98475-I

IN THE SUPREME COURT OF WASHINGTON

(Court of Appeals No. 366707-III)

THE ESTATE OF SHENNEN GOODYEAR BLACKBURN

Petitioner,

v.

SHAWN BLACKBURN

Respondent.

PETITION FOR REVIEW OF SHAWN BLACKBURN

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I. Identity of Petitioner.

Shawn Blackburn, the Respondent, Petitions the Supreme Court for Review of the March 26, 2020 Division III published decision.

II. Citation to Court of Appeals Decision

In re Marriage of Shennen Goodyear-Blackburn v. Shawn Blackburn, March 26, 2020 decision, published in part, No. 36670 -7-III.

III. Issues Presented for Review

Which statute of limitations applies on actions to receive reimbursement for overpayment of day care expenses which original child support order ordered the father to pay 100% of the day care expenses and the specific amount of monthly day care was entered by administrative order?

IV. Statement of the Case

The parties entered agreed divorce and child support orders in 2009 using the mandatory forms. CP 1-36 and *Blackburn* 36670-7-III, Appx. 2. Shennen received primary placement of their son. *Id.* Shawn agreed to pay $1000 per month as a child support transfer payment as well as $1,500 per month in spousal support for 84 months. CP 11 and 34. Shawn's basic support obligation was only $457.24. CP 18.

The final 2009 child support order required Shawn to pay 100% of day care costs by court interlineation. CP 13 and CP 371-372 (Appx. 13-14). The parties' child support order provided for reimbursements, if day care

costs were paid but not utilized for day care: "The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080." CP 11.

The trial court interpreted this reference in the child support order for day care reimbursements, as a provision that allowed Shawn to be reimbursed for daycare that was paid to the custodial parent but not actually incurred. CP 372 para 3.3 (Appx. 14).

The State of Washington garnished the transfer payment and in 2010 began ordering and garnishing monthly day care amounts. *See e.g. CP 294.* The first administrative order required Shawn to pay $150/month from Nov. 2009 – January 2010. CP 285. It then ordered $300/month beginning Feb. 2010. CR 285-287. Beginning June 1, 2012 it ordered Shawn to pay $650/month in child care expenses by administrative order of June 26, 2012. CP 104; CP 280-84. The State of Washington continued to garnish Shawn's employment checks to the full extent of the orders. *See e.g.* 299-307.

During the effects of this State of Washington $650/month child care administrative order, Shennen reimbursed Shawn a total of $3,500 during 2016 and 2017. CP 98-100.

After day care costs ended, the State of Washington proposed an amount owed by Shennen for reimbursement of child care costs at the full amount paid by Shawn, from June 2012 – May 2018: $46,800. Shennen

had not proven she had used the child care funds for child care. CP 103-104. State of Washington's notice of this delinquency was entitled, "Notice of Support Owed." CP 103.

In Sept., 2018, Shawn presented a motion to show cause in Superior Court to receive a judgment for reimbursement of this child care paid. CP 371 – 373 (Appx. 13-15).

The superior court determined the ten year statute of limitations for child support arrears applied and also determined that requesting competent proof for the six years of child care expense use to be reasonable. *Blackburn* No. 36670-7-III, Appx. 4, *see* CP 372 (Appx. 14).

Shennen did not present competent evidence that at any time, from June 2012 to June 2018, she had used the day care funds for day care. *See* trial court's order, CP 372 para 2.7, 3.1 and 3.2 (Appx.14).

The trial court noticed that a contract statute of limitations might apply if the 10 year RCW 4.16.020 (3) did not apply. CP 373 para 3.5 (Appx. 15). But ultimately, the trial court found that the administrative orders, charging monthly child care expenses to Shawn, is what caused the child support repayment arrears to accumulate, thus allowing RCW 4.16.020 (3) to apply.

The trial court found "that there would be no reason the catch all 2-year statute of limitations should apply." CP 373 para 3.5. (Appx. 15).

The trial court also denied all requests for equitable relief. CP 371-374 (Appx 13-16) The court of appeals affirmed this at 9.

Shawn is now the custodial parent of their son. He is receiving no child support from Shennen: she has past. Blackburn No 36670-7-III, Appx. 4. He continues to seek the $43,300 as a set off against the amount owed The Estate of Shennen's for the Estate's continued ownership of ½ interest in the home Shawn and their son reside. *See Id.* at 8.

V. Argument

The Supreme Court reviews de novo, questions of statutory interpretation. *Associated Press v. Washington State Legislature*, 194 Wn.2d 915, 920, 454 P.3d 93 (2019); *Jongeward v, BNSF R. Co.*, 174 Wn.2d 586, 592, 278 P.3d 157 (2012). The fundamental aim in interpreting a statute is to ascertain and carry out the legislature's intent. *Associated Press at 920.* A court must give effect to plain meaning as an expression of legislation intent. *Jongeward,* 174 Wn.2d. at 594. "Plain 'meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'" *Associated Press,* 194 Wn. at 920 (*quoting Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)) *and see Jongeward,* 174 Wn.2d at 594. Such may include the statutory scheme as a whole, the context of the statute where the provision is found, and related provisions. *Unruh v Cacchiotti,* 172 Wn.2d 98, 113, 257 P.3d 631

(2011). "' Statutes must be interpreted and construed so that all the language used is given effect with no portion rendered meaningless or superfluous." *Associated Press,* 194 Wn. 2nd at 920 (*citing Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Therefore, where statutory definitions apply, they must be used, and only when a term is undefined will it be given its plain and ordinary meaning. *See Associated Press,* 194 Wn. 2nd at 926.

