

STATE OF MINNESOTA

IN SUPREME COURT

A24-1539

Court of Appeals

McKeig, J.
Took no part, Hennesy, J.

Keith D Hagfors, as Trustee for the Next
of Kin of Sara E Hagfors,

Appellant,

vs.

Filed: August 19, 2026
Office of Appellate Courts

Fairview Health Services, et al.,

Respondents,

University of Minnesota,

Respondent,

University of Minnesota Physicians,

Respondent.

Gregory M. Erickson, Elizabeth A. Nielsen, Mohrman, Kaardal & Erickson, P.A.,
Minneapolis, Minnesota, for appellant.

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Bloomington, Minnesota; and

Julia J. Nierengarten, Meagher & Geer, PLLP, Minneapolis, Minnesota, for respondent University of Minnesota Physicians.

Mark R. Whitmore, James C. Kovacs, Sarah M. Hoffman, Bassford Remele, P.A., Minneapolis, Minnesota, for amicus curiae Minnesota Defense Lawyers Association.

Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota, for amici curiae Minnesota Medical Association and American Medical Association.

S Y L L A B U S

Appointment as trustee is a condition precedent to commencing a wrongful death action under Minnesota Statutes section 573.02.

Affirmed.

O P I N I O N

McKEIG, Justice.

We are asked to resolve whether Minnesota’s wrongful death statute, Minn. Stat. § 573.02, requires the appointment of a trustee as a condition precedent to commencing a wrongful death action under that statute. Sara E. Hagfors died on April 9, 2021, and was survived by her husband, appellant Keith D. Hagfors.¹ Eighteen days before the expiration of the limitations period to file a wrongful death claim under Minn. Stat. § 573.02, subd. 1, Hagfors filed a petition to be appointed as trustee for Sara Hagfors’s next of kin. Within the statutory limitations period, but before he was appointed as trustee, Hagfors served a summons and complaint on respondents Fairview Health

¹ We refer to decedent Sara E. Hagfors as “Sara Hagfors” and appellant Keith D. Hagfors as “Hagfors.”

Services, University of Minnesota, and University of Minnesota Physicians purporting to commence a wrongful death action under Minn. Stat. § 573.02. Hagfors was subsequently appointed as trustee, still within the limitations period. Hagfors did not re-serve respondents before the expiration of the statutory limitations period. The district court dismissed Hagfors’s wrongful death complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, concluding that Hagfors had not validly commenced suit because he served respondents before he had been appointed trustee. The court of appeals affirmed.

Because appointment as trustee is a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02, we affirm the decision of the court of appeals.

FACTS

Sara Hagfors died on April 9, 2021. She was survived by her husband and their daughters. On March 23, 2024, Hagfors filed a petition in Ramsey County District Court to be appointed as trustee for Sara Hagfors’s next of kin.²

Before the district court in the Trustee Action granted the trustee petition, Hagfors attempted to commence a wrongful death action for medical malpractice under Minn. Stat. § 573.02—a separate, but related, legal action. Between April 1, 2024, and April 4, 2024, Hagfors served a summons and complaint in the wrongful death action on

² The trustee petition is a separate but related legal action from the matter on appeal. For clarity, we refer to the trustee petition action as “the Trustee Action” and the district court assigned to the trustee petition as “the district court in the Trustee Action.” We refer to the district court assigned to this matter as “the district court.”

respondents.³ The complaint asserted that Hagfors “as surviving spouse, pursuant to Minn. Stat. Sec. 573.02 and Rule 144.01 has petitioned the Ramsey County District Court to be appointed trustee to commence this action and receive recovery damages, specifically, wrongful death economic and non-economic damages.”

On April 8, 2024, the district court in the Trustee Action granted Hagfors’s trustee petition in the Trustee Action.

