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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0995**

Gregg Schmaedeke, et al.,
Appellants,

vs.

All Service Plumbing, LLC,
Respondent.

**Filed April 8, 2019
Reversed and remanded
Jesson, Judge**

St. Louis County District Court
File No. 69DU-CV-17-2864

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Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

JESSON, Judge

The central issue before us is whether appellants Greg and Tracy Schmaedeke's
negligence action for water damage to their building is time-barred under the two-year
statute of limitations in Minnesota Statutes section 541.051, subdivision 1(a) (2016), which

covers claims for damages arising from the conditions of improvements to real property. Because we conclude it is not time-barred, we reverse and remand.

FACTS

Appellants Greg and Tracy Schmaedeke contracted with respondent All Service Plumbing, LLC to replace a boiler in their Duluth rental property. The boiler is part of the heating system of the house, which includes pipes and radiators. In November 2010, All Service Plumbing worked on replacing the boiler. After doing so, an All Service Plumbing employee began to refill the system with water. But the employee failed to close the “bleeder valves” on all of the radiators. The radiators were original to the building. Due to this failure to cap the radiators, water poured out and flooded the property, damaging the building.

Six years later, the Schmaedekees commenced a negligence lawsuit against All Service Plumbing. All Service Plumbing filed a motion for summary judgment, arguing that the boiler replacement constituted an improvement to real property and therefore the Schmaedekees’ claim was time-barred by the two-year statute of limitations found in Minnesota Statutes section 541.051, subdivision 1(a) (2016).¹ Conversely, the Schmaedekees argued that the six-year statute of limitations applied because the negligence

¹ Minnesota Statutes section 541.051, subdivision 1(a) was amended by the legislature in 2018. See Minn. Laws ch. 116, § 1 (modifying when the statute of limitations begins to run). Because the amendment “applies to causes of action accruing on or after” May 9, 2018, *id.*, and the Schmaedekees’ complaint was dismissed by the district court as being barred by the statute of limitations before that date, we review the district court’s decision under the former statute.

arose from the failure to close the radiator bleeder valves, which were not an “improvement to real property.”

The district court concluded that the failure to cap the radiator valves was part of the work on the improvement to real property. As a result, the court held the case was barred by the two-year statute of limitations. This appeal follows.

D E C I S I O N

The Schmaedekes argue that the district court erred in determining that All Service Plumbing’s act of refilling their radiators with water—and failure to close the valves in that process—arose from an improvement to real property, which subjects their claim to a two-year statute of limitations.² The parties agree that no material facts are in dispute. And they agree that the replacement of the boiler itself was an improvement to real property. But the district court, adopting the position of All Service Plumbing, held that the new boiler was part of a system which included the preexisting radiators and that, taken together, this system constituted an improvement to real property. We review this decision, which addresses the construction and applicability of a statute of limitations, *de novo*. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998).

The statute limiting claims on improvements to real property provides in relevant part:

Except where fraud is involved, no action by any person in contract, tort, or otherwise to recover damages for any injury

² Negligence claims are generally subject to a six-year statute of limitations period. See Minn. Stat. § 541.05, subd. 1 (2018); *see also D.M.S. v. Barber*, 645 N.W.2d 383, 390 (Minn. 2002) (stating “most negligence actions” are subject to a six-year statute of limitations period).

to property, real or personal, or for bodily injury or wrongful death, *arising out of the defective and unsafe condition of an improvement to real property*, shall be brought against any person performing . . . construction of the improvement to real property. . . more than two years after discovery of the injury, nor in any event shall such a cause of action accrue more than ten years after substantial completion of the construction.

Minn. Stat. § 541.051, subd. 1(a) (emphasis added).³

Under this statute, the two-year limitations period applies to claims: (1) of damages to real property; (2) arising out of the defective and unsafe condition; (3) of an improvement to real property. *Id.*; *Brandt v. Hallwood Mgmt. Co.*, 560 N.W.2d 396, 399 (Minn. App. 1997), *review denied* (Minn. June 11, 1997). All Service Plumbing has the burden of establishing that this statute of limitations applies. *State Farm Fire & Cas. v. Aquila, Inc.*, 718 N.W.2d 879, 885 (Minn. 2006). And if these elements are satisfied, and the claim was brought more than two years after discovery of the injury, then the claim is time-barred. Minn. Stat. § 541.051, subd. 1(a). The question before us is whether the final element is met: did the negligence in not capping the radiators arise from an improvement to real property?

³ Minnesota courts have concluded that a variety of improvements to real property fall under Minnesota Statutes section 541.051, subdivision 1(a). *See Allianz Ins. Co. v. PM Servs. of Eden Prairie, Inc.*, 691 N.W.2d 79, 84 (Minn. App. 2005) (water-purification systems); *Red Wing Motel Inv'rs v. Red Wing Fire Dep't*, 552 N.W.2d 295, 297 (Minn. App. 1996) (sprinkler system), *review denied* (Minn. Oct. 29, 1996); *Patton v. Yarrington*, 472 N.W.2d 157, 159-60 (Minn. App. 1991) (smoke detector), *review denied* (Minn. Aug. 29, 1991); *Citizens Sec. Mut. Ins. Co. of Red Wing v. Gen. Elec. Corp.*, 394 N.W.2d 167, 170 (Minn. App. 1986) (light fixtures and ballasts), *review denied* (Minn. Nov. 26, 1986).

