STATE OF MINNESOTA
IN COURT OF APPEALS
A14-1189

Jamy Hegseth f/k/a Jamy Jager,
Appellant,

vs.

American Family Mutual Insurance Group,
Respondent.

Filed March 9, 2015
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-CV-14-3430

Michael A. Bryant, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant)

Bjork T. Hill, Eden Prairie, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Schellhas, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this appeal from a summary judgment dismissing as time-barred appellant's breach-of-contract action against her uninsured-motorist insurer, appellant argues that although she did not commence her action within six years after her motor-vehicle accident, the action is not barred by the six-year statute of limitations because she

brought the action less than one year after respondent insurer breached its contract by failing to pay her uninsured-motorist claim. We affirm.

FACTS

On March 30, 2007, appellant Jamy Hegseth, f/k/a Jamy Jager, was injured when a truck turned in front of the vehicle in which appellant was a passenger. The truck left the scene before the driver's identity could be determined. The parties agree that when the accident occurred appellant was insured under two automobile policies that provided uninsured-motorist (UM) benefits. One of the policies was issued by respondent American Family Mutual Insurance Group, and the other was issued by another insurer.

Appellant's attorney determined that the policy issued by the other insurer provided primary UM coverage and that appellant could not pursue a claim against respondent for excess UM coverage until a claim against the other insurer for primary UM benefits was resolved. Appellant made a claim for UM benefits from the other insurer. On June 14, 2012, appellant notified respondent that the other UM carrier had offered its policy limits of $50,000 and that she would be seeking excess UM coverage from respondent. On August 17, 2012, appellant submitted a demand to respondent for UM benefits. On September 13, 2012, respondent denied appellant's claim on the ground that appellant had been fully compensated.

On July 9, 2013, appellant began this action against respondent seeking excess UM benefits. Respondent asserted the affirmative defense that the action was barred by the statute of limitations and later moved for summary judgment. The district court determined that a six-year statute of limitations applied to appellant's claim for UM

benefits and that the claim accrued on the date of the accident. Based on these determinations, the district court granted summary judgment for respondent because appellant's action was not commenced within six years of the accident date and, therefore, was time-barred. This appeal followed.

D E C I S I O N

Summary judgment is appropriate when the record shows "that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. We review the district court's grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in applying the law. *Mattson Ridge, LLC v. Clear Rock Title, LLP*, 824 N.W.2d 622, 627 (Minn. 2012). "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

A UM claim is subject to the six-year statute of limitations for an action upon a contract set forth in Minn. Stat. § 541.05, subd. 1(1) (2014). *Oganov v. Am. Family Ins. Grp.*, 767 N.W.2d 21, 24 (Minn. 2009). Appellant argues that although she did not commence her action within six years after her motor-vehicle accident, the action is not barred by the six-year statute of limitations because a UM action accrues when the insurance contract is breached and she brought her action less than one year after respondent breached its contract by failing to pay her UM claim.

In *Weeks v. Am. Family Mut. Ins. Co.*, 580 N.W.2d 24, 25 (Minn. 1998), *overruled in part on other grounds by Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401 (Minn. 2000), the

supreme court considered whether a cause of action for UM benefits accrues on the date of the accident or on the date the insurer rejects a UM claim. The supreme court applied the reasoning of its earlier decision in *O'Neill v. Illinois Farmers Ins. Grp.*, 381 N.W.2d 439 (Minn. 1986), *overruled in part by Oanes*, 617 N.W.2d at 406, that a cause of action for underinsured-motorist (UIM) benefits accrues on the date of the accident and determined that "[b]ecause liability rather than the existence of coverage is the underlying substantive issue, the cause of action for either UIM or UM benefits accrues once the accident occurs, and the claimant then becomes entitled to seek a judicial determination of liability and to recover damages." *Weeks*, 580 N.W.2d at 27.

