12.4 LACHES

Application of the doctrine of laches depends on a factual determination in each case. The basic question is "whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for."[1] The purpose of the doctrine is "to prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay."[2] While evidence of prejudice is not always required, it is an important factor in determining whether a plaintiff's delay was reasonable.[3]

Traditionally, laches, like equitable estoppel, has been available against the state when acting in its proprietary capacity, but not when acting in its sovereign capacity.[4] Thus, by delaying eleven years before questioning the terms of a settlement in a case involving contracts for the sale of state timber, the state, as a proprietor, committed laches.[5] However, a thirteen-year delay by the state in bringing suit in an inheritance tax case was neither laches nor estoppel, since tax is a matter of sovereignty.[6]

Laches against the state itself has been specifically discussed in only a few cases.[7] However, other cases dealing with equitable estoppel against the state or its subdivisions either have been cited as support for the proposition that laches applies to state action in a proprietary capacity[8] or appear to involve factual situations similar to the few reported laches cases.[9] The connection between these two doctrines was aptly expressed by the Minnesota Supreme Court where the court, without separately discussing the doctrines, found "such laches and estoppel on the part of the state that it cannot now be permitted to come in and question . . . the . . . settlement."[10]

In 1977, the Minnesota Supreme Court abolished the sovereign versus proprietary distinction for equitable estoppel claims against the state.[11] The same holding has not been

1 Fetsch v. Holm, 236 Minn. 158, 163, 52 N.W.2d 113, 115 (1952); *see also* Bhd. of Ry. & S.S. Clerks, Lodge 364 v. State Dep't. of Human Rights, 303 Minn. 178, 193, 229 N.W.2d 3, 12 (1975); City of St. Paul v. Harding, 356 N.W.2d 319, 322 (Minn. Ct. App. 1984); § 7.1.2.

2 Aronovitch v. Levy, 238 Minn. 237, 242, 56 N.W.2d 570, 574 (1953).

3 Wheeler v. City of Wayzata, 533 N.W.2d 405, 409 (Minn. 1996) (citing *Aronovitch*, 56 N.W.2d at 574); Harr v. City of Edina, 541 N.W.2d 603, 606 (Minn. Ct. App. 1996).

4 State v. Ill. Cent. R.R., 200 Minn. 583, 592, 274 N.W. 828, 831 (1937); City of Staples v. Minn. Power & Light Co., 196 Minn. 303, 306, 265 N.W. 58, 60 (1936) (dictum) (citing State v. Gardiner, 181 Minn. 513, 233 N.W. 16 (1930); State v. Horr, 165 Minn. 1, 205 N.W. 444 (1925)) ("The doctrine of laches applies even to the state in its proprietary capacity."); State v. Brooks, 183 Minn. 251, 253-54, 236 N.W. 316, 317 (1931) (finding laches could not be invoked against state in action to enforce tax lien).

5 State v. Brooks-Scanlon Lumber Co., 122 Minn. 400, 403-04, 142 N.W. 717, 719 (1913). *But see* State *ex rel.* City of Duluth v. Duluth Street Ry., 88 Minn. 158, 161, 92 N.W. 516, 517 (1902) (finding no laches where city took no action to enforce portions of street railway franchise until seven years after acquisition of right-of-way).

6 *Brooks*, 183 Minn. at 253-54, 236 N.W at 317; *see also Ill. Cent. R.R.*, 200 Minn. at 592, 274 N.W. at 831.

7 Wheeler v. City of Wayzata, 533 N.W.2d 405, 409 (Minn. 1996); *City of Staples*, 196 Minn. at 306, 265 N.W. at 60 (dictum); *Brooks*, 183 Minn. at 253-54, 236 N.W at 317; *Gardiner*, 181 Minn. at 515, 233 N.W. at 17; *Brooks-Scanlon Lumber Co.*, 122 Minn. at 253-54, 142 N.W. at 317.

8 *City of Staples*, 196 Minn. at 306, 265 N.W. at 60.

9 *State v. Ill. Cent. R.R.*, 200 Minn. at 592, 274 N.W. at 832.

10 *Gardiner*, Minn. at 515, 233 N.W. at 17.

11 Mesaba Aviation Div. v. Cnty. of Itasca, 258 N.W.2d 877, 800 (Minn. 1977).

applied to the defense of laches. In *Leisure Hills of Grand Rapids, Inc. v. Minnesota Dept. of Human Services*,[12] the Minnesota Court of Appeals rejected the relator's argument that the holding in *Mesaba* eliminating the sovereign/proprietary distinction should be applied to laches cases. The court explained that laches and equitable estoppel are distinctly different concepts. "The emphasis in laches is on delay; the emphasis in estoppel is on misleading."[13] Because of these differences, the court found that elimination of the distinction between the government's sovereign and proprietary functions in the equitable estoppel context was not mandated in the laches context.[14] Consequently, as this matter involved the agency's sovereign function of running the Medical Assistance program, the court determined the doctrine of laches to be inapplicable.[15]

