STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2114
A19-0155

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

vs.

Walker Jamar Company,
Defendant (A18-2114),
Respondent (A19-0155),

Honeywell International, Inc.,
Respondent (A18-2114),
Defendant (A19-0155).

Filed September 16, 2019
Affirmed
Rodenberg, Judge

Ramsey County District Court
File No. 62-CV-18-1147

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

David C. Thompson (pro hac vice), David C. Thompson, P.C., Grand Forks, North Dakota (for appellant)

Richard J. Leighton, Daryl T. Fuchihara, Johnson, Killen & Seiler, P.A., Duluth, Minnesota (for respondent Walker Jamar Company)

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

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

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

RODENBERG, Judge

These consolidated appeals are taken from judgments dismissing appellant's asbestos-related claims against respondents. Appellant Deborah Palmer challenges the summary-judgment dismissal of her claims against respondent Honeywell International, Inc. (Honeywell), arguing that the district court erred in determining that appellant's claims were barred by the six-year period of limitations set forth in Minn. Stat. § 541.05, subd. 1(5) (2018). Appellant also challenges the dismissal of her claims against respondent Walker Jamar Company (Walker Jamar) on grounds of insufficient service of process, arguing that the district court erred by (1) determining that, under published caselaw and Minn. Stat. § 302A.781 (2018), appellant was required to bring her claim within two years of Walker Jamar's 1985 corporate dissolution; and (2) concluding that a 2007 amendment to Minn. Stat. § 302A.781 does not apply to revive appellant's claim. We affirm.

FACTS

Decedent's Exposure and Medical History

Gary Palmer (decedent) died of malignant mesothelioma on March 1, 2015. Appellant, decedent's surviving spouse and trustee for his heirs and next-of-kin, alleges that decedent became ill and died from exposure to asbestos from his father's work clothes while his father was working with asbestos and from his own direct exposure to "asbestos dust from brake and clutch repair activities."

Decedent's father, Woodbury Palmer, was an "asbestos worker," a term used to refer to a tradesman who worked with and installed insulation products containing asbestos. In a 2013 video deposition, decedent testified that, while he was living in his parent's home, Woodbury "always worked for Walker-Jamar or A.W. Kuettel" as an asbestos worker. Decedent also testified that he was repeatedly exposed to dust from Woodbury's work clothes.

Decedent's second claimed source of exposure was dust from asbestos-containing brake products made by Bendix. For four months in 1974, decedent worked as a janitor for an Oldsmobile dealer, Bob Lewis Olds Inc. Decedent was responsible for sweeping and washing the floors and throwing away brake pad and clutch debris. Decedent testified that, as a dealer, Bob Lewis Olds would only "install . . . AC Delco, which is a GM product, into their vehicles that they work[ed] on."

In 2009, fluid built up in decedent's right lung. It had to be drained. Decedent testified that he was treated by a pulmonologist who ordered CT scans. Those scans revealed calcium deposits and "fibers in the pleural lining around the lung," leading the pulmonologist to opine, "'That's about . . . what I would expect from a family member of an asbestos worker.'" Decedent had periodic CT scans thereafter for a year.

In fall 2011, decedent again had a buildup of fluid in his lungs. This required surgery, and some of the tissue was biopsied. On the morning of December 24, 2011, hospital staff informed decedent that he had malignant mesothelioma, and decedent later testified that he thought asbestos "was the only reason [he] would have contracted that disease." Appellant sought out additional medical treatment and was told by his doctors in

January 2012 that mesothelioma is an asbestos-related disease.[1] Decedent's right lung was removed in 2012. A 2013 reoccurrence of mesothelioma ultimately caused his death on March 1, 2015. There is no dispute that mesothelioma caused by asbestos exposure led to his death.

Honeywell International

Respondent Honeywell is the successor-in-interest of The Bendix Company (Bendix). Bendix produced brake products containing asbestos. The parties agree that "for the purposes of this litigation, Honeywell is legally responsible for the asbestos-containing brake products sold by Bendix."

Walker Jamar Company

The historical background of respondent Walker Jamar comes from our published opinion, *Podvin v. Jamar Co.*, 655 N.W.2d 645 (Minn. App. 2003), on which the district court also relied.

