STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0507

Raymond Oswald, et al.,
Appellants,

vs.

South Central Mutual Insurance Co.,
Respondent.

Filed December 24, 2018
Affirmed
Reilly, Judge

Faribault County District Court
File No. 22-CV-17-627

Randall G. Knutson, Knutson+Casey, PC, Mankato, Minnesota (for appellants)

John J. Neal, Willenbring, Dahl, Wocken & Zimmermann, PLLC, Cold Spring, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Cleary, Chief Judge; and Reilly, Judge.

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

REILLY, Judge

The district court granted respondent's motion to dismiss pursuant to Minn. R. Civ. P. 12.02(e) on the ground that appellants' claims were barred by the insurance policy's one-year suit limitation period. Appellants argue that the district court erred in determining that the one-year period applied, was reasonable, and was not tolled. Additionally,

appellants argue that the district court erred in failing to convert the motion to dismiss to a motion for summary judgment. We affirm.

FACTS

On June 21, 2016, the hog barn of the appellants, Raymond and Patricia Oswald, burned down. An investigation into the cause of the fire revealed it was incendiary, suggesting it was caused by arson. No determination has been made concerning who committed the arson.

The Oswalds were insured under a combination policy by North Star Mutual Insurance Company (North Star) and respondent South Central Mutual Insurance Company (Central). Central provided coverage to the Oswalds for basic perils, broad perils, and limited perils, which included fire losses. Central is a township mutual insurance company operating under Minn. Stat. § 67A.191 (2016). "The legislature has long recognized the distinct nature of a township mutual insurance company, first enacting comprehensive legislation in 1909." *Schneider v. Plainview Farmers Mut. Fire Ins. Co.*, 407 N.W.2d 673, 674 (Minn. 1987). Because of their distinct nature, general Minnesota insurance laws, such as prescribed statutes of limitations, do not apply to township mutual fire insurance policies unless explicitly stated. Minn. Stat. § 67A.25, subd. 2 (2016). Instead, a township mutual insurance company may issue a policy containing its own contractual limitations period. Here, the Oswalds' and Central's policy provided that property claims must be brought within one year after the loss, which applied to Central's fire loss coverage. There was an additional Minnesota Amendatory Endorsement that stated "[w]ith respect to the coverages provided by the Statewide Mutual Company,"

claims must be brought within two years after the loss. This amendatory clause applied only to North Star.

During the investigation into the cause of the fire, the Oswalds attempted to serve a complaint on Central on June 1, 2017, alleging breach of contract, unjust enrichment, and breach of good faith and fair dealing. However, the Oswalds failed to properly serve Central, and they later filed a motion to dismiss their complaint without prejudice. The district court granted the Oswalds' motion. The Oswalds filed an almost identical complaint on September 25, 2017, this time with proper service. In response, Central filed a motion under Minn. R. Civ. P. 12.02(e) seeking dismissal because the action was commenced past the one-year limitation contained within the insurance policy. Approximately two weeks later, the Oswalds filed a motion seeking permission to sell the fire-damaged property. The Oswalds had previously sought permission from Central to sell the land, but Central replied that "[s]elling the property . . . jeopardizes [Central's] rights under the policy." However, Central notified the court that it did not oppose the Oswalds' motion seeking to sell the property, thus the only issue before the district court was the timeliness of the Oswalds' complaint. The same district court judge who dismissed the first matter without prejudice presided at the Minn. R. Civ. P. 12.02(e) motion to dismiss hearing. In a February 2, 2018 order, the district court granted the motion to dismiss. This appeal followed.

D E C I S I O N

I. Statute of Limitations

Township mutual fire insurance companies, such as Central, are "excluded from all provisions of the insurance laws" of Minnesota. Minn. Stat. § 67A.25, subd. 2. Therefore, the two-year suit limitation contained in Minn. Stat. § 65A.01, subd. 3 (2016) pertaining to standard fire insurance policies does not automatically apply. Here, the insurance policy contained a one-year suit limitation period, which the Oswalds argue is unreasonable, ambiguous, and should have been tolled.

a. The one-year suit limitation is reasonable.

