

40 Years

Working Together for Children
1976 - 2016



June 14 – 17, 2016
Merrillville, Indiana

Indiana Child Support Conference

This document may contain copyrighted material whose use has not been specifically authorized by the copyright owner. The Presenter is making this presentation available for the purposes of educating and training the practitioners to which this presentation is directed. We believe that this constitutes a 'fair use' of the copyrighted material as provided for in section 107 of the U.S. Copyright Law. If you wish to use this copyrighted material for purposes of your own that go beyond 'fair use,' you must obtain permission from the copyright owner.

Statute of Limitations

Presenter:

William Welch

IPAC Child Support Staff
Attorney

How A Statute of Limitations Issue Can Effect Your Office

Alternate Title:

Avoiding those

“OH CRAP”

Moments

Two Different Statutes of Limitations

Child Support Statute of Limitations

- 34-11-2-10

Judgment Statute of Limitations

- 34-11-2-12

But First.....



Some Child
Support Statute
of Limitations
History

Cause of action before 9/1/1982



15 years
from support
accrual

Cause of action after 9/1/1982



10 years
from support
accrual

But then we got our own...

Started out

1995

34-1-2-1.6

Recodified

1998

34-11-2-10

Child Support Statute of Limitations

An action to enforce a child support obligation must be brought no later than

Whichever occurs first

(1) the eighteenth birthday of the child; or

the child

Scenario 1

Child support order issued in 1993 for child who was then 4 years old. Child was emancipated at age 21 in 2010.

In the meantime, regarding your file...

I knew I left
that file at
home...but
why
couldn't I
find it??



Scenario 1

You can collect
the entire
amount.

Child turned 18
in 2007.

Less than 10
years have
passed.

Scenario 2

Once upon a time
there was an old file
in your office

You finally discover it,
but realize the child
turned 28 last week

And you never made
it to Court...ever...



This is your file



Scenario 2

You are probably out of luck.

Scenario 2

But what if...

Scenario 2

...you had an arrearage finding??

Whew!!! Reprieve!!!



Judgment Statute of Limitations

IC 34-11-2-12

- Every judgment and decree of any court of record of the United States, of Indiana, or of any other state shall be considered satisfied after the expiration of twenty (20) years.

Definition of Decree

Merriam-Webster

- a judicial decision especially in an equity or probate court

Definition of Decree

Black's Law Dictionary

- A decree in equity is a sentence or order of the Court...

Definition of Decree

Oxford English Dictionary

- An official order issued by a legal authority

Moral of the Story:

**BUT WAIT...THERE'S
MORE!!!**

If you
you hav

ourt
it...

Estate of Wilson v. Steward

The twenty-year statute is merely a rule of evidence that creates a rebuttable presumption.