Walker Jamar was a Minnesota company that sold, among other things, insulation products containing asbestos. *Id.* at 646-47. In 1981, Walker Jamar reorganized into "the Jamar Company (Jamar I), to take over most of the business of Walker Jamar and a holding company, Norwalk, Inc., to hold the stock of both Walker Jamar and Jamar I." *Id.* at 647. Walker Jamar has steadfastly maintained that reorganization was "to insulate the construction activities of the company from potential liabilities stemming from the

[1] Appellant concedes in her brief that decedent "knew that he had been diagnosed with the disease of mesothelioma and that the cancer generally had been caused by asbestos exposure as of late January of 2012."

distribution of" a nonasbestos-related product. *Id.* Jamar I was incorporated in early 1982, "assumed all assets and liabilities of Walker Jamar except those associated with" the nonasbestos product, and "continued all other aspects of the original business." *Id.* In 1983, an attempt was made to sell the company. *Id.* When those efforts were unsuccessful, it was instead "decided to dissolve the companies at the end of the fiscal year on January 31, 1985." *Id.* However, Jamar I was able to find a buyer before that date and "sold its assets, including its name, to API, Inc." and agreed to indemnify API against any liability not specifically assumed by API in the purchase agreement. *Id.* Following the sale,

> Jamar I merged into the parent company, Norwalk. A few months later, Norwalk merged into Walker Jamar. . . . On July 17, 1985, Walker Jamar filed its notice of intent to dissolve. On August 12, 1985, Walker Jamar filed its articles of dissolution in accordance with Minn. Stat. § 302A.733 (1984); the same day, the secretary of state issued Walker Jamar's certificate of dissolution.

Id.

Procedural History

In 2013, appellant and decedent sued 177 companies in North Dakota, for "asbestos-related product liability." Decedent was twice deposed in that case, and the depositions are part of the record in this appeal. Following decedent's death in 2015, appellant initiated a wrongful-death action in Cass County, North Dakota. Honeywell was not named as a defendant in either of the North Dakota cases, but Walker Jamar was named as a defendant in both of them. Walker Jamar was eventually dismissed from the North Dakota wrongful-death action on forum non conveniens grounds, "the North Dakota court having accepted the parties' stipulation that the applicable Minnesota statute of limitations had not run."

On February 23, 2018, appellant sued Honeywell and Walker Jamar in Minnesota, alleging that decedent's mesothelioma and death resulted from respondents' negligence and asbestos-related product liability. Later in 2018, Walker Jamar moved to dismiss appellant's claims for insufficient service of process, arguing that *Podvin* "directly addressed the validity of this method of service" and that a 2007 amendment to Minn. Stat. § 302A.781 could not apply retroactively to Walker Jamar. 2007 Minn. Laws ch. 54, art. 5, § 6. In August 2018, Honeywell also moved for summary judgment, arguing that it was entitled to summary judgment because appellant's complaint was commenced outside the period of limitations and, in the alternative, appellant "failed to demonstrate that [decedent] worked with or around any Bendix product." The two dispositive motions were heard together.

The district court granted Honeywell summary judgment in October 2018. The district court agreed that Honeywell is entitled to summary judgment on its period-of-limitations argument and, in the alternative, it also concluded that appellant made "at most a speculative claim of exposure to Honeywell[']s asbestos-containing products."

In November 2018, the district court granted Walker Jamar's motion to dismiss for insufficient service of process. The district court concluded that "[u]nless *Podvin* is somehow inapplicable, dismissal of the action for insufficient service of process is required" and that the 2007 amendment to section 302A.781 does not apply retroactively to appellant's claims. The district court also noted that appellant attempted to avoid dismissal by alleging "fraudulent dissolution" by Walker Jamar, but noted that her "abbreviated fraud argument cites only the availability of a fraud defense without laying

out the applicable elements of fraud and without explaining how her alleged evidence of fraud establishes a prima facie case of fraud sufficient to avoid summary judgment."

Appellant appealed the judgments resulting from both orders, and we consolidated the two appeals.

D E C I S I O N

I. The district court properly dismissed appellant's claims against Honeywell by summary judgment.

Appellant challenges the district court's grant of summary judgment in favor of Honeywell based on the expiration of the period of limitations. Appellant contends that the district court erred in determining when this period began to run and when appellant's claims accrued.[2]

Summary judgment is proper when a moving party "shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Appellate courts review a grant of summary judgment "de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). In reviewing a grant of summary judgment, appellate courts "view the evidence in the light most favorable to the nonmoving party . . .

