

NOT RECOMMENDED FOR PUBLICATION

File Name: 26a0364n.06

No. 25-2012

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Aug 24, 2026

KELLY L. STEPHENS, Clerk

BRENT PERRY, by heir and representative of the)
estate of Louis Brian Perry,)

Plaintiff-Appellant,)

v.)

ST. JOSEPH COUNTY, MICHIGAN; KATHY)
HUMPHREYS; JUDITH RATERING,)

Defendants-Appellees.)

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

OPINION

Before: KETHLEDGE, NALBANDIAN, and HERMANDORFER, Circuit Judges.

KETHLEDGE, Circuit Judge. St. Joseph County kept the surplus proceeds from the tax-foreclosure sale of Louis Perry's property. His heir and representative, Brent Perry, brought this suit under 42 U.S.C. § 1983 and Michigan law against the County and its current and former treasurers. The district court dismissed Perry's federal claims, holding they were time-barred. We vacate and remand.

In March 2014, St. Joseph County foreclosed on Louis Perry's property for failure to pay taxes. The County later sold the property for \$29,500 more than the tax debt, and refused to return to him any of the difference. Many other Michigan counties did the same thing to property owners in the state. In December 2014, three such owners brought suit in federal court, asserting claims on behalf of a putative class of persons (which included Perry) whose property had likewise been taken and sold for an amount in excess of the taxes owed on it. As defendants, the complaint named Van Buren County, along with a putative defendant class of "all other counties" in

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Michigan. *Wayside Church v. Van Buren County*, No. 1:14-cv-1274, Complaint (W.D. Mich. Dec. 11, 2014). In November 2015 the district court dismissed the complaint for failure to state a claim; in March 2017 our court vacated that decision and remanded with instructions to dismiss for lack of subject-matter jurisdiction. *See Wayside Church v. Van Buren County*, 847 F.3d 812 (6th Cir. 2017). The district court did so, but reopened the case in March 2019, based on intervening Supreme Court precedent. *See Wayside Church v. Van Buren County*, No. 24-1598, 2025 WL 2829601, at *1-3 (6th Cir. Oct. 6, 2025).

The plaintiffs then filed an amended complaint asserting putative class claims separately against each county defendant, including St. Joseph County. The litigation later resulted in a class settlement, from which Perry opted out in July 2023. Perry then filed this action in April 2024, asserting claims against the County and its current and former treasurers under 42 U.S.C. § 1983 and related state-law theories. The County removed the action to federal court and moved to dismiss Perry's claims as barred by the relevant statutes of limitations.

The district court determined that Perry's § 1983 claims were subject to a three-year limitations period, which began to run when the County took title to Perry's property in March 2014; and that period, the court held, had expired during the three-plus years between the dismissal of *Wayside* in 2015 and the court's reopening of that case in 2019. The court therefore dismissed Perry's federal claims as untimely and remanded the state-law claims to state court. We review that decision de novo. *Wershe v. City of Detroit*, 112 F.4th 357, 365 (6th Cir. 2024).

Perry argues that the limitations period for his federal claims was tolled from the date *Wayside* was filed (in December 2014) until his opt-out from the proposed class settlement in July 2023. We borrow the Michigan three-year limitations period for injuries to property, for purposes of determining the timeliness of Perry's claim. *Id.* at 370. We likewise apply Michigan's tolling

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rules as long as they are not “inconsistent with the federal policy underlying the cause of action under consideration.” *Id.* (cleaned up).

Those rules are set out in Michigan Court Rule 3.501(F), which provides 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.

Perry was undisputedly among the “persons within the class described” in the *Wayside* complaint on its “commencement.” MCR 3.501(F)(1). Perry’s federal claims were thus “tolled” upon the filing of *Wayside* in December 2014. *Id.* The district court’s November 2015 dismissal of that suit was “a final disposition of the action[,]” which means the limitations period for Perry’s claims “resume[d] running” upon that dismissal. MCR 3.501(F)(2). Yet subsection (F)(3) in turn wound back that time: the district court’s March 2019 order reopening the case “superseded” the court’s earlier orders dismissing the case, which means that the limitations period for Perry’s claims “shall be deemed to have been tolled continuously from the commencement” of the putative (and later actual) class action in *Wayside*. MCR 3.501(F)(3). The clock for those claims later began running again, in July 2023, when he opted out of the *Wayside* settlement; but he brought this suit only nine months later, in April 2024, well within the three-year period.