Only after a plain meaning contextual analysis is applied and the statute remains ambiguous, is it appropriate to reference case law on the subject. *Jongeward,* 174 Wn.2d at 602.

This petition for review is requested because Washington Supreme Court principles of statutory interpretation were avoided as well as long standing Washington Supreme Court principles of law, for the appellate court to reverse and reduce the trial court's statute of limitations choice from ten years to two. It also involves a subject of substantial public interest

1. **The court of appeals applied plain and ordinary meaning rather than statutory definitions and context to avoid application of the 10 year limitations for child support arrears of RCW 4.16.020(3).**

The superior court applied the RCW 4.16.020 (3)'s 10 yr. statute of limitations to this action to collect overdue child care overpayment

reimbursements which arose out of an administrative order. The Court of Appeals Division III avoided that statute of limitations by applying plain and ordinary meanings to child support duties rather than statutory definitions. The court of appeals decided that "overpaid child care expenses are not past due child support." *Blackburn No. 36670-7-III,* Appx. 7. In so doing, it avoided the Washington Supreme Court long standing precedent on discerning the legislature's intent.

Applicable statutory definitions that assist in determining if reimbursement for "overpayment of day care expenses" are child support are in the Child Support Enforcement chapter RCW 26.18, Child Support Schedule chapter 26.19 and Interstate Child Support Enforcement Act chapter 26.21A. All three related child support chapters define child support duties and terms broadly and include "reimbursements" as part of the "duty of support." The totality of RCW chapter 26.19 involves the proper setting of child support orders. The totality of RCW chapter 26.18 involves enforcing child support duties. RCW 26.21A is the Uniform Interstate Family Support Act chapter. All three chapters express the legislature's intent and definitions surrounding setting and enforcing child support orders, and assist courts in applying the correct statute of limitations to the issue.

For RCW 4.16.020 (3) to apply here, the funds that Mr. Blackburn sought to collect would have to be categorized as "past due child support that has accrued under an order."

The child support limitations statute does not define its words, but related definitions do appear in the enforcement of child support chapters.

The child support enforcement chapter, RCW 26.18 defines "duty of support" to include an obligation to make monetary payments, to pay expenses, or reimbursements of a person for necessary support furnished a dependent child. RCW 26.18.020 (3). "Dependent child" means a child to whom a support order has been established or for whom a duty of support is owed. RCW 26.18.020 (1). "Obligee" and "obligor" are defined within the enforcement chapter simply based on who is owed funds and who owes funds. RCW 26.18.020 (4) and (5).

Because the definition of duty of support is broad to include reimbursements for payment of expenses on behalf of a dependent child, this RCW 26.18 chapter supports a conclusion that the legislature intended child care expense overpayment reimbursements to be included in the broad meaning of child support for a dependent child.

The context of RCW 26.19.080 (3) also shows the legislative intent that the reimbursement of overpayment be required in child support orders and if unpaid, are overdue. An overview of RCW 26.19 shows that child support responsibilities are intended to apply to both parents. The

declared legislative intent in setting child support chapter of RCW 26.19, is to ensure that child support obligations are "equitably apportioned between the parents." RCW 26.19.011. The basic child support obligation is set for both parents. RCW 26.19.011 (1). The "support transfer payment" is the amount one parent pays another parent (on an ongoing basis and not fluctuating) for child support. RCW 26.19.011 (9).

It is within this statutory chapter devoted to equitable balancing and setting child support orders that the legislature elected to insert the obligee's requirement to reimburse an obligor for the overpayment of day care expenses. RCW 26.19.080 (3). Because the legislature included this provision in the chapter exclusively dedicated to setting child support orders, the placement supports the conclusions that the legislature intended the reimbursement requirements to be set forth in child support orders. *See* RCW 26.19.080 (3). Consistently, the state wide child support order form does incorporate and reference RCW 26.19.080, with its duty of reimbursement of expenses not incurred. *See* CP 11, para 3.3.

Shawn sought reimbursement relief on the basis of his superior court child support order that gave him the right of reimbursement and requiring him to pay 100% of daycare expenses as well as the results of the administrative order setting day care at $650/month. *Id.*

Finally, for RCW 4.16.020(3) to apply, the reimbursements needed to be past due. Per the plain reading of RCW 26.19.080, past due

reimbursement overpayments accrue when prompt reimbursement does not happen on an annual basis, when more than 20% of the childcare expenses are not used on child care. *See* RCW 26.19.080.

The definitions of the Interstate Support Enforcement Act are also consistent with a broad definition of a duty of child support and include reimbursement obligations for overpayments. Under the Interstate Act, support orders means a decree or order which provides, among other things, for reimbursement for financial assistance provided to an obligee. RCW 26.21A.010 (28). "Duty of support" therein means an obligation imposed or imposable by law to provide support for a child or former spouse, including an unsatisfied obligation to provide support. RCW 26.21A.010 (4). Obligor is a person who owes a duty of support. RCW 26.21A.010 (17)(1).

The RCW 4.16.020 (3) 10 yrs. limitations to collect past due child support provision should be applied here compared to the more general RCW 4.16.020 (2) limitations for all orders, because a special statute of limitations supersedes a general rule. *Reid v Dalton*, 124 App. 113, 100 P.3d 349 (Div. 3, 2004). The Interstate Support Enforcement Act chapter, RCW 26.21A.515 also requires that that the longer statute of limitations must be applied, for a proceeding for arrears, from a support order between states.