[2] Appellant makes a related argument that the district court erred in construing decedent's diagnosis of calcium deposits in 2009 and mesothelioma in late 2011 and early 2012 as a "single disease" and not regarding them as two separate diseases. However, the district court determined that appellant's claims fell outside the period of limitations using either 2009 or 2011 as the relevant disease-onset date.

and resolve all doubts and factual inferences against the moving part[y]." *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015).

Under Minnesota law, actions "for any other injury to the person or rights of another" shall generally be "commenced within six years." *See* Minn. Stat. § 541.05, subd. 1(5). Actions "based on the strict liability of the defendant and arising from the manufacture, sale, use or consumption of a product" must be commenced within four years. *Id.*, subd. 2. (2018). Expiration of the statutory period of limitations is an affirmative defense. Minn. R. Civ. P. 8.03. "[A] party asserting a statute of limitation . . . as an affirmative defense bears the burden of proving all elements of the affirmative defense." *State Farm Fire & Cas. v. Aquila Inc.*, 718 N.W.2d 879, 885 (Minn. 2006). "Courts have no power to extend or modify statutory limitation periods." *Johnson v. Winthrop Labs. Div. of Sterling Drug, Inc.*, 190 N.W.2d 77, 81 (Minn. 1971).

An "action[] can only be commenced . . . after the cause of action accrues." Minn. Stat. § 541.01 (2018). "A cause of action accrues when all of the elements of the action have occurred, such that the cause of action could be brought and would survive a motion to dismiss for failure to state a claim." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011). "An action for negligence cannot be maintained, nor does the statute of limitations begin to run, until damage has resulted from the alleged negligence." *Dalton v. Dow Chem. Co.*, 158 N.W.2d 580, 584 (Minn. 1968); *see Fink v. Cold Spring Granite Co.*, 115 N.W.2d 22, 30 (Minn. 1962) (applying a similar reasoning to silicosis, an "insidious disease" that "develops over a long period of time").

The Minnesota Supreme Court has 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." *DeCosse v. Armstrong Cork Co.*, 319 N.W.2d 45, 52 (Minn. 1982) (emphasis added); *see Karjala v. Johns-Manville Prods. Corp.*, 523 F.2d 155, 160 (8th Cir. 1975). Ignorance of a cause of action does not toll the period of limitations. *Johnson*, 190 N.W.2d at 81.

Here, the district court considered appellant's arguments regarding the period of limitations and rejected them, concluding that there existed no genuine issue of material fact. The district court noted that appellant was "[t]aking the controlling cases out of context," in order to argue that "the statute of limitations does not commence until [decedent] actually knew that he had an expert-supported liability claim against Honeywell regardless of when [decedent] learned that he sustained a bodily injury caused by asbestos exposure from one or more potential defendants." The district court determined, based on an undisputed record, that decedent was unquestionably aware by no later than January 2012 both that he had mesothelioma and that the disease had been caused by asbestos exposure. Consequently, because this lawsuit was not commenced until February 2018, the district court concluded that Honeywell was entitled to summary judgment under the longest potential statute of limitations—six years.

Appellant cites to federal caselaw to argue that the period of limitations should not have begun to run until decedent was able to specifically identify Bendix brakepads as the product that caused his mesothelioma. Appellant also appears to cite *Frederick v.*

Wallerich, 907 N.W.2d 167 (Minn. 2018) for this proposition. As the district court correctly noted, "*Frederick* is not a chemical or product-exposure case"; neither is it a product-liability case; *Frederick* does not impose any new requirements on the period of limitations in such cases. *See Frederick*, 907 N.W.2d at 173. Instead, the supreme court in *Frederick* examined the elements of legal malpractice to determine when some damage resulted from an attorney's negligent acts over a period of several years. *Id.* at 178-80.

Appellant's argument, which otherwise relies wholly on foreign caselaw, is at odds with Minnesota Supreme Court precedent, which has rejected the defendant-specific knowledge requirement.