Appellant acknowledges that the supreme court held in *Weeks* that a cause of action for UM benefits accrues on the date of the accident, but she argues that the supreme court overturned the *Weeks* holding in *Oanes*. We disagree. *Oanes* involved a suit for UIM benefits that was dismissed because it was brought more than six years after the accident in which the injury occurred. 617 N.W.2d at 402. The supreme court explained that in a line of cases that included *Weeks* (the *O'Neill*-*Weeks* line), it had "indicated that [a UIM] claim accrues and the limitations period commences at the time of the accident that causes the injury." *Id*. But the supreme court then explained that another line of cases held that "a UIM claimant is required to pursue his or her claim against the tortfeasor to settlement or judgment before seeking UIM benefits from the underinsurer." *Id.* at 404-05 (citing *Employers Mut. Cos. v. Nordstrom,* 495 N.W.2d 855, 858 (Minn. 1993)); *see also Washington v. Milbank Ins. Co.,* 562 N.W.2d 801, 806 (Minn. 1997) (reaffirming *Nordstrom* holding). The rationale underlying the *Nordstrom*

line of cases is that UIM coverage is secondary coverage and, therefore, a "'recovery from the tortfeasor's liability insurance is a nonarbitrable condition precedent to bringing an underinsured claim. Until there has been a recovery from the tortfeasor's insurer, the claimant's underinsured claim simply has not matured.'" *Oanes*, 617 N.W.2d at 405 (quoting *Nordstrom*, 495 N.W.2d at 857). Noting that there was no guarantee that the *Nordstrom* requirement of settlement or adjudication of an action against the tortfeasor would occur within six years of the accident, the supreme court "reject[ed] the rule that a UIM claim accrues on the date of the accident that causes the injury" and "overrule[d] the *O'Neill-Weeks* line of cases to the extent that they articulate such a rule." *Id.* at 406.

After rejecting the rule that a UIM claim accrues on the date of the accident that causes the injury, the supreme court declined to adopt the rule that a UIM claim accrues when the insurer breaches the insurance contract by denying a UIM claim. *Id*. Instead, the court adopted a third option for when a UIM claim accrues and the statute of limitations begins to run, which was "the date of settlement with or judgment against the tortfeasor." *Id*. The supreme court then explained:

> Using the date of settlement with or judgment against the tortfeasor as the accrual date for UIM claims is consistent with our *Nordstrom* decision. The UIM claim will accrue when the condition precedent to raising the UIM claim that we identified in *Nordstrom* has been satisfied, not before. The statute of limitations will not be triggered until the UIM claim becomes ripe, eliminating the possibility that the limitations period will have run before the claim could be brought.
>
> Designating the date of settlement with or judgment against the tortfeasor as the accrual date for UIM claims is also consonant with our concern expressed in *O'Neill* and

> *Weeks* that the claimant not be enabled to forestall the commencement of the limitations period indefinitely by failing to assert the UIM claim. With the date of settlement or judgment as the accrual date, that cannot happen.

Id. at 407.

Appellant acknowledges that *Oanes* involved UIM benefits while the present case involves UM benefits, but she argues that we should acknowledge that the supreme court recognized in *Oanes* that its earlier reasoning was wrong and adopted a different approach for determining when UIM and UM claims are ripe. She contends that under *Oanes*, her UM claim against the other, primary insurer had to be resolved before her claim against respondent was ripe for action. We reject this argument for several reasons.

First, the supreme court expressly limited its holding in *Oanes* to UIM claims. The court stated:

> Although . . . other jurisdictions have applied the accrual rule we adopt to UM as well as UIM claims, the case before us involves only a UIM claim. There are differences between the two types of claims that may have a bearing on the appropriate accrual rule. For example, "[t]he condition precedent for bringing an *uninsured* motorist claim is different from the underinsured claim. To bring an arbitration claim for [UM] benefits, the claimant does not have to recover first from the uninsured tortfeasor; the claimant need only show that the tortfeasor was uninsured." *Nordstrom*, 495 N.W.2d at 857 n.4. Resolution of whether such differences warrant different rules of accrual must await a case that presents the issue in the context of a UM claim. Accordingly, our decision to adopt the date of settlement with or judgment against the tortfeasor as the accrual date for purposes of the running of the statute of limitations is limited to UIM claims.

Id. at 406 n.2.

