STATE OF MINNESOTA

IN SUPREME COURT

A18-2114
A19-0155

Court of Appeals — Gildea, C.J.

Deborah J. Palmer, surviving spouse and Trustee
for the heirs of Gary J. Palmer,

Appellant,

vs.

Filed: July 1, 2020
Office of Appellate Courts

Walker Jamar Company,

Defendant,

Honeywell International, Inc.,

Respondent.

DeWayne Johnston, Johnston Law Office, P.C., Grand Forks, North Dakota; and

David C. Thompson, David C. Thompson, P.C., Grand Forks, North Dakota, for appellant.

Mark R. Bradford, Jonathan C. Marquet, Jeffrey R. Peters, Bassford Remele, P.A., Minneapolis, Minnesota, for respondent Honeywell International, Inc.

Sarah E. Bushnell, Jeffrey M. Markowitz, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota; and

Cheryl Hood Langel, Brian J. Kluk, McCollum Crowley P.A., Minneapolis, Minnesota, for amicus curiae Minnesota Defense Lawyers Association.

S Y L L A B U S

Because appellant filed her wrongful death action more than 6 years after her husband learned that exposure to asbestos had caused his mesothelioma, Minn. Stat. § 573.02, subd. 1 (2018), bars her action.

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

This case asks us to determine when a claim accrues in an asbestos-related wrongful death action. Appellant Deborah Palmer brought this wrongful death action against respondent Honeywell International after her husband, Gary Palmer, died from mesothelioma.[1] The district court granted summary judgment for Honeywell, concluding that the statute of limitations bars Deborah's claim because she filed her action more than 6 years after Gary learned that exposure to asbestos had caused his mesothelioma. The court of appeals affirmed. *Palmer v. Walker Jamar Co.*, Nos. A18-2114, A19-0155, 2019 WL 4409720 (Minn. App. Sept. 16, 2019). Because we conclude that a claim accrues in an asbestos-related wrongful death action when the fatal disease is causally linked to asbestos, we affirm.

FACTS

The facts are undisputed. In 2009, Gary's pulmonologist informed him that he had calcium deposits on his lungs due to asbestos exposure. On December 24, 2011, Gary was

[1] For clarity, we will refer to Gary Palmer and Deborah Palmer by their first names.

diagnosed with mesothelioma. The next month, in January 2012, Gary learned that asbestos exposure had caused his mesothelioma. Gary and Deborah filed an asbestos-related product liability action in North Dakota against 177 companies the following year.

Gary died of mesothelioma on March 1, 2015. On February 23, 2018, Deborah filed this action under Minn. Stat. § 573.02, subd. 3 (2018), against Honeywell.[2] She alleged that Gary contracted mesothelioma and died because he was exposed to asbestos-containing brake products sold by Bendix Corporation.[3] Deborah asserted that Gary was exposed to the brake products while he worked as a janitor at a car dealership for 4 months in 1974.

Honeywell moved for summary judgment, arguing that Deborah's action was barred because she filed it outside of the 6-year period of limitations. In the alternative, Honeywell argued that Deborah failed to establish that Gary was exposed to Bendix brake products. The district court agreed with Honeywell and granted its motion for summary judgment. Because Gary knew in January 2012 that asbestos exposure had caused his mesothelioma, and because Deborah did not file her action until February 2018, the district court concluded that the statute of limitations barred Deborah's action. The district court

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[2] Deborah also sued Walker Jamar Company, asserting that Gary was exposed to asbestos dust from his father's work clothes while his father worked for Walker Jamar. We declined to grant review of the issue relating to Deborah's action against Walker Jamar. *Palmer v. Walker Jamar Co.*, Nos. A18-2114, A19-0155, Order at 1 (Minn. filed Nov. 27, 2019). The facts relating to Deborah's action against Walker Jamar therefore are not relevant to our decision in this case.

[3] Honeywell International is the successor-in-interest of Bendix Corporation. For purposes of this litigation, the parties agree that Honeywell is legally responsible for the asbestos-containing brake products that Bendix sold.

further determined that Deborah failed to provide any evidence that Gary was exposed to Bendix brake products.

Deborah appealed, arguing that the district court erred in concluding that the statute of limitations barred her action. *Palmer*, 2019 WL 4409720, at *1. She asserted that the period of limitations did not begin to run until Gary could identify Bendix brake products as the cause of his mesothelioma. *Id.* at *4. The court of appeals rejected her argument, determining that the period of limitations began in January 2012 when Gary became aware that exposure to asbestos had caused his mesothelioma. *Id.* at *5. The court of appeals concluded that the statute of limitations barred Deborah's action because she filed suit more than 6 years later.[4] *Id.*

We granted Deborah's petition for review.