The district court reasoned—and the County argues here—that *Wayside* did not toll Perry’s claims at all, because *Wayside* sought the recovery of money damages; and “[a]n action that seeks

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to recover money from individual members of a defendant class may not be maintained as a class action.” MCR 3.501(I)(1). Thus, the court held, a putative class action that is invalid under MCR 3.501(I) cannot serve to toll putative class-member claims under MCR 3.501(F). But subsection (F)(1) provides that the “persons” whose claims are tolled thereunder is everyone “*within the class described in the complaint*”—not members of a class that is later certified by the trial (or district) court. That the class is “described in the complaint,” therefore, is enough to toll the claims of putative class members until “final disposition of the action[.]” among other events. MCR 3.501(F).

Subsection (F)(2)(c) confirms the point, since one such event (that restarts the limitations clock) is “entry of an order denying certification of the action as a class action[.]” Thus, the invalidity of “the class described in the complaint”—under MCR 3.501(I) or otherwise—is a reason to “*resume*[] running” the limitations period clock (after a determination to that effect), not to reject tolling under (F)(1) altogether. MCR 3.501(F)(2) (emphasis added).

Yet the County argues that application of MCR 3.501(F) here would conflict with our holding that federal “class action tolling does not apply to a defendant not named in the class action complaint.” *Wyser-Pratte Mgmt. Co. v. Telxon Corp.*, 413 F.3d 553, 567-68 (6th Cir. 2005). But the defendant in *Wyser-Pratte* had not been named as a party in the relevant class action at all, whereas here the County was a member of the putative class of defendants in *Wayside*. Moreover, that is a federal tolling rule. And we have never held that, to toll a § 1983 claim, a state’s tolling rule “must be consistent with the federal tolling provisions.” *Heard v. Strange*, 127 F.4th 630, 636 (6th Cir. 2025) (citation modified). Instead, we have asked whether the state’s tolling rules “are inconsistent with” (e.g., undermine) the federal “cause of action” itself. *Wershe*, 112 F.4th at 370 (cleaned up). But here no one has identified any inconsistencies between Perry’s takings claim

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under § 1983 and tolling under 3.501(F). To the contrary, the claim and tolling alike work together to vindicate federal constitutional interests. *See Bishop v. Children's Ctr. for Developmental Enrichment*, 618 F.3d 533, 537 (6th Cir. 2010); *see also Heard*, 127 F.4th at 635-36 (“any differences between Michigan’s tolling rule and federal equitable tolling rules don’t make Michigan’s rule inconsistent with a congressional statute”).

That leaves the question of the notice required for the County to be subject to tolling in the first place. A prerequisite of tolling under MCR 3.501(F) is that the defendant have “notice of the class member’s claim and the number and generic identities of the potential plaintiffs.” *Cowles v. Bank W.*, 719 N.W.2d 94, 105 (Mich. 2006). The Michigan Court of Appeals has interpreted that same rule to mean that “as long as [the] defendant was generally aware of the claims and parties it would face, the fact that the parties were not explicitly named should not be an impediment to their joining a pending class action suit in the future.” *Hill v. City of Warren*, 740 N.W.2d 706, 719 (Mich. Ct. App. 2007). So far as we can tell, the Michigan appellate courts have not had occasion to apply this same rule to a member of a putative defendant class. But we predict that the Michigan courts would apply here the same rule applied in *Cowles* and *Hill*. *See Whitlock v. FSL Mgmt., LLC*, 843 F.3d 1084, 1089 (6th Cir. 2016).

Whether the County had notice of Perry’s claims, in the sense described in *Cowles* and *Hill*, is a question that the district court can decide in the first instance. The district court’s judgment is vacated, and the case is remanded for proceedings consistent with this opinion.