This court applies a two-part test to determine the validity of a limitations period within an insurance policy. "The court must first look to see if a specific statute prohibits the use of a different limitation in the particular case. If no such statute exists, the parties are then free to shorten the limitations period as long as the contractual period is not unreasonable in length." *Henning v. Fireman's Fund Am. Life Ins. Co.*, 383 N.W.2d 645, 651 (Minn. 1986) (citations omitted). This court decides on a "case-by-case basis, looking at the particular facts of each case," if the limitation is unreasonable. *Id.*

Here, there is no governing statute that prohibits shortening the limitations period. While the Oswalds argue that Minn. Stat. § 541.05, subd. 1(1) (2016) applies because it governs contracts and prescribes a six-year suit limitation, this statute does not place any prohibition on contractually modifying the limitations period. Because there is no statutory prohibition, we next consider if the one-year limit was reasonable.

The Oswalds argue that the one-year limitation is unreasonable because: (1) changing a six-year time limitation to one year is unreasonable; (2) fires are notoriously difficult to investigate; and (3) the facts of this case are so complicated that a claim for fire loss could not even arise within the time limit.

A one-year limitation is not inherently unreasonable. Various cases have allowed a one-year limitation. *See Gendreau v. State Farm Ins. Co.*, 288 N.W. 225, 226 (Minn. 1939) ("The nature of the insured property and of the risk is such that, it seems almost unnecessary to suggest, the limitation of one year was not unreasonable."); *see also Hayfield Farmers Elevator & Mercantile Co. v. New Amsterdam Cas. Co.*, 282 N.W. 265, 269 (Minn. 1938) (noting that "[n]umerous cases have been determined by this court and courts generally upholding the limitation upon which defendant here relies, i.e., that suit must be brought within one year").

Additionally, while investigating the cause of a fire may be difficult and time consuming, the Oswalds still managed to file a complaint before the one-year deadline. Had the Oswalds properly served Central, they would have commenced a suit regarding their current claims within the one-year limitations period. The Oswalds argue that their first complaint was only filed to obtain a court order to allow them to sell their property. But even this relief was not available in the absence of service. And within the June 1, 2017 complaint, there was no motion for a court order to allow a sale. It was not until October 2017, after the Oswalds served and filed their second complaint, that they also filed a motion for permission to sell their property.

Because there is no statute prohibiting the shortened one-year limitation period and it is not unreasonable in this case, the district court did not err.

b. The terms of the contract are not ambiguous.

The Oswalds argue that the terms of the contract are so ambiguous relating to the limitations period that the one-year limit should not apply. In interpreting an insurance policy, "any ambiguity in the language of the policy must be construed in favor of the insured." *Henning*, 383 N.W.2d at 652. Additionally, "[t]he policy must be construed as a whole, and unambiguous language must be given its plain and ordinary meaning." *Id*.

Here, the Oswalds had a combination policy with Central, a township mutual insurance company, and North Star Mutual Insurance Company, a statewide mutual insurance company. Central provided coverage for basic perils, broad perils, and limited perils, which included fire losses. North Star provided coverage for the perils of windstorm, hail, sinkhole collapse, volcanic action, and all perils under Special Form unless otherwise noted. The Oswalds first argue that the policy was ambiguous because it continuously referred to the two insurance companies as "we" or "us" instead of including a clear delineation between the two companies. However, the policy stated that "[t]he agreement, Declarations, General Policy Provisions, and all 'terms' appl[ied] to both companies listed on the declarations unless otherwise designated." Because the terms of the policy applied to both companies unless otherwise designated, it was not ambiguous for the policy to use "we" and "us" when describing the obligations of the companies.

The Oswalds additionally argue that the policy did not provide a clear and unambiguous limitations period. However, the one-year limitation was clearly stated

within the policy conditions. While there was a Minnesota Amendatory Endorsement that provided a two-year limit with respect to the coverage provided by the statewide mutual company, Northstar, it made no mention of changes to Central's policy. Instead, the amendatory endorsement clearly stated it only applied to the statewide mutual company, Northstar. The contract was thus unambiguous and the one-year limitation applied to claims arising from fire loss coverage.

c. The limitations period was not tolled.

The Oswalds argue that the one-year limitation should be tolled due to either fraudulent concealment or equitable principles. The interpretation of an insurance policy and thus the interpretation of the one-year limitation is reviewed de novo. *Johnson v. Mut. Serv. Cas. Ins. Co.*, 732 N.W.2d 340, 343-44 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007).

