Filed 8/11/04

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re the Marriage of MARY ANN and DARRIN FELLOWS.	
MARY ANN MOYSE, Respondent, v. DARRIN FELLOWS, Appellant.	C044636 (Super. Ct. No. 146580)

APPEAL from a judgment of the Superior Court of Shasta County, Jack Halpin, Judge. (Retired judge of the Shasta Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Enochian & Kenny and Mark D. Norcross for Appellant.

Edgar J. Lana and Robert J. McNair for Respondent.

Does Family Code section 4502, subdivision (c) -- barring an obligor spouse from asserting the defense of laches in an action to recover child, family, or spousal support -- apply retroactively to facts that occurred before its enactment? Yes.

FACTUAL AND PROCEDURAL BACKGROUND

In June 1985, Darrin Fellows was ordered to pay child support to Mary Ann Moyse. Seventeen years later, on August 26, 2002, Moyse filed a motion to register the child support judgment in California. She asserted Fellows failed to pay any child support and the arrearages totaled $26,000.

On October 15, 2002, Fellows filed an application to vacate the registration of the support order. Fellows alleged the prior support order was invalid and he had paid all required support. Fellows further asserted the equitable defenses of laches and estoppel.

In her opposition papers, Moyse claimed she attempted to enlist the child support unit for Bronx County, New York, and the Legal Aid Society of New York, to enforce the order, but was unsuccessful in those attempts. Further, she alleged that Fellows moved repeatedly, making collection impossible. Moyse succeeded in getting enforcement proceedings started in Ventura, California, in 1993, but after a series of venue transfers among Ventura, Tehama, and Shasta Counties, this attempt was unavailing as well. Moyse renewed her efforts in 1999 to collect the judgment which resulted in further separate litigation between them which is still pending. Finally, Moyse brought these proceedings to enforce the child support order.

At the hearing on April 16, 2003, Moyse testified "**no** child support payments were made. [Fellows] testified **all** child support payments were made. The parties called corroborating

witnesses supporting their respective testimony." The trial court made the following findings:

(1) Fellows had not "established by a preponderance of the evidence that the child support was paid," except for a period of two years when the child lived with him; and

(2) Fellows would prevail on the defense of laches if he was allowed to assert it because Moyse "did not diligently pursue her support claims, and, as a result, [Fellows] suffered substantial detriment." The trial court, however, concluded Family Code section 4502, subdivision (c), eliminated the defense of laches in this case.

As a result, the court confirmed the registration of the New York child support order, denied Fellows's application to vacate the registration, and determined that arrearages were due and owing from Fellows. Fellows appeals.

DISCUSSION

I

Legislative Intent To Retroactively Apply Section 4502, Subdivision (c)

Fellows argues the trial court erred in applying Family Code[1] section 4502, subdivision (c) (hereafter section 4502(c)) to bar his laches defense because that defense was based on facts that occurred prior to the operative date of that section. Fellows contends that the defense of laches "has a substantive

---

[1] All further statutory references are to the Family Code unless otherwise indicated.

component precluding retroactive application absent clear Legislative directive." We conclude the Family Code provides that "clear legislative directive," and the trial court acted properly.

It is the general rule in California that "statutes operate prospectively only." (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840.) "It is an established canon of interpretation that statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent." (*Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 393; see also Code Civ. Proc., § 3 ["No part of [this code] is retroactive, unless expressly so declared"].)

"'A retrospective law is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.' [Citations.]" (*Aetna Cas. & Surety Co. v. Ind. Acc. Com., supra,* 30 Cal.2d at p. 391.) Stated another way, "[a] statute has retrospective effect when it substantially changes the legal consequences of past events. [Citation.] A statute does not operate retrospectively simply because its application depends on facts or conditions existing before its enactment." (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.)

Here, section 4502(c) was added in 2002, and became effective January 1, 2003. (Stats. 2002, ch. 304, § 1, p. 1.) It states, "In an action to enforce a judgment for child, family, or spousal support, the defendant may raise, and the

court may consider, the defense of laches only with respect to any portion of the judgment owed to the state." (§ 4502(c).) Section 4502(c) thus eliminates laches as a defense against a person, other than the state, who is owed child, family or spousal support. Prior to the enactment of section 4502(c), case law recognized laches as a defense to an action to collect support. (*In re Marriage of Dancy* (2000) 82 Cal.App.4th 1142, 1156; *In re Marriage of Copeman* (2001) 90 Cal.App.4th 324, 332; *In re Marriage of Fogarty & Rasbeary* (2000) 78 Cal.App.4th 1353, 1363; see also Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1658 (2001-2002 Reg. Sess.) Apr. 30, 2002, p. 2.)[2]

Thus, under the law that existed prior to January 1, 2003, laches was a defense to Moyse's action to collect the back child support, and would have, in this case, barred her claim. Under the law that exists after that date, laches is no longer a defense and would not bar Moyse's claim. Thus, the application of section 4502(c) to this case alters the legal consequences of past acts. The application of this statute here would be retroactive. Consequently, we must determine if there is any clear legislative intent to apply this statute retroactively.

