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STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1652

Ingrid Jorgensen, et al.,
Respondents,

vs.

Aaron Jorgensen,
Appellant.

Filed August 7, 2023
Affirmed in part, reversed in part, and remanded
Ross, Judge

Washington County District Court
File No. 82-CV-19-5840

Mark G. Ohnstad, DeWitt LLP, Minneapolis, Minnesota (for respondents)

Robert A. McLeod, O. Joseph Balthazor Jr., M. Bridget Boyle, Philip R. Schenkenberg, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Aaron Jorgensen unduly influenced his cognitively declining parents to sign documents in order to undermine their estate plan and procure for himself a substantial part of their wealth, which they had arranged in their wills and trusts to be divided evenly among Aaron and his two siblings. Aaron's siblings sued him in this civil action about seven years after their father died and two years after their mother died. The district court found that "Aaron breached his fiduciary duties as attorney-in-fact, trustee, personal representative, and trusted son." It entered judgment against Aaron totaling nearly $1.8 million, including damages and prejudgment interest. Aaron challenges that decision on appeal, contending that he cannot be liable under a probate theory and his siblings lack standing to sue him as trustee, attorney-in-fact, or in probate because neither he nor they were appointed personal representative, and contending that his siblings failed to invoke the district court's *in personam* jurisdiction necessary to prevail against him in his capacity as trustee. He argues alternatively that recovery for most of the damages is barred by the applicable statute of limitations and that, in any event, the district court erroneously awarded prejudgment interest from the time Aaron misappropriated the funds rather than from the time the siblings commenced the suit. We hold that Aaron waived his jurisdictional challenge, that the siblings had standing to sue as trust beneficiaries, and that the siblings sued within the operable statute-of-limitations deadline. But we also hold that the district court erred in calculating prejudgment interest. We therefore affirm in part and reverse in part, and we remand for the district court to recalculate interest.

FACTS

Jorgen and Jennie Jorgensen created trusts in June 1996 intending to divide their wealth evenly among their three children, appellant Aaron Jorgensen and respondents Ingrid Jorgensen and Jason Jorgensen. Jorgen died in November 2012 and Jennie in January 2017. By the time of Jennie's death, the combined value of the property in her estate would have totaled approximately $3 million, divided equally (with limited exceptions) among the three children. But because of decisions Jorgen and Jennie made bearing on their assets between June 2012 and December 2016, Ingrid and Jason received only $370,899 and $337,207, respectively, while Aaron received about $1.7 million, comprised of real property, benefits he garnered through his manipulation during his parents' lifetimes, and his share of the trust assets. Jorgen and Jennie had signed power-of-attorney authorizations and other documents that altered their estate plans substantially in Aaron's favor, based on Aaron's directions to them at moments when their physical and mental health were substantially diminished.

The most impactful components of Aaron's financial manipulation can be described simply. Aaron was trustee of his parents' trusts. He influenced his parents to take out personal loans on his behalf that were collateralized by stock held in the trust accounts (the hypothecations). Rather than repay the loans himself after Jorgen and Jennie died, he directed repayment using the trust's hypothecated stock. He then divided the trust property among himself, Ingrid, and Jason. Ingrid and Jason served Aaron with a civil complaint in October 2019 alleging that Aaron engaged in improper self-dealing. They claimed that he breached fiduciary duties he owed them as beneficiaries of Jorgen's and Jennie's trusts and that when he served as the parents' attorney-in-fact and they lacked mental capacity, he had unduly influenced them to authorize transactions benefiting himself.

Aaron filed his answer as a trust matter based on his characterization of his siblings' claims as asserting a trust cause-of-action. His answer asserted an affirmative defense that his siblings had failed to follow the procedural requirements of the Minnesota Trust Code, Minnesota Statutes sections 501C.0101 to 501C.1304 (2022). The siblings also filed the complaint, but as a civil matter. Two files had therefore been opened on the same complaint, a circumstance the parties resolved at a hearing. Ingrid and Jason explained their preference to proceed with the case as a civil matter, emphasizing that the allegations did not sound only in trust because they also involved claims of breach of fiduciary duty as a personal representative and as a person acting with power of attorney. The parties agreed that the case would proceed as a civil action, stipulating to the dismissal of the trust case without prejudice. The district court then held a bench trial and made extensive findings of fact in an October 2021 order, which we now outline.