ANALYSIS

On appeal, Deborah argues that her wrongful death claim did not accrue—and therefore the period of limitations did not begin to run—until it was reasonably discoverable that Bendix brake products were the proximate cause of Gary's mesothelioma.[5] In response, Honeywell asserts that the period of limitations began when Gary learned that exposure to asbestos had caused his mesothelioma.

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[4] Because the court of appeals determined that the statute of limitations barred Deborah's action, the court did not address the district court's alternative basis for summary judgment—that Deborah failed to establish that Gary was exposed to asbestos dust from Bendix brake products. *Palmer*, 2019 WL 4409720, at *5 n.3.

[5] Deborah also argues that the district court erred in concluding that the limitations period began running in 2009 when Gary was diagnosed with the calcium deposits on his

This case comes to our court on review of the entry of summary judgment. Summary judgment is appropriate when there are no genuine issues of material fact and "the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. There are no material facts in dispute in this case, and the only question before us is whether the district court properly determined when Deborah's wrongful death claim accrued.[6] Determining when a wrongful death claim accrues is a question of law that we review de novo. *MacRae v. Grp. Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008).

In Minnesota, plaintiffs have 6 years after the wrongful act or omission to bring a wrongful death claim. Minn. Stat. § 573.02, subd. 1 (2018) ("When death is caused by the wrongful act or omission of any person or corporation, . . . [the] action . . . may be commenced within three years after the date of death provided that the action must be commenced within six years after the act or omission.").[7] An "[a]ction[] can only be

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lungs. But the district court did not rely solely on the 2009 diagnosis to conclude that Deborah filed the action outside of the limitations period. The district court determined that "whether the analysis focuses on the asbestos-caused calcium deposits or the asbestos-caused mesothelioma, this case must be dismissed based upon an application of Minnesota's statute of limitations." Because the district court concluded that Deborah filed her action more than 6 years after Gary's mesothelioma was linked to asbestos exposure, we need not address Deborah's argument relating to the calcium deposits.

[6] Deborah asserts that genuine disputes of material fact exist relating to (1) whether Gary knew that he was exposed to Bendix asbestos-containing brake products more than 6 years before this action was filed, and (2) whether the Bendix brake products were defective and unreasonably dangerous or whether Bendix's wrongful acts were a proximate cause of Gary's mesothelioma. But these fact disputes are immaterial to our inquiry about when a wrongful death action accrues.

[7] Although Deborah sued Honeywell under Minn. Stat. § 573.02 (2018), Minnesota's wrongful death statute, Honeywell moved for summary judgment under Minn. Stat.

commenced . . . after the cause of action accrues . . . ." Minn. Stat. § 541.01 (2018). And a cause of action "accrue[s] at such time as it could be brought in a court of law without dismissal for failure to state a claim." *Dalton v. Dow Chem. Co.*, 158 N.W.2d 580, 584 (Minn. 1968).

We apply the "some damage" rule to determine when a claim accrues. *Hansen v. U.S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 327 (Minn. 2019). Under this rule, "the statute of limitations begins to run when 'some' damage has occurred as a result of the alleged [negligent act]." *Antone v. Mirviss*, 720 N.W.2d 331, 336 (Minn. 2006) (citation omitted) (internal quotation marks omitted); *see also Dalton*, 158 N.W.2d at 585 ("Until there is *some* damage, there is no claim and certainly a statute prescribing the time in which suit must be filed . . . can never operate prior to the time a suit would be permitted." (citation omitted) (internal quotation marks omitted)).

Most relevant here, we have applied the some damage rule to determine when a claim accrues in an asbestos-related wrongful death action. *DeCosse v. Armstrong Cork Co.*, 319 N.W.2d 45 (Minn. 1982). DeCosse brought a wrongful death action against respondent manufacturers after learning that her husband may have died from mesothelioma caused by asbestos exposure. *Id.* at 47. Mr. DeCosse had died 4 years

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§ 541.05, subd. 1(5) (2018), Minnesota's statute of limitations for personal injury actions. *See* Minn. Stat. § 541.05, subd. 1 (providing that an action "for any other injury to the person or rights of another" "shall be commenced within six years"). At oral argument, the parties agreed that our analysis of the issue before us is the same under either statute. Because Deborah brought a wrongful death claim, we apply the wrongful death statute—Minn. Stat. § 573.02—to determine whether her claim is barred.

earlier. *Id.* at 46–47. The respondents argued that the statute of limitations barred the wrongful death claim. *Id.* at 46 (citing Minn. Stat. § 573.02, subd. 1 (1976)).