In sum, the RCW 26.19.080 legislation ensures that the parent

receiving child care funds is a fiduciary of those funds, as they are always intended for another. Accordingly, the legislature provided strong language for that responsibility: reimbursement is required when applicable. *See* RCW 26.19.080 (3). The legislature expected the reimbursement requirement and duties to be included in court orders, by placing the reimbursement provision within the chapter devoted to the formation of child support orders. The legislature did not assign this reimbursing and crediting process its own statute of limitations. The legislature was aware at the time of enactment, that the 10 year statute of limitations applies to past due child support that has accrued under an order. Because the legislature defined duty of support to include reimbursements, the legislature intended the 10 year statute of limitations to apply here to an action to collect past due child support in the form of arrears for reimbursements of overpayment of daycare expenses accrued under an order of support. When brought into appropriate focus, the plain meaning of the orders and all the related statutes become clear and consistent with the trial court's decision. *See* RCW 4.16.020 (3) and 26.21A.515.

2. Many other statute of limitations apply, as well, so the court of appeals should not have required application of the last resort, two year statute of limitations.

In a published decision, Division III has erred on an issue of substantial public interest, by judicially carving out an exception to the 10 year statute of limitations for actions upon orders, by applying a two year statute of limitations to actions upon a statute in a court order. The *Blackburn* cause of action falls under the 10 year limitation of RCW 4.16.020 (2) as an action upon a decree. But the appellate court inserted a distinction for a basis in law cited in the decree.

In making the error, Division III is in direct conflict with the Supreme Court's decisions of *Shew v. Coon Bay Loafers, Inc.*, 76 Wn.2d 40, 51-52, 455 P.2d 359 (1969) and *Stenberg v. Pacific Power & Light Co., Inc. et al,* 104 Wn.2d 710, 709 P.2d 793 (1985). "When there is uncertainty as to which statute of limitation governs, the longer statue will be applied." *Stenberg*, 104 Wn.2d at 715 (*citing Rose v. Rinaldi*, 654 F.2d 546 (9th Cir. 1981) *and citing Shew*, 76 Wn.2d at 51). The *Shew* court explained, that if it were questionable which of two statutes applied, because there is doubt about the nature of the action, the multi-jurisdictional rule is that the statute applying the longest period is generally used. *Shew,* 76 Wn.2d at 51.

The court of appeals dismissed 4.16.020(2) from applying because they observed the right included in the order arose directly from statute without changing that statutory right in the order and the order was not forceful with a "shall", therefore it is not a right to be enforced under the

order. There are a plethora of problems with this reasoning. a) the RCW 4.16.020(2) 10 year SOL language is not ambiguous and clearly applies to all legal actions "upon decrees" and is not limited to "judgments" or ordered provisions with forceful words like "shall." b) All provisions in orders expectantly arise from law without changing the law, and are deemed to be in error if in derogation of the law. c) The "everything else" two year statute of limitations is not assigned to rights arising from statute. d) The type of underlying issue (other than upon an order), wrongfully keeping funds that belong to another, or breach of contract, are not the type of issue falling into the last resort, two year statute of limitations of RCW 4.16.130.

a) The RCW 4.16.020(2) 10 year SOL language is not ambiguous and applies to all legal actions upon "decrees" and is not limited to "judgments" or "shall" language.

In pertinent part, RCW 4.16.020 reads:

> "The period prescribed for the commencement of actions shall be as follows: Within ten years: . . . (2) For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the period is extended ..."

RCW 4.16.020.

The court of appeals did not discuss whether they considered RCW 4.16.020 to be ambiguous, and did not deny that the statute could apply to the child support order as addressed within RCW 4.16.020 (2).

The Court of Appeals did not specifically state that order was ambiguous, either. Without discussing an ambiguity, the Court of Appeals Div III asserted a right to "construe" the order and without much explanation decided that the statutory right within the order was notification, and not creating a right for reimbursement. *Blackburn* No. 36670-7-III, Appx. at 6-7. They then seemed to exempt the notification as being a right from which Shawn could enforce a decree. *Id.* at 7. Of note, RCW 4.16.020(2) does not use the word "enforce," but uses the phrase "action upon" a decree.

Concluding that a certain provision within a court order is not really part of the order to be enforced, and therefore the action cannot be upon an order to enforce, is straying from settled principles of statutory construction and allowing a limiting requirement within an order that is not present in the statute. *See e.g. Unruh*, 172 Wn.2d at 114.

The original child support order phrase at issue appears within the Obligee's rights and responsibilities section of 3.3. After requiring updating address information from the obligee and assigning a monthly net income to the obligee, the order states: "The obligor may be able to

seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080." CP 11 at para 3.3.

At section 3.15, the original child support order requires the parties to pay educational and day care expenses at 100% to the father. CP 3.13, para 3.15.

By these references, Shawn has been asserting the order includes RCW 26.19.080 with its reimbursement requirements. He brought a motion to show cause in the underlying divorce action, as authorized by his original child support order. *See* CP 11, and 371 (Appx.13).