In re Marriage of Garcia (2003) 111 Cal.App.4th 140 is the only reported case concerning the retroactivity of section

---

[2] We reject Moyse's arguments these cases are wrong and that section 4502(c) is merely a clarification of existing law. Moyse relies on *In re Marriage of Cordero* (2002) 95 Cal.App.4th 653 and the dissenting opinion in *In re Marriage of Dancy, supra,* 82 Cal.App.4th 1142. We agree with the careful analyses contained in the cases cited in the body of our opinion.

4502(c). *Garcia* concludes that section 4502(c) may not be applied retroactively in cases where the hearing on the motion to enforce a child support obligation predated the effective date of the statute. (*Garcia*, at pp. 147-148.) There, mother sought to enforce a child support order against father. (*Id.* at pp. 142-143.) Father defended based on laches. (*Id.* at p. 143.) At a hearing held prior to the effective date of section 4502(c), the trial court concluded that father had prevailed on his claim of laches and entered judgment in favor of father. (*Ibid.*) After the statute became effective, mother argued on appeal that laches was not a defense to a child support order under the law that preexisted section 4502(c). (*Garcia*, at p. 144.) As a corollary to her first argument, mother argued section 4502(c) did not act retroactively because this provision was merely a clarification of existing law. (*Garcia*, at p. 147.) The appellate court rejected both arguments, concluding that section 4502(c) changed the law to eliminate laches as a potential defense. (*Garcia*, at pp. 145-147.) Because the law had changed, and finding nothing in the statute that demonstrated a clear legislative intent to apply the law retroactively, the appellate court concluded that this section could not be applied retroactively. (*Id.* at p. 148.)

It is on the question of legislative intent that we respectfully part company with the *Garcia* court. While the language of section 4502(c) is obviously silent on the subject of retroactivity, as are the statute's legislative committee reports, we conclude the Legislature intended that amendments to

the Family Code shall be retroactively applied unless the legislation otherwise indicates. (See § 4.[3])

"In 1989, the Legislature directed the Law Revision Commission to review statutes relating to the adjudication of child and family civil proceedings and make recommendations to the Legislature regarding the establishment of a Family Code. The major concern addressed by the legislative resolution was the dispersion of family law in several codes, including the Civil Code, Code of Civil Procedure, Evidence Code, Probate Code, and Welfare and Institutions Code." (Recommendation: 1994 Family Code (Nov. 1993) 23 Cal. Law Revision Com. Rep. (1993) p. 9 [preprint copy], fn. omitted.) "The Family Code reorganize[d] the major family law statutes in a new code and resolve[d] many procedural and technical inconsistencies in the [pre]-existing law." (*Id.* at p. 10.)

As part of this new code, the Legislature enacted section 4 which "provides general transitional rules applicable to the Family Code." (23 Cal. Law Revision Com. Rep., *supra*, at p. 85.) We set forth the full text of this section in the margin.[4]

---

[3] The import of section 4 was not raised in *In re Marriage of Garcia, supra,* 111 Cal.App.4th 140. Neither did the parties to this case mention this statute in their briefing or before the trial court. On our own motion, we directed the parties to submit supplemental briefing on this subject. (Gov. Code, § 68081.) Only Fellows responded to our request.

[4] Section 4 provides:

"(a) As used in this section:

"(1) 'New law' means either of the following, as the case may be:

"(A) The act that enacted this code.

"(B) The act that makes a change in this code, whether effectuated by amendment, addition, or repeal of a provision of this code.

"(2) 'Old law' means the applicable law in effect before the operative date of the new law.

"(3) 'Operative date' means the operative date of the new law.

"(b) This section governs the application of the new law except to the extent otherwise expressly provided in the new law.

"(c) Subject to the limitations provided in this section, the new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date, including, but not limited to, commencement of a proceeding, making of an order, or taking of an action.