Jorgen and Jennie Jorgensen were eligible to purchase nonpublic stock options through Aaron's employment at UPS. They amassed a substantial quantity, making up most of their $3 million estate. Over the years, they drafted and modified their wills and trusts, and Jorgen kept extensive notes at each iteration. The estate documents eventually established that Jorgen and Jennie would serve as co-trustees of their respective trusts and that, if either is unable to serve, the other could serve as trustee alone. The relevant iteration of the trusts provides that Aaron, Ingrid, and Jason would share equally as beneficiaries after Jorgen and Jennie died. When Jorgen and Jennie signed their "Third Amendment and Restatement" of their respective trusts in 2007, they simultaneously transferred "all securities, bank accounts, money market funds, real estate, vehicles, and personal property" to their trusts. At that time, Jorgen's attorney estimated that the value of their assets totaled $3 million.

Jorgen's and Jennie's health began to decline in late 2010, when they were aged 86 and 87, respectively, and Aaron began manipulating their estate plan. By April 2012, Jorgen was exhibiting symptoms of dementia. Aaron would later claim in court that in June 2012 Jorgen told him that he and Jennie wanted to cover the costs of Aaron's children's college educations, which Aaron and his wife had funded using loans. Aaron typed a letter from Jorgen and Jennie to their bank authorizing the bank to change their hypothecation account to a line-of-credit account. Jorgen and Jennie purportedly signed the letter. Jorgen was so physically diminished at the time that, within six days after the letter was executed, he was hospitalized—too weak to care for himself. The next day he suffered a stroke. He was delirious, suicidal, and exhibited signs of his war-related Posttraumatic Stress Disorder, and he experienced repeated seizures. Jennie also showed signs of decline at about the same time. She started speaking excessively to her children about bargain-hunting. She moved into an assisted-living facility in July 2012.

With Jorgen hospitalized and Jennie in assisted living, Aaron began orchestrating a scheme to redirect trust assets to benefit himself. He influenced them both to sign power-of-attorney forms empowering him to make financial decisions for them. Aaron used one form, executed in July 2012, to make gifts to himself and his family from trust funds. Jorgen and Jennie on July 24, 2012, signed a form which had been completed in Aaron's handwriting, directing a hypothecation on their stock for $400,895 for the payment of Aaron's children's college loans. The next day, Aaron had Jennie sign a form granting Aaron power of attorney permitting him to make gifts to himself. And one day after that, Jorgen and Jennie signed a form authorizing checks to be written on their trust accounts. Aaron told Jason that Jason had to borrow $200,000 on the parents' stock for Jason's home, with Jason believing that this money was a loan from the parents to be repaid using his share of the inheritance. Then on August 4, Aaron had Jorgen and Jennie sign another form authorizing a $181,501 loan with the trust's UPS stock as collateral for "Home Improvement." On August 5, he had Jorgen and Jennie sign a document authorizing their bank to transfer money from the trust to pay the creditor of the college loans.

Jorgen then signed a "Fourth Amendment and Complete Restatement" of his trust instrument. Jennie signed a similar document. Both also signed wills nominating Aaron to serve as the personal representative, and the trust instruments made Aaron co-trustee. The trusts distributed the family home and property that Jennie owned in Connecticut to Aaron. The trusts also divided trust assets into marital and family shares upon the settlor's death, with the marital share to be distributed to the surviving spouse. The family shares were to be divided equally among Aaron, Ingrid, and Jason. Within days after Aaron became trustee, the bank approved multiple hypothecations, including one for $400,895. The bank also issued checks to pay off the school loans that Aaron and his wife had incurred for their children.

Jorgen died in November 2012, and the family share of his trust was distributed to Aaron, Ingrid, and Jason. Aaron continued his self-enrichment after Jorgen's death, making use of Jennie's trust property from 2012 until her death in January 2017.

