

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1539**

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

vs.

Fairview Health Services, et al.,
Respondents,

University of Minnesota,
Respondent,

University of Minnesota Physicians,
Respondent.

**Filed August 18, 2025
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-CV-24-2027

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Considered and decided by Slieter, Presiding Judge; Bond, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

This appeal is taken from a district court order dismissing, for lack of subject-matter jurisdiction, appellant's wrongful-death complaint against respondents following the death of his wife. The district court determined that dismissal was required because the lawsuit was not timely commenced by a trustee for the next of kin of his wife. Because we agree that the wrongful-death action must be timely commenced by a trustee, dismissal was proper, and we affirm.

FACTS

On March 23, 2024, appellant Keith D. Hagfors (Hagfors) petitioned the district court to be appointed as the trustee for the next of kin of his wife, Sara Hagfors, who died on April 9, 2021. On April 4, before the district court acted on his petition to appoint him as his wife's trustee, Hagfors served a summons and complaint alleging the wrongful death of his wife upon respondents—Fairview Health Services, University of Minnesota (UMN), and University of Minnesota Physicians (UMP). The complaint recited that Hagfors had petitioned the district court for appointment as trustee. On April 8, the district court appointed Hagfors as trustee for his wife. The three-year statute of limitations to commence a wrongful-death action expired on April 9. On May 22, Hagfors served respondents a second time with the same summons and complaint.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Respondents sought dismissal of the complaint under rule 12.02(a) (for lack of subject-matter jurisdiction), arguing that, because Hagfors had failed to commence the wrongful-death action as the appointed trustee before the expiration of the statute of limitations, the district court lacked subject-matter jurisdiction.

The district court granted respondents' motions to dismiss, determining that Hagfors served the summons and complaint on the respondents before being appointed as his wife's trustee and that he, at that time, lacked standing to commence a wrongful-death action on his wife's behalf. And because the statute of limitations had expired on April 9—before Hagfors served respondents in his capacity as trustee—the district court lacked subject-matter jurisdiction.

Hagfors appeals.

DECISION

Hagfors challenges the district court's determination that dismissal was required because he had not yet been appointed as a trustee for his wife's next of kin when the wrongful-death summons and complaint were served within the statute-of-limitations period.

Under rule 12.02(a), a district court must dismiss a complaint if the court lacks subject-matter jurisdiction. Minn. R. Civ. P. 12.02(a). We review a district court's dismissal under rule 12.02(a) *de novo*. See *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 644 (Minn. 2019) ("Subject-matter jurisdiction is a question of law that we review *de novo*.").

“Subject-matter jurisdiction is the court’s authority to hear the type of dispute at issue and to grant the type of relief sought.” *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). “Generally, a statute of limitations provides an affirmative defense that is waivable by defendants.” *Ariola v. City of Stillwater*, 889 N.W.2d 340, 348 (Minn. App. 2017) (citing *Albers v. Fitschen*, 143 N.W.2d 841, 843 (Minn. 1966)), *rev. denied* (Minn. Apr. 18, 2017). However,

[w]hen the limitations provision relates to a statutorily created cause of action, a plaintiff’s failure to comply with the statute of limitations requires the court to dismiss the claim . . . “because the court in such a case has no jurisdiction to hear the untimely claim, as compliance with the time period is a condition of the statutory right.”

Ariola, 889 N.W.2d at 348 (quoting *Carlton v. State*, 816 N.W.2d 590, 601 (Minn. 2012)).

“When death is caused by the wrongful act or omission of any person or corporation, the trustee appointed . . . may maintain an action . . . for an injury caused by the wrongful act or omission.” Minn. Stat. § 573.02, subd. 1 (2024). To recover damages for the wrongful death caused by a physician, hospital, or employee, the trustee must commence the action “within three years of the date of death.” *Id.* It is only the trustee who may maintain a wrongful-death action. *Ortiz v. Gavenda*, 590 N.W.2d 119, 122-23 (Minn. 1999) (noting that under Minn. Stat. § 573.02, it is the trustee who has the exclusive right to maintain a wrongful-death action or to negotiate a settlement for the benefit of the next of kin).