"(d) If a document or paper is filed before the operative date, the contents, execution, and notice thereof are governed by the old law and not by the new law; but subsequent proceedings taken after the operative date concerning the document or paper, including an objection or response, a hearing, an order, or other matter relating thereto is governed by the new law and not by the old law.

"(e) If an order is made before the operative date, or an action on an order is taken before the operative date, the validity of the order or action is governed by the old law and not by the new law. Nothing in this subdivision precludes proceedings after the operative date to modify an order made, or alter a course of action commenced, before the operative date to the extent proceedings for modification of an order or alteration of a course of action of that type are otherwise provided in the new law.

"(f) No person is liable for an action taken before the operative date that was proper at the time the action was taken,

Section 4, however, is much more than a transitional provision. A straightforward application of section 4 demonstrates that the Legislature intended as a general rule that future amendments to the Family Code are to be retroactively applied. Section 4, subdivision (a)(1)(B) defines "amendments" to the code as "new law." Section 4, subdivision (c) provides that this "new law" (here, section 4502(c)) applies "on the operative date [here, January 1, 2003] to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date." As noted by the Law Revision Commission, "In addition to governing other substantive provisions, Section 4 also governs itself. It therefore becomes operative on the date the Family Code becomes operative and applies to provisions enacted and

---

even though the action would be improper if taken on or after the operative date, and the person has no duty, as a result of the enactment of the new law, to take any step to alter the course of action or its consequences.

"(g) If the new law does not apply to a matter that occurred before the operative date, the old law continues to govern the matter notwithstanding its repeal or amendment by the new law.

"(h) If a party shows, and the court determines, that application of a particular provision of the new law or of the old law in the manner required by this section or by the new law would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons in connection with an event that occurred or circumstance that existed before the operative date, the court may, notwithstanding this section or the new law, apply either the new law or the old law to the extent reasonably necessary to mitigate the substantial interference."

operative before, on, *or after* that date." (23 Cal. Law Revision Com. Rep., *supra*, at p. 86, italics added.)

Section 4 provides that amendments to the Family Code, including the one at issue here, are intended to apply to past events unless the amendment provides otherwise, or the case fits into one of the particular exceptions enumerated in the remainder of section 4. Because section 4 demonstrates the Legislature intended amendments to the Family Code shall apply retroactively, we conclude section 4502(c) applies retroactively to conduct that predated that section. In doing just this, the trial court did not err.

Fellows points to *In re Marriage of Wood* (1995) 37 Cal.App.4th 1059, where the court asserted that section 4 was not a model of clarity. Without any analysis or citation as to why it came to that conclusion, the *Wood* court concluded that an amendment to the child support statute could not be applied retroactively because the change was "substantive" and not "procedural." (*Id.* at p. 1070.)

We respectfully disagree with the *Wood* court based on our Supreme Court's subsequent construction of the almost identical provision contained in Probate Code section 3.[5] (*Rice v. Clark*

---

[5] Probate Code section 3 provides:

"(a) As used in this section:

"(1) 'New law' means either of the following, as the case may be:

"(A) The act that enacted this code.

"(B) The act that makes a change in this code, whether effectuated by amendment, addition, or repeal of any provision of this code.

"(2) 'Old law' means the applicable law in effect before the operative date of the new law.

"(3) 'Operative date' means the operative date of the new law.

"(b) This section governs the application of a new law except to the extent otherwise expressly provided in the new law.

"(c) Subject to the limitations provided in this section, a new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date, including, but not limited to, creation of a fiduciary relationship, death of a person, commencement of a proceeding, making of an order, or taking of an action.

"(d) If a petition, account, report, inventory, appraisal, or other document or paper is filed before the operative date, the contents, execution, and notice thereof are governed by the old law and not by the new law; but any subsequent proceedings taken after the operative date concerning the petition, account, report, inventory, appraisal, or other document or paper, including an objection or response, a hearing, an order, or other matter relating thereto is governed by the new law and not by the old law.

"(e) If an order is made before the operative date, including an order appointing a personal representative, guardian, conservator, trustee, probate referee, or any other fiduciary or officer, or any action on an order is taken before the operative date, the validity of the order or action is governed by the old law and not by the new law. Nothing in this subdivision precludes proceedings after the operative date to modify an order made, or alter a course of action commenced, before the operative date to the extent proceedings for modification of an order or alteration of a course of action of that type are otherwise provided by statute.

