STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0494

Malcolm Butler,
Appellant,

vs.

Sun Life Financial (U.S.) Services Company, Inc., et al.,
Defendants,

Sun Life Assurance Company of Canada,
Respondent.

Filed August 26, 2013
Affirmed
Larkin, Judge

Clay County District Court
File No. 14-CV-12-696

Jeffrey R. Hannig, Hannig Law Office, P.A., Fargo, North Dakota (for appellant)

Hal A. Shillingstad, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Minneapolis, Minnesota; and

Tina M. Bengs (pro hac vice), Valparaiso, Indiana (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Cleary, Judge.

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

LARKIN, Judge

Appellant challenges the district court's summary dismissal of his lawsuit seeking death benefits under a life-insurance policy issued to his spouse. Because appellant's suit is untimely under the terms of the policy, we affirm.

FACTS

Jane Butler (decedent) worked as a teacher for the Moorhead school district until June 4, 2004, when she ceased active employment due to the effects of a brain tumor. The school district maintained an employee-benefit program that provided life-insurance coverage to eligible employees. Decedent was insured under the district's policy, and her spouse, appellant Malcolm Butler, is the named beneficiary.

Under the life-insurance policy, premium payments may be waived for individuals who are "totally disabled," as that term is defined in the policy.[1] On August 23, decedent filed a premium-waiver claim with respondent Sun Life Assurance Company of Canada asserting that she was totally disabled. Sun Life informed decedent that the policy required her to submit proof of claim, including evidence demonstrating her disability, within 30 days of her waiver request. On December 17, Sun Life denied decedent's claim because she failed to timely submit evidence supporting her premium-waiver request. Sun Life informed decedent that she had the right to appeal within 180 days. Decedent appealed, and Sun Life upheld the denial based on its determination that the

[1] Under the policy, totally disabled "means an Employee, because of Injury or Sickness, is unable to perform the material and substantial duties of any occupation for which he is or becomes reasonably qualified for by education, training or experience."

evidence did not support a finding that decedent was "totally disabled." Sun Life informed decedent that she had exhausted all of her administrative remedies but that she had the right to file a civil lawsuit. Decedent did not pursue legal action against Sun Life.

After decedent's death on July 28, 2010, Butler filed a claim for death benefits with Sun Life. The school district informed Sun Life that decedent was retired at the time of her death. Sun Life therefore paid Butler the retiree life-insurance benefit of $25,000 instead of the $50,000 life-insurance benefit for active employees. Butler sued Sun Life for the additional $25,000 under a breach-of-contract theory. Butler alleged that Sun Life breached the policy by denying decedent's premium-waiver claim. He further alleged that had Sun Life not improperly denied decedent's claim, he would be entitled to the higher life insurance benefit of $50,000.

Sun Life moved for summary judgment, arguing, in part, that Butler's challenge to Sun Life's denial of decedent's premium-waiver claim was barred by the policy time limit on initiation of legal actions. Butler countered that the policy time limit was unreasonable and unenforceable. The district court granted Sun Life's motion for summary judgment, based on the failure of either decedent or Butler to file suit on the premium-waiver claim within the applicable policy time limit. This appeal follows.

D E C I S I O N

I.

The primary issue in this appeal concerns the timeliness of Butler's lawsuit and more specifically, whether the time limit under the policy is unreasonable and therefore unenforceable. Normally, the statute of limitations applicable to contract claims is six

years. Minn. Stat. § 541.05, subd. 1(1) (2012). However, the policy in this case provides a shorter time limit.

"Parties may limit the time within which legal claims may be brought provided there is no statute specifically prohibiting the use of a different limitations period in such a case and the time fixed is not unreasonable." *Peggy Rose Revocable Trust v. Eppich*, 640 N.W.2d 601, 606 (Minn. 2002) (citing *Henning Nelson Constr. Co. v. Fireman's Fund Am. Life Ins. Co.*, 383 N.W.2d 645, 650-51 (Minn. 1986); *Prior Lake State Bank v. National Sur. Corp.*, 248 Minn. 383, 388, 80 N.W.2d 612, 616 (1957)). "Whether the contractual limitations period is reasonable depends upon the particular facts presented; what is acceptable in one case may be objectionable in another." *Id.* "Such provisions, however, are not generally favored and are strictly construed against the party invoking them." *Henning*, 383 N.W.2d at 651.