The court of appeals opined that the "may" word in the order was the killer to acknowledging the reimbursement action as an operative part of the order, categorizing the language within the order merely as notice. But, "may" was a required word in the order because a lot of contingencies had to occur before applying the child support reimbursement remedies of RCW 26.19.080. Those contingencies of RCW 26.19.080 and the child support order include: 1) the special expenses of day care would have to be both ordered and paid; 2) day care would have to not be utilized to the degree of more than 20% of the child care paid each year; 3) the obligee has not timely re-paid what she has a duty to repay; 4) the obligor files a show cause order or an administrative application to consolidate the arrears, collect the arrears or receive a judgment. *See* RCW 26.19.080. The "may" was required within the

order's context, and would have been error and an abuse of discretion to be changed into "shall."

Splitting hairs on what words in an order should be subject to the 10 year decree statute of limitations and which should not is a fabricated distinction that cannot stand under the clear words of RCW 4.16.020 (2)'s inclusion and RCW 4.16.130's exclusion.

RCW 4.16.020 (2) is without ambiguity and therefore should not be construed. *See Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014).

RCW 4.16.020 (2) is clear that an action upon a decree is subject to the 10 year statute of limitations. RCW 4.16.020 (2) is inclusive of all actions upon all decrees out of all US jurisdictions, entitling all of them to the 10 year statute of limitations; there is no room for the slippery slope of creative distinction, via fabricated ambiguity, to arrive at a two year statute of limitations, sometimes, depending on how the court utilized the law in an order and what kind of action is arising out of the order.

The two year statute of limitations cannot trump the ten year here.

b) Causes of actions arising from statutes that are cited in court orders are not exempt from the 10 year statute of limitations that apply to court orders.

RCW 4.16.020 (2) requires the ten year statute of limitations to apply to any "action upon a decree of any court of the United States, or of

any state or territory within the United States. . . . .unless the period is extended. . . ." RCW 4.16.020(2) does not allow a distinction for any part of a court order that incorporates or cites a statute. Similarly, RCW 4.16.020 does not differentiate and allow a specific inclusion for any court order that changes a statutory right.

Court orders generally arise out of law, or they are deemed to be error of law based on untenable reasons. *See, Ugolini v. Ugolini*, 11 Wn.App. 2d 443, 446, 453 P.3d 1027 (Div. 3, 2019); *State v. McCormick*, 166 Wn.2d 689, 213 P.3d 32 (2009)*(equating abuse of discretion with decisions of a court based on untenable grounds or reasons*).

The act of incorporating or referencing a statute in an order, as occurred in *Blackburn*, provides the statutory right to a 10 year statute of limitations for causes arising out of that statute upon the order. RCW 4.16.020. Mr. Blackburn brought the action for reimbursement because the right was allowed to be exercised in his child support order: therefore, he brought the action upon his order. *See* CP 11, 98 and 371 (Appx. 13).

c) Although the right to reimbursement arose in a statute before it was incorporated into a court order, that does not preclude the longer statute of limitations from applying.

In effect, the Division III Court of Appeals seems to resurrect 1927 law holding that the 2-year catch-all statute of limitations applies to

statutorily created liabilities. *See Stenberg*, 104 Wn.2d at 718 (*citing Robinson v. Lewis Cy.*, 141 Wn. 642, 645, 252 P.143, 256 P. 503 (1927)).

The 1985 *Stenberg* court specifically over-ruled that 1927 precedent and its progeny. *Stenberg* brought the "catch all" statute interpretation back to its plain terms of *exclusion* to only apply to "cases not fitting into the other limitation provisions." *Stenberg* over-ruled 60 years worth of fabricated distinctions (of direct or indirect injury) within personal injury actions that had expanded the use of the two year statute of limitations into statutorily granted indirect personal injury actions. *See Stenberg,* 104 Wn.2d at 720-721.

Similarly, the court in *Seattle Professional Engineering Employees Ass'n v. Boeing,* 139 Wn.2d 824, 836-38, 991 P.2d 1126 (2000) also found that the two year statute of limitations could not be applied to a statutory right incorporated into an implied employment contract. It illustrated that to identify the correct statute of limitations, analysis should be on the type of harm the statute was vindicating, and in that case, found unpaid training time was akin to unjust enrichment and implied contracts. *Id.* at 836-838.

In so holding, *Seattle Professional Engineering Employees Assoc.,* 139 Wn.2d at 836-837 over-ruled *Cannon v. Miller*, 22 Wn.2d 227, 155 P.2d 500 (1945) and use of the two year "catch all statute" to apply to rights arising wholly from statute (RCW 4.16.130) in an implied contract

arena. In so holding, the court acknowledged that actions to vindicate personal financial injuries are not subject to the two year statute of limitations just because the right arises in a statute. *Id.*

It is error to apply the two year statute of limitations to a cause of action arising from a statute without analyzing what type of action it is that arises from a statute: whether based in an order, contract, or equitable principles.

d) The underlying issue falls into other, longer statute of limitations categories, not two years.

Had the 10 year statute of limitations not so clearly applied, then Shawn could have argued for a contractual statute of limitations to apply, as noted by the court of appeals in footnote 3, based on the reimbursement checks written to him from Shennen in 2016 and 2017 as well as the originally agreed to court order. *Blackburn* No. 36670-7-III at 8 n.3 (Appx. 8).

