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ADVANCE SHEET HEADNOTE
April 8, 2024

2024 CO 19

No. 22SC787, *Kinslow v. Mohammadi* – Statute of Limitations – Limitations for Persons Under Disability – Tolling – When a Statute Begins to Run.

The supreme court holds that a suit for damages sustained from a motor vehicle accident over four years ago is untimely under the circumstances. The court holds that the plain language of section 13-81-103(1)(c), C.R.S. (2023), gives a plaintiff who turns eighteen within the three-year limitation period for a motor vehicle accident a statute of limitations that is the longer of (1) the full three years normally accorded an accident victim, or (2) two years from their eighteenth birthday. While Daniaala Mohammadi was sixteen at the time of the accident, because her suit was filed over four years after the accident and over two years after she turned eighteen, it was untimely.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 19

Supreme Court Case No. 22SC787
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 21CA109

Petitioner:

Mark Kinslow,

v.

Respondent:

Daniala Mohammadi.

Judgment Reversed

en banc

April 8, 2024

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JUSTICE HART delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE HART delivered the Opinion of the Court.

¶1 On November 6, 2015, Mark Kinslow hit sixteen-year-old Daniaala Mohammadi with his car while she was riding her bicycle. Mohammadi sued Kinslow on December 30, 2019—more than two years, but less than three years, after she turned eighteen. Kinslow moved to dismiss the suit, arguing that the statute of limitations had expired two years after Mohammadi’s eighteenth birthday. Mohammadi responded that the usual three-year statute of limitations for motor vehicle accidents had not started to run until her eighteenth birthday. This case asks us to resolve who was right: Did the statute of limitations reset to three years when Mohammadi turned eighteen or does it give plaintiffs in her position two years from their eighteenth birthday to bring a suit?

¶2 We conclude that the plain language of section 13-81-103(1)(c), C.R.S. (2023), gives a plaintiff who turns eighteen within the three-year limitation period for a motor vehicle accident a statute of limitations that is the longer of (1) the full three years normally accorded an accident victim, or (2) two years from their eighteenth birthday. For Mohammadi, this meant that she was required to bring her claim by January 1, 2019—two years after she turned eighteen. Because her suit was filed after that date, it was untimely. We accordingly reverse and remand with instructions to dismiss.

I. Facts and Procedural History

¶3 Kinslow hit Mohammadi with his car while she was riding her bike on November 6, 2015. Mohammadi turned eighteen on January 1, 2017. She did not sue Kinslow until December 30, 2019 – over four years after the accident and over two years after she turned eighteen.

¶4 Kinslow moved to dismiss the lawsuit as untimely under section 13-81-103(1)(c). He argued that, because Mohammadi failed to bring her action either within the applicable three-year limitations period (by November 6, 2018), or within the two-year period after she turned eighteen (by January 1, 2019), her suit was untimely.

¶5 Mohammadi agreed that section 13-81-103(1)(c) applied but disagreed with Kinslow's reading of the statute. Mohammadi argued that she had the benefit of the full three-year statute of limitations period starting at her eighteenth birthday, meaning she had until January 1, 2020, to file suit. She grounded her argument in language from opinions of this court describing the statute of limitations as "tolled" for a minor until they reached the age of majority. *See, e.g., Rudnicki v. Bianco*, 2021 CO 80, ¶ 16, 501 P.3d 776, 780.

¶6 The trial court granted Kinslow's motion to dismiss, concluding that Mohammadi was required to bring her claim either within three years of the incident, or within two years after she turned eighteen. Thus, while Mohammadi

was a minor at the time of the accident, her lawsuit was untimely because she did not file within two years after turning eighteen.

¶7 A split division of the court of appeals reversed. *Mohammadi v. Kinslow*, 2022 COA 103, ¶ 31, 521 P.3d 1057, 1063. The majority acknowledged that the plain language of section 13-81-103(1)(c) supported the trial court's ruling, but nonetheless agreed with Mohammadi and concluded that it was bound by decisions of this court providing that statutes of limitations are "tolled" for claims by a minor plaintiff until the minor turns eighteen. *Id.* at ¶4, 521 P.3d at 1059 (citing *Rudnicki*, ¶ 16, 501 P.3d at 780).