"When an insurance clause requires suit to be brought within a certain period, failure to bring suit within that period bars suit if the limitation clause does not conflict with a specific statute and is not unreasonable in length." *L&H Transport, Inc. v. Drew Agency, Inc.*, 403 N.W.2d 223, 226 (Minn. 1987) (emphasis omitted). The district court concluded that there were "insufficient facts presented to create a material issue of fact as to the unreasonableness of the time limitation to bring suit" and dismissed the suit in summary-judgment proceedings.

"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." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). "[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). "[T]he party resisting summary judgment must do more than rest on mere averments." *Id.*

"[Appellate courts] review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). "On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio*, 504 N.W.2d at 761.

"It is well-established that general contract principles govern the construction of insurance policies, and that insurance policies are to be interpreted to give effect to the intent of the parties." *Thommes v. Milwaukee Ins. Co.*, 641 N.W.2d 877, 879 (Minn. 2002). "The interpretation of an insurance policy is a question of law reviewed de novo." *Id.* "When the language of an insurance contract is unambiguous, it must be given its plain and ordinary meaning." *Id.* at 880.

Because Butler does not show that there is a statute prohibiting the shorter policy time limit, we focus our analysis on whether the policy limit on legal actions is

unreasonable under the particular undisputed facts of this case.[2] Butler makes several arguments regarding why the time limit "is unreasonable as a matter of law." We address each in turn.

Proof of Disability

The crux of Butler's argument is that "a three-year limitation period is unreasonable in any case involving a determination of disability." Butler argues that "proof of disability [is] an evolving process that should not be constrained by unreasonably short time limitations." In essence, Butler argues that the policy does not allow enough time to prove the existence of a disability as defined under the policy. As support, Butler heavily relies on the amount of time it took to litigate and determine decedent's disability status with the Social Security Administration, which was four years.

We begin by reviewing the policy language to determine when the time-limitation period begins to run, as well as the length of the period. The policy states that "[n]o legal action may start . . . until 60 days after Proof of Claim has been given; nor . . . more than 3 years after the time Proof of Claim is required." It further states that

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[2] In his reply brief, Butler argues that the policy time limit violates Minn. Stat. § 61A.07 (2012). A special-term panel of this court granted Sun Life's motion to strike that argument from Butler's reply brief, and we therefore do not consider it. *Butler v. Sun Life Financial*, No. A13-0494 (Minn. App. June 26, 2013) (order op.); *see also* Minn. R. Civ. App. P. 128.02, subd. 4 (stating that the reply brief must be confined to "new matter" raised in respondent's brief); *Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002) ("If an argument is raised in a reply brief but not raised in an appellant's main brief, and it exceeds the scope of the respondent's brief, it is not properly before this court and may be stricken from the reply brief."), *review denied* (Minn. Feb. 26, 2003).

> proof of claim must be given to Sun Life no later than 15 months after the Employee ceases to be Actively at Work.
>
> . . . .
>
> If it is not possible to give proof within these time limits, it must be given as soon as reasonably possible. Proof of claim may not be given later than one year after the time proof is otherwise required unless the individual is legally incompetent.
>
> Proof of claim must consist of . . . a description of the loss or disability; the date the loss or disability occurred; and the cause of the loss or disability.

Unlike the statute of limitations on a contract claim, which begins to run when the contract is breached, the time-limitation period under the policy is triggered when the employee ceases to be actively at work. *See* Minn. Stat. § 541.01 (2012) (stating that the statute of limitations begins to run on a claim when "the cause of action accrues"); *Bachertz v. Hayes-Lucas Lumber Co.*, 201 Minn. 171, 176, 275 N.W. 694, 697 (1937) ("[A] cause of action for breach of contract accrues immediately on a breach, though actual damages resulting therefrom do not occur until afterwards." (quotation omitted)). The policy states that "[n]o legal action may start . . . more than 3 years after the time Proof of Claim is required," and that proof of a "Life Waiver of Premium" claim (i.e., the claim at issue in this case) must be given no later than 15 months after the employee ceases to be actively at work.[3] In sum, once the employee ceases to be actively at work, the employee has 15 months to submit proof of claim to the insurer and an additional three years to initiate legal action related to the claim.

[3] As a member of the teacher's bargaining unit, decedent ceased being an active employee once she was not "scheduled to work at least 26 hours per week."