Aaron led the others involved to believe that he would pay off the debt accrued from the hypothecations out of his one-third share of the inheritance given that he was the one who had benefitted from the loans. Jason testified that he and Aaron were to pay back the funds they received from the hypothecation loans out of their respective one-third shares. Jason's wife Nancy also understood this to be the arrangement, and she recalled Aaron telling Jason that he would "reimburse the hypothecations" and then divide the stock between the three siblings equally, which she understood to mean that the hypothecation-based loans would be repaid by the parties who received the funds. The parents' estate-planning attorney believed that Aaron and his parents agreed that the hypothecated loans would be repaid out of Aaron's share of the inheritance. And Aaron told the parents' investment banker in January 2013 that this was the plan, stating:

> Bottom-line, per my Dad's trust, the UPS shares are to be split between my brother Jason, my sister Ingrid and myself. As Executor my job is to pay off the hypo and then convert the remaining shares into these accounts. My brother and sister will get the larger amount of shares since my dad placed the hypo on item that were from my share and that will be paid off. Pretty simple.

Ingrid testified that she did not learn until after Jennie's death that Aaron did not intend to pay the trusts' hypothecated loans back out of his share. She explained that she asked Aaron about her inheritance, and he informed her that Jorgen wanted to pay his grandchildren's \$600,000 worth of school loans. He also stated that Jason was gifted \$200,000 through stock hypothecations for his house. He explained that the siblings would receive \$300,000 each in inheritance. Jason, like Ingrid, seemingly also learned that Aaron did not intend to reimburse the hypothecated loans back out of his share around the time of Jennie's death when Aaron told him that he would not need to pay back the \$200,000 hypothecated loan he took out for his house and that all of the funds were gifts. Consistent with the understanding that Aaron was to pay back the funds, neither Aaron nor his parents ever paid gift taxes reflecting that the funds Aaron received were gifts.

Aaron did not repay the hypothecated loans backed by his parents' stocks until after Jennie died, and he did not do so out of his own share of the inheritance. Instead, Aaron as trustee sold shares from his parents' trusts to pay off the outstanding loans *before* dividing the remainder of the estate between himself and his siblings. Aaron distributed the inheritance, giving himself $735,135 (including the family home and Connecticut property) while Ingrid and Jason received $370,899 and $337,207, respectively. Had Aaron paid back the loans out of his and Jason's shares, Ingrid would have received about $675,000, Jason about $450,000, and Aaron would have owed a little over $400,000.

The district court concluded that "Aaron breached his fiduciary duties as attorney-in-fact, trustee, personal representative, and trusted son." The district court ordered that it would appoint an independent accountant to help the district court determine the exact damages to be awarded. The district court stated that Ingrid and Jason were entitled to a 10% prejudgment-interest award under Minnesota Statutes section 549.09 (2022) and ordered that the interest be calculated.

The forensic accountant reported that Aaron directed payments starting on August 9, 2012—two days after Jorgen and Jennie's amended trusts made him co-trustee—until March 2017. The forensic accountant also calculated the prejudgment-interest award. In doing so the forensic accountant "applied the interest rate of 10% as set forth in M.S.549.09 for Judgement exceeding $50,000 . . . . This rate was applied to *each identified transaction* as of the known date or estimated date of the transaction." (Emphasis added.)

Aaron moved for a new trial or for amended findings of fact and conclusions of law. In his posttrial motion, Aaron argued that: (1) his siblings lacked standing to sue personally because any claims relating to his actions as attorney-in-fact or as trustee are for harms suffered by Jennie and Jorgen, not by Ingrid and Jason; (2) damages from all transactions arising before October 29, 2013 (six years before the dated complaint) are barred by the statute of limitations; (3) the forensic accountant did not calculate interest according to Minnesota Statutes section 549.09; and (4) the district court should not award fees to his siblings. Aaron's motion for amended findings or a new trial did not raise the issue of his siblings' failure to invoke the court's *in personam* jurisdiction. The district court rejected Aaron's arguments in a November 2022 order and awarded Ingrid and Jason $1,793,839.82. Aaron appeals.