Estate of Wilson v. Steward

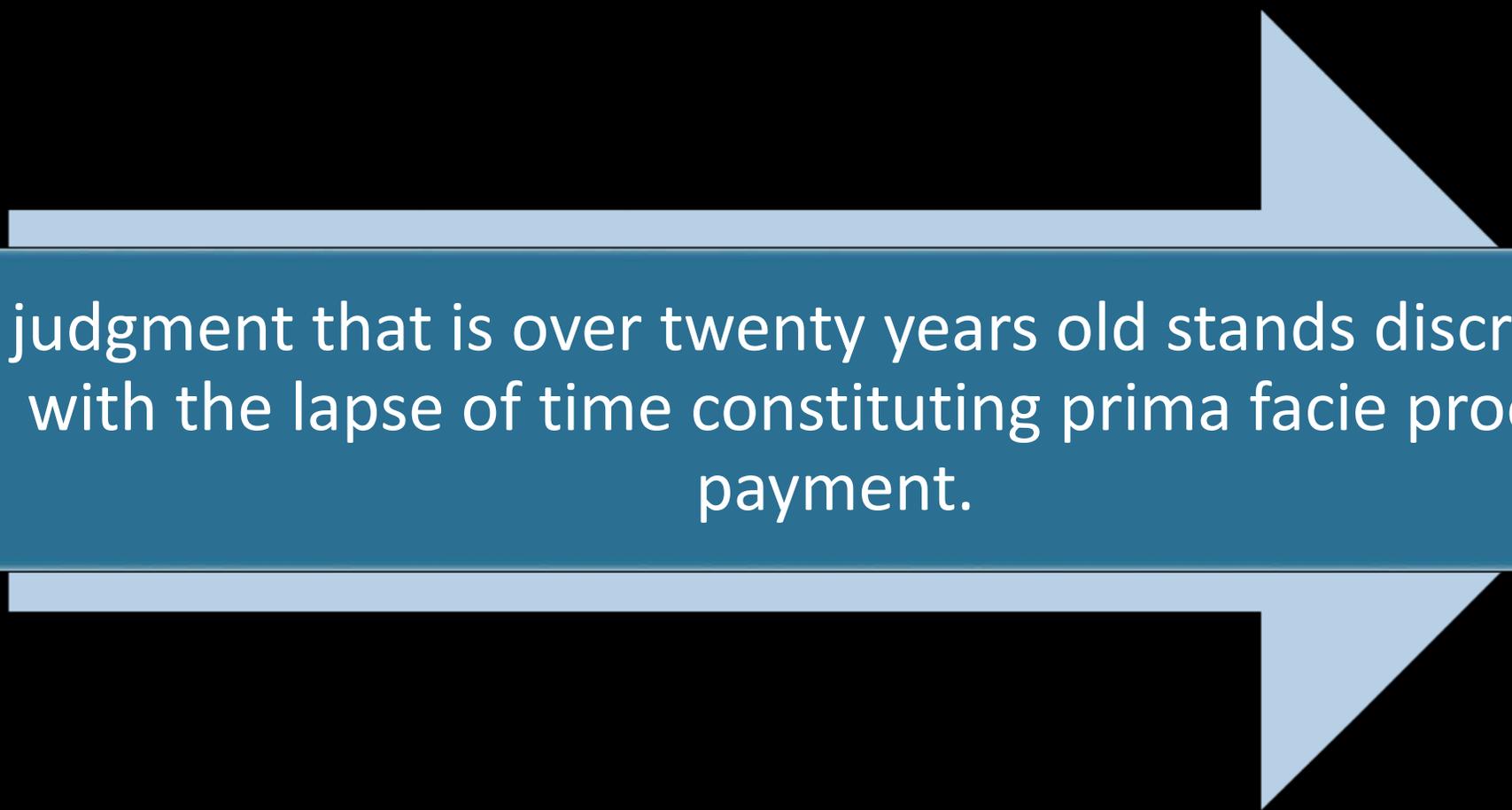
Nothing in our statutes indicate[s] an intention to *utterly destroy* judgments after the lapse of 20 years.

Estate of Wilson v. Steward

A judgment that is less than twenty years old constitutes prima facie proof of a valid and subsisting claim...



Estate of Wilson v. Steward



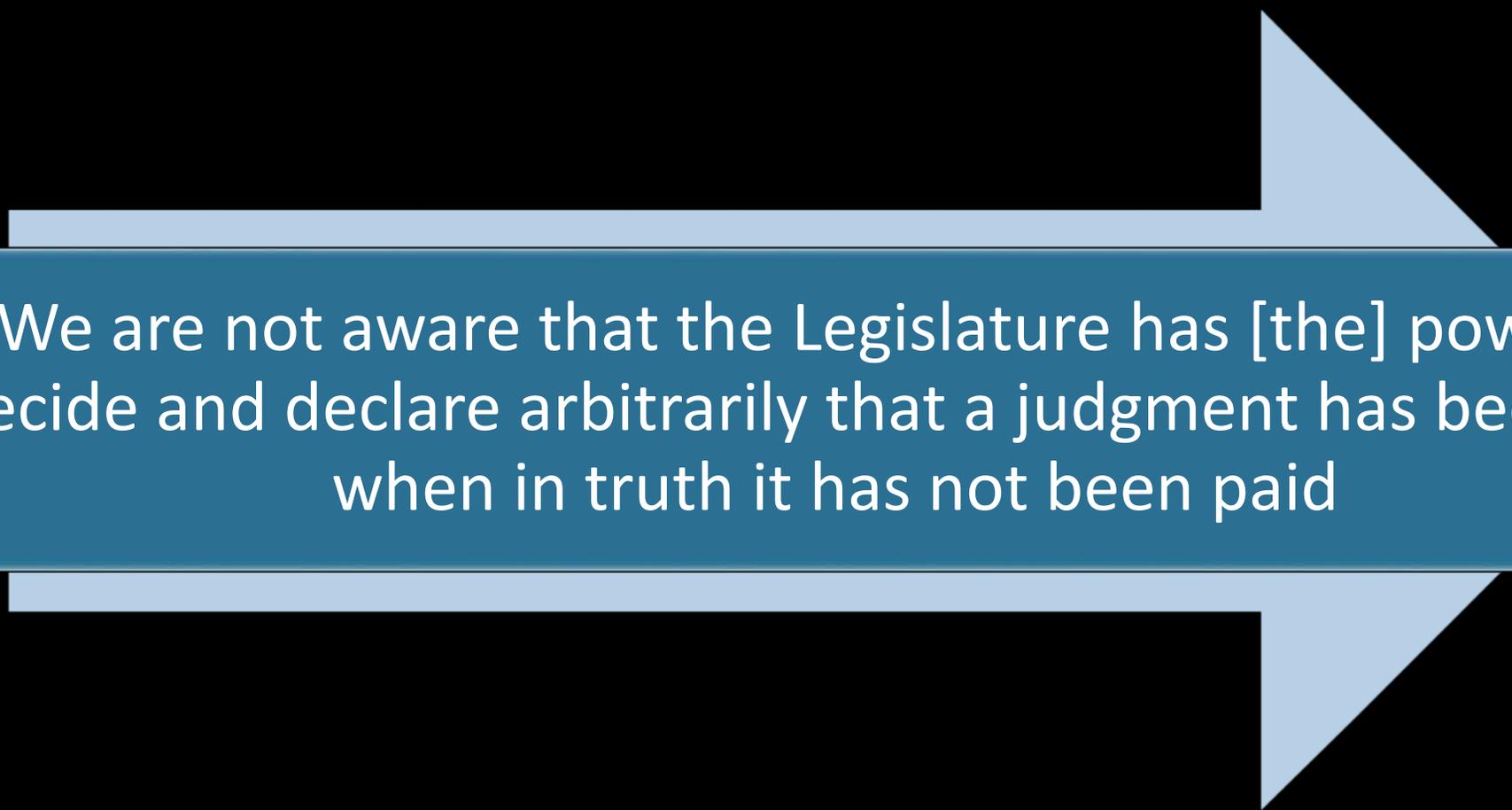
A judgment that is over twenty years old stands discredited, with the lapse of time constituting prima facie proof of payment.

Estate of Wilson v. Steward

Thus, the party seeking to avail itself of the presumption of satisfaction of a judgment after twenty years have passed must plead payment.



Interesting Statement



We are not aware that the Legislature has [the] power to decide and declare arbitrarily that a judgment has been paid when in truth it has not been paid

Bottom Line:

Get the Arrearage Finding and your Good!

But Arrears are Already Judgments!

34-11-2-12
Judgment or
Decree

31-16-16-2
"Treated as a
Judgment"

But Arrears are Already Judgments!

Skolak v. Skolak
895 N.E.2d 1241
(Ind. Ct. App. 2008)

Arrearage that has not been subject of Court determination is not the same as a judgment or decree and thus does not come under 20 statute of limitations

Scenario 3

You file that old case anyway

Statute of Limitations has run

What now???

Scenario 3

Actually Nothing!

You handle it like
any other case

Until...

Scenario 3

The NCP raises the issue of Statute of Limitations

The Statute of Limitations is an Affirmative Defense

Must be both pleaded and proven by Defendant

Scenario 3

Pursuant to this Rule, a party seeking the benefit of an affirmative defense must raise and specifically plead that defense or it is waived.

- *Willis v. Westerfield*, 839 N.E.2d 1179, 1185, 2006 Ind. LEXIS 1, *8 (Ind. 2006)



Take Aways

Don't lose files. (I really hate file gremlins)

Best Practice – Set up SOL Reminder System

Force NCP to allege the SOL Defense

And Most Important...

Obtain Arrearage
Determinations frequently

Every File Needs it every
_____ years

Statute of Limitations Problem

SOLVED!!!

Thank you for coming!

Questions?

- William Welch
- Staff Attorney
- Indiana Prosecuting Attorneys Council
- 302 W Washington St, Rm E-205
- Indianapolis, IN 46204
- Tx: 317/232-1836
- Email: wwelch@ipac.in.gov