The underlying Blackburn Child Support Order had been entered as an agreement, which could be interpreted as a written contract. "Contract principles govern final judgments entered by stipulation or consent." *Wm. Dickson Co. v. Pierce County*, 128 Wn.App. 488, 493, 116 P.3d 409 (2005). A six-year statute of limitations applies to actions based on written contracts. RCW 4.16.040. The statute of limitations on a written contract begins to run at the time of breach or when the party

knows or should know of the other's breach. *Wm. Dickson Co.,* 128 Wn.App. at 495. And, the statute of limitations begins again after a payment on a contract has been made. RCW 4.16.270. If the 10 year did not so clearly apply, Shawn could have asserted reimbursement under written contract theories, incorporating RCW 26.19.080, and the six year statute of limitations with extensions for reimbursement payment from Shennen in 2017.

Notwithstanding all the applicable longer statute of limitations, if the court of appeals were required to assign a "catch-all" limitations to reimbursement of child support overpayments, then it would have been the three year "catch-all" of RCW 4.16.080 (2) for any injury to the person or rights of another not hereinbefore provided for. *See Rose v. Rinaldi,* 654 F.2d 546 (9th Circuit, 1981). The two year statute of limitations was the statute of last resort and should not have been applied here.

Keeping for oneself child support payments intended for another, is a form of unjust enrichment and a breach of fiduciary duties. Such types of harms are not subject to the two year statute of limitations. *See* RCW 4.16.080(2). If the 10 year court order statute of limitations did not so clearly control, or the 6 year on a written contract, then a three year unjust enrichment or breach of fiduciary duties statute of limitations could apply. *See Id., and Seattle Professional Engineering Employees Assoc.,* 139 Wn.2d at 836-837. This lesser statute of limitations was not argued

because the 10 years limitation so clearly applied, and, when in doubt, the longer statute of limitations applies. *Stenberg* 104 Wn.2d at 715; *Shew* 76 Wn.2d at 51.

VI Conclusion

In summary, if the Division III, *In re Marriage of Blackburn* precedent is not over-ruled, a mess of fabricated distinction will be applied to actions upon decrees concerning the analysis of whether the right in an order is created by statute, rather than by the court order, as well as if the broad, statutory meaning of a term or narrow ordinary meaning of a term should be used to carve out distinctions to preclude relief under either court order's 10 years statute of limitations. It will also cause a derogation in legislative intent, allowing the fiduciary of day care expenses to avoid their child support responsibilities.

I respectfully ask for acceptance of review as a matter of substantial public interest and conflicting Washington Supreme Court precedent.

Respectfully submitted this 23rd day of April, 2020.

AMY RIMOV, WSBA 30613
Attorney for Shawn Blackburn

VI Appendix

FILED
MARCH 26, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

IN THE MATTER OF THE MARRIAGE OF SHENNEN MARGARET GOODYEAR-BLACKBURN, Appellant, v. SHAWN DAVID BLACKBURN, Respondent.	No. 36670-7-III OPINION PUBLISHED IN PART

LAWRENCE-BERREY, J. — Shawn Blackburn sought reimbursement from Shennen Goodyear-Blackburn for overpaid day care expenses. Shennen[1] claimed she incurred over $15,000 of day-care expenses, but could not produce cancelled checks or invoices. The trial court applied a 10-year statute of limitations and entered judgment in favor of Shawn for $43,300. We hold that the two-year catchall statute of limitations applies and reverse Shawn's judgment and remand for further proceedings.

[1] To avoid overuse of "Mr." and "Ms." when parties have the same last name, we often refer to them by their first names.

FACTS

In 2009, the parties agreed on terms to a legal separation, including primary placement of their son with Shennen. The agreement required Shawn to pay Shennen 100 percent of educational expenses. When the agreement was presented, the trial court interlineated "and day care" so the provision required Shawn to pay Shennen 100 percent of "educational and day care expenses." Clerk's Papers (CP) at 13.

In 2010, the trial court converted the legal separation into a dissolution. The final orders did not alter the earlier set child care obligation. As part of the dissolution decree, both parties were permitted to purchase the family home from the other by paying the other one-half of the net equity after a professional appraisal.

In June 2012, the Department of Child Services administratively set the monthly child care expense payment at $650. The parties do not dispute that Shawn paid that monthly amount.

At some point, Shawn questioned to what extent Shennen had incurred child care expenses for their son. Shawn and Shennen tried to resolve this question. Between May 2016 and March 2017, Shennen issued Shawn four checks totaling $3,500. In the memo area of the first $1,000 check, Shennen wrote: "Repayment settlement total [$]11,050 due @ 4/30 – this [$]1,000." CP at 110.

In September 2018, Shawn brought a motion requiring Shennen to show cause why he should not receive a $43,300 credit toward his purchase of Shennen's interest in the former family home. The amount reflects a $3,500 credit against monthly payments of $650 from June 1, 2012 through May 31, 2018.

Shennen opposed the motion. She asserted Shawn had agreed to various offsets that significantly reduced the debt he now claimed. Shawn disputed an agreement was reached.

Shennen claimed the governing statute of limitations was two years. In addition, she claimed she was entitled to offsets totaling $15,550 for child care, $7,423 for their son's unreimbursed medical costs, and $1,900 for additional amounts. The documentation she presented in support of her requests for offsets did not include checks or invoices. With respect to child care expenses, her documentation included signed verifications from two persons attesting to monthly amounts, each purportedly received to care for the couple's child. At Shennen's request, the trial court gave her additional time to produce checks and invoices to support her offset claims. After more than two months, she failed to provide any documentation.