(2002) 28 Cal.4th 89.) Probate Code section 3 is the section upon which section 4 is modeled. (23 Cal. Law Revision Com. Rep., *supra*, at p. 85) In *Rice v. Clark*, *supra,* 28 Cal.4th at pages 89, 92, 98, Clark received gifts under a will, trust, and other documents executed prior to a 1995 amendment to Probate Code section 21350. The 1995 amendment eliminated the disqualification of persons who "caused [the instrument] to be drafted" from receiving assets from these instruments. Clark argued the amendment to Probate Code section 21350 applied to the will and trust that was drafted prior to the operative date

---

"(f) No personal representative, guardian, conservator, trustee, probate referee, or any other fiduciary, officer, or person is liable for any action taken before the operative date that was proper at the time the action was taken, even though the action would be improper if taken on or after the operative date, and such a person has no duty, as a result of the enactment of the new law, to take any step to alter the course of action or its consequences.

"(g) If the new law does not apply to a matter that occurred before the operative date, the old law continues to govern the matter notwithstanding its amendment or repeal by the new law.

"(h) If a party shows, and the court determines, that application of a particular provision of the new law or of the old law in the manner required by this section or by the new law would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons in connection with an event that occurred or circumstance that existed before the operative date, the court may, notwithstanding this section or the new law, apply either the new law or the old law to the extent reasonably necessary to mitigate the substantial interference."

of that amendment relying on section 3 of the Probate Code. (*Id.* at p. 99.) The Supreme Court agreed. (*Ibid.*) The Supreme Court held that Probate Code section 3, subdivision (c) "mandates application of the law as amended in 1995, even though the trust and will were executed prior to the amendment's effectiveness." (*Rice v. Clark*, *supra*, 28 Cal.4th at p. 99.) The court further concluded that the purpose of Probate Code section 3 was "to make legislative improvements in probate law applicable on their operative date whenever possible." (*Rice v. Clark*, *supra,* 28 Cal.4th at p. 99.)

For this same reason, we conclude the substantially identical provision in section 4 serves the same purpose and must be interpreted as the Legislature's intent that amendments to the Family Code shall be retroactively applied unless it states another intent in enacting those amendments or the exceptions to section 4 apply. Contrary to Fellows's argument, nothing in section 4, subdivision (c) provides that amendments which are "substantive" in nature are not retroactive, while mere "procedural" changes are retroactive.

The retroactivity of section 4502(c) is also compelled by an independent reason. We presume the Legislature intends for a statute to apply retroactively when the Legislature amends a law to provide a remedy for a statute it perceives has produced unfair results. (See *In re Marriage of Powers* (1990) 218 Cal.App.3d 626, 636.) Here, in support of the bill that became section 4502(c), its author noted that "over 2 million children in California are owed over $19 million in unpaid support, and

that ‘many of these children fail to thrive because there are not adequate resources to meet their basic needs.’” (Sen. Com. Analysis, *supra*, at p. 3.) With those children in mind, this amendment was specifically designed to “prohibit a person who has violated a court order for the payment of child, family, or spousal support from raising the defense of ‘laches’ (unreasonable and prejudicial delay) in response to an action to enforce the support order.” (*Id.* at p. 1.)

Further, the bill was based on the premise that laches is a “legal loophole” used by obligors who are “‘escaping justice by hiding from the child support system long enough to allow a defense of laches to shield them from ever having to pay the child support they have been court-ordered to pay.’” (Sen. Com. Analysis, *supra*, at p. 3.) It is precisely the Legislature’s intent to right this perceived injustice that dictates the retroactive application of section 4502(c).

Finally, the retroactive application of section 4502(c) creates certainty in litigation and eases the court’s task in ascertaining the correct result. Laches generally covers a long period of time because it requires an unreasonable delay and prejudice resulting from that delay. (*In re Marriage of Garcia, supra,* 111 Cal.App.4th at p. 144.) Without the retroactive application of this statute, in five years, when a father or mother raises the defense of laches, the court will be faced with the daunting task of trying to figure out if laches should apply to a child support judgment that is 6, 10, or 15 years old. In those instances, the delay of the obligee parent and

the prejudice to the obligor may have occurred prior to, during, *and* after the operative date of section 4502(c). Under the rule we have identified above, it is clear that laches simply will be inapplicable.[6]

In his supplemental brief, Fellows argues three of section 4's exceptions apply here to avoid the general rule provided by section 4, subdivision (c): subdivisions (f), (g) and (h). We disagree. We shall address subdivisions (f) and (g) here, and subdivision (h) in the next section.