In *Dalton*, a newspaper worker was, over the course of his employment, exposed to multiple chemicals including a cleaning solvent, vythene. 158 N.W.2d at 581. In 1957, the worker began experiencing severe symptoms and ultimately his lower extremities became paralyzed. *Id.* at 581. Before August 1957, the worker suspected vythene exposure might be related to his ailments. *Id.* In late 1957 and early 1958, doctors wrote letters opining that the worker's paralysis resulted from his exposure to methyl chloroform and trichlorethylene. *Id.* at 582. In January 1964, almost six-and-a-half years after the worker was first admitted to a hospital for his symptoms, the worker brought a claim for negligence and breach of warranty against vythene's manufacturer. That claim was dismissed for being barred by the period of limitations. *Id.* at 582-83.

The supreme court affirmed the dismissal, concluding that "[a]n action for negligence cannot be maintained, nor does the statute of limitations begin to run, until damage has resulted from the alleged negligence." *Id.* at 584. The supreme court noted

that, by summer 1958, the worker had suffered his injury and chemical exposure had been discussed as a possible cause of his paralysis. *Id.* at 585. The supreme court noted that its approach was similar to prior workers' compensation cases involving occupational diseases such as silicosis. *Id.* at 583-84. The worker in *Dalton* argued that "he must *positively know of, not suspect*, *the causal relationship before the action he commenced accrues*." *Id.* at 585 (emphasis added). The supreme court rejected that argument, stating that "[t]he subjective determination of the accrual of his cause of action contended for by [appellant] is obviously without support in our decisions." *Id.*

In *DeCosse*, the supreme court examined the period of limitations in asbestos-related wrongful-death actions. 319 N.W.2d at 47. In relevant part, the supreme court 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.

Here, decedent was diagnosed with mesothelioma by December 24, 2011. He then knew both that he had mesothelioma and that the disease is linked to asbestos exposure. Appellant concedes that decedent was aware of the causal link between mesothelioma and asbestos by January 2012. Here, the cause of action accrued, at the latest, as of January 2012. Under *Dalton* and *DeCosse*, decedent was only required to "positively know of . . . the causal relationship" between asbestos and his disease before the action would be considered to have accrued. *Dalton*, 158 N.W.2d at 585; *see DeCosse*, 319 N.W.2d at 52. That he may not then have specifically identified Honeywell as a legally responsible party

does not change the analysis of when the cause of action accrued. *See DeCosse*, 319 N.W.2d at 52. Under Minn. Stat. § 541.05, subds. 1 and 2, appellant had four years to bring claims involving strict product liability and six years to bring her other claims. Both of those statutory periods of limitations had expired when appellant commenced the action in February 2018, more than six years after the cause of action had accrued. We therefore affirm the district court's grant of summary judgment for Honeywell.[3]

II. The district court did not err by applying *Podvin v. Jamar Company* to dismiss appellant's claims against Walker Jamar for insufficient service of process.

Appellant challenges the district court's dismissal of the claims against Walker Jamar for insufficient service of process. Appellant contends that her action is not barred by Minn. Stat. § 302A.781 due to the "'continuing tort' nature of latent asbestos-caused diseases, the 2003 Court of Appeals decision in *Podvin*, and Minnesota trial and appellate courts' recognition" that asbestos claims are "incurred" within the meaning of section 302A.781, subdivision 3, at the time a corporation is dissolved.

"Sufficiency of process is a jurisdictional question." *Podvin*, 655 N.W.2d at 648. "A party may immediately appeal, as a matter of right, from the denial of a motion to dismiss for lack of jurisdiction," which is a legal question we review de novo. *Id.* A dissolved corporation may be served under section 5.25, which provides that:

> (a) Process . . . may be served on a dissolved . . . business entity that was governed by chapter 302A, 303, 317A, 321,

[3] The district court alternatively concluded that summary judgment was appropriate because appellant had demonstrated only a "speculative" claim of exposure to asbestos dust from Bendix products. We decline to address this alternative basis for summary judgment as unnecessary.

> 322C, or 323A as provided in this subdivision. The court shall determine if service is proper.
>
> (b) If a business entity has voluntarily dissolved . . . , service must be made according to subdivision 3 or 4, *so long as claims are not barred under the provisions of the chapter that governed the business entity.*

Minn. Stat. § 5.25, subd. 5(a), (b) (2018) (emphasis added).