"To establish fraudulent concealment, a plaintiff must prove there was an affirmative act or statement which concealed a potential cause of action, that the statement was known to be false or was made in reckless disregard of its truth or falsity, and that the concealment could not have been discovered by reasonable diligence." *Haberle v. Buchwald*, 480 N.W.2d 351, 357 (Minn. App. 1992), *review denied* (Minn. Aug. 4, 1992). The Oswalds argue that Central concealed whether or not they would pay out the insurance claim, but do not identify an affirmative statement by Central that would fulfill the first or second prongs of fraudulent concealment. Because the Oswalds fail to identify an affirmative statement which concealed a claim, the one-year limitation was not tolled due to fraudulent concealment.

Equitable tolling is inappropriate when there are no circumstances beyond the plaintiffs' control that prevent service of a complaint within the limitations period. *Ochs v. Streater, Inc.*, 568 N.W.2d 858, 860 (Minn. App. 1997). Here, the Oswalds attempted to commence a suit within the one-year limit, but failed for reasons within their control. Thus, equitable tolling is inappropriate. If the Oswalds were attempting to argue equitable estoppel instead of equitable tolling, they would have the burden of proving: "(1) that promises or inducements were made; (2) that it reasonably relied upon the promises; and (3) that it will be harmed if estoppel is not applied." *Hyrda-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990). These elements are very similar to fraudulent concealment, and the Oswalds failed to identify any promise or inducement made by Central. Therefore, neither equitable tolling nor equitable estoppel apply.

II. Conversion of Rule 12 Motion

The Oswalds argue that the district court wrongfully considered matters outside the pleadings when it granted Central's Minn. R. Civ. P. 12.02(e) motion. Therefore, the Oswalds argue, the motion should have been treated as one for summary judgment. "The interpretation of the Minnesota Rules of Civil Procedure is a question of law that we review de novo." *Gams v. Houghton*, 884 N.W.2d 611, 616 (Minn. 2016).

In a Minn. R. Civ. P. 12.02(e) motion, the district court reviews the four corners of the complaint and not matters outside the pleadings when it makes its determination. *See Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008) (noting that the court may only consider facts alleged in the complaint). Documents "embraced by the complaint" are not matters outside the pleadings. *Greer v. Professional Fiduciary, Inc.*,

792 N.W.2d 120, 126-27 (Minn. App. 2011). If on a rule 12.02 motion for judgment on the pleadings, the district court considers "matters outside the pleadings" that are "not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Minn. R. Civ. P. 12.03. Here, the Oswalds object to the district court referring back to the previous complaint that had been dismissed due to inadequate service and argue this is a matter outside the pleadings.

In discussing the previous complaint in its order, the district court stated:

> On May 22, 2017, Plaintiffs attempted to serve a summons and complaint but the service was ineffective causing Plaintiff to request the Court on September 7, 2017 to dismiss suit without prejudice. The Court granted Plaintiff's request dismissing the matter without prejudice on September 20, 2017[.] . . . Plaintiff believed that the limitations period in the insurance policy was two years from the time of loss.

Additionally, when discussing the Oswalds' fraudulent concealment claim, the district court stated:

> The fact that Plaintiffs attempted to initiate suit within the limitations period but were unsuccessful does not automatically toll the statute of limitations. However, '[a] statute of limitations may be tolled if the cause of action is fraudulently concealed by the defendant.' *Haberle v. Buchwald*, 480 N.W.2d 351, 357 (Minn. 1992). . . .
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> . . . No evidence was presented to the Court indicating that Defendant has made dishonest statements regarding whether Defendant would cover the loss and by the fact that one-year limitations period was clearly stated in the policy, which could have been discovered using reasonable diligence. In addition, Plaintiffs had sufficient information that they first attempted to initiate suit in May 2017, well within the one-year

> limitation period, but were unsuccessful due to Plaintiffs' own error.

The district court is permitted "to consider documents that are embraced by the complaint, including pleadings and orders in an underlying proceeding." *Greer*, 792 N.W.2d at 126-27. Further, none of these statements by the district court were dispositive of the motion to dismiss. Instead, the insurance policy, which no party disputes is fully embraced by the complaint, was dispositive because it clearly stated that the limitations period was one year. Therefore, the district court did not consider matters outside the pleadings and did not err in granting Central's rule 12.02(e) motion to dismiss.

Affirmed.