

Barabin had not sued for personal injuries during his lifetime. We conclude Deggs controls. Because Henry Barabin allowed the statute of limitations to expire on his underlying personal injury claim during his lifetime, his personal representative has no viable cause of action for wrongful death against these new defendants. Accordingly, we reverse.

FACTS

The material facts are undisputed. In 2006, Henry Barabin and his wife, Geraldine, successfully sued two defendants for injuries related to Henry's asbestos exposure in the workplace.² But the judgment was ultimately vacated and remanded to federal district court, where that case remains pending. In 2014, two years after Henry passed away, Geraldine, as personal representative for his estate, filed a wrongful death claim in King County Superior Court against several new defendants.

Before this court issued its opinion in Deggs, the superior court denied the new defendants' motions for summary judgment, ruling that the expiration of the statute of limitations on Henry's underlying personal injury action did not bar Geraldine's wrongful death claim.

This court granted discretionary review.

ANALYSIS

This appeal presents the question whether the expiration of the statute of limitations on an individual's personal injury action during his lifetime can preclude a wrongful death action based upon the underlying personal injury action.

² Barabin v. AstenJohnson, Inc., C07-1454RSL, 2010 WL 1506430, at *1 (W.D. Wash. Apr. 14, 2010).

Under substantially the same facts and same legal arguments, this court recently held that there is no viable cause of action for wrongful death once an individual allows the statute of limitations to expire on his underlying personal injury claim during his lifetime: “Wrongful death claims derive from the wrongful act and do not accrue absent a valid subsisting cause of action in the decedent at the time of his death.”³

We conclude Deggs controls here. Henry passed away over five years after he and Geraldine filed his original personal injury complaint. Neither Henry nor Geraldine filed any claims against the new defendants related to his injuries within the three-year statute of limitations for the personal injury claims. As a result, there was “no subsisting cause of action in the deceased” at the time of Henry’s death. We note that the trial court did not have the benefit of the Deggs decision at the time it denied the motions for summary judgment. Accordingly, his personal representative has no viable cause of action under the wrongful death statute against the new defendants.

We reverse.

WE CONCUR:

Spears, C.J.

Walden, J.

Becker, J.

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³ Deggs, 188 Wn. App. at 497.