Butler's argument regarding the time reasonably necessary to prove the existence of a disability relates primarily to the portion of the policy-limitation period in which proof of claim must be provided to the insurer. The usual deadline for providing proof of a premium-wavier claim, which must include a description of the disability, the date the disability occurred, and the cause of the disability, is 15 months. However, the policy states that "[i]f it is not possible to give proof" within that time, "it must be given as soon as reasonably possible" and no later than "one year after the time proof is otherwise required unless the individual is legally incompetent." As a result, proof of claim may not be required for as long as 27 months after the employee ceases to be actively at work.[4] Then, the employee has an additional 36 months to start a legal action based on the claim. In effect, the time period during which legal action must be initiated under the policy is as long as 63 months. Because the policy allows reasonable extensions of the deadline for submission of proof of claim, which in turn extends the deadline for initiation of legal action, the policy does not unreasonably constrain the time necessary to prove the existence of a disability.

Moreover, the policy does not create an unreasonable situation in which a contractual deadline on initiation of legal action begins to run without the employee's knowledge. In *Peggy Rose*, the supreme court concluded that "an arbitration agreement provision subjecting all claims to an 18-month limitations period running from the date of the real estate closing is not within the bounds of reasonableness when applied to [a]

[4] A legally incompetent individual has even more time to file proof of claim. The policy states: "Proof of claim may not be given later than one year after the time proof is otherwise required unless the individual is legally incompetent."

claim of fraud" because a party could be precluded from bringing the claim before "the party knew or reasonably should have known that he or she was harmed by another's conduct." 640 N.W.2d at 609. Here, it is undisputed that decedent was aware of the circumstances that triggered the running of the time period (i.e., ceasing to be actively at work). Decedent's last day of active employment as a result of her disability was June 4, 2004. On or about August 23, 2004, decedent submitted a premium-waiver claim based on her disability. The policy language clearly explains the deadline for initiation of a legal action related to the premium-waiver claim. In sum, the record does not suggest that the policy limitation period unreasonably precluded decedent from initiating a timely legal action before she "knew or reasonably should have known" that she was harmed by Sun Life's claim denial. *See id.*

Lastly, we observe that decedent did not initiate a lawsuit to challenge Sun Life's denial of her premium-waiver claim even though she obtained a favorable disability determination from the Social Security Administration prior to expiration of the policy deadline for starting a legal action. Because decedent ceased active work on June 4, 2004, the 15-month deadline for submission of her proof of claim was on or about September 4, 2005. The latest date to commence legal action was three years later, on or about September 4, 2008. On August 21, 2008, an administrative-law judge determined that decedent had been "under a disability, as defined in the Social Security Act, from June 4, 2004 through the date of this decision."

Although the Social Security Administration's disability determination was made shortly before the policy deadline for initiating legal action based on a 15-month proof-

of-claim period, the policy allowed for extension of the proof-of-claim deadline up to an additional 12 months if it was not possible to give proof within the 15-month period, which would in turn extend the deadline for legal action. Decedent's failure to take legal action based on the favorable disability determination by the Social Security Administration undermines Butler's argument that we should hold the policy time limit unreasonable because it did not allow enough time to obtain the information necessary to prove decedent's disability.

Effect of Disability

Butler argues that we should consider that decedent's disability involved her brain function and that "[t]his would have affected adversely [decedent's] ability to take legal action to contest [Sun Life's] denial of waiver of premium." But around the same time that Sun Life denied decedent's claim, decedent applied for and successfully obtained social security disability benefits after being denied benefits at the initial phase. Decedent also obtained disability benefits from the Minnesota Teacher's Retirement Association and Madison National Life Insurance Company. Both entities initially denied her request for benefits, and she successfully challenged their denials of benefits.

Moreover, Butler asserts that "[i]t took four years for a determination to be made that [decedent] was disabled for the purposes of the Social Security Act" and that "[i]f the Administrative Law Judge had not accepted [decedent's] claim, she would have been forced to file further appeals with the Social Security Appeals Council and then with the Federal District Court." Based on decedent's vigilance in obtaining social security

benefits and her purported willingness to pursue that benefits claim in federal court, Butler's argument that decedent's disability adversely affected her ability to take legal action to contest Sun Life's disability determination is unpersuasive.