Subdivision (f) of section 4 provides: "No person is liable for an action taken before the operative date that was proper at the time the action was taken, even though the action would be improper if taken on or after the operative date, and the person has no duty, as a result of the enactment of the new law, to take any step to alter the course of action or its consequences."

Fellows argues this subdivision applies because he had no "no duty prior to January 1, 2003 to preserve evidence forever

---

[6] We cannot help but notice that other than *In re Marriage of Wood, supra,* 37 Cal.App.4th at page 1070, no other court has cited section 4 in its 10-year existence. Further, the courts that have examined the retroactivity of amendments to the Family Code have failed to cite section 4 in their analysis. (See, e.g., *In re Marriage of Petropoulos* (2001) 91 Cal.App.4th 161, 174; *In re Marriage of Dandona & Araluce* (2001) 91 Cal.App.4th 1120, 1124.) Both cases, however, found the statutes they sought to interpret to be retroactive based on express legislative intent and thus, did not need to look to the general provision contained in section 4. (*In re Marriage of Petropoulos*, *supra*, 91 Cal.App.4th at p. 174; *In re Marriage of Dandona & Araluce*, *supra*, 91 Cal.App.4th at p. 1124.)

of his payment of his child support obligation; and the new law cannot and should not impose upon him a duty to attempt to do so long after the fact." The amendment to section 4502(c) does not impose any duty on Fellows to do anything. It does not deprive him of the defense that he paid his child support obligation or the ability to prove that he has paid that obligation. In this regard, Fellows could still attempt to prove payment through his own testimony, through that of others who observed him make payments, or through the use of his bank records or those of Moyse. All section 4502(c) does is remove a defense of laches, i.e., delay of enforcement and prejudice from the list of defenses available to Fellows. This defense presumes nonpayment but Fellows had the duty to pay both prior to and subsequent to the amendment of section 4502(c). Subdivision (f) does not assist him.

Turning to section 4, subdivision (g), that part of the statute provides: "If the new law does not apply to a matter that occurred before the operative date, the old law continues to govern the matter notwithstanding its repeal or amendment by the new law." Fellows suggests this law makes no sense unless it is construed as follows: "new laws do not apply to [substantive] matters occurring prior to the new law's effective date absent an express retroactivity provision." We disagree.

We start with the language of the statute when construing it. (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310.) "Absent a compelling reason to do otherwise, we strive to construe each statute in accordance with its plain

language.” (*Ibid.*) Nothing in section 4, subdivision (g) states the application of the new law versus the old law is based upon whether the new law is “substantive” or “procedural” in nature. Rather, section 4, subdivision (g) provides that if the new law does not apply, then the law that preexisted the amendment continues in force. Given the general rule of retroactivity created by section 4, subdivision (c), a new provision of the Family Code will “not apply to a matter that occurred before the operative date” when that new law expressly says so. Here, the amendment to section 4502(c) does not limit its application to facts that postdated its enactment. Thus, subdivision (g) does not help Fellows.

For the foregoing reasons, we conclude the trial court correctly determined the Legislature intended the amendment to section 4502(c) to be retroactive.

II

Constitutional Objections

Fellows argues that the elimination of the defense of laches violates his right to “substantive due process.” Fellows further argues that section 4, subdivision (h), requires the court to apply the old law “when necessary to avoid a substantial interference with the rights of the parties.” Fellows also argues the retroactive application of this statute is “unconstitutionally overbroad” as applied. We reject these contentions.

A

Substantive Due Process

Under this heading, Fellows argues that substantive due process and the equitable defense of laches serve to ensure fairness in litigation. He postulates, "To eliminate the defense of laches is to eliminate equity and fairness; it is to eliminate due process of law." Fellows's argument misconstrues the test of whether a statute violates his rights to substantive due process.

"[T]he burden lies on plaintiffs to demonstrate the unconstitutionality of the statute they attack. [Citation.] It is clear that substantive due process requires a rational relationship between the objectives of a legislative enactment and the methods chosen to achieve those objectives. A line of substantive due process cases generally holds that the guaranty of due process in the Fifth and Fourteenth Amendments includes a 'substantive' component that restricts infringement upon certain fundamental 'liberty interests.' [Citation.] The substantive due process doctrine thus acts as a limitation on unreasonable and arbitrary legislation. [Citations.] The scope of the 'substantive due process' concept is indefinite. '. . . the notions of fairness and reasonableness which make up the content of substantive due process . . . are too general to offer any definite test . . . .' [Citation.] Since there is no definite test to determine whether a statute complies with the 'notions of fairness' which make up the concept of 'substantive due process,' and since there is no definite test to determine