The Minnesota Supreme Court defines an improvement to real property as “[a] permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.” *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 451 (Minn. 1988) (quotation omitted). We use a common-sense approach to this determination of whether something is an “improvement to real property.” *Siewart v. N. States Power Co.*, 793 N.W.2d 272, 286 (Minn. 2011).

In making this common-sense evaluation, we are guided by *Brandt*. In *Brandt*, a carpenter was injured when he came into contact with an energized electric wire that was left over from demolition work which was performed in anticipation of remodeling work. 560 N.W.2d at 398. This court was presented with the issue of whether the subcontractor’s negligent failure to de-energize the electrical wire constituted a defective and unsafe condition of an improvement to real property. *Id.* at 402. The electrical subcontractor argued that the demolition work it performed was part of a “continuous remodeling process” that was part of an improvement to real property. *Id.* at 399. We disagreed. There was no evidence that the demolition work “constructed, built, or added anything new.” *Id.* at 400 (quotation marks omitted). And we noted that the electrical wire the injured carpenter came in contact with was “apparently the same conduit that existed in the building prior to [the] demolition work.” *Id.* As a result, we concluded that the preliminary

property demolition work was not part of the later remodeling which was an improvement to real property.⁴ *Id.* at 400-01.

Here, like the electrical conduit in *Brandt*, the radiators and the bleeder valves were original to the building. They were not “a permanent *addition to* or betterment of real property.” *Sartori*, 432 N.W.2d at 451. As in *Brandt* and *Wiita*, the Schmaedekes’ complaint appears to focus on the plumber’s individual conduct in failing to close the bleeder valves, which is only tangentially related to the installation of the improvement to real property. That improvement is the boiler itself.

But All Service Plumbing asserts that because the boiler was plumbed into the heating system (which included the radiators) the radiators were part of the improvement. And that anything required to successfully install a boiler, such as filling the system with water, would fall within the improvement.⁵ We disagree. Just as demolition work performed in *anticipation* of construction of an improvement to real property is not covered

⁴ The *Brandt* decision relied upon *Wiita v. Potlatch Corp.*, 492 N.W.2d 270 (Minn App. 1992), which provides further guidance. In *Wiita*, two people suffered from injuries at a construction site when cement blocks being moved by a crane fell on them. 492 N.W.2d at 270. The blocks were being used to construct a fire wall. *Id.* The appellant asserted that his injuries arose out of the negligent operation of the crane operator rather than the condition of the wall, which they conceded was an improvement to real property. *Id.* at 271. This court concluded, in part, that the injury did not arise from a defective and unsafe condition in the improvement to real property (i.e., fire wall). *Id.* at 272. Instead, we concluded that the appellant’s injury arose from the negligent operation of the crane. *Id.* As a result, the two-year statute of limitations did not apply. *Id.*

⁵ During oral argument, in response to this court’s questioning, All Service Plumbing asserted that turning the power off to install the boiler or opening and closing the windows, if required, would fall within the scope of the installation of the boiler.

by the two-year statute of limitations, neither is ancillary work *subsequent* to construction of the improvement. *Brandt*, 560 N.W.2d at 402.

All Service Plumbing further relies on the fact that the “scope of work” for the boiler installation included filling of radiators with water, to support its position. And it cites to *Allianz* to support its position. But a contract for work does not define what constitutes an improvement to real property—Minnesota Statutes section 541.051 provides the definition. And while in *Allianz*, this court determined that a water-purification system that was “plumbed into and thus [was] integrated into the building’s water system and made the building more useful because the water was purified” was considered an improvement to real property, in *Allianz*, the actual improvement (the water-purification system) broke, causing the water damage. 691 N.W.2d at 84. Here, the boiler worked properly.

Because All Service Plumbing did not meet its burden of proving that the damage to the Schmaedekes’ real property arose out of an improvement to the property, we conclude that the district court erred in determining that the two-year statute of limitations applied here.⁶ See Minn. Stat. § 541.051, subd. 1(a). Therefore, we reverse and remand.

Reversed and remanded.

⁶ Because we conclude that the damage to the Schmaedekes’ rental house did not arise out of an improvement to real property, we do not reach the issue of whether the damage arose out of a defective and unsafe condition. Nor do we reach the Schmaedekes’ argument that the two-year statute of limitations does not apply because the furnace would be considered “machinery installed upon real property” pursuant to Minnesota Statutes section 541.051, subdivision 1(e) (2018). See *Great N. Ins. Co. v. Honeywell Int’l Inc.*, 911 N.W.2d 510 (Minn. 2018) (concluding that a heat-recovery ventilator containing the motor manufacturer’s motors in a home’s HVAC system was “machinery” and thus not barred under Minn. Stat. § 541.051, subd. 1(a)).