In *Podvin*, we addressed asbestos-related claims against Walker Jamar under the 1984 version of Minn. Stat. § 302A.781, subd. 3. 655 N.W.2d at 649-52. Minnesota's 1984 corporate dissolution statute provided that, if a "creditor or claimant" had no notice of a corporation's dissolution, that claimant must "initiate legal, administrative, or arbitration proceedings concerning the claim within two years after the date of filing the notice of intent to dissolve." Minn. Stat. § 302A.729, subd. 2 (1984). Subdivision 1 of section 302A.781, in relevant part, provided that a creditor or claimant "who does not file a claim or pursue a remedy . . . within the time provided in section[] 302A.729 . . . [is] forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section." Minn. Stat. § 302A.781, subd. 1 (1984). Subdivision 3 provided that:

> All debts, obligations, and *liabilities incurred during dissolution proceedings* shall be paid by the corporation before the distribution of assets. . . . A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers, directors, and shareholders of the corporation before the expiration of the applicable statute of limitations.

Minn. Stat. § 302A.781, subd. 3 (1984).

In 2007, the legislature amended section 302A.781 to include subdivision 5, providing that, "[i]n addition to the claims in subdivision 4, all other statutory and common law rights of persons who may bring claims of injury to a person, including death, are not affected by dissolution under this chapter." 2007 Minn. Laws ch. 54, art. 5, § 6, at 263 (codified at Minn. Stat. § 302A.781, subd. 5 (2018)).

In *Podvin*, the plaintiff asserted asbestos-related claims against Walker Jamar and Jamar II in 2001, and the two companies "moved to dismiss the lawsuit for insufficiency of process, claiming that, as dissolved corporations, they could no longer be served." 655 N.W.2d at 647. The district court denied the motion, and we addressed subdivision 3's applicability. *Id.* at 647-49. First, we concluded that the two-year period of limitations in section 302A.781 applied, based in part upon Minnesota Supreme Court precedent strictly applying the "time limit for asserting claims against dissolved corporations." *Id.* at 649-50. Next, we held that the phrase "'*liabilities incurred' plainly applies to a debt or obligation that the obligor was legally obligated to pay at the time of the dissolution proceedings, rather than to an unmatured tort or contract claim*." *Id.* at 650 (emphasis added). Our analysis noted the legislature's intent that the goal of every dissolution is to "end the corporate existence as quickly and neatly as possible" and to avoid "lingering liability for claims arising after dissolution that could conceivably extend corporate accountability in perpetuity." *Id.* at 651.

Here, the district court correctly observed that appellant "makes the same arguments that were rejected in *Podvin*." Appellant did not file suit against Walker Jamar until more than 32 years after the company's voluntary dissolution. The district court applied *Podvin*

and concluded that "service of process was ineffective because Walker Jamar's liability to [appellant] was not incurred during dissolution" and could not arise until decedent's cause of action accrued. The district court reasoned that decedent's "cause of action against Walker Jamar could not have accrued before January 2009." The district court concluded that:

> Walker Jamar could not have incurred a liability to [decedent] or his family during dissolution proceedings [in 1985] as a matter of law. As such, the two-year time-barring provision of the corporate dissolution statute controls because none of the statutory exceptions are applicable. Minnesota Statutes sections 302A.729 and 302A.781, when read in conjunction with *Podvin*, preclude [appellant's] claim. Unless *Podvin* is somehow inapplicable, dismissal of the action for insufficient service of process is required.

Appellant cites to an unpublished case, *Evert v. ACandS, Inc.*, Nos. CX-94-1067, C1-94-1068, C3-94-1069, 1994 WL 654532 at *2 (Minn. App. Nov. 22, 1994), *review denied* (Minn. Jan. 25, 1995), in support of her argument. Appellant's reliance on this unpublished case is misplaced. In *Evert*, three plaintiffs, seeking to sue Walker Jamar, served the individual, Walker Jamar Jr., in his capacity as the former president of Walker Jamar and former chairman of The Jamar Company, in 1993. *Id.* at *1. Walker Jamar "moved to dismiss the complaint, claiming insufficiency of service of process," which the district court denied. *Id.* The district court reasoned that lawsuits against dissolved corporations were "clearly contemplated" and "someone must be served." *Id.* We noted that "[w]hile the law contemplated suit against a dissolved corporation and named who could defend against a suit after dissolution, the law did not specifically address *how* a claimant could effect service of process." *Id.* at *2. Ultimately, we affirmed the district

court's order, because Jamar Jr. "was the person who could reasonably be expected to apprise the corporation of the service and the pendency of the action" given his former positions, his beforehand involvement in asbestos litigation, and his previous acceptance of service "for asbestos-related claims on behalf of the dissolved corporations." *Id.* at *3-4 (quotation omitted). However, we expressly declined to address any statute-of-limitations question, because no such issue was before us on appeal. *Id.* at *3.