We determined that "the act or omission of exposing Mr. DeCosse to asbestos would continue until the disease manifested itself *and was causally linked to respondents' products*." *Id.* at 49. We further explained that although "the disease may have manifested itself some months before [Mr.] DeCosse died, it was apparently never linked to asbestos or diagnosed as a mesothelioma before death." *Id.* We held that, "because of the unique character of asbestos-related deaths, wrongful death actions brought in connection with those deaths accrue either upon the manifestation of the fatal disease *in a way that is causally linked to asbestos*, or upon the date of death—whichever is earlier." *Id.* at 52 (emphasis added). Because Mr. DeCosse's illness had not been causally linked to asbestos, we concluded that the claim accrued upon the date of Mr. DeCosse's death. *Id.* at 48–49.

DeCosse is dispositive of the question presented here. Under our holding in *DeCosse*, Deborah's wrongful death claim accrued in January 2012. It is undisputed that Gary knew in January 2012, years before his death, that exposure to asbestos caused the mesothelioma. Because the mesothelioma manifested itself in a way that was causally linked to asbestos before Gary died on March 1, 2015, *DeCosse* requires the earlier date—January 2012—as the date of accrual of the wrongful death claim, *id.* at 52. And because Deborah did not file this wrongful death action against Honeywell until February 2018, more than 6 years after the claim accrued, it is barred. Minn. Stat. § 573.02, subd. 1 ("Any other action under this section may be commenced within three years after the date of death

provided that the action must be commenced within *six years* after the act or omission." (emphasis added)).

In urging us to reach a different conclusion, Deborah argues that we should adopt a discovery rule: that the point of accrual in a wrongful death claim begins when all of the elements of the cause of action, including the identity and fault of the tortfeasor, are discoverable or reasonably discoverable by the plaintiff. A discovery rule, she asserts, is consistent with federal and Minnesota law. But the cases she cites do not compel us to depart from *DeCosse*.

One of the cases Deborah relies on is *Karjala v. Johns-Manville Products Corp.*, 523 F.2d 155 (8th Cir. 1975) (applying Minnesota substantive law). There, the jury awarded damages to the plaintiff because he had contracted asbestosis from using the defendant's asbestos products. *Id.* at 156. On appeal, the defendant challenged the district court's instruction to the jury. *Id.* at 159. The jury instruction provided, in relevant part: "The statute doesn't commence to run against [the plaintiff] until he has contracted the disease of asbestosis, and the process of contracting the disease does not cease until physical impairment manifests itself." *Id.* at 159 n.7. The Eighth Circuit held that the instruction "adequately and fairly instructed the jury under Minnesota law," *id.* at 161, determining that exposure to asbestos "is more in the nature of a continuing tort[,]" *id.* at 160. The court concluded that the statute of limitations for asbestos-related injuries begins "when the disease manifests itself in a way which supplies some evidence of causal relationship to the manufactured product[.]" *Id.* at 160–61.

Deborah argues that *Karjala* stands for the proposition that a claim for asbestos-related damages accrues when the cause of the disease is linked to a *specific* product and a *specific* defendant. *See id.* ("It is when the disease manifests itself in a way which supplies some evidence of causal relationship to the *manufactured product* that . . . the statute of limitations will begin to run." (emphasis added)). But the jury instruction the Eighth Circuit affirmed in *Karjala* focused on when the plaintiff learned that he contracted asbestosis, not when he learned that the defendant manufactured products that contained asbestos. *Id.* at 159 n.7. The district court did not instruct the jury that the disease had to manifest itself in a way that established a causal relationship to a specific defendant. *Id.* Rather, the district court explained that "the disease must have progressed to a stage where [the plaintiff] would have a provable legal claim for his injuries." *Id. Karjala* therefore does not stand for the proposition that a claim accrues only when the asbestos exposure is causally linked to a specific product and manufacturer.

