procedural paths, they arrived at the same

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result: dismissal by the district court after it held their § 1983 claims time-barred. The district court rejected Plaintiffs’ argument that their claims were tolled by *Wayside Church v. Van Buren County*, No. 1:14-cv-1274 (W.D. Mich.) (“*Wayside*”), a separate class action arising from the same Michigan county policies that was filed in December 2014 and temporarily dismissed from November 2015 to March 2019. Grainger opted out of the proposed *Wayside* settlement on July 17, 2023, as did Sczesny on July 19, 2023, and Felkers, Kacynski, and Virella on July 21, 2023. Plaintiffs timely appealed their actions’ dismissal.

II. DISCUSSION

On appeal, Plaintiffs challenge the district court’s holding that *Wayside* did not toll their claims. We review that holding *de novo*. See *Wershe v. City of Detroit*, 112 F.4th 357, 365 (6th Cir. 2024).

Plaintiffs’ § 1983 claims are subject to Michigan’s residual three-year limitations period for personal injury actions. Mich. Comp. Laws § 600.5805(2); *Perry v. St. Joseph Cnty.*, No. 25-2012, 2026 WL 2476333, at *1 (6th Cir. Aug. 24, 2026). Michigan tolling rules also apply because they do not conflict with federal law. *Perry*, 2026 WL 2476333, at *3. Those rules provide, in relevant part:

(F) Statute of Limitations.

(1) The statute of limitations is tolled as to all persons within the class described in the complaint on the commencement of an action asserting a class action.

(2) The statute of limitations resumes running against class members other than representative parties and intervenors . . .

(e) on final disposition of the action.

(3) If the circumstance that brought about the resumption of the running of the statute is superseded by a further order of the trial court, by reversal on appeal, or otherwise, the statute of limitations shall be deemed to have been tolled continuously from the commencement of the action.

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Mich. Ct. R. 3.501(F). And while Michigan does not “recognize defendant classes in damages actions,” *Cunningham v. Allegan Cnty.*, No. 26-1060, 2026 WL 2986362, at *2 (6th Cir. Oct. 5, 2026) (citing Mich. Ct. R. 3.501(I)(1)), “the Michigan Supreme Court has emphasized that tolling can apply to a class described in a complaint even if Michigan courts” cannot “actually certify that class,” *id.* (citing *Cowles v. Bank W.*, 719 N.W.2d 94, 105 (Mich. 2006)). Subsection (F)(1) therefore tolls the claims of “everyone ‘*within the class described in the complaint*’—not members of a class that is later certified by the trial (or district) court.” *Perry*, 2026 WL 2476333, at *2 (quoting Mich. Ct. R. 3.501(F)(1)).

Therefore, as this court held in *Perry*, 2026 WL 2476333, at *2–3, and *Cunningham*, 2026 WL 2986362, at *2–3, *Wayside* tolled Plaintiffs’ claims, including through its temporary dismissal, if two criteria are met. First, Plaintiffs must have been among the “persons within the class described in” the *Wayside* complaint. Mich. Ct. R. 3.501(F)(1). And second, the Counties must have had notice of Plaintiffs’ claims in the sense described in *Cowles*, 719 N.W.2d at 105, and *Hill v. City of Warren*, 740 N.W.2d 706, 719 (Mich. Ct. App. 2007)—namely, that they were “generally aware of the claims and parties [they] would face,” *id.* These are issues the district court can determine on remand.

III. CONCLUSION

We accordingly **VACATE** the district court’s judgments and **REMAND** for proceedings consistent with this opinion.

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Before: CLAY, GIBBONS, and GRIFFIN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.

THESE CASES were heard on the records from the district court and were argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgments of the district court are VACATED, and the cases are REMANDED for further proceedings consistent with the opinion of this court.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk