No. 15-FM-718

DISTRICT OF COLUMBIA COURT OF APPEALS

CAROLYN POPE-MASSEY,

Appellant,

v.

FREDDIE MASSEY,

Appellee.

On appeal from the Superior Court of the District of Columbia

(1983 DRB 1540)

BRIEF OF APPELLEE

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***Attorney to Present Oral Argument**

D.C. APP. R. 28(a)(2) STATEMENT

The parties to this appeal are Carolyn Pope-Massey and Freddie Massey. In the Superior Court, Ms. Pope-Massey appeared *pro se*. Mr. Massey, who initially appeared *pro se*, was later represented by Ashley McDowell of the Legal Aid Society of the District of Columbia. The District of Columbia appeared as an intervenor and was represented by Assistant Attorney General Philip Medley and Assistant Attorney General Matthew LaFratta, both of the Office of the Attorney General, Child Support Services Division.

In this Court, Ms. Pope-Massey is represented by Frederic W. Schwartz, Jr. Mr. Massey is represented by Ashley McDowell, Stephanie Troyer, and Jonathan Levy of the Legal Aid Society of the District of Columbia. The District of Columbia has not participated in this appeal.

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ISSUES PRESENTED

1. Whether the trial court correctly applied the statute of limitations to Mr. Massey's outstanding child support arrears, all of which were over twelve years old.

2. Whether Mr. Massey waived the statute of limitations defense by seeking a modification of his child support order.

3. Whether Mr. Massey was barred from raising the statute of limitations defense by the doctrines of law of the case or claim preclusion.

4. Whether administrative enforcement actions taken by the District of Columbia precluded Mr. Massey from invoking the statute of limitations.

STATEMENT OF THE CASE

This appeal challenges the trial court's order granting Freddie Massey's Motion to Reduce Arrears. That motion was filed on October 21, 2014, and raised the statute of limitations defense to the collection of his child support arrears, all of which were more than twelve years old. The Superior Court held a hearing on the motion on May 6, 2015, at which the District argued that its attempts to enforce the order using administrative means effectively revived all outstanding child support arrears and that Mr. Massey had waived the statute of limitations defense. On May 13, 2015, the trial court issued an Order Granting Motion to Reduce Arrears. The court found that all of Mr. Massey's outstanding arrears were over twelve years old

and thereby time-barred from collection by D.C. Code § 15-101. The court vacated all outstanding child support arrears. Ms. Pope-Massey appeals from that ruling.

STATEMENT OF THE FACTS

Ms. Pope-Massey and Mr. Massey were married on May 10, 1969. They are the parents of four children, the youngest of whom is now thirty-eight years old: Angela Massey, born on June 13, 1971, Freddreaka Massey, born on December 6, 1972, Elizabeth Massey, born on November 26, 1976, and Freddie Massey, born on October 30, 1978. On April 12, 1985, the parties filed a Judgment of Absolute Divorce with the Superior Court of the District of Columbia. *See* Aplt. App. 102. The Divorce Judgment required Mr. Massey to pay child support to Ms. Pope-Massey in the amount of $450 per month. *See* Aplt. App. 105. In October 1999, Freddie, the youngest child, emancipated when he reached the age of twenty-one, and the child support order terminated as a matter of law. *See Jones v. Jones*, 72 F.2d 829, 830 (D.C. 1934).

Mr. Massey filed a *pro se* Motion to Terminate Support on May 17, 2007. *See* Aplt. App. 94. In his motion, he stated that he was disabled and that his only income was a veteran's pension and disability payments, and consequently, he was not able to pay his outstanding child support arrears and support himself. The court denied the motion orally, memorializing its decision only in a jacket entry on the file which noted that the denial was without prejudice to Mr. Massey re-filing in the future with

evidence to support his claim. *See* Aplt. App. 210:23–25, 214:1–2. On December 3, 2012, Mr. Massey, unrepresented, again sought to reduce his child support order by filing a motion to modify based on disability, unemployment, and receipt of Social Security benefits. *See* Aplt. App. 76, 78. The court denied the second motion on January 19, 2013, without making any findings. *See* Aplt. App. 75. Mr. Massey filed a third *pro se* Motion to Modify Child Support Order on July 8, 2014. *See* Aplt. App. 82. He stated that he was unemployed, disabled, and unable to work. *See* Aplt. App. 84. As part of the relief requested, Mr. Massey asked the court to terminate the child support order and wrote "stature [sic] of limitations Oct, 1999." Aplt. App. 86.

Mr. Massey subsequently obtained counsel, and on October 21, 2014, filed a Motion to Reduce Arrears, asserting the statute of limitations as a defense to the payment of child support arrears more than twelve years old. *See* Aplt. App. 40, 41. At that time, Mr. Massey owed approximately $48,974.20 in arrears, all of which was more than twelve years past due. *See* Aplt. App. 42.

On May 6, 2015, the court heard argument on Mr. Massey's Motion to Reduce Arrears. *See* Aplt. App. 113. Ms. Pope-Massey and an Assistant Attorney General for the Office of the Attorney General, Child Support Services Division both appeared, as well as Mr. Massey with counsel. *Id.* At that hearing, the District argued that Mr. Massey had waived the statute of limitations defense by not raising

it before the District began garnishing his Social Security Disability Benefits, and that the District's withholding could continue until the entire debt was satisfied, pursuant to D.C. Code § 46-215. *See* Aplt. App. 113:10–15. Mr. Massey argued that administrative actions taken by the District, including wage withholding pursuant to D.C. Code § 46-215, did not revive already-expired arrears, that Mr. Massey had not waived the statute of limitations, and that all of the uncollected arrears were time-barred from collection. *See* Aplt. App. 110–11, 113–15, 118–19, 123–24, 128.

On May 13, 2015, the court issued an order granting the Motion to Reduce Arrears and finding that all outstanding arrears were (1) more than twelve years old, (2) time-barred from collection by D.C. Code § 15-101, and (3) vacated due to the statute of limitations. *See* Aplt. App. 18. Ms. Pope-Massey, through counsel, filed a notice of appeal, seeking review of the granting of the Motion to Reduce Arrears.

SUMMARY OF THE ARGUMENT

It is undisputed that by the time of the motion at issue in this appeal, all of Mr. Massey's arrears were more than twelve years old. It is further undisputed that the statute of limitations applicable to child support orders is twelve years from the month in which payment became due, *see* D.C. Code §§ 15-101(a)(2), 46-204(b), and that therefore the statute of limitations had run on all of Mr. Massey's arrears, rendering them time-barred from collection.

The only question on appeal is thus whether the Superior Court was barred from applying the statute of limitations here by some form of tolling, revival, or a doctrine prohibiting the application of an affirmative defense. Nothing barred the Superior Court from applying the statute of limitations here.

Ms. Pope-Massey argues that the Superior Court erred in applying the statute of limitations because Mr. Massey waived the defense. That argument is wrong because Mr. Massey never affirmatively waived the defense and did not fail to raise it in any relevant responsive pleading. Furthermore, the Superior Court had the discretion to consider that defense even if it had been raised in an untimely fashion, in keeping with the court's flexibility regarding affirmative defenses and the absence of any prejudice to Ms. Pope-Massey.

Ms. Pope-Massey also argues that because Mr. Massey did not appeal from the denials of his motions to modify based on his unemployment, disability, and the emancipation of the children, the doctrines of law of the case and claim preclusion bar him from raising the statute of limitations. This is incorrect. The doctrine of law of the case does not apply because the court had not given a prior ruling on the statute of limitations, and even if the court had done so, the law of the case does not prevent a court from changing its ruling. The doctrine of claim preclusion does not bar Mr. Massey from raising the statute of limitations because the court had not issued a previous *final judgment*, only previous orders that do not have the preclusive

effect of a final judgment, as illustrated by the Superior Court's *pro forma* denials of his motions to modify.

Ms. Pope-Massey contends that each order issued by the court effectively revived all outstanding support judgments, giving them a new twelve-year lifespan. This argument fails because the Superior Court at no time issued an order reviving the arrears, as required by D.C. Code § 15-101. The orders issued by the court were utterly silent on the issue of revival and the statute of limitations, and Ms. Pope-Massey cites no precedent for an implicit revival.

Ms. Pope-Massey argues that the doctrine of *nullum tempus occurrit regi* provides her with further time to collect on the old debt. However, the doctrine of *nullum tempus occurrit regi* only applies when the sovereign seeks to enforce a public right, and in the matter at hand, it is Ms. Pope-Massey, a private individual, who seeks the collection of old, expired private arrears. Finally, Ms. Pope-Massey offers no legal basis for the contention that the District's attempts to collect arrears that are more than twelve years old through administrative functions bars the application of the statute of limitations.

ARGUMENT

In the District of Columbia, each periodic award of child support is a "money judgment that becomes absolute, vested, and upon which execution may be taken, when it becomes due." D.C. Code § 46-204(b). Each judgment "is enforceable, by

execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last order of revival thereof." D.C. Code § 15-101(a)(2). The twelve-year statute of limitations begins to run against each periodic judgment as it becomes due. D.C. Code § 46-204(b). "At the expiration of the twelve-year period … the judgment or decree shall cease to have any operation or effect," and cannot be revived, unless the judgment is the subject of a pending proceeding for enforcement. *Id.* § 15-101(b). "Unless a court order is issued within the twelve year statutory period reviving the right to payment of matured support amounts," the judgment has no operation or effect and there no longer exists a right to receive satisfaction of the debt. *Mayo v. Mayo*, 508 A.2d 114, 115 (D.C. 1986); D.C. Code §§ 15-101(b), 15-103.

Here, a support order in the amount of $450 per month was entered as part of the parties' April 1985 Divorce Judgment. *See* App. 105. Each month that a payment was due, a judgment for that month's payment came into being with its own twelve-year statute of limitations. The final judgment became due and owing in October 1999, the month in which the parties' youngest son reached the age of twenty-one. At that time the child support order terminated as a matter of law. *See Jones v. Jones*, 72 F.2d 829, 830 (D.C. 1934) (under the common law, infants attain majority at the age of twenty-one). Twelve years later, in October 2011, that last unpaid judgment expired pursuant to the statute of limitations. When Mr. Massey

asserted the statute of limitations in July 2014, all arrears were over twelve years old, and therefore time-barred from collection. There has never been any order of revival. Consequently, the court properly found that the collection of any outstanding arrears was time-barred.

I. THE 2007 AND 2012 MOTIONS TO MODIFY CHILD SUPPORT AND RESULTING ORDERS DO NOT PRECLUDE MR. MASSEY FROM INVOKING (OR THE COURT FROM APPLYING) THE STATUTE OF LIMITATIONS.

Ms. Pope-Massey argues that Mr. Massey waived the statute of limitations defense by not raising it in 2007 or 2012, and that the denials of his 2007 and 2012 motions revived the judgments and created a new twelve-year lifespan for all of the child support debt. *See* Pope-Massey Br. at 3. Additionally, Ms. Pope-Massey argues that under the doctrines of claim preclusion and law of the case, the denials of these motions prevent Mr. Massey from invoking the statute of limitations. *See* Pope-Massey Br. at 4, 5. These assertions are legally incorrect, as detailed below.

A. Mr. Massey's Requests for a Modification of His Child Support Order in 2007 and 2012 Did Not Waive His Statute of Limitations Defense.

Ms. Pope-Massey incorrectly argues that the statute of limitations defense was waived in 2007 and 2012 because the motions to modify did not invoke the defense. Pope-Massey Br. at 3. The trial court's conclusion that Mr. Massey did not in fact waive the statute of limitations defense is reviewed only for abuse of discretion, and

there was no such abuse here. *See Jaiyeola v. District of Columbia*, 40 A.3d 356, 361 (D.C. 2012); *cf. Bridges v. Clark*, 59 A.3d 978, 982 n.1 (D.C. 2013).

Waiver involves the failure to include a defense in an answer to a pleading—typically, a complaint. *See* Super. Ct. Civ. R. 8(c), 12(b). Generally, an affirmative defense, such as the statute of limitations, "'must be set forth affirmatively in a responsive pleading' and may be waived if not promptly pleaded." *Feldman v. Gogos*, 628 A.2d 103, 104 (D.C. 1993) (quoting *Whitener v. WMATA*, 505 A.2d 457, 458 (D.C. 1986)). However, this case's procedural history reveals no pleading to which Mr. Massey was required to respond. Instead, it was Mr. Massey, in an attempt to address his outstanding child support arrears, who filed *pro se* motions to modify in 2007 and 2012 and eventually affirmatively raised the statute of limitations defense with the assistance of counsel in 2014. Although Ms. Pope-Massey argues that Mr. Massey's failure to raise the statute of limitations in his previous requests for a modification foreclosed him from raising the defense in 2014, she has not provided any authority for the notion that the failure to include an affirmative defense in a motion to modify constitutes a waiver of that defense, and we are aware of none.

Additionally, this Court has held that, "absent unfair surprise or other substantial prejudice to the plaintiff … a defendant may raise an affirmative defense in a pre-trial motion despite having neglected to assert it in the answer to the

complaint." *Jaiyeola*, 40 A.2d at 362; *see also Federal Marketing Co. v. Virginia Impression Products Co.*, 823 A.2d 513, 526 (D.C. 2003); *Whitener*, 505 A.2d at 457, 460; *District of Columbia v. Tinker*, 691 A.2d 57, 60 (D.C. 1997) ("[U]nless there is prejudice to the opposing party, the rules of procedure cannot bar a defendant from raising the defense of the statute of limitations even after the filing of its answer.").

The key case upon which Ms. Pope-Massey relies, *Mayo v. Mayo*, 508 A.2d 114, 116 (D.C. 1986), is easily distinguished because it involved the total failure to raise the statute of limitations in the relevant proceeding; the defense was only raised later in a *collateral* proceeding. Here, the proceeding before the Superior Court was not a collateral proceeding. Instead, as in *Tinker* and *Whitener*, Mr. Massey raised his defense in a motion in the very proceeding at issue. As the trial court correctly noted:

> Without deciding whether a statute of limitations defense is implied in Mr. Massey's *pro se* pleadings, the court concludes once Mr. Massey obtained counsel he properly raised the statute of limitations defense in the trial court as required by *Mayo*. Unlike the respondent in *Mayo*, Mr. Massey did not wait to raise the statute of limitations defense by collateral attack upon an adverse judgment, or for the first time on appeal.

Aplt. App. at 17.

Moreover, the trial court would have acted within its discretion in considering the statute of limitations defense even if Mr. Massey had not timely raised the

defense. The court has long followed "the trend toward a flexible interpretation of Rule 8(c)" and the appropriate timing to raise statute of limitations and other affirmative defenses. *Osei-Kuffnor v. Argana*, 618 A.2d 712, 715 (D.C. 1993). That is consistent with the court's "preference for the resolution of disputes on the merits, not on technicalities of pleading." *Whitener*, 505 A.2d at 458; *see also Briggs v. Israel Baptist Church*, 933 A.2d 301, 304 (D.C. 2007) (parties who retained new counsel allowed to raise statute of limitations defense late). Thus, "[a]lthough the decision is a matter of trial court discretion, the policy favoring resolution of cases on the merits creates a 'virtual presumption' that a court should grant leave" to raise a statute of limitations defense "where no good reason appears to the contrary." *Briggs*, 933 A.2d at 304 (quoting *Bennett v. Fun & Fitness of Silver Hill, Inc.*, 434 A.2d 476, 478 (D.C. 1981)). Courts consider late defenses "when no substantial prejudice would result from permitting the defendant to raise an affirmative defense at a later stage." *Whitener*, 505 A.2d at 459; *see also, e.g.*, *Jaiyeola*, 40 A.3d at 362 ("no prejudice and hence no waiver" of statute of limitations) (quoting *Federal Marketing Co.*, 823 A.2d at 526). There was no prejudice here, as all parties had full occasion to brief the issue, *cf. Jaiyeola*, 40 A.3d at 362, and to do so within a reasonable amount of time, *cf. Briggs*, 933 A.2d at 304–05. And, at any rate, the passage of time has had no effect on Ms. Pope-Massey's assertions that the statute of limitations does not apply.

Additionally, Ms. Pope-Massey could have raised an objection based on waiver at the Superior Court level. She did not do so however, and therefore waived the waiver argument. Consequently, the Superior Court properly addressed the merits of Ms. Massey's statute of limitations defense.

B. There Was no Prior Ruling to Which the Law of the Case Doctrine Could Apply.

Ms. Pope-Massey argues that the doctrine of law of the case barred Mr. Massey from relying on the children having emancipated, insufficient funds, his disability, or his unemployment in his 2014 motion to modify because he included those same grounds in his previous motions to modify, those previous motions were denied, and he did not appeal those denials. *See* Pope-Massey Br. at 5. This argument fails for several reasons. Most importantly, when the Superior Court granted Mr. Massey's Motion to Reduce Arrears based on the application of the statute of limitations, no prior ruling on the statute of limitations existed as to which the law of the case could apply. And, even if such a ruling had existed, the law of the case doctrine does not prevent the Superior Court from changing that ruling.

1. The Superior Court Did Not Previously Rule on the Statute of Limitations.

The law of the case doctrine "bars a trial court from reconsidering the same question of law that was presented to and decided by another court of coordinated jurisdiction," when the motion being considered is (1) "substantially similar" to the

one previously considered by the prior court, (2) the first court's ruling was "sufficiently final," and (3) the previous ruling is not "clearly erroneous in light of newly presented facts or a change in the substantive law." *Tompkins v. Washington Hospital Center*, 433 A.2d 1093, 1098 (D.C. 1981) (citing *Kritsidimas v. Sheskin*, 411 A.2d 370, 371–72 (D.C. 1980)); *see also Nunnally v. Graham*, 56 A.3d 130, 142 (D.C. 2012) (noting that trial judges generally "adhere to a ruling made on the same question of law decided by a prior judge"). In the matter at hand, Ms. Pope-Massey points to no previous order of the court addressing the statute of limitations, and in fact, there is no such order. The record shows that no prior trial court had made a ruling on, or even considered, the statute of limitations defense when Mr. Massey asserted the defense and the Superior Court ruled in his favor with respect to the statute of limitations in 2014.

The 2007 and 2012 motions to modify filed by Mr. Massey were based on, among other bases, his disability, low income, and the long-ago emancipation of the parties' children. It is unclear why the Superior Court denied these motions. *See* D.C. Code § 16-916.01 (stating that a party may seek a modification "upon a showing of a material and substantial change in … the ability of the parent with a legal duty to pay support to pay…"). What is clear, however, is that those denials do not address the statute of limitations because that defense was not presented to the court in those motions. Accordingly, the orders denying those motions are not

"substantially similar" to the order under review, which addresses the statute of limitations specifically and expressly, and the previous orders thus cannot constitute law of the case on the statute of limitations issue.

Moreover, these orders are insufficiently final to establish the law of the case. The oral ruling denying the 2007 motion is expressly nonfinal and without prejudice to renewal, Aplt. App. at 210:23–25 ("I have to deny your motion to terminate without prejudice to you re-filing if you have some evidence to support your claim."), so it clearly does not constitute the kind of final order to which the law of the case doctrine can apply. *See Tompkins*, 433 A.2d at 1098 (D.C. 1981) (must consider whether the first court's ruling was "sufficiently final"). And the order denying the 2012 motion was devoid of written findings and so terse that it too is insufficiently final. *See Kumar v. District of Columbia Water & Sewer Authority*, 25 A.3d 9, 14–15 (D.C. 2011) (court's denial of a motion for summary judgment did not create the law of the case when the court did not set forth the reasons for denial in the order and when the court expected further review).

2. The Law of the Case Doctrine Does Not Prevent the Superior Court from Changing a Ruling.

The law of the case doctrine should not be applied inflexibly. It is instead "discretionary," because it "merely expresses the practice of courts generally to refuse to reopen what has been decided," and is not "a limit to their power." *Nunnally*, 56 A.3d at 142 (quoting *Crane v. Crane*, 614 A.2d 935, 939 n.12 (D.C.

1992)). Thus, even if the Superior Court had previously ruled on the statute of limitations, it would still have had the authority to reconsider the question at a later time.

In any appeal, the ultimate question is whether the Superior Court ruled correctly in the judgment under review. *Guilford Transportation Industries v. Wilner*, 760 A.2d 580, 593 (D.C. 2000) (upholding the trial court's decision to grant a motion for summary judgment, even though a previous judge denied, without prejudice, an earlier motion for summary judgment); *see also Carter-Obayuwana v. Howard University*, 764 A.2d 779, 792 n.22 (D.C. 2001). Here, the Superior Court's May 2015 decision correctly applied the statute of limitations and should be upheld.

C. There Was No Final Judgment to Which Claim Preclusion Could Apply.

Ms. Pope-Massey also improperly invokes the doctrine of claim preclusion. *See* Pope-Massey Br. at 4. Claim preclusion prevents the same parties from relitigating matters actually litigated and those that could have been litigated in a previous proceeding. *Stutsman v. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.*, 546 A.2d 367, 369–370 (D.C. 1988). Under this doctrine, "when a valid *final judgment* has been entered on the merits, the parties or those in privity with them are barred, in a *subsequent proceeding*, from relitigating the same claim or any claim that might have been raised in the *first proceeding*." *Washington Medical Center, Inc. v. Holle*, 573 A.2d 1269, 1280–81 (D.C. 1990) (emphases

added); *accord Jones v. Brooks*, 97 A.3d 97, 100 (D.C. 2014); *Calomiris v. Calomiris*, 3 A.3d 1186, 1190 (D.C. 2010) ("The doctrine operates to bar in the second action … claims which were actually raised in the first….") (quoting *Patton v. Klein*, 746 A.2d 866, 870 (D.C. 1999)). As is clear from the definition, claim preclusion must be invoked in a "subsequent proceeding" based on a pre-existing "final judgment" in a "first proceeding."