Equitable Estoppel

Butler argues that this court should also consider that Sun Life materially misrepresented the type of insurance plan under which decedent was insured by referring to it as "part of an ERISA . . . plan" in its letter informing decedent that it had denied her appeal of its denial of her premium-waiver claim. The letter stated that decedent had "the right to bring a civil action under [ERISA] following an adverse determination on review." It is undisputed that the insurance plan was not an ERISA plan.

Butler essentially contends that because appeals from an administrator's decision under ERISA plans are "almost always fruitless" given the deferential standard of review, decedent was discouraged from pursuing an appeal prior to expiration of the time limit. Thus, according to Butler, Sun Life should be equitably estopped from asserting a time-limitation defense. *See L&H*, 403 N.W.2d at 227 (stating that an insurance company may be estopped from asserting an insurance policy time limitation for suit on a claim if it would be "unjust, inequitable, or unconscionable to allow the defense to be interposed" (quotation omitted)).

"Estoppel is an equitable doctrine within the court's discretion and is intended to prevent a party from taking unconscionable advantage of its own wrong by asserting its strict legal rights." *Tackleson v. Abbott-Nw. Hosp., Inc.*, 415 N.W.2d 733, 735 (Minn. App. 1987), *review denied* (Minn. Feb. 12, 1988). To prevail under the doctrine, Butler

must show that Sun Life made representations or inducements upon which decedent reasonably relied that will cause harm if estoppel is not applied. *See id.* Because the district court's ruling that "there is no legal basis to estop [Sun Life]" is a summary-judgment determination, we review the issue de novo.[5]

Butler does not present evidence of detrimental reliance. In fact, he concedes that it is "impossible to prove that [decedent] took no action within the three year limitation period prescribed in the policy . . . because of the representation of the policy as an ERISA Plan." Butler attempts to avoid the failure of his estoppel claim by arguing that because Sun Life misrepresented the nature of the insurance policy, it "did not come into Court with 'clean hands'" and therefore cannot seek equitable relief. *See Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 715 (Minn. 1985) (stating that under the doctrine of unclean hands, "he who seeks equity must do equity, and he who comes into equity must come with clean hands" (quotation omitted)). Butler's reliance on the unclean-hands doctrine is misplaced because Sun Life does not seek equitable relief. Sun Life seeks contractual relief: enforcement of the time limits in its insurance policy. *See Heidbreder v. Carton*, 645 N.W.2d 355, 371 (Minn. 2002) (stating that the "doctrine of

[5] Sun Life argues that decisions regarding equitable estoppel are reviewed for an abuse of discretion. Sun Life relies on a case in which equitable estoppel was determined after a court trial. *See City of North Oaks v. Sarpal*, 797 N.W.2d 18, 23-24 (Minn. 2011) (differentiating between the standard of review that is applied to equitable estoppel claims determined in summary-judgment proceedings (de novo) and after a court trial (abuse of discretion)). The appropriate standard of review is de novo. *See SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 860-61 (Minn. 2011) (stating that although a deferential standard of review is appropriate where the district court balances the equities and decides not to award equitable relief, de novo review is applied when the district court determines, in summary-judgment proceedings, that equitable relief is not available as a matter of law).

'unclean hands' bars a party who acted inequitably from obtaining *equitable* relief" (emphasis added)).

Contract of Adhesion

Butler argues that "the insurance policy involved in this case is a contract of adhesion" because neither he "nor [decedent] had an opportunity to participate in negotiating the terms of the policy." "A contract of adhesion is one drafted unilaterally by the business enterprise and forced upon an unwilling and often unknowing public for services that cannot readily be obtained elsewhere." *Vierkant by Johnson v. AMCO Ins. Co.*, 543 N.W.2d 117, 120 (Minn. App. 1996) (quotation omitted), *review denied* (Minn. Mar. 28, 1996). "Insurance contracts are contracts of adhesion between parties not equally situated." *Id.* Butler contends that "[t]o give a party who drafts a contract of adhesion the benefit of a shortened limitations period, against an unsophisticated consumer, would be unconscionable and inconsistent with the principle that such provisions should be construed strictly against the party invoking them." But the supreme court has upheld shortened time limits in the context of insurance contracts. *See Gendreau v. State Farm Fire Ins. Co. of Bloomington, Ill.*, 206 Minn. 237, 237, 288 N.W. 225, 225 (1939) ("Not being violative of any statute, and the time not unreasonably short, a limitation of one year after loss, fixed by a policy of automobile insurance, for commencing actions thereunder, is valid."). Moreover, we do construe time limits in insurance contracts against the party invoking them. *See Henning*, 383 N.W.2d at 651 (stating that contractual limitation periods "are not generally favored and are strictly construed against the party invoking them").

