

SEP 19 2014

IN THE THIRD JUDICIAL DISTRICT, STATE OF UTAH
IN AND FOR SALT LAKE COUNTY, SALT LAKE DEPARTMENT

Salt Lake County

By: _____

lm
Deputy Clerk

NICOLE PEZELY,

Plaintiff,

vs.

UTAH OFFICE OF STATE DEBT
COLLECTION,

Defendants.

RULING & ORDER

Civil No. 139920053

Judge Royal I. Hansen

Pending before this Court is Plaintiff Nicole Pezely's ("Plaintiff") Motion for Summary Judgment (the "Motion"). The Motion was fully briefed and submitted for decision, and came before the Court for oral argument on August 11, 2014, at which hearing Plaintiff was represented by W. Andrew McCullough and Defendant Utah Office of State Debt Collection ("Defendant") was represented by Jacob H. Franklin. Based on the briefing submitted by the parties, and on the arguments presented on August 11, the Court issues the following Ruling and Order.

DISCUSSION

Rule 56 of the Utah Rules of Civil Procedure provides summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." UTAH R. CIV. P. 56(c). Utah courts have clarified Rule 56 contains a presumption in favor of the nonmoving party, stating "the moving party [must meet] its initial burden to present evidence establishing that no genuine issue

of material fact exists" before the court should obligate the nonmoving party "to demonstrate that there is a genuine issue for trial." *See Orvis v. Johnson*, 2008 UT 2, ¶16, 177 P.3d 600 (citations omitted). However, courts have further stated once the moving party meets its initial burden, "[t]he non-moving party must set forth specific facts showing that there is a genuine issue for trial" to survive a summary judgment motion. *See Peterson v. Coca-Cola USA*, 2002 UT 42, ¶20, 48 P.3d 941. Finally, courts have clarified that, in addressing a summary judgment motion, a court is required "to draw all reasonable inferences in favor of the nonmoving party." *IHC Health Servs., Inc. v. D & K Mgmt., Inc.*, 2008 UT 73, ¶19, 196 P.3d 588. It is in this context the Court examines whether the civil statute of limitations may bar collection of fines imposed following a criminal proceeding.

"When interpreting a statute, [the court] look[s] to the plain language first, recognizing that [the] primary goal is to give effect to the legislature's intent in light of the purpose the statute was meant to achieve." *Dillon v. S. Mgmt. Corp. Ret. Trust*, 2014 UT 14, ¶50, 326 P.3d 656. Thus, the Court must look to the plain language of the applicable statute of limitations and related provisions to determine whether Plaintiff's criminal fine is subject thereto. The Utah Code provides "the limitations in this chapter [regarding statutes of limitations] apply to actions brought in the name of or for the benefit of the state or other governmental entity the same as actions by private parties." Utah Code Ann. § 78B-2-115 (West 2014). Furthermore, the relevant statute of limitations provides "[a]n action may be brought within eight years upon a judgment or decree of any court of the United States, or of any state or territory within the United States." Utah Code Ann. § 78B-2-311 (West 2014).

Defendant argues that Plaintiff's fine, having been imposed following a criminal proceeding, is not subject to the eight year statute. Defendant cites to a concurring opinion from

an Idaho case in further support of this proposition. *See Collection Bureau, Inc. v. Dorsey*, 249 P.3d 1150, 1155 (Idaho 2011) (Jones, J., concurring) (stating, without further analysis, "no statute of limitations applies to the collection of a fine, monetary penalty, or restitution provision contained in a judgment of conviction in a criminal case"). However, "decisions [of other state courts] are not controlling in this [c]ourt . . . [w]here, as here, there has been specific statutory direction by the legislature." *See Bayle v. Bd. of Review of Indus. Comm'n of Utah Dep't of Emp't Sec.*, 700 P.2d 1135, 1137 (Utah 1985).

Indeed, the Utah Code contemplates the recording of criminal fines in the registry of civil judgments. *See Utah Code Ann. § 76-3-201.1(5)(h)* (West 2014). Moreover, with regard to criminal fines recorded in the registry of civil judgments, the Utah Code clarifies "[w]hen a fine, forfeiture, surcharge, cost, fee, or restitution is recorded in the registry of civil judgments, the judgment . . . has the same effect and is subject to the same rules as a judgment for money in a civil action." *Utah Code Ann. § 77-18-6(2)(b)* (West 2014).


In interpreting these provisions Utah courts have clarified "[a] judgment which orders the payment of a fine" should not "place the defendant in a perpetual state of limbo with no guidelines or limitations of the court's reach into the future." *See State v. Dickey*, 841 P.2d 1203, 1209 (Utah Ct. App. 1992). The *Dickey* court further reasoned the requirement that criminal fines recorded in the registry of civil judgments are "subject to the same rules as a judgment for money in a civil action" subjected these fines to the eight year statute of limitations for civil judgments. *See id.* Based on the foregoing, the Court reads the provisions of the Utah Code, addressed *supra*, to require application of the eight-year statute of limitations to a criminal fine recorded in the registry of civil judgments. Therefore, because Plaintiff's fine was recorded in

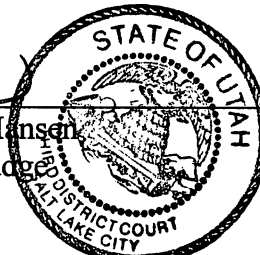
the registry of civil judgments on February 15, 2000, the statute of limitations bars recovery thereupon.

Based on the foregoing, Plaintiff's Motion for Summary Judgment is GRANTED. The eight-year statute of limitations bars recovery of Plaintiff's criminal fine recorded on the registry of civil judgments on February 15, 2000.

This Ruling and Order is the order of the Court, and no further order is required.

So Ordered this 22 day of September, 2014.



Judge Royal I. Hansen
District Court Judge


CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 139920053 by the method and on the date specified.

MAIL: JACOB H FRANKLIN 1135 STATE OFFICE BLDG PO BOX 141001 SALT LAKE CITY, UT 84114

MAIL: W ANDREW MCCULLOUGH 6885 S STATE ST STE 200 MIDVALE UT 84047

Date: 09/22/2014 _____

/s/ LYNETT MCKINNEY _____

Deputy Court Clerk