Contrary to appellant's assertion that *Evert* is "directly analogous" to this one, *Evert* is not controlling for several reasons. Foremost, *Evert* is not a published opinion and is therefore not binding precedent; *Podvin* is published and therefore binding. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993). *Podvin* is also directly on point and specifically held that "[t]he definition of 'liabilities incurred' under Minn. Stat. § 302A.781, subd. 3 (1984), encompassed only debts or claims that a corporation was legally obligated to pay at the time of the dissolution process, rather than unmatured tort and contract claims." *Podvin*, 655 N.W.2d at 652. *Podvin* also noted *Evert*'s existence but found it unpersuasive because the opinion "did not specify *how* a claimant could effect service of process." *Id.* at 651. As the district court noted, "[b]ecause *Podvin* is binding, published precedent, any abrogation of the [appellate] court's express and unambiguous holding based upon an unpublished decision is inappropriate and obviously constitutes reversible error." And we, like the district court, are bound by "our own published opinions." *Jackson v. Options Residential, Inc.*, 896 N.W.2d 549, 553 (Minn. App. 2017). Finally, *Evert* is distinguishable in that *Evert*'s plaintiffs served Jamar Jr. in his capacity as a former officer, as opposed to attempting service through the Minnesota Secretary of

State's office. *Evert*, 1994 WL 654532, at *1. Accordingly, *Evert* only addressed the available legal methods of service on a dissolved corporation. *Id.* at *1-3. In contrast, *Podvin* addressed whether, considering the two-year liability bar, any form of service is effective. 655 N.W.2d at 648-51. *Podvin* concluded any such service of process after the statutory two-year limitation period is ineffective. *Id.* at 652.

Appellant also appears to argue that the nature of asbestos injuries makes *Podvin* inapplicable. The district court also addressed appellant's attempt "to distinguish *Podvin* by suggesting that case did not consider the continuous nature of asbestos exposure and the long latency period between exposure and disease contraction." We agree with the district court that appellant's argument fails because (1) "the same argument was fully briefed and rejected in *Podvin*," (2) this argument is "inconsistent with when tort liability is incurred in an asbestos case," (3) "even if liability could have been 'incurred during dissolution' through mere exposure without a resulting injury," decedent was last exposed 11 years before Walker Jamar's dissolution, and (4) appellant only cites "district court and unpublished appellate decisions decided prior to *Podvin* and which were either expressly or impliedly rejected by *Podvin*." Appellant does not articulate any reasons based in Minnesota law that provide a rationale for overruling *Podvin*.[4]

[4] Appellant also argues that *Podvin* is inapplicable because Walker Jamar's insurance companies' continuing to provide coverage related to asbestos litigation and injuries is "concrete and even conclusive" acknowledgement of Walker Jamar's liability for asbestos-related injuries. We find no such "acknowledgement" by the insurance companies in this record. Moreover, Walker Jamar's insurance status is irrelevant to liability. *See* Minn. R. Evid. 411; *Kissoondath v. U.S. Fire Ins. Co.*, 620 N.W.2d 909, 918-19 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001).

Appellant also contends that her claims against Walker Jamar are not barred by Minn. Stat. § 302A.781 because of a 2007 amendment to the statute. In 2007, the Minnesota legislature amended section 302A.781 to add subdivision 5. 2007 Minn. Laws ch. 54, art. 5, § 6, at 263. In its entirety, the amendment adding subdivision 5 reads:

> Sec. 6. Minnesota Statutes 2006, section 302A.781, is amended by adding a subdivision to read:
>
> Subd. 5. **Other claims preserved.** In addition to the claims in subdivision 4, all other statutory and common law rights of persons who may bring claims of injury to a person, including death, are not affected by dissolution under this chapter.
>
> **EFFECTIVE DATE.** This section is effective July 1, 2007.

Id.