¶8 Judge Welling dissented, distinguishing this case from the circumstances presented in our precedents that purported to toll the statute of limitations. *Id.* at ¶ 33, 521 P.3d at 1064 (Welling, J., dissenting). Specifically, the dissent noted that those cases involved a disability, such as being a minor, that continued throughout the otherwise applicable limitations period, so the limitations period had expired by the time the disability was removed. *Id.* at ¶ 41, 521 P.3d at 1065. In this case, by contrast, Mohammadi reached the age of majority within the ordinarily applicable three-year statute of limitations. *Id.* at ¶ 46, 521 P.3d at 1065-66. Thus, the dissent noted, the plain language of section 13-81-103(1)(c) applied, and Mohammadi filed her suit out of time. *Id.*

¶9 Kinslow petitioned for, and this court granted, certiorari review.¹

II. Analysis

¶10 After setting out the applicable standard of review, we proceed to consider whether the plain language of section 13-81-103(1) “tolls” the statute of limitations for an injured minor who turns eighteen before that statute would ordinarily expire. We conclude that it does not. If a minor turns eighteen during the ordinary limitations period applicable to their claim, section 13-81-103(1)(c) requires them to bring the claim either within the ordinary limitations period or within two years of their eighteenth birthday, whichever is later. We therefore reverse the division and remand for dismissal of the case.

A. Standard of Review

¶11 Whether Mohammadi complied with the statute of limitations turns on our interpretation of section 13-81-103(1)(c). When interpreting statutory language, we aim to effectuate the legislature’s intent, looking first to the language of the statute to ascertain its meaning. *Arvada Vill. Gardens LP v. Garate*, 2023 CO 24, ¶ 9,

¹ We granted certiorari to review the following issue:

[REFRAMED] Whether section 13-81-103(1)(c), C.R.S. (2022), tolls the otherwise applicable statute of limitations for a minor’s bodily injury claim until the minor’s eighteenth birthday, even if the minor turns eighteen before the otherwise applicable statute of limitations expires.

529 P.3d 105, 107. If the language is clear and unambiguous, we apply it as written.

Delta Air Lines, Inc. v. Scholle, 2021 CO 20, ¶ 13, 484 P.3d 695, 699.

B. Section 13-81-103(1) Does Not Toll the Statute of Limitations Under These Circumstances

¶12 In general, a tort action arising out of the operation of a motor vehicle must be brought “within three years after the cause of action accrues.” § 13-80-101(1)(n), C.R.S. (2023). However, when a plaintiff is unable to sue because they are a minor (or under some other legal disability), the statute of limitations may be extended. *See* § 13-81-103. Specifically, the limitations period may be extended if a legal representative is appointed, if the person under disability dies, or if the disability is terminated. § 13-81-103(1)(a)-(c).

¶13 Under subsection (1)(a), if a legal representative is appointed for a person under a disability “at any time after the right [to sue] accrues and prior to the termination of such disability,” that representative shall be allowed “no[] less than two years after his appointment . . . to take action on behalf of such person under disability, even though the two-year period expires after the expiration of the period fixed by the applicable statute of limitations.” § 13-81-103(1)(a).² This provision specifically anticipates that a right to sue may accrue before the

² Section 13-81-101(1) defines “[a]pplicable statute of limitations” to mean “any statute of limitations which would apply in a similar case to a person not a person under disability.”

termination of the disability—that is, before a minor turns eighteen. Mohammadi’s assertion that the statute of limitations is tolled for a minor until they turn eighteen would render the statutory language meaningless. Under the plain language of this subsection, a plaintiff may have a cause of action whose statute of limitation is running from the date that claim accrues, but a legal representative will have at least two years to pursue the claim even if the ordinary statute would have expired earlier.

¶14 Subsection (1)(b) provides that, if the right to sue survives the death of the person under a disability, then the executor or administrator of a decedent may take action on the claim within one year after the death if the death occurs before the termination of the disability. This subsection does not address when a claim accrues or when the statute of limitations might otherwise expire. It simply gives one year following the death of a person under a disability for an executor or administrator to pursue a claim.

¶15 And, finally, when

the disability of any person is terminated before the expiration of the period of limitation . . . and no legal representative has been appointed . . . such person shall be allowed to take action *within the period fixed by the applicable statute of limitations or within two years after the removal of the disability, whichever period expires later.*

§ 13-81-103(1)(c) (emphasis added). This provision makes clear that a disability can terminate “before the expiration of the period of limitation,” which is only

possible if the period of limitation can begin to run before the termination of the disability.

¶16 Mohammadi argues otherwise, claiming that section 13-81-103(1) is ambiguous as to whether the statute of limitations begins to run on the date of claim accrual or on the date that the disability is removed. And she turns to precedent from this court—also relied upon by the division majority—to argue that we have interpreted the statute to “toll” the statute of limitations until the disability is removed—in this case, until she turned eighteen. In noting the “tension” between the language of section 13-81-103(1) and our prior suggestions that the section “tolled” the statute of limitations, the division concluded that it was bound by our prior rules and that the question “must be resolved by [the Colorado Supreme Court] or by the legislature.” *Mohammadi*, ¶ 26, 521 P.3d at 1063.