Hagfors offers two reasons as to why the district court erred in dismissing his wrongful-death lawsuit. First, he argues that the district court erred in relying on *Ortiz*

because *Ortiz* is wrongfully decided for a number of proffered reasons.¹ Second, Hagfors claims that the district court erred in dismissing his wrongful-death complaint because he timely commenced the action because the May service of the summons and complaint complied with Minn. R. Civ. P. 3.01(c).

We first dispense with Hagfors’ claim that *Ortiz* was incorrectly decided. We are an error-correcting court, and our function “is limited to identifying errors and then correcting them.” *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (citations omitted). “The court of appeals is bound by supreme court precedent.” *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). And as to Hagfors’ contention that *Ortiz* created a “harsh rule,” though we appreciate his sentiment given the unfortunate death of his wife, the answer to this contention has been provided by the supreme court. *Id.*

Application of *Ortiz*

In *Ortiz*, the Minnesota Supreme Court held that (1) “[a] plaintiff’s failure to commence a wrongful death action as a court-appointed trustee for the next of kin of the decedent within the statutory time limit precludes [him] from maintaining the action[.]” and (2) “[t]he filing of a wrongful death action without the appointment of a trustee during the statutory filing period was a nullity.” 590 N.W.2d at 120. In *Ortiz*, the complaint was served before the expiration of the statute of limitations for wrongful-death actions, but the plaintiff had not been appointed trustee before the statute of limitations expired. *Id.* at

¹ Hagfors also argues that the statement in *Ortiz* that appointment of a trustee is a condition precedent to commencing a wrongful-death action pursuant to the wrongful-death statute is *dictum*. For the reasons we set forth below in our discussion of the application of *Ortiz*, we reject this claim.

120-21. The supreme court was therefore forced to address whether appointment needed to occur before commencement of a wrongful-death action. *Id.* at 121-22.

In *Ortiz*, the supreme court emphasized that it has “consistently reaffirmed the importance of [a trustee’s] filing [of] a wrongful death action within the time fixed by Minn. Stat. § 573.02[.]” *Id.* at 122. Reiterating the importance for “strict compliance” with section 573.02, the supreme court cited to its previous decision in *Regie de l’assurance Auto. du Quebec v. Jensen*, 399 N.W.2d 85 (Minn. 1987), “where [it] held that 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.

Here, prior to his appointment as a trustee, Hagfors personally served the wrongful-death complaint on April 4, 2024, on all respondents. Therefore, just like in *Ortiz*, Hagfors’ service of the wrongful-death summons and complaint before he was appointed trustee was a legal nullity. *Id.* And, because the statute of limitations thereafter expired without commencement by Hagfors in his capacity as a trustee, the district court lacked subject-matter jurisdiction and properly dismissed the complaint. *See id.* at 122 (stating that “limitation provisions in a statutorily created cause of action are jurisdictional”); *see also Ariola*, 889 N.W.2d at 348 (noting that a district court does not have jurisdiction over statutorily untimely claims).

Rule 3.01(c)

Hagfors argues alternatively that, even if the district court properly dismissed his wrongful-death action for the reasons set forth in *Ortiz*, he successfully commenced the

action before the expiration of the limitation period by service under Minn. R. Civ. P.

3.01(c). Under rule 3.01(c), an action is commenced

when the summons is delivered for service to the sheriff in the county where the defendant resides personally, by U.S. Mail (postage prepaid), by commercial courier with proof of delivery, or by electronic means consented to by the sheriff's office either in writing or electronically; but 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.

Hagfors argues that because he had emailed all the pleadings to the Hennepin and Ramsey County Sheriff's Offices on April 3, before he was appointed trustee, but then re-served the respondents in May after he was appointed trustee those original emailed pleadings "by operation of law, changed from legal nullities into pleadings with a legal effect" and, therefore, effected commencement of the action within the statute of limitations. We are unpersuaded.

Hagfors provides no legal authority for this claim, and we have found none. Moreover, the record shows that all respondents were personally served the summons and complaint on April 4, before Hagfors was appointed trustee, which rendered the served documents a legal nullity. *Ortiz*, 590 N.W.2d at 122-23. And because the re-service in May was after the statute of limitations had expired, the district court properly dismissed the complaint for lack of subject-matter jurisdiction.

Affirmed.