In March 2019, the trial court issued its written ruling. It found there was no agreed reduction of the debt and, without clearly explaining why, it refused to apply

equitable estoppel or laches. The trial court noted that RCW 4.16.020 provides for a 10-year statute of limitations for past due child support obligations that accrue under an administrative order. Citing RCW 74.20A.020(6), which defines "administrative order," it concluded that the debt was a child support obligation that accrued under an administrative order. The trial court, therefore, entered judgment in Shawn's favor in the amount of $43,300.

Shennen timely appealed to this court. Shennen has since passed away and her estate has substituted in this and the lower court as the party in interest.

ANALYSIS

STATUTE OF LIMITATIONS

The parties disagree which statute of limitations controls. Determinations of which statute of limitations applies to a specific cause of action is a question of statutory construction this court reviews de novo. *City of Pasco v. Pub. Emp't Relations Comm'n*, 119 Wn.2d 504, 507, 833 P.2d 381 (1992).

Statutes are construed by applying well settled principles. *Cortez-Kloehn v. Morrison*, 162 Wn. App. 166, 170, 252 P.3d 909 (2011). The purpose of statutory construction is to give effect to the legislature's meaning and intent. *Roberts v. Johnson*, 137 Wn.2d 84, 91, 969 P.2d 446 (1999). "Statutes must be interpreted and construed so

that all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

If a statute is clear and unambiguous, it does not need interpretation. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). Thus, we always begin with the statute's "'plain language and ordinary meaning.'" *Id.* (quoting *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999)). When interpreting a statute with undefined terms, this court will give those terms their plain and ordinary meaning, unless there is contrary legislative intent. *State v. Connors*, 9 Wn. App. 2d 93, 95-96, 442 P.3d 20, *review denied*, 193 Wn.2d 1041, 449 P.3d 656 (2019). If a statute is ambiguous and the intent of the legislature is unclear, the court may rely on legislative history, including bill reports, to help decipher the statute's meaning. *Biggs v. Vail*, 119 Wn.2d 129, 134, 830 P.2d 350 (1992).

RCW 4.16.130 provides: "An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued." Therefore, unless Shawn can point to a specific statute of limitations, this two-year statute controls.

Shawn cites both RCW 4.16.020(2) and RCW 4.16.020(3). He argues both control his cause of action.

RCW 4.16.020(2) provides in relevant part: "The period prescribed for the commencement of actions shall be . . . ten years . . . [f]or an action upon a judgment or decree of any court of the United States . . . ."

Shawn argues his action is one to enforce the original child support order, which is part of the divorce decree. In support of his argument, he cites a provision of the support order that states: "The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080."[2] CP at 11. This provision uses the word "may" and directs the parties to RCW 26.19.080, which sets forth limitations and procedures for seeking reimbursements for overpaid day care or special child rearing expenses. We construe the provision as notifying the parties of a statutory

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[2] RCW 26.19.080(3) provides in relevant part:
If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses. . . . If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future support payments. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period. . . .

right, not as creating a right in the decree for reimbursement. Shawn's argument would be stronger if the provision stated, "The obligor shall be liable for reimbursement of day care or special child rearing expenses not actually incurred." Because it does not say this, we conclude that Shawn's request for reimbursement of child care overpayments is not an action to enforce the child support order.

RCW 4.16.020(3) provides in relevant part: "The period prescribed for the commencement of actions shall be . . . ten years . . . [after] the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support . . . ."

Here, Shawn seeks reimbursement for overpaid child care expenses. He does not seek to recover past due child support. Overpaid child care expenses are not past due child support. We conclude RCW 4.16.020(3) does not apply.

The Estate argues the applicable statute of limitations is 12 months. It cites one sentence in RCW 26.19.080(3). We earlier set forth most of this subsection in our footnote 2. The one sentence relied on by the Estate provides: "If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period."

We reject the Estate's argument that RCW 26.19.080(3) provides a 12-month cap for overpaid child care expenses. That section provides a 12-month cap *if* the obligor parent seeks reimbursement by offsetting future child support payments. Here, Shawn does not seek reimbursement by offsetting future child support payments. Rather, he seeks a judgment to offset Shennen's one-half net equity in the former family home.

Because neither RCW 4.16.020(2) nor RCW 4.16.020(3) apply, we conclude the two-year catchall statute of limitations applies.[3] We remand for the trial court to enter an amended judgment based on a two-year statute of limitations.

Reversed and remanded.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder, having no precedential value, shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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[3] Shawn does not argue that Shennen's four payments constitute an acknowledgment of the debt for purposes of recommencing the statute of limitations. We doubt the argument would have succeeded. Shennen never acknowledged the debt. Rather, she disputed it. Her four payments, coupled with the "Repayment settlement total [$]11,050" notation on the first check, reflect her willingness to pay a lesser amount.

DENIAL OF EQUITABLE RELIEF

The Estate contends the trial court erred by not applying equitable estoppel or laches. We disagree.

The trial court did not explicitly explain why it denied Shennen's request for equitable relief. But based on the parties' briefing below and on appeal, we can discern the trial court's reasons.

The trial court determined that Shawn was not equitably estopped from requesting full reimbursement because he had not agreed to a lesser amount. We see no error. Even if Shennen had established that Shawn had agreed to receive a lesser reimbursement, she did not perform the agreement. Under the law of accord and satisfaction, when a debtor fails to pay the lesser negotiated amount, the creditor may bring an action on the original disputed amount. *Douglas Nw., Inc. v. Bill O'Brien & Sons Constr., Inc.*, 64 Wn. App. 661, 685-87, 828 P.2d 565 (1992). Here, Shennen did not pay the purported negotiated amount of $11,050.