Minnesota law provides that "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2018); *see Thompson Plumbing Co. v. McGlynn Companies*, 486 N.W.2d 781, 785 (Minn. App. 1992) ("Newly enacted laws or amendments are presumed to apply prospectively unless there is an unambiguous legislative expression to the contrary."). Use of the word "retroactive" is "a clear manifestation by the legislature that a statute is intended to be applied retroactively." *U.S. Home Corp. v. Zimmerman Stucco & Plaster, Inc.*, 749 N.W.2d 98, 101 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008). The legislature may also indicate its intent for a retroactive effect through other language such as through the phrase "commenced on or after" a specific date. *Gomon v. Northland Family Physicians, Ltd.*,

645 N.W.2d 413, 417-20 (Minn. 2002). Alternatively, an act may apply retroactively if it clarifies rather than modifies existing law. *Thompson Plumbing Co.*, 486 N.W.2d at 785.

Here, the district court concluded that "the 2007 addition of subdivision 5 to section 302A.781 cannot retroactively resurrect a claim against Walker Jamar that was barred thirty years ago." The district court noted that the language in the amendment was "without additional language expressly applying the amendment to claims brought on or after the effective date." The district court also rejected appellant's argument that the amendment "was a clarification in response to *Podvin*—an intent to return to the 'status quo' of pre-*Podvin* interpretation of section 302A.781." The district court correctly noted that there was no "status quo" before *Podvin* because the case raised an issue of first impression. It further observed that an amendment added more than four years after *Podvin* was decided cannot be considered a clarification.

The 2007 amendment contains no indication of legislative intent that it should apply retroactively. In *U.S. Home Corp.*, we determined that the legislature's intent for retroactive effect was evidenced by use of the word "retroactive." 749 N.W.2d at 101. Similarly, in *Gomon*, the Minnesota Supreme Court concluded that the phrase "commenced on or after" a certain date "expresses the legislature's intent to revive certain claims." 645 N.W.2d at 417. In contrast, the 2007 amendment at issue here contains no indication of legislative intent to revive claims long barred. The amendment states that it is "effective July 1, 2007." 2007 Minn. Laws ch. 54, art. 5, § 6, at 263. It contains no statement of legislative intent to apply retroactively. *See id.* Applying subdivision 5 retroactively in this circumstance would be an exercise of our will and not that of the legislature. *See* Minn.

Stat. § 645.16 (2018) (providing that, when the words of a statute are unambiguous, "the letter of the law shall not be disregarded under the pretext of pursuing the spirit").

Appellant also contends that subdivision 5 is merely "a clarifying additional subdivision" to overturn *Podvin*. Appellant's argument fails. *Podvin* was decided in early 2003. 655 N.W.2d at 645. The amendment was enacted in 2007. As the district court noted, appellate courts have previously determined legislative amendments as clarifications when there is a "prompt reaction to a court's construction of a statute" with which the legislature disagrees.

In *Hoben v. City of Minneapolis*, an amendment was determined to be a clarification because the legislature amended the statute at the next session of the legislature to override the supreme court's interpretation of a provision of the no-fault benefit statute. 324 N.W.2d 161, 162 (Minn. 1982). Similarly, in *Carlson v. Lilyerd*, we concluded an earlier amendment to the statute at issue was a clarification based upon "an immediate legislative response" to a court's earlier interpretation of that statute. 449 N.W.2d 185, 191 (Minn. App. 1989), *review denied* (Minn. Mar. 8, 1990). As the *Carlson* court explained, the earlier interpretation of the statute at issue was initially "decided February 23, 1989" but on "June 2, 1989 the governor signed the bill" amending the statute to repudiate that interpretation. *Id.* Appellant cites no caselaw in support of her argument that four years is "an immediate legislative response," and we are aware of none.

The language of the amendment itself also contains no language suggesting a "clarifying" legislative intent. 2007 Minn. Laws. ch. 54, art. 5, § 6, at 263. The 2007 amendment states that it is an amendment ("is amended by"). *Id.* In *Carlson*, we examined

previous cases where legislative acts were determined to be clarifications in part because the preambles to the acts "explicitly labeled the amendments as 'clarifying acts.'" 449 N.W.2d at 191. Such language is not required, but the absence of any indication of a legislative intent to clarify is telling. *See id.*

In sum, we affirm the district court's grant of summary judgment against Honeywell because appellant's claims against Honeywell are barred by the statute of limitations. We also affirm the district court's dismissal of appellant's claims against Walker Jamar for insufficient service of process under section 302A.781 and the published caselaw under that section.

Affirmed.