

NO. A05-943

State of Minnesota
In Court of Appeals

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.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

Argument 1

I. Dawn Carlson’s claim for breach of contract arose on August 12, 1994; application of the statute of limitations bars Northwestern National’s claims.

Conclusion 5

TABLE OF AUTHORITIES

State v. Joseph, 622 N.W.2d 358 (Minn. App. 2001) 1

Metropolitan Prop. v. Metropolitan Tran., 538 N.W.2d 692 (Minn. 1995) 2

ARGUMENT

In Respondent's brief, Northwestern National Insurance Company takes the position that an insurer's right to indemnity is not barred by the six-year statute of limitations set forth in Minn. Stat. § 541.05, as Dawn Carlson's indemnity claim did not arise until after the Miller v. Shugart Agreement. Dawn Carlson was first denied coverage on August 12, 1994, close to six years before the Miller v. Shugart Agreement. However, Dawn Carlson made a demand for coverage to her insurance carrier upon providing notice of the accident, and was advised on August 12, 1994 that there was no coverage due to a failure to pay premium. This fact is undisputed and constitutes an alleged breach of contract.

Respondent contends that Minnesota case law either provides no applicable statute of limitations where a denial of coverage has been provided, or that the statute itself does not begin to toll until an obligation of indemnity occurs. In stating that no statute of limitations exists on coverage actions, Respondent relies on State v. Joseph, 622 N.W.2d 358 (Minn. App. 2001). This particular case was overturned by the Supreme Court on other grounds, yet discusses the statute of limitations as it would apply to declaratory judgment actions. First, State v. Joseph involved a declaratory judgment action that was raised by the insurer, not the insured. In fact, the Court of Appeals explicitly notes this difference in stating, "It should be noted that a declaratory judgment action to determine the validity of an insurance coverage defense may become moot if the claimant has failed to commence its breach of contract action within the statute of limitations." State v.

Joseph at 362. In this particular case, it is clear that the claimant, Dawn Carlson, failed to commence her breach of contract action within six years of the denial of coverage, which would have occurred on August 12, 1994. In the case now before the Court of Appeals, Dawn Carlson provided an assignment of a breach of contract action that expired on August 12, 2000. Northwestern National Insurance Company knew of this action, as their uninsured motorist claim only arose when Illinois Farmers Insurance Company denied coverage. The obligation to pay Northwestern National's insured, David Swanberg, rose after Swanberg's counsel was notified that Illinois Farmers Insurance Company indicated no coverage existed. After Northwestern National resolved the uninsured motorist claim in 1995 with Swanberg, they then proceeded to make a claim against Carlson for subrogation.

Respondent cites Metropolitan Prop. v. Metropolitan Tran., 538 N.W.2d 692 (Minn. 1995) as support for its contention that accrual of Carlson's claim did not occur until she entered into a Miller v. Shugart Agreement. Analysis of Metropolitan Prop. v. Metropolitan Tran., 538 N.W.2d 692 (Minn. 1995) provides a conclusion opposite to that advocated by Respondent. In Metropolitan, the statute of limitations begins to accrue when payment has been made. In this particular case, Northwestern National made payment in 1995 to Swanberg, which gave rise to its subrogation claim against Carlson. Under Respondent's analysis, contrary to Metropolitan, they contend that, despite their paying an indemnity benefit in 1995, they are able to obtain an additional six years for contractual right assigned to them by Dawn Carlson, as she had not "raised a requirement for indemnity." Clearly, Metropolitan does not anticipate such an inequitable analysis of

the statute of limitations. Under Metropolitan, the subrogation claim of Respondent commenced, at the latest, when they paid uninsured motorist benefits.

In this case, it is quite clear that, pursuant to the allegations of Dawn Carlson, Illinois Farmers Insurance Company breached its contract on August 12, 1994, the date of its denial. It is well established that any denial of coverage by an insurer must be made promptly so that it will not unduly prejudice an insured's rights to a defense in indemnification. *See e.g.*, Minnesota Fair Claims Practices Act, MSA 62, *et. seq.* (2005). The uninsured motorist claim did not arise until coverage was denied, which Northwestern National knew, as it formed the basis of their payment to their insured, Swanberg. At the time of said payment, it is their contention that they had six years to pursue a claim against Dawn Carlson, and an additional six years to pursue a coverage action against Farmers. Support for such a contention clearly will prejudice insurers who provide denials of coverage. In this case, the denial of coverage was based upon the failure to pay a premium, proof of which would presumably comprise of records and testimony. Respondent's position in this matter would allow an insurance carrier, or other individual receiving an assignment of a coverage claim, to delay an action to the point where recall of any useful evidence would be impossible. Clearly, this is a situation contemplated by the statute of limitations for breach of contract actions and the long-standing rules relating to an assignee receiving no greater rights than the assignor. The contrary result, advocated by the Respondent, would place an insured in a largely indefensible position, giving rise to judicial inefficiency and a waste of resources. Insurers would be forced to bring a declaratory judgment action with every denial.

Where coverage is lapsed due to nonpayment of premium, as in this case, the delay clearly works against the insurer. In this particular case, Northwestern National did not raise as a defense to their insured, Swanberg, that Carlson was in fact insured. Clearly, Northwestern National could have denied the uninsured motorist claim of Swanberg by denying that the vehicle was uninsured per the statute, and the coverage issue could have been determined in a timely manner.

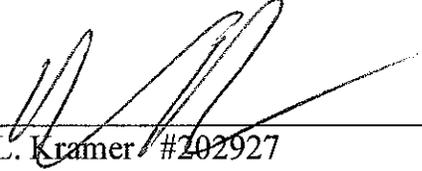
Illinois Farmers Insurance Company is clearly prejudiced by the significant delay in bringing this action. No records are available to document the notices provided to Dawn Carlson. While Respondent points out that these items were requested by Carlson's attorney and Northwestern National in 1997, this is also clear proof that Northwestern National had notice of the coverage claim, and in fact had been seeking subrogation from Carlson and anticipating a coverage action. Waiting an additional seven years to commence the action violates the statute of limitations.

CONCLUSION

Respondent's brief essentially sets forth that Minnesota law does not provide the six-year statute of limitations for a breach of contract action where an assignment occurs. Such a conclusion is unsupported by Minnesota law and clearly contradicted by the cases set forth above, as well as those in Appellant's principal brief. Accordingly, the District Court's Order for Summary Judgment should be reversed and judgment entered on behalf of Appellant, Illinois Farmers Insurance Company.

Respectfully submitted,

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