When the state seeks to revoke professionals' licenses, laches will seldom be found as a matter of public policy unless the licensee has been unduly prejudiced.[16] Thus, a four-year time lapse between the initiation of an investigation and the filing of charges did not constitute laches.[17] The same type of considerations may be found in environmental protection litigation.[18]

An alternative to asserting a laches defense is to argue that the case is barred by a statute of limitations. However, this argument has usually not been successful because the judicial statute of limitations applies to "actions"[19] and "action" is defined as "any proceeding in any court of this state."[20] The Minnesota Supreme Court declined to apply the statute of limitations to an arbitration hearing, noting that the statute is confined to judicial proceedings.[21] And the Department of Labor and Industry's attempt to recover underpayments due to prevailing wage violations was not barred by the two-year statute of limitations on the recovery of wages[22] because the Court of Appeals concluded that, by common law and statutory definition, the statute was intended to be confined to judicial proceedings.[23] The Court of Appeals has also held in a dentist license case that no statute

12 480 N.W.2d 149, 151 (Minn. Ct. App. 1992).

13 *Id*. (quoting MODERN AMERICAN REMEDIES 964 (Douglas Laycock ed. 1985)).

14 *Id*. at 152.

15 *Id*. *But see* State v. St. Paul Fire & Marine Ins., 434 N.W.2d 6, 8-9 (Minn. Ct. App. 1989) (ignoring sovereign versus proprietary distinction in a case where the state's claim against an insurance company under the Unclaimed Property Act was dismissed for failure to prosecute when the suit had been pending for seven and one-half years). The court restated the traditional test for dismissing for failure to prosecute: "(1) the delay must have prejudiced the adverse party; and (2) the delay must have been unreasonable and inexcusable." *Id.* at 8. The court tempered that test, however, noting that "after many years of unnecessary delay, the need to search for concrete examples of prejudice diminishes." *Id.* at 9 (quoting Belton v. City of Minneapolis, 393 N.W.2d 244, 246 (Minn.Ct.Ap.1986)).

16 *See, e.g.*, *In re* N.P., 361 N.W.2d 386, 392 (Minn. 1985); Fisher v. Indep. Sch. Dist. No. 622, 357 N.W.2d 152, 156 (Minn. Ct. App. 1984) (upholding elementary school principal's discharge for sexual misconduct based on events that did not come to light until 12 years later); *see also* Annotation, 51 A.L.R. 4th 1147 (1987 and Supp. 1997); Note, *The Application of the Doctrine of Laches in Public Interest Litigation,* 56 B.U.L. REV. 181 (1976).

17 *N.P.*, 361 N.W.2d at 392-93.

18 Minn. Pub. Interest Research Grp. v. Butz, 498 F.2d 1314, 1324 (8th Cir. 1974).

19 MINN. STAT. §§ 541.05, .07 (2014).

20 *Id.* § 645.45(2).

21 Har Mar Inc. v. Thorson & Thorshov Inc., 300 Minn. 149, 153, 218 N.W.2d 751, 754 (1974).

22 MINN. STAT. § 541.07(5) (2014).

23 *In re* Wage & Hour Violations of Holly Inn, 386 N.W.2d 305, 308 (Minn. Ct. App. 1986).

of limitations applies to the licensing of the dental profession.[24] The exception to these cases appears to be the application of the six-year statute of limitations for actions upon a liability created by statute to administrative cases brought under the Veterans Preference Act.[25] Perhaps because these are proceedings to recover lost wages brought against a public employer, the Court of Appeals decided to apply the judicial policy against allowing stale claims.[26]

A final question involves situations where laches, a traditionally equitable defense, is claimed in a case in which there is a statute of limitations. Customarily, laches would not apply before the statute of limitations had run. "In actions at law, governed by express statutes of limitations, the doctrine of laches is seldom applied, has often been said to have no application at all, and that nothing short of the statutory limitation will bar the right of action."[27] Since the modern cases focus on whether the delay has caused prejudice, however, the old rule may no longer be valid.[28]

24 *In re* Schultz, 375 N.W.2d 509, 518 (Minn. Ct. App. 1985).

25 MINN. STAT. §§ 197.46-.481 (2014).

26 Johnson v. Cnty. of Anoka, 536 N.W.2d 336, 339 (Minn. Ct. App. 1995); *see also* Oak Ridge Care Ctr. v. Dep't of Human Servs., 452 N.W.2d 703, 706-07 (Minn. Ct. App 1990) (enforcing two-year statute of limitations against dissolved corporations applied against DHS, but reversed by supreme court's holding that the department's "actions" were commenced timely), *rev'd in part*, 460 N.W.2d. 21 (Minn. 1990).

27 State v. Brooks-Scanlon Lumber Co., 122 Minn. 400, 404, 142 N.W. 717, 719 (1913)

28 *See, e.g.*, *In re* N.P., 361 N.W.2d 386, 392-93 (Minn. 1985).