Stale Evidence

The purpose of a statute of limitations is to prescribe a period within which a right may be enforced and after which a remedy is unavailable for reasons of private justice and public policy. *Bachertz*, 201 Minn. at 176, 275 N.W. at 697. A statute of limitations discourages fraud and endless litigation; it "prevents a party from delaying an action until papers are lost, facts forgotten, or witnesses dead." *Karels v. Am. Family Mut. Ins. Co.*, 371 N.W.2d 617, 619 (Minn. App. 1985), *aff'd*, 381 N.W.2d 441 (Minn. 1986). "A statute of limitation is based on the proposition that it is inequitable for a plaintiff to assert a claim after a reasonable lapse of time, during which the defendant believes no claim exists." *Id.*

Butler argues that "none of the factors [that] militate in favor of cutting off his claims by a shortened limitation period" are present in this case. Butler only discusses one factor, arguing that the evidence here is not stale because decedent's "medical records, the findings of other agencies regarding her disability status, and the testimony of witnesses are all available." That argument loses its force when one considers that decedent is not available for physical examination or cross-examination.

In summary, we are mindful of the need to strictly construe the policy time limitation against Sun Life. *See Henning*, 383 N.W.2d at 651. But none of Butler's arguments supports a finding of unreasonableness. Decedent was aware of her premium-waiver claim and that she had been harmed by Sun Life's denial of the claim. She was aware of the occurrence of the event that triggered the policy deadline for initiation of legal action based on the claim. And decedent obtained the information that Butler

asserts she needed to prove the claim (i.e., the Social Security Administration's disability determination) before expiration of the policy deadline.

If Butler had developed the record regarding decedent's level of functioning leading up to or at the time of the Social Security Administration's disability determination, perhaps there would be genuine issues of material fact regarding decedent's ability to proceed in a timely fashion and the potential tolling of the policy limitation period based on legal incompetency. In which case, we would have a much different set of circumstances in which to assess the reasonableness of the policy. But the case as presented does not support Butler's argument that the policy limitation period is unreasonable because it did not allow the time necessary to prove the existence of decedent's disability. We therefore reject Butler's argument that the policy time limit is unreasonable and unenforceable.

II.

Butler alternatively argues that the policy limitation period did not begin to run until his cause of action accrued and that as a beneficiary his rights under the policy did not accrue until decedent's death. He therefore contends that his lawsuit is timely regardless of any deadline that would have applied to initiation of a legal action by decedent. Neither Butler nor Sun Life cite precedential authority on the issue. Butler relies on *Kucera v. Metro. Life Ins. Co.*, 719 F.2d 678 (3rd Cir. 1983), and Sun Life relies on *Horton v. United States*, 207 F.2d 91 (5th Cir. 1953). The circumstances in *Horton* are analogous.

In *Horton*, the insured filed a claim for waiver of premiums for his life insurance policy based on his disability. 207 F.2d at 92. The claim was approved, but only for a specific period of time. *Id.* The insured did not challenge the time limit on the premium waiver, nor did he assert a new claim to extend the premium waiver. *Id.* at 92, 94. After the insured died, his beneficiary filed an application for waiver of premiums. *Id.* at 92. The application was denied because the policy had lapsed as a result of the insured's nonpayment of premiums following expiration of the approved waiver-of-premium period. *Id.* The beneficiary sued, claiming she was entitled to the proceeds of the policy. *Id*. at 93. The Fifth Circuit concluded that the insured had no remaining rights under the policy and further concluded that "[t]he beneficiary had no more rights than the insured and was not entitled to waiver of premiums or to again raise the question of the insured's alleged continuous total disability, or to recover on the policy which had lapsed for nonpayment of premiums." *Id.* at 94.

The *Horton* decision finds support in the legal treatises. "If a claim is barred by the statute of limitations, other claims intertwined with that claim are also barred, because when one cause of action accrues, the limitation period ordinarily begins to run for all possible dependent or intertwined causes of action." 51 Am. Jur. 2d *Limitation of Actions* § 14 (2011). "A derivative claim is ordinarily time-barred, where the original claim is barred by the statute of limitations, since derivation claims are governed by the

statute of limitations for the source claims."[6] *Id.* "[G]enerally, a claim that is derivative of a claim against another party, which has already become time-barred, is also time-barred." 54 C.J.S. *Limitations of Actions* § 34 (2010).