Second, the only authority that appellant cites for her claim that her case against the primary UM insurer had to be resolved before her claim against respondent is ripe for action is *Interstate Fire & Cas. Co. v. Auto-Owners Ins. Co.*, 433 N.W.2d 82 (Minn. 1988). But that case involved neither no-fault automobile insurance nor a statute-of-limitations issue, and appellant has not explained its relevance to the continued validity of the holding in *Weeks* that a cause of action for UM benefits accrues on the date of the accident.

Finally, in *Oganov*, which was decided nine years after *Oanes*, the supreme court reaffirmed its holding in *Weeks* with respect to UM coverage. In *Oganov*, the tortfeasor was insured by Legion Insurance Company in January 1999, when Oganov's vehicle collided with the tortfeasor's truck. 767 N.W.2d at 23. Oganov pursued a claim against Legion, but in July 2003, a Pennsylvania court declared Legion insolvent and ordered the company liquidated. *Id*. In October 2006, Oganov commenced an action against his insurer for UM benefits. *Id*. The district court granted summary judgment to the insurer on the ground that the statute of limitations barred the UM claim. *Id*. Applying *Weeks*, this court determined that the six-year statute of limitations for Oganov's UM claim began to run on the date of the accident, and, therefore, concluded that the claim was untimely and affirmed the district court. *Id*. at 23-24.

On appeal to the supreme court, Oganov argued that the statute of limitations began to run on the date of the tortfeasor's insurer's insolvency, rather than on the date of the accident. *Id*. at 24. In addressing this claim, the supreme court explained:

> UM coverage is available to insureds who are legally entitled to recover damages for bodily injury from an owner or operator of an uninsured motor vehicle. A claimant may commence an action to recover UM benefits against his insurer, without first making a claim directly against the uninsured motorist. The only condition precedent for a UM claim is that the claimant show that the tortfeasor was uninsured.

Id. (citations and quotation omitted).

Then, citing *Weeks*, the supreme court stated that it had "held that a claim for UM benefits accrues on the date of the accident" and that Oganov was essentially asking it "to overturn *Weeks*, or carve out an exception to *Weeks* for UM claims created by the insolvency of the tortfeasor's insurer." *Id*. at 25. The supreme court declined the request to overturn *Weeks*, but it found "several compelling reasons to extend *Oanes*, and carve out an exception to *Weeks* in cases where the tortfeasor's insurer is declared insolvent within the six-year limitations period." *Id*. at 26. The supreme court stated in part:

> First, it is illogical to conclude that a UM claim accrues and the limitations period begins to run on the date of the accident when the claim does not exist at the time of the accident, but rather is created by the subsequent insolvency of the tortfeasor's insurer. Second, fixing the accrual date at the time of the accident may effectively leave a claimant without coverage if the tortfeasor's insurer declares insolvency so close in time to the expiration of the limitations period that the claimant is unable to adequately present his or her claim. Such a result does not comport with our sense of justice and fair play.

Id.

The court then rejected the rule that a UM claim accrues on the date of the accident when the claim arises from the subsequent insolvency of the tortfeasor's insurer

and, instead, held "that if a tortfeasor's insurer is judicially declared insolvent within six years of the date of the accident, a claim for uninsured motorist benefits accrues, and the limitations period begins to run, on the date the tortfeasor's insurer is declared insolvent." *Id*. at 27. The court emphasized that its holding "is limited to UM claims arising from the insolvency of the tortfeasor's insurer" and observed "that in the vast majority of cases a UM claim will accrue on the date of the accident because the at-fault driver did not have insurance." *Id*.

Thus, the rule in *Weeks* that a UM claim accrues on the date of the accident remains applicable following *Oganov* when, on the date of the accident, the at-fault driver did not have insurance. Unlike Oganov, whose UM claim did not exist at the time of the accident, appellant's UM claim came into existence on March 30, 2007, when the car in which she was riding collided with a traffic-signal pole to avoid hitting an unidentified truck. Therefore, when appellant brought her action seeking UM benefits on July 9, 2013, the action was barred by the six-year statute of limitations.

Affirmed.