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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1734**

Linda M. Cordes, f/k/a Linda M. Joyce,
Appellant,

vs.

Holt and Anderson, Ltd., et al.,
Respondents.

**Filed July 14, 2009
Affirmed
Shumaker, Judge**

Dakota County District Court
File No. 19-C8-07-030092

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(for appellant)

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Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and
Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant challenges the district court's grant of summary judgment to respondents, an attorney and law firm, on her claim for unjust enrichment. Because the district court correctly concluded that appellant's claim is barred by the applicable statute of limitations, we affirm.

FACTS

This appeal arises out of an unjust-enrichment action by appellant Linda M. Cordes, f/k/a Linda M. Joyce, against respondents, Michael J. Holt, and his law firm, Holt and Anderson, Ltd. Cordes retained Holt as counsel to investigate a claim involving the estate of her long-time companion, Larry Sohns. Between July 2000 and February 2001, Holt billed Cordes for attorney fees incurred in defending and prosecuting a series of claims against Sohns's estate. Cordes regularly received bills for attorney fees, which she paid at the time without objection, even though she now claims that the fees were unreasonable and excessive.

In total, Cordes paid \$56,500 for Holt's legal work. Holt claims Cordes's last payment occurred on February 8, 2001, but Cordes claims she made a final payment on March 24, 2001.

Holt eventually withdrew as Cordes's counsel, though the parties dispute the date on which Holt's representation ended. Holt claims that he decided to withdraw from Cordes's case on February 24, 2001, and gave Cordes notice to that effect. Cordes insists, however, that Holt did not formally withdraw from representing her until May 15,

2001. In support of her claim, Cordes points to a notice of withdrawal of counsel from Holt dated May 15, 2001.

Cordes commenced this unjust-enrichment action against Holt and his law firm on May 14, 2007, seeking repayment of some of the allegedly excessive attorney fees. Holt asserted that Cordes's unjust-enrichment claim was clearly barred by the applicable six-year statute of limitations, and accordingly moved for summary judgment. The district court agreed and granted Holt's motion for summary judgment, concluding that Cordes's unjust-enrichment claim was barred by the six-year statute of limitations because Cordes's last payment for legal services was on February 8, 2001, and her complaint was served on May 14, 2007. Cordes appeals.

DECISION

A motion for summary judgment shall be granted when there is no genuine issue of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. On appeal from a district court's grant of summary judgment, the reviewing court asks "(1) whether there are any genuine issues of material fact for trial; and (2) whether the trial court erred in its application of the law." *Hoyt Props., Inc. v. Prod. Res. Group, L.L.C.*, 736 N.W.2d 313, 317 (Minn. 2007) (citation omitted). No genuine issues of fact exist when "the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). "The construction and application of a statute of limitations, including the law governing the accrual of a cause of action, is a question of law and is

reviewed de novo.” *MacRae v. Group Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008).

Cordes commenced her unjust-enrichment action on May 14, 2007. She concedes that her cause of action is governed by the six-year statute of limitations set forth in Minn. Stat. § 541.05, subd. 1(1) (2006). Accordingly, if Cordes’s claim accrued before May 14, 2001, it is barred by the statute of limitations.

A court has “no power to extend or modify statutory limitation periods.” *Johnson v. Winthrop Labs. Div. of Sterling Drug, Inc.*, 291 Minn. 145, 151, 190 N.W.2d 77, 81 (1971). The statute of limitations is a harsh but strict mechanism designed to prevent one party who has a claim against another from waiting an unreasonable amount of time to bring that claim. *Bachertz v. Hayes-Lucas Lumber, Co.*, 201 Minn. 171, 176, 275 N.W. 694, 697 (1937); *see also Bustad v. Bustad*, 263 Minn. 238, 244, 116 N.W.2d 552, 556 (1962) (stating that the salutary purpose of the statute of limitations is to discourage lawsuits based on stale claims).

“A cause of action accrues and the statute of limitations begins to run when the cause of action will survive a motion to dismiss for failure to state a claim upon which relief can be granted.” *Noske v. Friedberg*, 670 N.W.2d 740, 742 (Minn. 2003); *Bonhiver v. Graff*, 311 Minn. 111, 116-17, 248 N.W.2d 291, 296 (1976). “A cause of action survives a motion to dismiss so long as ‘some’ damage has occurred” *Herrmann v. McMenemy & Severson*, 590 N.W.2d 641, 643 (Minn. 1999); *see also Bonhiver*, 311 Minn. at 117, 248 N.W.2d at 296 (stating that the statute of limitations begins to run when “damage is occasioned”). The running of the statute of limitations

does not depend on the ability to ascertain the exact amount of the damage and is not tolled, in the absence of fraud, by ignorance of the cause of action. *Hermann*, 590 N.W.2d at 643.

The outcome of this case is controlled by our decision in *Block v. Litchy*, 428 N.W.2d 850 (Minn. App. 1988). In *Block*, we concluded that an unjust-enrichment action based on an alleged overpayment accrued when the overpayments were made. 428 N.W.2d at 854. Accordingly, we held that a claim on overpayments made more than six years before the commencement of the action was barred by the statute of limitation, but that a claim for overpayments made within the six-year statute-of-limitations period was not barred. *Id.*

In light of *Block*, we conclude that Cordes's cause of action accrued when she made the alleged overpayments. Although the parties dispute the date of the last payment as being in either February 2001 or in March 2001, it is undisputed that Cordes's last alleged overpayment occurred before May 14, 2001, more than six years before she commenced her unjust-enrichment action on May 14, 2007. Thus, her unjust-enrichment claim is barred by the statute of limitations.

Cordes argues that her cause of action did not accrue until Holt withdrew from representation on May 15, 2001, explaining that she could not have known if Holt had earned all the fees that he had charged until that date. She asserts that had she filed an unjust-enrichment claim before representation ended, her claim would have been dismissed for failure to state a claim because Holt would still have been working for her and earning fees. But Cordes cites no caselaw or other authority directly supporting the

proposition that her cause of action accrued when representation ended. We held in *Block* that a cause of action for unjust enrichment accrues at the time of overpayment. 428 N.W.2d at 854. Absent a claim of fraud or deliberate misrepresentation, Cordes's ignorance of her own cause of action did not toll the statute of limitations. *Id.* Additionally, Cordes's argument that she "did not know" if Holt had earned the fees until representation ended is unavailing, as it, in effect, invites application of a discovery rule to statute-of-limitation questions, which Minnesota courts have rejected. *See Johnson*, 291 Minn. at 150-51, 190 N.W.2d at 81 (rejecting the discovery rule); *see also Herrmann*, 590 N.W.2d at 643-44 (rejecting the use of the discovery rule in a legal malpractice claim and concluding that the cause of action accrued when the attorneys failed to advise their client that an action was prohibited).

Because Cordes's last payment for legal services occurred more than six years before she commenced her unjust-enrichment action, her claim is barred by the statute of limitations. As a result, the district court did not err by granting summary judgment against her unjust-enrichment claim.

Affirmed.