The reasoning of *Horton* and the treatises is persuasive: a beneficiary seeking relief on a claim that is derivative of the insured's claim has no greater rights than the insured. Thus, the beneficiary's claim is subject to the same time limitations that govern the insured's claim. *Kucera* does not persuade us otherwise. Although *Kucera* essentially holds that a beneficiary's derivative claim is not subject to the same time limitation that governs the insured's claim, the Third Circuit nonetheless recognized that "the beneficiary's contract rights against an insurance company are derivative of the policy owner's rights." 719 F.2d at 681. And the court went on to state that "it may well be that [the insurer] has valid defenses to [the beneficiary's] contract action based upon the [insured's] failure to pay premiums or other conduct," recognizing that a beneficiary cannot prevail on a claim under circumstances in which the insured could not. *Id.* We fail to discern a persuasive reason to limit a beneficiary's right to recover on a derivative claim in all respects except as to timeliness. The concerns underlying the imposition of time limitations on legal actions are not eliminated simply because the right to bring a claim has passed from one party to another.

Butler argues that a rule that "a beneficiary's rights are no greater than those of the named insured, would be nonsensical" and that it is "meaningless to argue that the

[6] Black's Law Dictionary defines a derivative action as "[a] lawsuit arising from an injury to another person, such as a husband's action for loss of consortium arising from an injury to his wife caused by a third person." *Black's Law Dictionary* 509 (9th ed. 2009).

beneficiary's rights are no greater than those of the named insured, when the named insured had no enforceable right." As support, he contends that decedent suffered no damages as a result of Sun Life's wrongful denial of her premium-waiver claim. Next, he reasons that because she suffered no damages, she did not have a cause of action and any lawsuit that she initiated would have been dismissed for failure to state a claim. We disagree. To state a claim for breach of contract, the plaintiff must show (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to her right to demand performance by the defendant, and (3) breach of the contract by defendant. *Briggs Transp. Co. v. Ranzenberger*, 299 Minn. 127, 129, 217 N.W.2d 198, 200 (1974). According to the allegations in Butler's complaint, all of those elements existed prior to decedent's death. Moreover, if decedent's premium-waiver claim was wrongfully denied, she suffered damages: she lost her contractual right to continue the policy in effect without having to pay premiums.

Butler also contends that "[i]t is difficult to fathom what sort of action could have been brought on [decedent's] behalf to contest the disability of premium waiver denial." But we fail to see why decedent could not have sought relief under Minnesota's Uniform Declaratory Judgments Act. *See* Minn. Stat. §§ 555.01-.16 (2012). Moreover, we are not persuaded by Butler's argument that he "is making a totally different claim than [decedent] could have made" and that his "cause of action is separate and distinct from any cause of action that [decedent] may have had." Butler correctly describes his lawsuit as "an action by the beneficiary on the basic life policy to recover death benefits." But Butler's lawsuit entirely depends on the theory that Sun Life wrongfully denied

decedent's premium-waiver claim. Thus, even though Butler's lawsuit is based on his death-benefits claim, its substance is decedent's premium-waiver claim. Because Butler's right to challenge Sun Life's determination of decedent's premium-waiver claim derives from decedent's right to challenge the determination, we apply the reasoning of *Horton* and hold that Butler's right to recover is no greater than decedent's. Thus, Butler cannot initiate a lawsuit that would have been untimely by decedent.

In conclusion, under the particular undisputed facts of this case, the policy time limit on initiation of a legal action challenging the denial of decedent's premium-waiver claim is not unreasonable. Because Butler's right to challenge Sun Life's denial of the premium-waiver claim derives from decedent's rights under the policy, Butler's legal action is subject to the same deadline that would have applied to a suit by decedent. Decedent's right to sue based on the denial of her premium-waiver claim expired, at the earliest, on or about September 4, 2008, and at the latest, on or about September 4, 2009. Because Butler did not initiate his lawsuit challenging the denial of decedent's premium-waiver claim until April 2011, the suit is untimely and the district court did not err by summarily dismissing the suit on that ground. We therefore affirm without addressing Sun Life's alternative arguments in support of summary judgment.

Affirmed.