

40 Years

Working Together for Children
1976 - 2016



June 14 – 17, 2016
Merrillville, Indiana

Indiana Child Support Conference



Statute of Limitations

Presenter:

William Welch

IPAC Child Support Staff
Attorney



How A Statute of Limitations Issue Can Effect Your Office



Alternate Title:

Avoiding those

“OH CRAP”

Moments

Two Different Statutes of Limitations

Child Support Statute of Limitations

- 34-11-2-10

Judgment Statute of Limitations

- 34-11-2-12

But First.....



Some Child
Support Statute
of Limitations
History

Cause of action before 9/1/1982



15 years
from support
accrual

Cause of action after 9/1/1982



10 years
from support
accrual

But then we got our own...

Started out

1995

34-1-2-1.6

Recodified

1998

34-11-2-10

Child Support Statute of Limitations

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

Whichever occurs first

(1) the eighteenth birthday of the child; or

the child

Scenario 1

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

In the meantime, regarding your file...

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



Scenario 1

You can collect
the entire
amount.

Child turned 18
in 2007.

Less than 10
years have
passed.

Scenario 2

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

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

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



This is your file



Scenario 2



You are probably out of luck.

Scenario 2

But what if...

Scenario 2

...you had an arrearage finding??

Whew!!! Reprieve!!!



Judgment Statute of Limitations

IC 34-11-2-12

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

Definition of Decree

Merriam-Webster

- a judicial decision especially in an equity or probate court

Definition of Decree

Black's Law Dictionary

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

Definition of Decree

Oxford English Dictionary

- An official order issued by a legal authority

Moral of the Story:

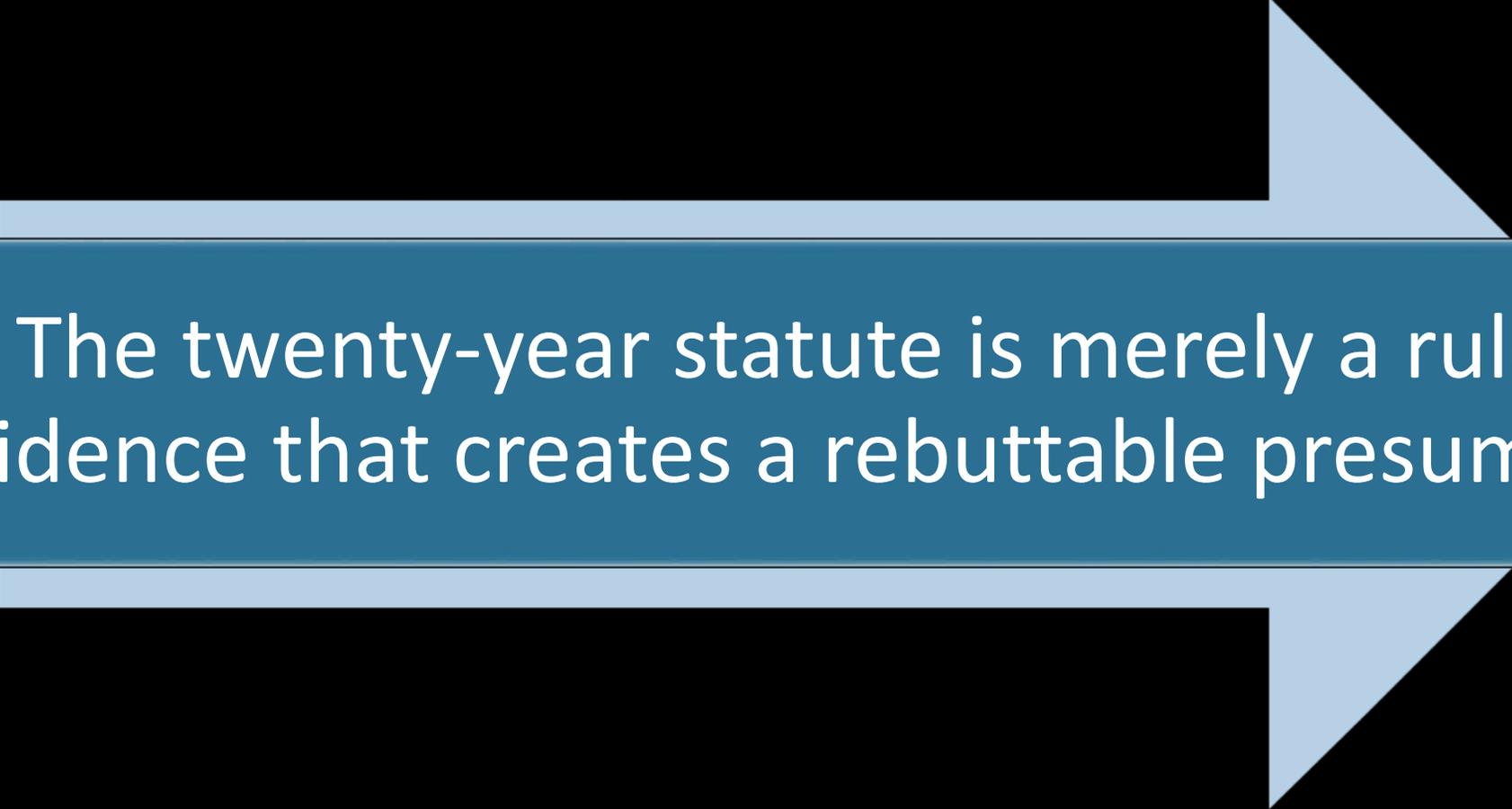
**BUT WAIT...THERE'S
MORE!!!**

If you
you hav

ourt
it...



