

NO. A05-943

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State of Minnesota  
**In Court of Appeals**

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Dawn Marie Carlson, debtor, and  
Farmers Insurance Group, a foreign corporation, garnishee,  
*Appellant,*

vs.

Northwestern National Insurance Company as Subrogee  
for David Jerome Swanberg, creditor,  
*Respondent.*

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**APPELLANT'S BRIEF AND APPENDIX**

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## LEGAL ISSUE

- I. Does the six-year statute of limitations apply to garnishment claims where the creditor assumes a claim from debtor which would be time-barred?

The trial court held: The trial court denied summary judgment and entered judgment on behalf of Northwestern National on the ground that the statute of limitations did not act as a bar to Northwestern National's garnishment action.

## STATEMENT OF THE CASE

Plaintiff has commenced a garnishment claim against Dawn Marie Carlson and Farmers Insurance Group, pursuant to MSA § 571.75 for subrogation on an uninsured motorist claim paid to Northwestern National's insured, David J. Swanberg. The automobile accident which set forth the basis of Northwestern National's subrogation claim occurred on August 11, 1994. Farmers Insurance Group canceled Ms. Carlson's insurance coverage on July 31, 1994 for nonpayment of premium and denied her claim for that basis on August 12, 1994. In May of 1999, Northwestern National and Dawn Carlson reached an agreement relative to entry of judgment in favor of Northwestern National, thereby assigning her rights against Farmers Insurance Group to Northwestern National.

The garnishment Summons and Complaint were originally served on February 9, 2004, almost ten years after the automobile accident, and denial of coverage by Farmers Insurance Group. Accordingly, Farmers Insurance Group moved for summary judgment pursuant to MSA § 541.05, in that contract actions shall be commenced within six years from the date coverage was denied. The trial court denied Farmers Insurance Group's motion for summary judgment, and as no documentation or facts remained with which to prove lack of coverage, judgment was entered by the district court in favor of the creditor, Northwestern National Insurance Company. Defendant Farmers Insurance Group now appeals from that judgment.

## STATEMENT OF FACTS

This garnishment action arises out of an automobile accident that occurred on August 11, 1994. At that time, an insured of Northwestern National Insurance Company, David Swanberg, was injured allegedly as a result of negligence by Dawn M. Carlson. On July 31, 1994, Farmers Insurance Group had canceled Ms. Carlson's insurance for nonpayment of premium. On August 12, 1994, upon making her claim, Farmers Insurance Group, or their agent, notified Ms. Carlson that no coverage was in place for the automobile accident with Mr. Swanberg, as the policy had been canceled for nonpayment of premium (see Affidavit of Dawn M. Carlson).

On or about October 16, 1996, Northwestern National Insurance Company, after having settled with Swanberg, their insured, commenced a subrogation action against Carlson to recover \$21,000 which was paid under its uninsured motorist coverage. On that date, Ms. Carlson advised Northwestern National that a coverage dispute existed between her and Farmers Insurance Group, and she maintained that she was entitled to coverage under her policy. Accordingly, on or about October 16, 1996, Northwestern National had knowledge of the denial of coverage and Farmers' position as to indemnifying Ms. Carlson for the August 11, 1994 automobile accident. In May 1999, Northwestern National Insurance Company and Dawn Carlson reached an agreement relative to entry of judgment in favor of Northwestern National pursuant to Miller-Shugart, 316 N.W.2d 729 (Minn. 1982). Pursuant to the agreement, Northwestern National agreed that the only collection that would occur in the case would be as against

Farmers Insurance Group. Accordingly, Northwestern National received an assignment of Ms. Carlson's claims against Farmers for the denial of coverage, which had been in place since August 12, 1994.

Northwestern National Insurance Company took no action in terms of commencing a garnishment action or declaration of coverage against Farmers Insurance Group until February 9, 2004, when it served its garnishment Complaint. At no point in time did Ms. Carlson commence any declaration of coverage action against Farmers Insurance Group, despite being notified of the denial on August 12, 1994.<sup>1</sup>

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<sup>1</sup> In the course of discovery in this garnishment action, it was determined that Ms. Carlson's file materials from August 1994 were unretrievable. Accordingly, it was decided between the parties that the Court's ruling on the statute of limitations issue would result in final judgment for either party.

## ARGUMENT

### Scope of Review/Standard of Review

“On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the lower courts erred in their application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990) (citation omitted).

“A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted).