The following day, on April 9, 2024, Hagfors filed the complaint in this wrongful death matter. The three-year limitations period to file a wrongful death action related to Sara Hagfors’s death expired that same day, on April 9, 2024.⁴ Respondents filed motions to dismiss for lack of subject matter jurisdiction, Minn. R. Civ. P. 12.02(a), and failure to state a claim, Minn. R. Civ. P. 12.02(e). Respondents argued that Hagfors did not properly commence suit and that the purported wrongful death action was a legal nullity because Hagfors served the summons *before* being appointed as trustee and did not serve the summons *after* being appointed as trustee but before the limitations period expired. Respondents also argued that Hagfors’s suit could not be permitted to relate back to the original complaint, citing *Regie de l’assurance Automobile du Quebec v. Jensen*,

³ Hagfors served respondent University of Minnesota personally on April 2, 2024, and respondent University of Minnesota Physicians through the Hennepin County Sheriff’s Office on April 4, 2024. Hagfors served respondent Fairview Health Services three times: personally on April 1, 2024 and April 4, 2024, and through the Ramsey County Sheriff’s Office on April 4, 2024.

⁴ The parties do not dispute that three years is the applicable limitations period under Minn. Stat. § 573.02, subd. 1.

399 N.W.2d 85 (Minn. 1987), and *Ortiz v. Gavenda*, 590 N.W.2d 119 (Minn. 1999), two cases in which we considered the trustee requirement.

Before the district court ruled on respondents' motions, Hagfors served the original summons and complaint in this matter on respondents Fairview Health Services and University of Minnesota Physicians again in late May 2024. Respondents filed amended motions to dismiss, seeking to dismiss the summons and complaint served in May on the grounds that service occurred outside the limitations period.

The district court granted respondents' motions to dismiss, concluding that the purported wrongful death action was a "legal nullity" because Hagfors had not been appointed as trustee before attempting to commence suit. Judgment was entered the next day.

Hagfors requested permission from the district court to file a motion to reconsider.⁵ Hagfors informed the district court that, at his request, the district court in the Trustee Action had issued a nunc pro tunc order⁶ amending the date of the order appointing Hagfors as trustee to March 23, 2024, the date Hagfors had originated the

⁵ Under Minnesota General Rule of Practice 115.11, "[m]otions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and any responses to such requests, shall be made only by letter to the court."

⁶ "Nunc pro tunc" is Latin for "now for then" and means "[h]aving retroactive legal effect through a court's inherent power." *Nunc Pro Tunc*, *Black's Law Dictionary* (12th ed. 2024).

Trustee Action.⁷ Hagfors argued to the district court that the nunc pro tunc order “render[ed] the basis for dismissal entirely moot” because, according to the nunc pro tunc order, Hagfors was appointed as trustee before he served the summons and complaint in early April. Respondents opposed the request for reconsideration. The district court denied Hagfors’s request on the grounds that Hagfors had failed to establish a compelling circumstance warranting reconsideration, Hagfors’s motion for a nunc pro tunc order was inappropriate, the nunc pro tunc order did not change the district court’s analysis of the motions to dismiss, and Hagfors’s “expressly stated purpose for requesting permission to file a motion for reconsideration [was] inappropriate” because reconsideration may not be used to expand or supplement the record on appeal.

Hagfors then filed a “Motion to Establish a Record of the Proceedings Affecting the Order Denying Plaintiff’s Request for Permission to File a Motion to Reconsider.” Respondents opposed Hagfors’s motion. The district court construed Hagfors’s motion as a request to supplement the record and entered judgment denying the motion.

Hagfors appealed, purporting to appeal (1) the dismissal of the wrongful death complaint, (2) the order denying reconsideration based on the nunc pro tunc order, and (3) the order denying his motion to supplement the record.⁸ The court of appeals

⁷ Hagfors explained that he had filed a motion requesting the nunc pro tunc order on July 5, 2024—before this wrongful death matter was dismissed—and that the district court in the Trustee Action had granted the motion on August 13, 2024, after the district court had dismissed the wrongful death matter and entered judgment.

⁸ Hagfors’s notice of appeal stated he was appealing from the district court’s dismissal order, “as well as from all other orders entered in the case affecting judgment

questioned whether it had jurisdiction to consider an appeal from the order denying reconsideration and the order denying the motion to supplement the record. Hagfors filed a notice of voluntary partial dismissal for the portion of his appeal seeking review of these two orders, and the court of appeals dismissed those portions of the appeal. Thus, the only matter before the court of appeals was the July 30, 2024 dismissal of the wrongful death action for lack of subject matter jurisdiction, Minn. R. Civ. P. 12.02(a), and failure to state a claim upon which relief could be granted, Minn. R. Civ. P. 12.02(e).