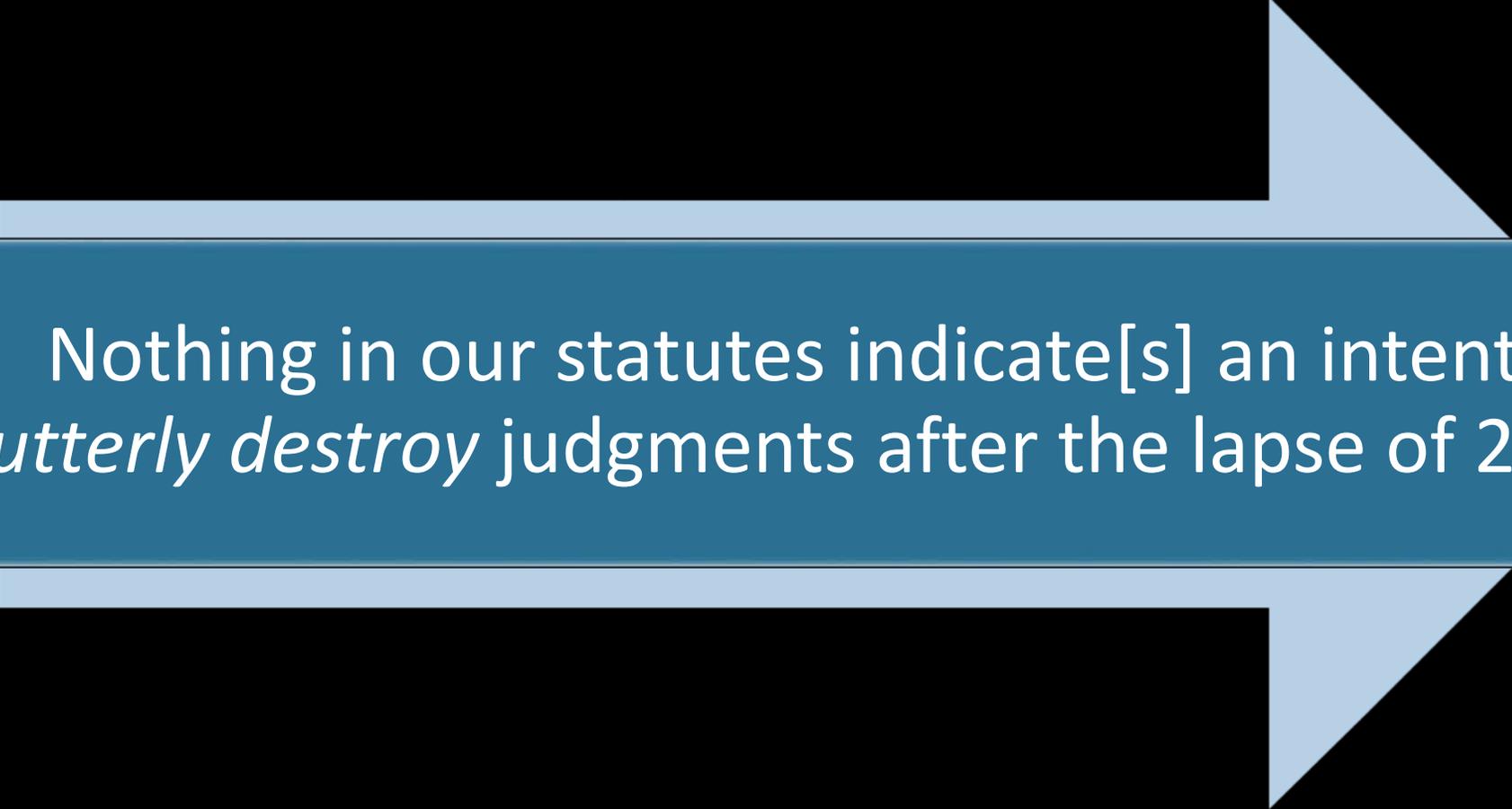
Estate of Wilson v. Steward



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



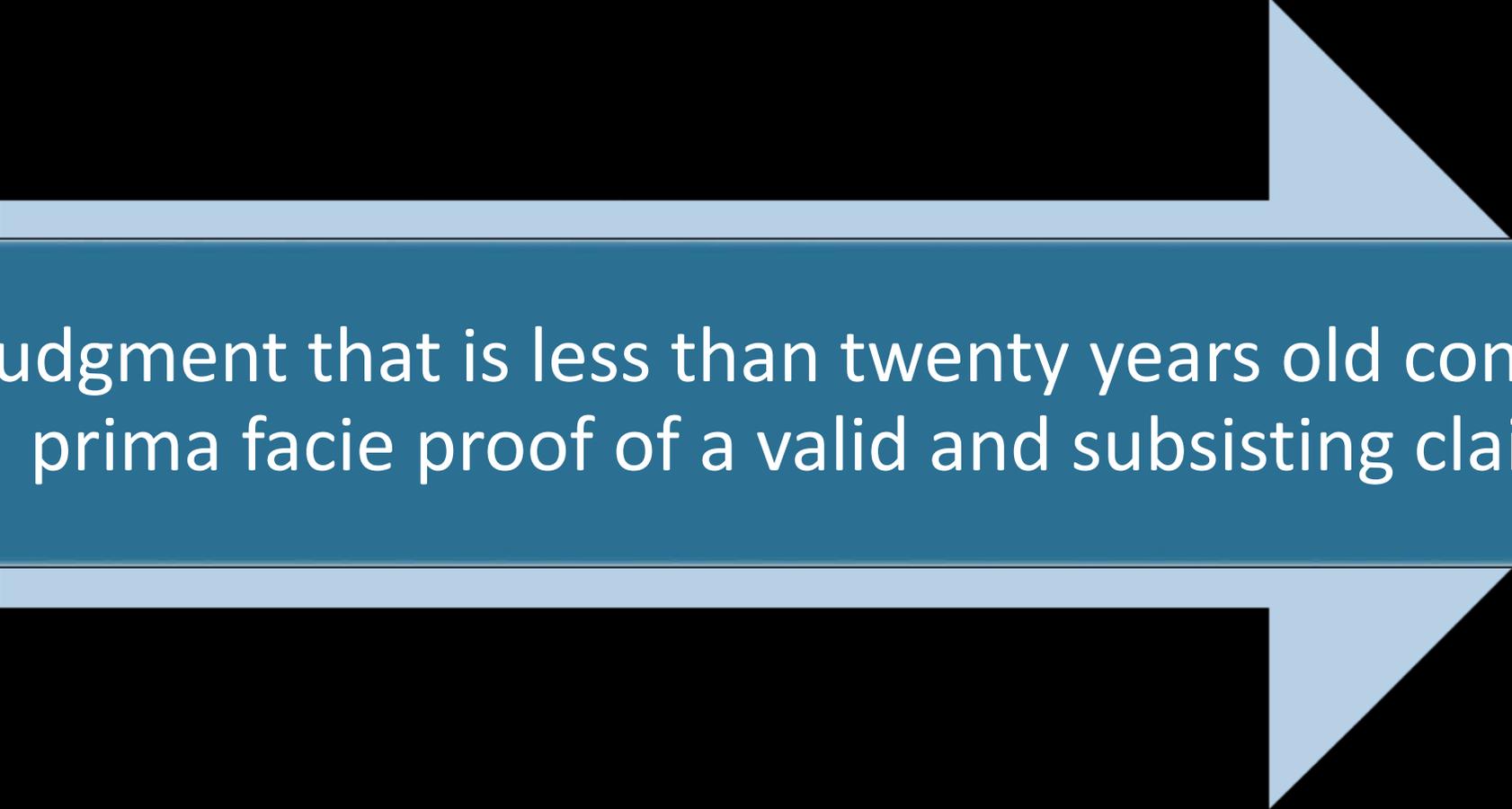
Estate of Wilson v. Steward



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



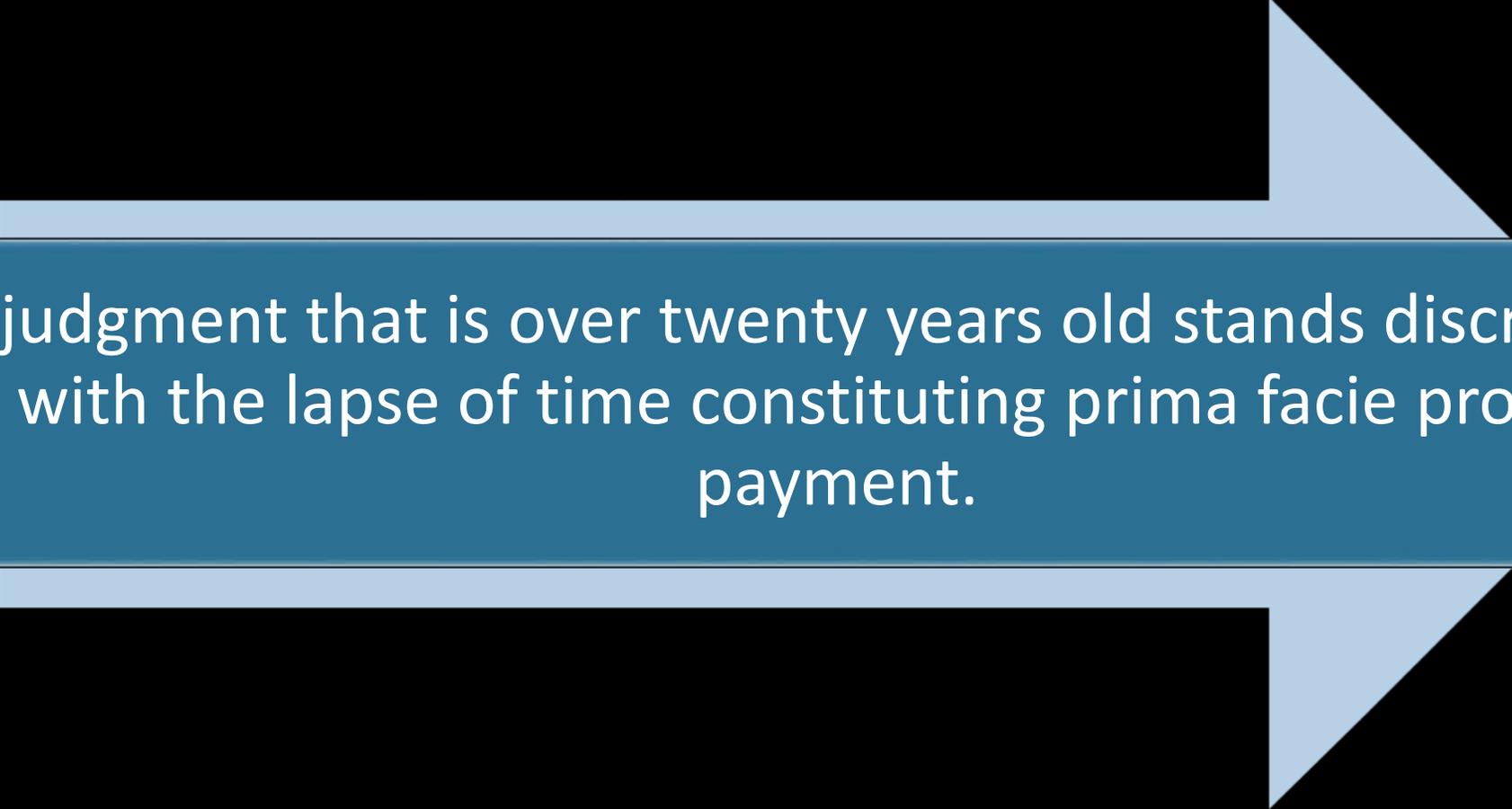
Estate of Wilson v. Steward



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



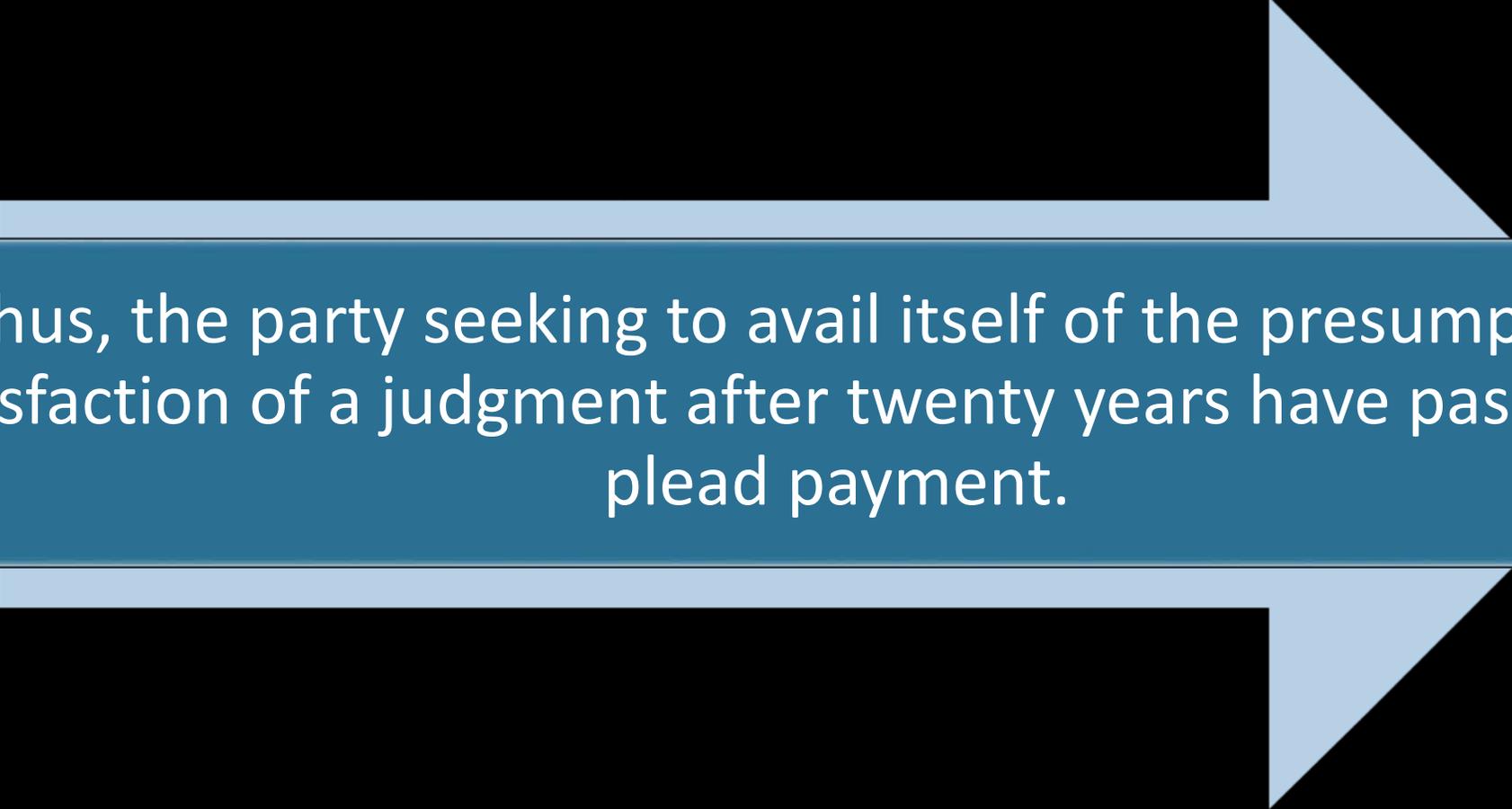
Estate of Wilson v. Steward



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



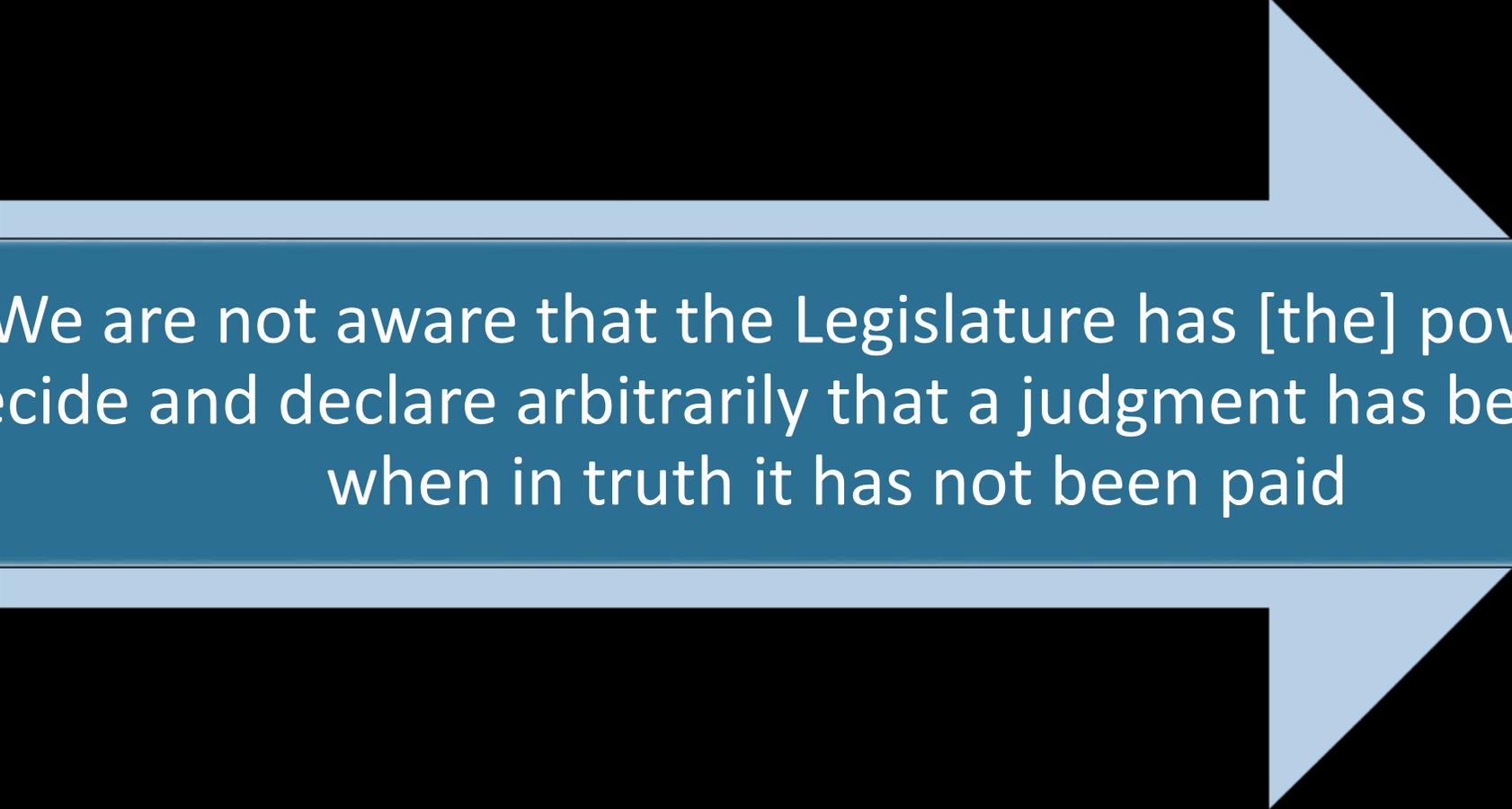
Estate of Wilson v. Steward



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