#### **I. The trial court erred in denying summary judgment to Farmers Insurance Group, as Northwestern National’s garnishment claim is time barred.**

Pursuant to MSA § 541.05, contract actions shall be commenced within six years from the date coverage was denied. *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401 (Minn. 2000). *See e.g. Amdahl v. Stonewall Ins. Co.*, 484 N.W.2d 11 (Minn. App. 1992). In the *Oanes* matter, the court determined the applicability of the statute of limitations to an underinsured motorist claim, which the court stated begins on the date that the plaintiff was advised of the tortfeasor’s underinsured status. The uninsured motorist claim in this case was commenced in 1995, a year after the accident, and settled in December of that year. As a result of the settlement agreement, Northwestern National Insurance Company

commenced a subrogation claim against Dawn Carlson. In 1995, Ms. Carlson clearly was aware of the denial of coverage issued on August 12, 1994 by Farmers Insurance Group. Accordingly, Ms. Carlson's claim against Farmers Insurance Group for coverage, commenced on the date of denial, which was August 12, 1994. It is expected that respondent will contend that Farmers' obligation to indemnify did not occur until after the Miller-Shugart agreement was executed and an assignment provided in 1999. However, a request for indemnification was made by Ms. Carlson on August 12, 1994, when she contacted her insurance company to determine coverage and report the claim. At that point, she was advised that her policy had been canceled due to the nonpayment of premium. At no point in time did Ms. Carlson ever commence a declaratory judgment action in order to establish coverage for the automobile accident. In 1999, when the Miller-Shugart agreement was negotiated, another year remained within the statute of limitations to bring a coverage claim on behalf of Ms. Carlson, which was not commenced. It is well settled that subrogation claims by insurers accrue when "a party seeking indemnification has made payment to the injured person." *Grothe v. Shaffer*, 232 N.W.2d 227 (1975). Accordingly, Northwestern National's rights as against Carlson commenced upon settlement with Swanberg in 1995.

In the case of *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401 (Minn. 2000), the Court explicitly found that the accrual date for the statute of limitations arises on an underinsured claim after the party is entitled to underinsured benefits, which presumably would be the date the case was settled against the tortfeasor. As a footnote in the *Oanes* case indicates, uninsured motorist cases are clearly different than underinsured motorist

claims, which was discussed in *Oanes*. In the context of an underinsured motorist claim, it is possible that a claim against a tortfeasor may be commenced within the six-year statute of limitations. By the time that the case is settled or resolved, some years may ensue which is why the statute of limitations begins to accrue on the date the underlying action is resolved. Using this analysis, the uninsured motorist claim was resolved in 1995, and accordingly, the time period for Northwestern National to commence a claim against Dawn Carlson began after said payment.

Dawn Carlson's ability to commence a declaratory judgment action for the denial of coverage that occurred on August 12, 1994, expired on August 12, 2000. Prior to that date, in 1999, Carlson entered into a Miller-Shugart agreement with Northwestern National Insurance Company, thereby assigning her rights against Farmers Insurance Group to Northwestern National Insurance Company as subrogee. It is well established in Minnesota that the plaintiff/creditor's rights against an insurer in a garnishment action are no greater than the insured/debtor's rights. *Poor Richards Inc. v. Chas Olson & Sons & Wheel Service Co., Inc.*, 380 N.W.2d 225, 227 (Minn. Ct. App. 1986). Accordingly, Northwestern National only possesses those rights against Farmers Insurance Group that could be held by Dawn Carlson. It is clear that, as of the time of the commencement of the garnishment action in February 2004, the statute of limitations, as to Dawn Carlson for bringing a claim against Farmers Insurance Group, had expired. As Dawn Carlson would not be able to commence a declaratory judgment action due to the time barring nature of the statute of limitations, as an assignee of Ms. Carlson's rights, Northwestern National would also be time barred, pursuant to the case law set forth above.

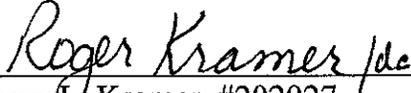
A contrary result in this case clearly would cause unfair prejudice to insurance carriers who have denied coverage. While there is no explicit requirement that either insurer or insured commence a declaratory action, a denial of coverage clearly establishes a breach of the contract which gives rise to a declaratory judgment action. In this case, this breach occurred on August 12, 1994. Despite sustaining automobile damage and a potential injury claim, Dawn Carlson never commenced any action seeking declaratory judgment. Northwestern National, having spent some three years pursuing Ms. Carlson on its subrogation claim, accepted an assignment with the knowledge that coverage had been denied in August 1994. As opposed to bringing a declaratory judgment action within the statute of limitations, Northwestern National waited an additional four years to commence the garnishment claim. As significant facts and documentation would be required to either defend or prosecute the coverage action, such an action clearly becomes more difficult to establish and defend some ten years following the original denial. In terms of the recollection of witnesses, as well as the retention of documents, delaying an action in the manner that Northwestern National has in this case, will unfairly work to the detriment of defendants in the same position as Farmers Insurance Group.

**CONCLUSION**

Northwestern National has no greater rights against Farmers Insurance Group than did their insured, Dawn Carlson. As any claim for coverage against Farmers Insurance Group would be time barred, pursuant to MSA § 541.05, Northwestern National Insurance Company should have no greater rights than Ms. Carlson. Accordingly, their garnishment claim should be denied on the basis of the statute of limitations.

Respectfully submitted,

June 9, 2005

  
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MPLIB:233654.1

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).