The court of appeals affirmed the district court's dismissal. *Hagfors ex rel. Hagfors v. Fairview Health Servs.*, No. A24-1539, 2025 WL 2389042, at *1 (Minn. App. Aug. 18, 2025). The court of appeals determined that the district court properly dismissed the complaint for lack of subject matter jurisdiction because Hagfors had not properly commenced a wrongful death action in his capacity as trustee before the expiration of the limitations period. *Id.* at *3. The court reasoned that Hagfors failed to properly commence a wrongful death action because Hagfors served the summons and complaint before he was appointed trustee, and, “[t]herefore, just like in *Ortiz*, Hagfors’ service of the wrongful-death summons and complaint before he was appointed trustee was a legal nullity.” *Id.* In response to Hagfors’s argument that the district court erred by relying on *Ortiz* because *Ortiz* had been wrongfully decided, the court of appeals explained that, as an error-correcting court, it is “bound by supreme court precedent.” *Id.* at *2 (quoting *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (internal quotation marks omitted)).

including the” order denying Hagfors’s request to file a motion for reconsideration and the order denying Hagfors’s request to supplement the record.

Hagfors petitioned for review on a single question: whether trustee appointment is a condition precedent to commencing a wrongful death action under Minn. Stat.

§ 573.02.

We granted review.

ANALYSIS

This case comes to us on appeal from the district court's grant of a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(a), (e). Whether subject matter jurisdiction exists is a question of law we review de novo. *Rued v. Comm'r of Hum. Servs.*, 13 N.W.3d 42, 47 (Minn. 2024). We also review de novo “whether a complaint has stated a claim sufficiently to survive a motion to dismiss.” *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 325 (Minn. 2019). To determine whether the complaint has stated a legally sufficient claim for relief, we “consider only the facts alleged in the complaint, accepting those facts as true.” *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). And, in doing so, we “must construe all reasonable inferences in favor of the nonmoving party.” *Id.*

The issue we must resolve here is whether trustee appointment is a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02. This is a question of statutory interpretation, and the interpretation of a statute is a question of law that we also review de novo. *Wynkoop v. Carpenter*, 574 N.W.2d 422, 425 (Minn. 1998).

We first determine whether appointment as trustee is a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02. We then determine whether Hagfors validly commenced a wrongful death action.

A.

A cause of action for wrongful death is created by statute. *Ortiz v. Gavenda*, 590 N.W.2d 119, 121 (Minn. 1999). There was no cause of action for wrongful death at common law under “the theory that a claim for personal injuries died with the victim.” *Id.* Where the Legislature creates a cause of action by statute and in derogation of the common law, we strictly construe the statutory requirements. *See, e.g., Bonhiver v. Fugelso, Porter, Simich & Whiteman, Inc.*, 355 N.W.2d 138, 141 (Minn. 1984). Thus, “the limitation provisions in a statutorily created cause of action are jurisdictional, requiring dismissal for failure to comply.” *Ortiz*, 590 N.W.2d at 122.

In relevant part, the wrongful death statute provides the following:

Subdivision 1. **Death action.** When death is caused by the wrongful act or omission of any person or corporation, *the trustee appointed as provided in subdivision 3 may maintain an action therefor if the decedent might have maintained an action*, had the decedent lived, for an injury caused by the wrongful act or omission. An action to recover damages for a death caused by the alleged professional negligence of a physician, surgeon, ... [or] hospital ..., or an employee of a physician, surgeon, ... [or] hospital ... *shall be commenced within three years of the date of death*, but in no event shall be commenced beyond the time set forth in section 541.076....

....

Subd. 3. **Trustee for action.** Upon written petition by the surviving spouse or one of the next of kin, the court having jurisdiction of an action falling within the provisions of subdivisions 1 or 2, shall appoint a suitable and competent person as trustee to commence or continue such action and obtain recovery of damages therein.

Minn. Stat. § 573.02 (emphasis added). Minnesota has recognized a cause of action for wrongful death since 1851.⁹ Minn. Rev. Stat. (Terr.) ch. 78, § 3 (1851).