Interesting Statement



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

Bottom Line:

Get the Arrearage Finding and your Good!

But Arrears are Already Judgments!

34-11-2-12
Judgment or
Decree

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

But Arrears are Already Judgments!

Skolak v. Skolak
895 N.E.2d 1111 (Ind. 2010)

But We Have a Problem!!!

A court's determination is not the same as a judgment or decree and thus does not come under 20 statute of limitations

But Arrears are Already Judgments!

42 U.S. Code
§ 666 (a) (9)

...each State must have in effect laws requiring the use of the following procedures...:

But Arrears are Already Judgments!

42 U.S. Code
§ 666 (a) (9)

(9) Procedures which require that any payment or installment of support under any child support order...is...

But Arrears are Already Judgments!

42 U.S. Code
§ 666 (a) (9)

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced

Scenario 3

You file that old
case anyway

Statute of
Limitations has
run

What now???

Scenario 3

Actually Nothing!

You handle it like
any other case

Until...

Scenario 3

The NCP raises the issue of Statute of Limitations

The Statute of Limitations is an Affirmative Defense

Must be both pleaded and proven by Defendant

Scenario 3

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

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



Take Aways

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

Best Practice – Set up SOL Reminder System

Force NCP to allege the SOL Defense

And Most Important...

Obtain Arrearage
Determinations frequently

Every File Needs it every
_____ years

But can you file knowing the SOL has run?

Yes - ABA Ethics Op. 94-387 (Sept. 26, 1994)

Not unethical to file a lawsuit knowing the claim is time-barred.

No duty to inform opposing party that SOL has run and may negotiate to resolve a time-barred claim. It would violate duties of diligence and confidentiality to do so.

The result is the same even if the lawyer represents the government.

But can you file knowing the SOL has run?

Best Practice – Establish a Policy

Did NCP try to avoid enforcement by hiding assets or location

Did CP ignore the arrears and wait to sign up for IV-D.

Does NCP have any fault in failure to enforce

Statute of Limitations Problem

SOLVED!!!

LIVE LONG AND



PROSPURR



Thank you for coming!

Questions?

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