Claim preclusion does not apply here for two reasons. First, there is no "first proceeding" and no "subsequent proceeding" here, only one single proceeding in Superior Court with a single Superior Court case number. Second, there was no "final judgment" to which the doctrine could be applied. A final judgment is one that "embodies all of a party's rights arising out of the transaction involved." *Parker v. Martin*, 905 A.2d 756, 762 (D.C. 2006) (quoting *Williams v. Board of Trustees of Mount Jezreel Baptist Church*, 589 A.2d 901, 906 (D.C. 1991)). There is no such final judgment here.

II. THE DENIALS OF THE 2007 AND 2012 MOTIONS TO MODIFY DID NOT REVIVE THE ARREARS.

Ms. Pope-Massey incorrectly suggests that the denials of Mr. Massey's 2007 and 2012 motions to modify revived the arrears, extending the period for collection by another twelve years. *See* Pope-Massey Br. at 5. This contention is wrong as a matter of law. A judgment can only be revived by a court order issued for that purpose. According to the statute:

> An order of revival issued upon a judgment or decree during the period of twelve years and from the rendition or from the date of an order reviving the judgment or decree, extends the effect and operation of the judgment or decree with the lien thereby created and all the remedies for its enforcement for the period of twelve years from the date of the order.

D.C. Code § 15-103. After the twelve-year period has expired, the judgment can no longer be revived. *See* D.C. Code § 15-101(b). "Unless a *court order* is issued within the twelve year statutory period reviving the right to payment of matured support amounts," the judgment has no operation or effect. *Mayo*, 508 A.2d at 115 (D.C. 1986) (emphasis added). Revival may thus only be accomplished through the issuance of a court order issued within the original twelve-year statutory period, and no such court order exists here.

Although Ms. Pope-Massey asserts that court orders which fail to address arrears revival or the statute of limitation somehow implicitly constitute orders of revival, *see* Pope-Massey Br. at 5, there is no precedent for such an approach. Instead, court orders reviving judgments must be both explicit and clear, as evidenced by orders entered when a court does, in fact, intend to revive a judgment. *See, e.g.*, *Michael v. Smith*, 221 F.2d 59, 60 (D.C. Cir. 1955) ("On April 23, 1942, the court, reciting in its order, inter alia, that a copy of the motion had been duly served and that no opposition to it had been filed, adjudged that the judgment 'be and the same hereby is revived and extended for a further period of twelve years from the date of the expiration thereof.'"); *Dickey v. Fair*, 768 A.2d 540, 540 (D.C.

2001) (noting that the trial court granted appellee's "motion to revive judgment"); *White v. O.R. Evans & Bro., Inc.*, 157 F.2d 857, 858 (D.C. Cir. 1946) ("On September 7, 1945, the District Court entered an order reviving the judgment."). Here, the plain language of the trial court's previous denials show no indication of revival.

Both the trial court's January 22, 2008 oral ruling and January 19, 2013 order denying Mr. Massey's motions to modify are utterly silent with respect to revival in particular and the statute of limitations more generally. *See* Aplt. App. 75, 210. Neither of these orders mentions the word "revival" nor the relevant D.C. statute regarding revival, nor the concept of revival. *See* Aplt. App. 75, 195–214. Likewise, neither the phrase "statute of limitations" nor the relevant D.C. statute regarding the statute of limitations, nor the concept of the statute of limitations is mentioned anywhere in the orders. *See* Aplt. App. 75, 195–214. Also, neither the oral ruling nor the written order makes any reference to a motion for revival (which is unsurprising, as no such motion had been filed or has ever been filed in this case). *See* Aplt. App. 75, 195–214. Based on the Superior Court's previous rulings and the record, at no time did the court revive Mr. Massey's child support arrears.

III. NEITHER THE DOCTRINE OF *NULLUM TEMPUS OCCURIT REGI* NOR D.C. CODE § 46-215 APPLIES TO THIS PROCEEDING.

A. The Doctrine of *Nullum Tempus Occurrit Regi* is Not Applicable to Mr. Massey's Case, As It May Only Be Invoked by the Sovereign to Enforce a Public Right.