Nevertheless, the trial court found that Shawn had not agreed to a lesser negotiated amount. Equitable estoppel requires a party's claim to be inconsistent with a prior act or statement. *Club Envy of Spokane, LLC v. Ridpath Tower Condo. Ass'n*, 184 Wn. App. 593, 601, 337 P.3d 1131 (2014). Shawn's request to recover the disputed amount,

therefore, was not inconsistent with any prior act or agreement. We conclude the trial court did not err by refusing to apply equitable estoppel to this dispute.

The doctrine of laches is an implied equitable waiver arising when the plaintiff has knowledge of existing conditions and acquiesces to them. *Buell v. City of Bremerton*, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972). A defendant wishing to raise a laches defense must prove three elements, "'(1) knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant; (2) an unreasonable delay by the plaintiff in commencing that cause of action; and (3) damage to the defendant resulting from the unreasonable delay.'" *King County v. Taxpayers of King County*, 133 Wn.2d 584, 642, 949 P.2d 1260 (1997) (quoting 15 LEWIS H. ORLAND & KARL B. TEGLAND, WASH. PRACTICE § 651, at 478 (5th ed. 1996)).

Here, the Estate argues Shawn unreasonably delayed to bring this action until he wished to purchase the family home. We do not discern any unreasonable delay. Shawn had good reason to not earlier seek reimbursement. Reimbursement would have come directly from Shennen and, thus, taken away from their son's care. Waiting until Shawn could offset the family home purchase was not an unreasonable delay. We conclude the trial court did not err by refusing to apply laches to this dispute.

The parties have not discussed whether Shennen's payment of $3,500 to Shawn should be credited to the reduced judgment. We suggest, but do not hold, that the law of accord and satisfaction might be applied to resolve that issue.

Reversed and remanded.

Lawrence, Berrey, J.

WE CONCUR:

Pennell, C.J.

Siddoway, J.

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Superior Court of Washington
County of Lincoln

In re: SHENNEN GOODYEAR-BLACKBURN, Petitioner, and SHAWN BACKBURN, Respondent.	No. 09-3-03484-7 Enforcement of Order of Child Support and Establishment of Judgment for Overpayment of Daycare [ ] Clerk's Action Required

I. Judgment Summary

[ ] Does not apply.
[X] Applies as follows:

A.	Judgment creditor	Shawn Blackburn
B	Judgment debtor	Shennen Goodyear-Blackburn
C.	Principal judgment amount	$43,300
D.	Interest to date of judgment	$0
E.	Attorney fees	$0
F.	Costs	$0
G.	Other recovery amount	$0
H.	Principal judgment shall bear interest at 0% per annum	
I.	Attorney fees, costs and other recovery amounts shall bear interest at n/a% per annum	
J.	Attorney for judgment creditor	Amy Rimov
K.	Attorney for judgment debtor	Craig Mason
L.	Other:	

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II. Background/Proceedings

2.1 The respondent through his attorney had filed a Motion and Declaration to Show Cause on September 17, 2018 requesting petitioner to show cause why a judgment should not be entered against her for daycare costs not actually incurred. An initial hearing was held on September 25, 2018; and this court required the parties to attempt mediation. After respondent refused to proceed with mediation, petitioner retained counsel and subsequently filed her Motion to Void Order on November 6, 2018 and her Memo on Statute of Limitations, Laches and Equity.

2.2 The parties stipulated to reset the hearing for November 13, 2018, and later to December 7, 2018. At this hearing, both attorneys gave oral argument regarding the issues of daycare reimbursement. Petitioner claimed offsets to include respondent's 68% share of the child's medical expenses paid by her, medical expenses incurred by petitioner that should have been covered by medical insurance as set forth in the Decree of Legal Separation requiring such coverage for three years from the entry of the decree, and costs of life insurance on his life that was required in the decree which she claimed were not actually obtained by respondent. Respondent denied these allegations and questioned whether petitioner actually incurred such payments.

2.3 At this December 7, 2018 hearing, this court denied petitioner's motion to vacate as the Order on Motion to Convert Decree of Legal Separation to Decree of Dissolution was not a modification of the dissolution. Rather, the parties may at that time mutually agree to make changes to the Decree of Legal Separation; therefore, any such action would not be void. Petitioner also argued that laches and equitable estoppel apply. However, respondent had not agreed to the $650/mo. in daycare costs and gave no action or indication that he agreed with the administrative judge's determination that the petitioner had regularly incurred $650/mo. in actual daycare costs.

2.4 At this hearing, respondent submitted that a 10-year statute of limitations apply; and petitioner submitted that the 2-year statute of limitations apply. This court had indicated the 6-year statute of limitations should apply and then allowed petitioner one month to provide proof of daycare costs and medical expenses actually paid by petitioner that should have been paid by respondent and provide proof of any other costs or expenses that she believes should be offset against the overpayment of such daycare.

2.5 This court acknowledged the handwritten portion of the Order of Child Support requiring respondent to pay 100% of the daycare expenses was in error as the Worksheets only referenced education expenses, not daycare. However, respondent had retained counsel in 2010 to convert the Decree of Legal Separation to a Decree of Dissolution of Marriage and did not make any mention of this provision; and the $650/mo. in daycare costs was established administratively and not by this court. Therefore, the primary issue is whether any

daycare was actually paid out of pocket by petitioner, not whether respondent should pay 100% or his percentage, i.e., 68%, of such daycare.