Hagfors argues that the statute does not require trustee appointment to commence a wrongful death action under Minn. Stat. § 573.02. Instead, Hagfors argues, the statute requires only trustee appointment to maintain an action—that is, to continue an action already commenced. Thus, in Hagfors’s view, appointment as trustee is not a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02.

Respondents argue that the statute plainly requires appointment as trustee as a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02, consistent with our decisions in *Regie*, 399 N.W.2d 85, and *Ortiz*, 590 N.W.2d 119.

To determine whether trustee appointment is a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02, we must interpret the statute. The goal of statutory interpretation is to ascertain and give effect to the Legislature’s intent. *In*

⁹ The 1851 statute provided the following:

[w]hen the death of one is caused by the wrongful act or omission of another, *the personal representatives of the former, may maintain an action against the latter, if the former might have maintained an action*, had he lived, against the latter, for an injury caused by the same act or omission.

Minn. Rev. Stat. (Terr.) ch. 78, § 3 (1851) (emphasis added). Identical language was codified in the Minnesota General Statutes upon Minnesota’s admission as a state. Minn. Gen. Stat. ch. 68, § 3 (1858).

A decedent’s “personal representatives” included only the decedent’s “executor or administrator.” *Nash v. Tousley*, 8 N.W. 875, 875 (Minn. 1881). The Legislature replaced the “personal representatives” requirement in 1951, amending the statute to provide that only a “trustee appointed as provided” in the statute “may maintain an action” for wrongful death. Act of Apr. 23, 1951, ch. 697, § 1, 1951 Minn. Laws 1215, 1215 (codified at Minn. Stat. § 573.02 (1953)) (emphasis removed).

re Est. of Ecklund, 20 N.W.3d 351, 355 (Minn. 2025). We begin with the statute’s plain language. *Id.* If there is only one reasonable interpretation of the plain language, we adopt that meaning. *Id.*

“Once we have interpreted a statute, that prior interpretation guides us in reviewing subsequent disputes over the meaning of the statute. Our interpretation becomes part of the statute as though written therein.” *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 174 (Minn. 2021) (citation omitted) (internal quotation marks omitted); *see also Wynkoop*, 574 N.W.2d at 426 (“When a judicial interpretation of a statute has remained undisturbed, it becomes part of the terms of the statute itself.”). Consistent with this principle, we interpret Minn. Stat. § 573.02 “the same way in this case that we did in” *Regie and Ortiz. Cf. Karl v. Uptown Drink, LLC*, 835 N.W.2d 14, 18 (Minn. 2013) (interpreting the statute at issue “the same way in this case that we did in” a previous case involving the same statute).

We considered the trustee requirement in *Regie de l’assurance Automobile du Quebec v. Jensen*, 399 N.W.2d 85 (Minn. 1987). There, *Regie de l’assurance Automobile du Quebec* (the *Regie*), an insurer, brought an equitable subrogation action against a driver whose negligent operation of a pickup truck caused a death. *Id.* at 87. Seeking to recover from the driver the benefits it paid to the surviving spouse, the *Regie* commenced an equitable subrogation action against the driver in its own name. *Id.* More than three years after the death,¹⁰ the surviving spouse petitioned for the *Regie* to be appointed as

¹⁰ The limitations period was three years. Minn. Stat. § 573.02 (1986).

trustee for the decedent's next of kin. *Id.* After the district court appointed it trustee, the Regie amended its original complaint to seek recovery under the wrongful death statute. *Id.* at 88. The driver challenged the initial equitable subrogation action and the attempted amendment. *Id.* at 87–88.