whether a statute is 'unreasonable' or 'arbitrary,' courts must be cautious not to interfere with proper legislative judgment when considering claims of violation of substantive due process. Thus '"[s]substantive due process" analysis must begin with a careful description of the asserted right [allegedly infringed upon], for "[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field."' [Citation.] '". . . a Legislature does not violate due process so long as an enactment is . . . reasonably related to a proper legislative goal. The wisdom of the legislation is not at issue in analyzing its constitutionality, and neither the availability of less drastic remedial alternatives nor the legislative failure to solve all related ills at once will invalidate a statute."' [Citation.]" (*California Rifle & Pistol Assn. v. City of West Hollywood* (1998) 66 Cal.App.4th 1302, 1330.)

Here, the legislative goal of this amendment is to ensure that child support is paid so that our children will thrive by removing a perceived legal loophole from collection. (Sen. Com. Analysis, *supra*, at pp. 2-3.) Even Fellows concedes the collection of child support is a "substantial interest" of the government. We agree the protection of the welfare of the children of this state through the vehicle of child support is a proper legislative goal and an important governmental interest. (See § 4053.) We further conclude section 4502(c) is reasonably related to that goal. Thus, this statute passes muster under the substantive due process test.

B

Section 4, Subdivision (h)

Fellows argues section 4, subdivision (h)'s exception to retroactivity applies here because the law interferes with his substantial right. For the same reason this law does not violate substantive due process, we conclude the application of section 4502(c) does not interfere with any "substantial right" under section 4, subdivision (h).

Further, we conclude Fellows has no substantial right in the defense of laches. We draw from the cases which reject constitutional objections to the enlargement of the statute of limitations period. (See *20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1273.) In *20th Century Ins. Co.* the court stated, "[t]he running of a statute of limitations does not grant a defendant a *vested* right of repose. [Citation.]" "[B]ecause the limitations period operates as an affirmative defense which is inoperative until certain conditions are met (i.e., it is properly plead and accepted by a court) it cannot be deemed a vested right." (*Id.* at pp. 1272-1273.)

Laches is similar to the statute of limitations. In addition to the expiration of an unreasonable period of time, laches requires the proponent to prove prejudice arising from that passage of time. (*In re Marriage of Garcia, supra,* 111 Cal.App.4th at p. 144.) Just like the statute of limitations defense, the facts giving rise to the affirmative defense of laches do not grant a defendant a vested right to that defense

until it is pleaded, proved, and accepted by the court in the form of a judgment. Thus, the exception in section 4, subdivision (h), to the general retroactivity rule contained in section 4, subdivision (c), does not apply here either.

C

Overbreadth

Fellows's final argument is that this statute is unconstitutionally overbroad. He is wrong.

Fellows cites *Zwickler v. Koota* (1967) 389 U.S. 241 [19 L.Ed.2d 444]. There, Zwickler was convicted of violating a statute that required him to include the names and addresses of the printers and distributors of handbills on handbills concerning political candidates. (*Id.* at p. 242 [19 L.Ed.2d at p. 447].) Zwickler challenged the statute on the grounds it was "repugnant to the guarantees of free expression secured by the Federal Constitution" and overbroad because its "sweep embraces anonymous handbills both within and outside the protection of the First Amendment." (*Id.* at p. 244 [19 L.Ed.2d at p. 448].) The trial court abstained from deciding the case. (*Ibid.*) The Supreme Court concluded this challenge raised federal constitutional issues that the trial court had a duty to resolve. (*Id.* at pp. 254-255 [19 L.Ed.2d at p. 454].) However, the court specifically stated, "[w]e express no view whatever with respect to . . . the constitutional validity of the law." (*Id.* at p. 255 [19 L.Ed.2d at p. 454].)

Zwicker's dicta does not aid Fellows. As explained in *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1108-1109,

constitutional overbreadth analysis applies to a law only if it impinges on a person's fundamental rights or constitutional freedoms. There, the court held that because an ordinance forbidding camping did not "directly impinge[] on a fundamental constitutional right," the overbreadth concept had no application.

Here, Fellows has identified no fundamental constitutional right that is implicated by the elimination of the equitable defense of laches. Thus, this argument borders on the frivolous.

DISPOSITION

The judgment is affirmed. Appellant Fellows shall bear costs on appeal. (Cal. Rules of Court, rule 27(a).)

ROBIE, J.

We concur:

HULL, Acting P.J.

BUTZ, J.