2.6 Petitioner also submitted that they had entered into an agreement on December 11, 2014 that appears to address daycare costs and the child's medical expenses; however, this document is partially redacted, many of its terms are confusing to understand, and the respondent denies that he had ever signed such an agreement. Without additional supporting testimony and evidence to show the parties actually agreed to and followed this agreement, this court did not rely on its terms nor the unsigned "new agreement" dated "May 2016" referenced by petitioner.

2.7 On January 8, 2019, Petitioner submitted a Motion for More Time and to Request Certification of Statute of Limitations Issue to Division III under RAP 2.3(b)(4) and filed a doctor's statement on January 11, 2019 and additional medical reports/statements on February 1, 2019 indicating that petitioner will need additional time to respond. This court thereafter tentatively reserved making its final ruling with the understanding that petitioner would be noting her motion for more time with the court and provided documentation as to when she could be able to provide the court with the needed proof. Respondent submitted his response timely on January 14, 2019. No other documents or evidence were provided and no hearing had been set. In view of the substantial time that has now passed, the following findings and conclusions will be entered.

III. Findings and Conclusions

This Court Finds:

3.1 Petitioner has failed to provide any documents such as receipts, cancelled checks or billing statements showing she had actually incurred any daycare costs or medical expenses for the child or herself as required by court order and as referenced above.

3.2 In spite of petitioner's very serious illness, she was able to prepare and provide significant amount of information to this court. Unfortunately, much of this information is not relevant to the issue whether respondent should be entitled to the significant offset for daycare not actually incurred.

3.3 Petitioner had repeatedly claimed the provision in the Order of Child Support that "The obligor may be able to seek reimbursement for daycare or special child rearing expenses not actually incurred," somehow benefits her. Since the obligor is only the respondent and not the petitioner, she cannot benefit from this; rather, this provision allows the obligor to be reimbursed for daycare that was paid to the custodial parent but not actually incurred.

3.4 Respondent has substantially complied with the provisions required by this court and as subsequently ordered administratively. He paid petitioner $1,000/mo. in child support when the standard calculation was $372 (and the standard calculation would have been significantly less had he deducted the $1,500 in spousal maintenance from his income and included it in her income), he paid her $1,500/mo. in spousal maintenance for seven years, and he paid when he could the $650/mo. in daycare costs. There was never any indication that petitioner should be paid any more, and most likely would have been paid less, had she filed for a modification of such child support.

3.5 This court initially determined that the administrative decision to set daycare costs at $650/mo. was not a judgment subject to a 10-year statute of limitations but more of an action on a contract or account receivable that would be subject to the 6-year statute of limitations and that there would be no reason the catch all 2-year statute of limitations should apply. However, upon further review, RCW 4.16.020 specifically provides that support may be collected if an action to collect past due child support is commenced within ten years of the eighteenth birthday that has accrued under a court order **or that has accrued under an administrative order as defined in RCW 74.20A.020(6).** Said RCW 74.20A.020(6) defines an "administrative order" as "any determination, finding, decree, or order for support . . . establishing the existence of a support obligation;" and in the present case, there was an initial administrative Notice of Support Owed dated February 16, 2010, setting daycare from 11/01/2009 through 01/31/2010 and a subsequent Notice of Support Owed dated May 30, 2012 setting such daycare costs at $650/mo. Therefore, the ten-year statute of limitations would apply.

3.6 Petitioner should reimburse respondent for all of the daycare costs not actually incurred. The actual summary of the obligations and payments were set forth in the DCS Debt Calculation. DSC had determined that respondent should be reimbursed for the $650/mo. in daycare payments from June of 2012 through May 31, 2018, i.e., $46,800. Since it is not disputed that petitioner had already paid respondent by four separate checks totaling $3,500 for overpaid daycare, the balance now due by petitioner to respondent is the sum of $43,300.

3.7 There is no basis to grant petitioner a discretionary review of this decision under the provisions of RAP 2.3(b). There is no further determination to be made, and she may at this time file an appeal if she so chooses.

III. Order and Judgment

It is Ordered:

1. Petitioner's claims of laches, equitable estoppel and asserting the provisions in the Decree of Dissolution that were not contained in the Decree of Legal Separation are void are hereby denied.

2. Judgment is entered against petitioner in favor of respondent in the sum of $43,300.

3. Neither party shall be entitled to reasonable attorney's fees.

Dated: March 6, 2019

Judge/~~Commissioner~~

Prepared by this court following the January 7, 2019 hearing and after providing both parties an opportunity to provide documents requested by the court.

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 24th day of April 2020, the within document described as Petition for Review was delivered to the following persons in the manner indicated:

Counsel for: The Estate of Shennen Goodyear Blackburn, CRAIG MASON 1707 W Broadway Ave Spokane, WA 99201 masonlawcraig@gmail.com	Via Hand Delivery [ ] Via United States Mail [X] Via Federal Express [ ] Via Facsimile Transmission [ ] Via Electronic Mail [X]
Court of Appeals, Division III Clerk's Office 500 N Cedar St Spokane, WA 99201	Via Hand Delivery [X] Via United States Mail [ ] Via Federal Express [ ] Via Facsimile Transmission [ ] Via Electronic Mail [ ]

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