We held that the Regie could not maintain an equitable subrogation action in its own name because the surviving spouse, “not having been appointed trustee” when the Regie brought the equitable subrogation action, had not had an individual right to bring an action to recover damages from his wife’s death. *Id.* at 88–89. In doing so, we explicitly stated that a wrongful death “action may only be brought by a duly court appointed trustee.” *Id.* at 88. We also held that the Regie could not amend its original complaint to one alleging a wrongful death claim because the Regie had not validly commenced an action within the limitation period under Minn. Stat. § 573.02, subd. 1. *See id.* at 92. In reaching our conclusion, we agreed with the driver that under our precedent, “meeting the limitation requirements of Minn. Stat. § 573.02, subd. 1, is a condition precedent to successful maintenance of a death by wrongful act action.” *Id.* at 91. We rejected the Regie’s argument that it should be permitted to amend its complaint to relate back to the original date of filing, explaining as follows:

The Regie’s amended complaint did not merely expand upon a cause of action originally instituted. To the contrary, at no time during the three-year statutory limitation period did the Regie have any cause of action to recover wrongful death damages in its own name Since it possessed no cause of action in its own name and never pled a valid cause of action, the original attempted equitable subrogation action was a legal nullity. Thus, nothing existed to which the attempted amendment, now brought in the name of the Regie as trustee, could “relate back.”

Id. at 91–92.

Twelve years later, we considered the trustee requirement in *Ortiz v. Gavenda*, 590 N.W.2d 119 (Minn. 1999). There, the decedent’s surviving spouse filed a complaint alleging a wrongful death claim within the limitations period but the signed petition to be appointed trustee was not filed until after the limitations period expired. *Id.* at 121. The district court denied the surviving spouse’s motion to amend and granted the defendant’s motion to dismiss. *Id.* We affirmed the district court’s conclusion that

the statutory time limit of three years for bringing the action in the name of the trustee in Minn. Stat. § 573.02 (1998) was a condition precedent to maintaining a wrongful death action and therefore the consequences of failing to bring the action as required by the statute could not be circumvented by application of the amendment and relation back rules.

Id. at 120. In *Ortiz*, we succinctly reiterated our holding in *Regie*: “because appointment of a trustee was a condition precedent to bringing a wrongful death action under Minn. Stat. § 573.02, an action filed without it was a ‘legal nullity.’ ” *Ortiz*, 590 N.W.2d at 122–23.

We decline to depart from our holdings in *Regie* and *Ortiz* that appointment as a trustee is a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02. Accordingly, *Regie* and *Ortiz* are still good law.

Hagfors argues that *Regie* and *Ortiz* are distinguishable because the plaintiffs in those cases were appointed as trustees after the expiration of the limitations period while Hagfors was appointed as trustee within the limitations period. We disagree. The plaintiffs in *Regie* and *Ortiz* did not validly commence wrongful death actions because each plaintiff served a summons and complaint alleging a wrongful death action *before*

being appointed as trustee. Because a party may not bring a wrongful death action in its own name, the attempted wrongful death actions in *Regie* and *Ortiz* were each a legal nullity. Here, as in *Regie* and *Ortiz*, Hagfors served a summons and complaint alleging a wrongful death action before being appointed as trustee. The attempted wrongful death action is therefore, like those in *Regie* and *Ortiz*, a legal nullity.

Hagfors also argues that the Legislature did not intend “maintain” to mean “commence.” See Minn. Stat. § 573.02, subd. 1 (“When death is caused by the wrongful act or omission of any person or corporation, the trustee appointed as provided in subdivision 3 may *maintain* an action therefor if the decedent might have maintained an action, had the decedent lived, for an injury caused by the wrongful act or omission.” (emphasis added)). We disagree, based on our prior interpretation of the phrase “may maintain an action” in the wrongful death statute in *Boutiller ex rel. Boutiller v. The Steamboat Milwaukee*, 8 Minn. 97, 105 (1863).¹¹ In *Boutiller*, the respondent argued that the Legislature’s use of “maintain” in the statute meant that “no action can be commenced or originated by the personal representatives, but that they can only carry on one which had been commenced by the injured party before his death.” *Id.* We declined to adopt this interpretation, stating that

[i]t cannot be seriously urged that the word “maintain,” as used in speaking of the deceased having his action against the wrong doer, can mean other than *commence, institute, or begin an action*; and the same expression

¹¹ The Legislature has not amended the phrase “may maintain an action” since creating a cause of action for wrongful death. Compare Minn. Rev. Stat. (Terr.) ch. 78, § 3 (1851), with Minn. Stat. § 573.02, subd. 1. Our previous interpretation of a statute, when “undisturbed, ... becomes part of the terms of the statute itself.” *Wynkoop*, 574 N.W.2d at 426.

occurring in the same sentence, in reference to the same subject, to wit, the suit against the trespasser, cannot reasonably be held to have two different significations.