¶17 The tension referenced by the division is real. On several occasions, we have referred to section 13-81-103(1) as tolling the statute of limitations for a person under disability. *See, e.g., In re Estate of Daigle*, 634 P.2d 71, 75 (Colo. 1981) (The statute “creates what is the equivalent of a statutory toll to applicable statutes of limitations for persons under disability, such as minors, at the time a right of action accrues.”); *Southard ex rel. Southard v. Miles*, 714 P.2d 891, 897 (Colo. 1986) (The statute “is intended to toll the applicable statute of limitations during the period

of disability.”). The two most relevant cases – both involving minors – are *Elgin v. Bartlett*, 994 P.2d 411 (Colo. 1999), *overruled on other grounds by Rudnicki*, ¶ 48, 501 P.3d at 786 and *Rudnicki*.

¶18 *Elgin* involved a claim brought by the parents of nine-year-old Heather Bartlett for medical negligence. 994 P.2d at 413. The alleged negligent care occurred in 1990, and Bartlett’s parents initially filed suit in 1992, though they were not appointed by the court as her legal representatives. *Id.* In 1996, Bartlett’s parents sought to amend their suit to add a defendant. *Id.* The trial court granted summary judgment to the defendant, holding that the statute of limitations had expired. *Id.* We observed that the trial court was correct as to any derivative claims of the parents, but we also concluded that, because the parents were not court-appointed legal representatives, their actions could not affect Bartlett’s legal rights. *Id.* at 414–15. And we explained that “[t]he statute of limitations begins to run when the minor reaches the age of eighteen or when, if it does, a court appoints a legal representative for the minor.” *Id.* at 414.

¶19 In *Rudnicki*, we similarly stated that a “‘person under disability’, and for whom the court has not appointed a legal representative,” is protected by the statute of limitations’ tolling provisions. ¶16, 501 P.3d at 780. Alexander Rudnicki was injured on October 5, 2005, when a vacuum extractor was used to assist his birth. *Id.* at ¶ 4, 501 P.3d at 778. His parents filed suit against his medical

providers in 2014. *Id.* at ¶ 5, 501 P.3d at 778. The district court found that the parents' claims were time-barred but that claims they brought on the child's behalf could proceed. *Id.* Again, we concluded that the legal claims of then nine-year-old Rudnicki had been "tolled" and would only begin to run when he was appointed a legal representative or when he reached the age of eighteen. *Id.* at ¶ 16, 501 P.3d at 780.

¶20 Significantly, in both *Rudnicki* and *Elgin*, none of the circumstances specifically identified in section 13-81-103(1) pertained. No legal representative had been appointed, the minor had not died, and they had not reached the age of majority before the expiration of the statute of limitations that would regularly apply to the medical negligence claims in each case.

¶21 The use of the term "tolled" in these cases has obviously caused confusion, and we want to end that confusion here. The most these cases stand for is the idea that, when none of the specific provisions of section 13-81-103(1) are in play, a minor's statute of limitations will not begin to run until they reach the age of majority. In other words, for a person under a disability who faces none of the circumstances the legislature has specifically contemplated, the statute of limitations will restart when the disability is removed. This interpretation of legislative silence is consistent with "the General Assembly's policy choice" that

the statute should “operate literally for the protection of the minor.” *Elgin*, 994 P.2d at 415.

¶22 We will not, however, recognize this policy choice as a mechanism for avoiding the plain language of the statute. And the statute is explicit about the effect of certain circumstances. When a legal representative is appointed for the minor (or person under some other disability), subsection (1)(a) is clear that the statute of limitations can be extended to ensure that the legal representative has at least two years to file a suit. § 13-81-103(1)(a). When a minor (or person under other disability) dies, an executor or administrator has one year from that death to pursue any available claim. § 13-81-103(1)(b). And, when a minor turns eighteen before the regular statute of limitations has run, “such person shall be allowed to take action within the period fixed by the applicable statute of limitations or within two years after the removal of the disability, whichever period expires later.” § 13-81-103(1)(c).

¶23 For Mohammadi, who did not have a legal representative appointed but who turned eighteen during the limitation period, this means that when her disability terminated, she could file her claim within the ordinary three-year limitations period or within two years after she turned eighteen, whichever was later. *See id.* Because she did not bring her claim within either of those periods, her suit was untimely.

III. Conclusion

¶24 Mohammadi's suit is untimely. Under section 13-81-103(1)(c), she was required to bring suit within two years of her eighteenth birthday, which was the later of the two times specified in the statute. Yet, she did not do so. Accordingly, we reverse the court of appeals' decision and remand for dismissal of the case.