DECISION

Our decision rests on five mostly uncontroverted foundations. First, all the property Aaron misappropriated was trust property. Second, Ingrid and Jason became beneficiaries of the parents' trusts on the parents' deaths. Third, the funds Aaron received from his parents' trusts were loans rather than gifts. Fourth, Aaron was the trustee of the Jorgensen family trusts. And fifth, Aaron agreed that this matter could proceed as a civil case. We say mostly uncontroverted because Aaron appears to question the third foundation, maintaining in his reply brief that "[t]here is no testimony or document in the record evidencing an agreement between Aaron and his siblings under which Aaron promised to repay them out of his inheritance." But Aaron raised this argument for the first time in his reply brief. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010) (repeating that we do not generally address arguments raised for the first time in a party's reply brief). And the argument also misunderstands the district court's conclusion. The district court concluded that the parents, acting on Aaron's behalf, took out the hypothecated loans and allowed Aaron to withdraw funds derived from those loans on the understanding that Aaron would repay the loans. In other words, the district court effectively concluded that the agreement to repay the funds out of his share of the inheritance was between Aaron and his parents. Based on these five foundations and for the following reasons, we reject Aaron's contentions that he could not be held liable because neither he nor his siblings were ever appointed by the court as the estates' personal representative, that his siblings lacked standing to challenge his actions as trustee, that the district court lacked the *in personam* jurisdiction required to hold Aaron liable in his personal capacity, and that the damages are mostly barred by the statute of limitations. Aaron raises other contentions that we need not address.

I

Aaron offers a two-pronged probate-based argument. He maintains first that he cannot be held liable for his management of his parents' estates because Ingrid and Jason never petitioned the district court to appoint him as the personal representative. He maintains second that Ingrid and Jason lacked standing to sue him for breach of fiduciary duty and undue influence because they were never appointed as personal representatives of Jorgen's and Jennie's estates under the probate code. The arguments fail.

The problem with Aaron's first argument is that it applies to only one of the district court's bases for liability—liability as personal representative. Aaron is correct that the district court typically must appoint a personal representative of a decedent's estate for that person to "acquire the powers and undertake the duties and liabilities of a personal representative of a decedent," Minn. Stat. § 524.3-103 (2022), including the fiduciary duty to the estate, Minn. Stat. § 524.3-712 (2022). But the district court held Aaron liable not only as personal representative; it also held him liable as trustee. The claimed error is therefore inconsequential if the district court correctly held Aaron liable as trustee. It did.

Aaron's argument as to standing similarly has only superficial appeal. While we review *de novo* whether a party has standing to sue, *In re Gillette Child.'s Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016), we review for clear error the district court's factual findings underlying its decision on standing, *see Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *rev. denied* (Minn. June 26, 2002). The district court's factual findings, which are not clearly erroneous, render Aaron's argument unconvincing.

Aaron premises the argument on the notion that Ingrid and Jason's claims alleging breach of fiduciary duty as attorney-in-fact and as trustee are personal to Jorgen and Jennie and that the claims therefore belong to their estates. Because neither Ingrid nor Jason served as personal representative of either estate, Aaron maintains, they never acquired standing to sue. But his argument depends on his theory that his breaches occurred when the transactions occurred, during the parents' lifetimes. If this theory were correct, his standing argument might prevail. *See* Minn. Stat. § 573.01 (2022) (stating that causes of action not arising out of personal injury to the decedent survive to the personal representative of the decedent's estate). But the theory is incorrect because the district court concluded in the November 2022 order that the breach of fiduciary duty occurred when Aaron failed to repay the borrowed funds from his share of the inheritance, and at that point, Ingrid and

Jason were indisputably beneficiaries of the trusts. They therefore had standing to sue as trust beneficiaries, not needing appointment as personal representatives.

We are not otherwise persuaded by Aaron's argument that the record lacks evidence that Aaron had agreed with his siblings to repay the funds. The argument fails because the district court found that the hypothecated loan funds Aaron received were not a gift from his parents but were instead a loan Aaron would repay from his inheritance. The finding is not clearly erroneous. The district court cited the lack of any gift tax return ever filed on the proceeds of the loan despite the loan amount being well over the threshold requiring tax reporting. The district court also observed that Aaron himself had represented this repayment obligation to the family's banker. The agreement has sufficient support in the record.

II

Aaron maintains that because his siblings' petition failed to specify whether they were invoking the district court's *in rem* jurisdiction or *in personam* jurisdiction, the district court lacked jurisdiction under the trust code. And he argues that because the district court lacked *in personam* jurisdiction, it could not decide the claims against him. *In personam* jurisdiction is a subset of personal jurisdiction, *see Nagel v. Westen*, 865 N.W.2d 325, 330 (Minn. App. 2015), *rev. denied* (Minn. Sept. 15, 2015), and we review the existence of personal jurisdiction *de novo*, *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016). Our *de novo* review informs us that Aaron waived any challenge to the *in personam* requirements of the trust code.