Id. (emphasis added). Therefore, under *Boutiller*, to maintain an action for wrongful death is to commence, institute, or begin an action for wrongful death. The Legislature has not seen fit to reject our interpretation of “may maintain an action” in *Boutiller* in the intervening 163 years. *Boutiller* is still good law, and Hagfors’s argument that “maintain” does not mean “commence” is incorrect.

Our precedent is clear. We again hold that appointment as a trustee is a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02. Any attempt to commence an action under Minn. Stat. § 573.02 by a party who has not been appointed as trustee for the decedent’s next of kin is a legal nullity.

B.

Having determined that appointment as trustee is a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02, we next consider whether Hagfors validly commenced a wrongful death action. We conclude that Hagfors did not validly commence a wrongful death action before the expiration of the limitations period on April 9, 2024, because Hagfors served the summons before he was appointed trustee.

Under Minnesota Rule of Civil Procedure 3.01, “[a] civil action is commenced against each defendant ... (a) when the summons is served upon that defendant, or ... (c) when the summons is delivered for service to the sheriff in the county where the defendant resides personally.” Minn. R. Civ. P. 3.01. If the plaintiff opts for service-by-

sheriff, “such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.” Minn. R. Civ. P. 3.01(c).

Hagfors filed a petition to be appointed trustee for Sara Hagfors’s next of kin on March 23, 2024. Between April 1, 2024, and April 4, 2024—before the district court in the Trustee Action had appointed Hagfors as trustee for Sara Hagfors’s next of kin—Hagfors served the summons in this matter personally on respondents Fairview Health Services and University of Minnesota. On April 4, 2024, Hagfors delivered the summons in this matter to the Ramsey County Sheriff’s Office for service on respondent Fairview Health Services and to the Hennepin County Sheriff’s Office for service on University of Minnesota Physicians. Both sheriff’s offices completed service the same day. Hagfors was appointed as trustee for Sara Hagfors’s next of kin on April 8, 2024, after the summons had been served. Hagfors did not attempt to serve the summons after he was appointed trustee but before expiration of the limitations period on April 9, 2024. Thus, under Rule 3.01, Hagfors commenced suit against respondents between April 1, 2024, and April 4, 2024, when the summons was served. Because Hagfors had not yet been appointed as trustee for Sara Hagfors’s next of kin, he did not validly commence a wrongful death action.

Hagfors argues that he validly commenced suit within the limitations period, relying on the August 13, 2024 nunc pro tunc order and Minn. R. Civ. P. 3.01(c), which states that service is effective when a summons is delivered to the sheriff if it is “actually served” within 60 days. We address each argument in turn.

First, Hagfors argues that he validly commenced a wrongful death action within the limitations period based on the nunc pro tunc order issued in the Trustee Action amending the date of his appointment as trustee from April 8, 2024, to March 23, 2024. We conclude that Hagfors waived that argument when he abandoned it at the court of appeals.

“Waiver is the intentional relinquishment of a known right or an estoppel from enforcing it.” *Rued*, 13 N.W.3d at 51 (citation omitted) (internal quotation marks omitted). In other words, waiver “is the expression of an intention not to insist upon what the law affords.” *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 631 (Minn. 2017) (citation omitted) (internal quotation marks omitted). “Waiver is consensual in nature” and “arises from voluntary choice, not mere negligence.” *In re Giem*, 742 N.W.2d 422, 432 (Minn. 2007).

The nunc pro tunc order was issued in a separate, but related, district court proceeding—the Trustee Action—on August 13, 2024. The order states that the April 8, 2024 order in the Trustee Action appointing Hagfors as trustee is amended to take effect as of March 23, 2024. On August 14, 2024, Hagfors requested permission from the district court in this action to file a motion to reconsider the court’s dismissal of the action. On August 21, 2024, the district court filed an order denying the request because Hagfors had failed to show compelling circumstances warranting reconsideration.