Deborah also relies on *Frederick v. Wallerich*, 907 N.W.2d 167 (Minn. 2018). *Frederick* is a legal malpractice case involving an unenforceable antenuptial agreement. *Id.* at 170. An attorney prepared the antenuptial agreement for a client and his then-fiancée in 2006 and then incorporated the agreement into a will the attorney drafted for the client in 2007. *Id.* Although the execution of the antenuptial agreement occurred outside of the 6-year limitations period, the client argued that the attorney's incorporation of the agreement into the will was a separate negligent act, and that the incorporation occurred within the limitations period. *Id.* We concluded that the client had made a minimal showing that the drafting of the will "was an independent act of negligence, separate from

the 2006 execution of the antenuptial agreement," *id.* at 176, and that the client had suffered "some damage" in 2007, within the period of limitations, *id.* at 179, 181.

Deborah's argument based on *Frederick* relies solely on the sentence in the opinion that states that "[a]n analysis of when a claim accrues . . . necessarily involves consideration of *all* elements of the claim." *Id.* at 173. In Deborah's view, *Frederick* requires courts to consider "all elements of the claim" in determining when a claim accrues, and therefore her claim did not accrue until it was reasonably discoverable that Bendix brake products caused Gary's mesothelioma.

Deborah's argument fails for two reasons. First, we have recognized "the unique character of an asbestos-related disease." *DeCosse*, 319 N.W.2d at 48. Unlike legal malpractice cases in which the date of the harm often can be readily identified, "there is rarely a magic moment when one exposed to asbestos can be said to have contracted asbestosis; the exposure is more in the nature of a continuing tort," *Karjala*, 523 F.2d at 160. Accordingly, we use the date of death or the point at which the fatal disease manifests "in a way that is *causally linked to asbestos*," whichever is earlier, to determine when an asbestos-related claim accrues. *DeCosse*, 319 N.W.2d at 52 (emphasis added).

Second, we held in *Frederick* that the damage resulting from the attorney's drafting of the will in 2007—a separate act of negligence—occurred within the period of limitations, and therefore the client's claim was not barred. 907 N.W.2d at 176, 181. We did not create a new requirement that the identity and fault of the tortfeasor must be discoverable to the plaintiff before a court can determine that a claim has accrued. Deborah's reliance on *Frederick* is therefore misplaced.

Deborah further relies on the decisions in *Mertz v. 999 Quebec, Inc.*, 780 N.W.2d 446 (N.D. 2010) and *Foster v. Johns-Manville Sales Corp.*, 787 F.2d 390 (8th Cir. 1986) (applying Iowa substantive law), in which the courts applied a discovery rule to determine when an asbestos-exposure claim accrued. But North Dakota and Iowa have each adopted a discovery rule. *Mertz*, 780 N.W.2d at 452; *Franzen v. Deere & Co.*, 334 N.W.2d 730, 732 (Iowa 1983). We, in contrast, considered, and explicitly rejected, a discovery rule in *DeCosse*. 319 N.W.2d at 52 ("[W]e still feel compelled to reject the discovery rule."). We determined that "[i]t is not in the public interest, absent a showing of fraudulent concealment, to encourage, literally, the unearthing of wrongful death causes of action long after the death has occurred because there is some suspicion that death was caused by a wrongful act." *Id.* If we were to adopt the discovery rule for which Deborah advocates, we would have to overrule *DeCosse*.

But "[w]e are extremely reluctant to overrule our precedent[,]" and "require[] a 'compelling reason' to do so." *State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005) (quoting *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000)). Deborah has not provided us with any compelling reasons to overrule *DeCosse*. She has not asserted that the circumstances surrounding asbestos litigation have changed since we decided *DeCosse*. And while Deborah points to case law from other jurisdictions that have adopted the discovery rule, rather than the some damage rule, she has not shown that our approach is out of line with case law from other jurisdictions generally or otherwise obsolete. Finally, in the 38 years since our decision in *DeCosse*, the Legislature has not changed the relevant language in Minn. Stat. § 573.02, subd. 1, despite returning to amend the subdivision in

1983 and 2002. *See* Act of May 22, 2002, ch. 403, § 6, 2002 Minn. Laws 1706, 1711–12; Act of June 14, 1983, ch. 347, § 2, 1983 Minn. Laws 2397, 2397–98 (codified as amended at Minn. Stat. § 573.02, subd. 1 (2018)).

Under the rule we announced in *DeCosse*, Deborah's wrongful death claim accrued in January 2012 when Gary learned that asbestos exposure had caused his mesothelioma. *See* 319 N.W.2d at 52. Because Deborah did not file this wrongful death action until February 2018, more than 6 years after the claim accrued, we hold that section 573.02, subdivision 1, bars her claim.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.