Aaron is correct that Jason and Ingrid's petition did not specify whether they were invoking the court's *in rem* or *in personam* jurisdiction, but Jason and Ingrid did not purport to initiate a trust case—they instead filed the case as a civil matter. District courts in trust matters may exercise *in rem* jurisdiction, *in personam* jurisdiction, or both. Minn. Stat. § 501C.0201(c). An order under the district court's *in rem* authority is binding "upon the trust estate and upon the interests of all beneficiaries," Minn. Stat. § 501C.0204, subd. 1, meaning it binds not the trustee but the trust property, *Swanson v. Wolf*, 986 N.W.2d 217, 222 (Minn. App. 2023). An order under the district court's *in personam* jurisdiction binds "(1) a party who is served with notice of the judicial proceeding, (2) a party who appears in the judicial proceeding, and (3) any other party who may be bound by such parties as described in sections 501C.0301 to 501C.0305." Minn. Stat. § 501C.0204, subd. 2. The interested parties' petition must specify whether they are invoking the court's *in rem* or *in personam* jurisdiction. Minn. Stat. § 501C.0201(c). If the petition does not so specify, then the district court's *in rem* jurisdiction is invoked. *Id.* (c)(1).

Aaron unpersuasively relies on our recent *Swanson* decision to argue against the district court's exercise of jurisdiction. The *Swanson* court held that a district court may not grant a petition to remove a trustee unless the petitioners properly invoked the district court's *in personam* jurisdiction. 986 N.W.2d at 223. Aaron argues that *Swanson* requires us to conclude that the district court lacked the *in personam* jurisdiction necessary to hold him personally liable. But his argument ignores the fact that a party may waive his personal-jurisdiction defense. *See Mississippi Valley Dev. Corp. v. Colonial Enters., Inc.*, 217 N.W.2d 760, 763 (Minn. 1974). He may do so by affirmatively invoking the district court's jurisdiction. *See Patterson v. Wu Fam. Corp.*, 608 N.W.2d 863, 869 (Minn. 2000). Aaron waived his personal-jurisdiction challenge both expressly and by affirmatively invoking the district court's jurisdiction in a civil matter.

As an affirmative defense to Ingrid and Jason's claims under the trust code, Aaron asserted that Ingrid and Jason failed to meet the procedural requirements set forth in sections 501C.0201 to 501C.0208. But the assertion did not last, and Aaron did not preserve the defense. At the first hearing before the district court, Aaron not only failed to raise the challenge to the court's *in personam* jurisdiction, his attorney also asked the district court to order the parties to mediate the dispute and indicated that he was not seeking a jury trial. More significantly regarding this issue, Aaron's attorney then addressed the treatment of the case as a trust matter or civil case:

> As to the classification of this matter, I don't think it matters to -- it certainly doesn't matter to my client whether it's called a trust proceeding. We think it's trust issues. Or a civil proceeding. We're going to litigate these issues and have been gathering information so what the Court does with that is in the Court's discretion.

In other words, when he had the opportunity to argue that any trust issues be subject to the jurisdictional constraints of an *in personam* trust proceeding, Aaron all but expressly invited the district court to freely choose whether to address the trust issues as "a trust proceeding" or "a civil proceeding." When the district court, in response, stated that it would not "hurt[] anybody" (as in, we presume, "prejudice either party") to treat the litigation as a civil proceeding, Aaron's counsel agreed and therefore expressly waived the right to challenge the procedural requirements in the trust code. This waiver defeats his jurisdictional challenge.

We add that Aaron also affirmatively invoked the district court's jurisdiction over this case as a civil proceeding by asking the district court to order mediation and by moving for a new trial. *See Mississippi Valley*, 217 N.W.2d at 763 (holding ineffective-service-of-process claims waived where appellant invoked the trial court's jurisdiction by moving the court to compel arbitration and appealing the trial court's decision). We affirm the district court's exercise of personal jurisdiction.

III

Aaron argues that even if the district court correctly held him liable as trustee, most of the damages arising from his acts as trustee are barred by the statute of limitations. The argument fails.