When Hagfors initiated this appeal in the court of appeals, he included the August 21, 2024 order among multiple district court orders that he sought to appeal. The court of appeals subsequently issued an order questioning whether the August 21, 2024

district court order is an appealable order and ordering the parties to file informal memoranda addressing that question, among others. The court of appeals' order also provided that Hagfors could file a notice of voluntary partial dismissal in lieu of an informal memorandum if he concluded that the court of appeals lacked jurisdiction over the appeal. One week later, without filing an informal memorandum, Hagfors filed a notice of partial dismissal conceding that the court of appeals lacked jurisdiction over his notice of appeal of the August 21, 2024 district court order and voluntarily dismissing his notice of appeal of that order.¹² The court of appeals then entered an order dismissing the portion of the appeal seeking review of the August 21, 2024 district court order.

We conclude that Hagfors waived the argument that he validly commenced a wrongful death action within the limitations period based on the nunc pro tunc order because he filed a notice of voluntary partial dismissal to dismiss the portion of this appeal related to the nunc pro tunc order. Accordingly, we will not consider Hagfors's argument related to the nunc pro tunc order.¹³

Second, Hagfors argues that he validly commenced suit by serving respondents pursuant to Minn. R. Civ. P. 3.01(c), which permits a plaintiff to “deliver[the summons] for service to the sheriff in the county where the defendant resides personally.” Service is

¹² Hagfors's notice also voluntarily dismissed his appeal of a separate district court order.

¹³ We also note that Hagfors did not raise the nunc pro tunc order in his petition for review. We “may decline to hear an issue if it is not raised in either a petition for further review or a conditional petition for further review.” *Anderly v. City of Minneapolis*, 552 N.W.2d 236, 240 (Minn. 1996); *accord Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 317 n.1 (Minn. 2007).

effective as of the date of delivery to the sheriff, provided the summons is “actually served” on the defendant within 60 days. *Id.* This 60-day grace period “is intended to accommodate a busy sheriff, not a tardy plaintiff.” *Johnson v. Soo Line R.R. Co.*, 463 N.W.2d 894, 898 (Minn. 1990). Hagfors argues that he validly commenced suit because the sheriff’s office re-served the summons in late May 2024, after Hagfors was appointed as trustee but before the expiration of Rule 3.01(c)’s 60-day grace period.

This argument is unpersuasive. “[T]he action is *commenced* when the summons is *delivered* to the sheriff of the proper county for service, not when the sheriff subsequently serves the papers.” *Johnson*, 463 N.W.2d at 898. Hagfors had not yet been appointed as trustee when he delivered the summons to the Ramsey County Sheriff’s Office for service on Fairview Health Services and to the Hennepin County Sheriff’s Office for service on University of Minnesota Physicians; consequently, the May service did not validly commence a wrongful death action against Fairview Health Services and University of Minnesota Physicians. Nor does Rule 3.01(c)’s 60-day grace period and the late May 2024 second service save Hagfors’s argument. The 60-day grace period does not extend the limitations period. *Cf. Johnson*, 463 N.W.2d at 898 (stating that the delivery date, not the date of service, is the commencement date of the action).

* * *

We recognize that the application of Minn. Stat. § 573.02 may lead to harsh results in some cases. But because a cause of action for wrongful death is a statutorily created cause of action, we strictly construe the statutory language enacted by the Legislature. *Bonhiver*, 355 N.W.2d at 141. Recognizing a cause of action for wrongful death and

providing jurisdictional limitations is a “complex public policy issue[]” best suited to the Legislature. *State v. Khalil*, 956 N.W.2d 627, 633 (Minn. 2021). To the extent that Hagfors argues that it is unnecessary and burdensome to require appointment as trustee as a condition precedent to commencing a wrongful death action, that argument is for the Legislature, not this court. *See id.* at 633 (stating that “legislative bodies are institutionally better positioned than courts to sort out conflicting interests and information surrounding complex public policy issues”).

We hold that under our precedent construing the language adopted by the Legislature, appointment as trustee is a condition precedent to commencing a wrongful death action under Minn. Stat. § 573.02. Because Hagfors was not appointed as trustee before serving the summons on respondents, he did not validly commence a wrongful death action.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

HENNESY, J., took no part in the consideration or decision of this case.