The doctrine of *nullum tempus occurrit regi* stands for the principle that "neither laches nor statutes of limitations will constitute a defense to suit *by the sovereign* in the enforcement of *a public right*." *The New 3145 Deauville, L.L.C. v. First American Title Ins. Co.*, 881 A.2d 624, 629 (D.C. 2005) (emphases added). Neither requirement of the doctrine is met here.

As one of the cases cited by Ms. Pope-Massey explains, the reach of the *nullum tempus* doctrine is extremely narrow. In *Guaranty Trust Co. v. United States*, 304 U.S. 126 (1938), the United States Supreme Court explained that *nullum tempus* is a rule limited to "the domestic 'sovereign,' state or national," *id.* at 133, and does not even extend to other governmental entities within the United States, "such as municipalities, county boards, school districts and the like." *id.* at 135 n.2. Indeed, the *Guaranty Trust Co.* opinion cites an older Supreme Court opinion—*Metropolitan Railroad Co. v. District of Columbia*, 132 U.S. 1, 11–12 (1889)—which specifically refused to allow the District of Columbia to invoke *nullum tempus* on its own behalf. Although this Court has applied the doctrine to the District in limited circumstances despite the Supreme Court's ruling in *Metropolitan Railroad*, *see District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d

394, 402–403 (D.C. 1989), the doctrine clearly does not extend to a private party like Ms. Pope-Massey, who is the only party seeking to invoke the doctrine here.

Moreover, even if a sovereign were itself to attempt to invoke the doctrine here, that attempt would founder on the limitation that the doctrine applies only when a sovereign acts "to protect an intrinsically sovereign interest or when exercising any right which is peculiarly that of a sovereign." *Owens-Corning*, 572 A.2d at 402. Collecting child-support arears is not the act of a sovereign, but rather the private act of a private individual—here, Ms. Pope-Massey. The District was previously involved in this case, but its involvement was solely as the assignee of Ms. Pope-Massey's private right to collect child support, and that involvement as an assignee (rather than as a sovereign *per se*) does *not* allow the District to invoke the *nullum tempus* doctrine. *See Guaranty Trust Co.*, 304 U.S. 126 (United States cannot invoke *nullum tempus* in action where it is acting as the assignee of a foreign sovereign); *Broselow v. Fisher*, 319 F.3d 605, 609 (3d Cir. 2003) (State cannot invoke *nullum tempus* with respect to "claims assigned to the State by Medicaid beneficiaries"); *Marshall v. Intermountain Elec. Co.*, 614 F.2d 260, 262 n.3 (10th Cir. 1980) (*nullum tempus* does not apply when the "government functions as a mere conduit for the enforcement of private rights which could have been enforced by the private parties themselves") (collecting cases). Ms. Pope-Massey cites no case, and we have found none, applying *nullum tempus* to the context of child support,

regardless of the parties. It is clear that Ms. Pope-Massey does not meet the requirements of *nullum tempus*, and cannot invoke the doctrine here.

B. D.C. Code 46-215 Does Not Preclude the Application of the Statute of Limitations.

Ms. Pope-Massey asserts that D.C. Code § 46-215 precludes the application of the statute of limitations here. The law states:

> An order to withhold issued by the IV-D agency or other appropriate agency upon a judgment or order for support and *issued within 12 years from the date of the judgment or order* shall not lapse or become invalid before complete satisfaction solely by reason of the statute of limitation set forth in § 15-101.

D.C. Code § 46-215 (emphasis added). Under the plain statutory language, an order to withhold support must be issued within twelve years from the date of the judgment to prevent the application of the statute of limitations. In this matter, the only relevant order to withhold support was issued by CSSD to obtain funds from Mr. Massey's Social Security Disability Insurance payments. But that order was not issued until July 2012—more than twelve years after the last judgment accrued in October 1999. Therefore, D.C. Code § 46-215 presents no bar to the court's application of the statute of limitations to Mr. Massey's outstanding judgments.

CONCLUSION

For the foregoing reasons, this Court should affirm the Superior Court's May 13, 2015 Order Granting Motion to Reduce Arrears and vacating all of Mr. Massey's outstanding child support arrears.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 19, 2016, I caused a copy of the foregoing Brief of Appellee Freddie Massey to be served by first-class mail and electronic mail on:

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