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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1310**

John W. McColley, et al.,
Appellants,

vs.

American States Preferred Insurance Company,
Respondent.

**Filed May 23, 2011
Affirmed
Ross, Judge**

St. Louis County District Court
File No. 69DU-CV-09-3132

David L. Weidt, Minneapolis, Minnesota (for appellants)

Shayne M. Hamann, Elizabeth A. Jenson Prouty, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and Ross, Judge.

UNPUBLISHED OPINION

ROSS, Judge

The district court dismissed John and Sally McColley's 2009 lawsuit against their insurance company for benefits from a 1998 car accident because they filed it after the six-year statute-of-limitations deadline. We affirm.

FACTS

John and Sally McColley were injured in a car accident in December 1998. Both incurred medical expenses and lost wages and submitted no-fault-benefits claims to their insurer, American States Preferred Insurance Company (ASPIC), which paid them \$19,574.25 in benefits.

Six months after the accident, an ASPIC-paid doctor independently examined Sally McColley and ASPIC sent her a letter stating that “all no-Fault benefits otherwise payable for [the losses related to the car accident] will be terminated as of [June 15, 1999].” Two years later, on March 12, 2001, ASPIC sent John McColley a similar letter, stating, “[W]e are terminating [your] benefits as of July 20, 2000.” In April 2008, the McColleys’ attorney submitted claims to ASPIC for the allegedly remaining no-fault benefits. ASPIC denied the claims and the McColleys sued in September 2009.

The district court dismissed the suit, relying on the six-year statute of limitations in Minnesota Statutes section 541.05, subdivision 1(1) (2008) and on *Entzion v. Illinois Farmers Insurance Company*, 675 N.W.2d 925 (Minn. App. 2004). The McColleys appeal.

DECISION

On appeal from summary judgment, we determine whether there are any genuine issues of material fact and whether the district court erroneously applied the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review the district court’s application of a statute to undisputed facts de novo. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998). In doing so, we view the evidence in the light most

favorable to the party against whom judgment was entered. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

The McColleys first argue that the district court erred by applying the six-year statute of limitations. In *Entzion*, we held that the six-year limitations period in Minnesota Statutes section 541.05, subdivision 1(1), applies to an insured's actions for no-fault benefits under the insured's policy. 675 N.W.2d at 929. That holding controls here. To the extent the McColleys attempt to distinguish this case from *Entzion* by alleging that their action is not for breach of contract, they do so unconvincingly; the complaint specifically seeks damages due under the insurance policy. *See Thommes v. Milwaukee Ins. Co.*, 641 N.W.2d 877, 879 (Minn. 2002) (stating that insurance policies are contracts).

The McColleys also argue that the district court erred by finding that their claims accrued in 1999 (for Sally) and 2001 (for John) when they received letters from ASPIC indicating that it would no longer pay their claims. In *Entzion* we held that an action for breach of contract in a no-fault benefits case accrues "once the insurer has denied benefits." 675 N.W.2d at 929. The McColleys contend that ASPIC's letters were not "denials," technically, because they were sent before specific claims were made and failed to comply with the notice-of-rejection requirements of the No-Fault Act. *See* Minn. Stat. § 65B.54, subd. 5 (2010) (requiring "prompt written notice of the rejection, specifying the reason").

The argument is far from convincing. *Entzion* applies to the denial of future benefits, not just to those already claimed. 675 N.W.2d at 929 (holding that cause of

action accrues at the time insurer discontinued benefits). The notion that the running of the limitations period does not commence until after an insurer complies with statutory notice-of-rejection requirements would invite absurd results. For example, under the McColleys' theory, if an insurer expresses its decision to deny a claim for coverage simply by ignoring the claim altogether, and it then confirms its denial by a clear oral statement made during a telephone discussion with the claimant, the limitations period would *never* begin. And if their argument is correct, the McColleys' own claims still have not accrued today and could have been summarily dismissed for lack of ripeness.

The McColleys argue finally that the reasonable-expectations doctrine should save their time-barred claims. This is so, they contend, because they personally expected that their claims would not be barred. The reasonable-expectations doctrine allows courts to find insurance coverage when the reasonable expectations of the insured differ from the literal provisions of the policy. *Atwater Creamery Co. v. W. Nat'l Mut. Ins. Co.*, 366 N.W.2d 271, 278–79 (Minn. 1985). The doctrine places the burden on insurance companies to clearly communicate their policies to their customers. *Id.* at 278. The doctrine certainly does not apply to invalidate the statute of limitations.

Affirmed.