Aaron argues that his siblings' action is largely time-barred. Before its amendment in 2015, Minnesota Statutes section 541.05, subdivision 1(7) (2014), imposed a six-year limitations period on trust actions. When the legislature passed the trust code in 2015, it enacted a new limitations provision, section 501C.1005. *See* 2015 Minn. Laws ch. 5, art. 10, § 5, at 57. Section 501C.1005(a) states that "[a] beneficiary may not commence a judicial proceeding against a trustee more than three years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim." If paragraph (a) does not apply, then a beneficiary must commence a judicial proceeding against a trustee within six years after the first to occur of the removal, resignation, or death of the trustee; the termination of the beneficiary's trust interest; or trust termination. Minn. Stat. § 501C.1005(c). Aaron maintains that the amended statute applies rather than section 501C.1005, and that as a result, many of the hypothecation-related damages are time-barred. Aaron maintains alternatively that, under section 501C.1005, the claims are barred because paragraph (a) does not apply and paragraph (c) sets the relevant starting date as Jorgen's death. We review *de novo* the application of a statute of limitations. *Ford v. Minneapolis Pub. Schs.*, 874 N.W.2d 231, 232 (Minn. 2016). Because the claims here did not accrue until Aaron failed to repay the loans from his share after Jennie's 2017 death, we need not decide which limitation period applies. And because Aaron failed to show how the district court clearly erred in its findings underlying its paragraph (c) analysis, reversal on those grounds is not warranted.

The district court determined that the claims did not accrue until Aaron failed to repay the hypothecated funds out of his share of the inheritance. Statutes of limitations begin running when a cause of action accrues, and a cause of action accrues at "the point in time when a plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief can be granted." *Hansen v. U.S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 327 (Minn. 2019) (quotation omitted). We apply the "some damage" rule of accrual to breaches of fiduciary duties. *Id.* Under this rule, "[s]ome damage in the form of financial liability accrues when the resulting liability is immediate, concrete, compensable, noncontingent, and at least partly ascertainable." *Id.* at 328. And "contingent financial harm does not constitute damages for the purposes of the statute of limitations because the damages do not accrue unless and until the contingency actually happens." *Id.* at 329. That is the case here—the contingency did not occur until Aaron failed to repay the hypothecated funds. The funds Aaron received from hypothecated loans were to be repaid on Jennie's death, making his nonpayment after her death the point of accrual. This conclusion is well supported by the evidence of the agreement. This action commenced within the limitations period.

Aaron also maintains that Minnesota Statutes section 501C.1005(c) forecloses recovery for actions he took as the trustee of Jorgen's trust because the trust terminated and the six-year limitation period commenced when Jorgen died in November 2012. Aaron maintains that the district court failed to apply paragraph (c) to all claims relating to Jorgen's trust brought after November 2018. But the district court found that none of the qualifying events occurred, including trust termination, and we review its factual findings underlying its statute-of-limitations conclusion for clear error, *see Giuliani v. Stuart Corp.*, 512 N.W.2d 589, 595 (Minn. App. 1994). Aaron does not support his position that this finding was clearly erroneous.

IV

We find convincing Aaron's contention that the district court misapplied the law when it calculated prejudgment interest. Aaron raises a question of law, the interpretation of Minnesota Statutes section 549.09, which we review *de novo*. *See Trapp v. Hancuh*, 587 N.W.2d 61, 63 (Minn. App. 1998). The statute provides that prejudgment interest "shall be computed . . . from the time of the commencement of the action." Minn. Stat. § 549.09, subd. 1(b). The district court's initial order announcing its decision and awarding interest stated that the amount "should be calculated under [section 549.09], which calls for interest at 10% per year on amounts over $50,000." The forensic accountant then applied the 10%

interest rate “to each identified transaction *as of the known date or estimated date of the transaction*.” (Emphasis added.) The district court adopted the accountant’s calculation. Because the district court calculated prejudgment interest from the estimated dates of the offending transactions rather than from the commencement of the action, the calculation is erroneous. And because the district court ordered that interest should be calculated under section 549.09, we will not affirm the grant of interest on alternate grounds as Ingrid and Jason urge. Ingrid and Jason also maintain that the district court erred by awarding interest only through July 31, 2022. Given our remand, we do not address the contention. On remand, the district court must recalculate prejudgment interest as required by the statute.

Affirmed in part, reversed in part, and remanded.