

STATE OF MICHIGAN
COURT OF APPEALS

BRENDA STRAHL,

Plaintiff-Appellee,

v

WISCONSIN CENTRAL LTD.,

Defendant-Appellant.

UNPUBLISHED

October 25, 2002

No. 238769

Delta Circuit Court

LC No. 00-015641-NO

Before: Hood, P.J., and Whitbeck, C.J., and O’Connell, J.

MEMORANDUM.

Defendant appeals by leave granted from the trial court’s order denying its motion for summary disposition. We reverse.

Plaintiff, an administrative assistant at defendant’s Gladstone office, alleged that she suffered from sarcoidosis as a result of animal contaminate that traveled through the ventilation system. In January 1997, STS Consultants, Ltd., conducted an evaluation of the environmental air quality. In conjunction with the evaluation, employees were given a questionnaire to delineate any symptoms or complaints from the environmental conditions. Plaintiff indicated that her doctor advised her, in May 1995, that her health problems may be caused by her work environment. At the time of the environmental assessment, plaintiff told two other employees that she believed that the environmental conditions of the building were the cause of her medical problems. On August 2, 2000, plaintiff filed suit pursuant to the Federal Employers’ Liability Act (FELA), 45 USC § 51 *et seq.*, against her employer, an interstate rail carrier.

Defendant alleges that the trial court erred in denying its motion for summary disposition. We agree. An appellate court reviews the grant of denial of a motion for summary disposition *de novo* to determine if the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The plaintiff must allege and prove that a cause of action was filed within three years of the date of accrual to maintain an action under FELA. 45 USC § 56; *Matson v Burlington Northern Santa Fe Railroad*, 240 F3d 1233, 1235 (CA 10, 2001). The discovery rule applies to latent injuries and provides that the statute of limitations begins to run when the plaintiff knows or has reason to know of the existence and cause of the injury. *Id.* Upon experiencing symptoms, a plaintiff has a duty to investigate both the injury *and the suspected cause*. *Fries v Chicago & Northwestern Transportation Co*, 909 F2d 1092, 1095-1096 (CA 7, 1990) citing *United States v Kubrick*, 444 US 111, 123; 100 S Ct 352; 62 L Ed 2d 259 (1979). Although this rule imposes an affirmative duty on injured plaintiffs

to investigate potential causes, any other rule would thwart the purpose of the statute of limitations. *Id.* at 1095. Plaintiff did not investigate the cause of her injury despite the advice of her physician in 1995. Accordingly, the trial court erred in denying defendant's motion for summary disposition.

Reversed.

/s/ Harold Hood
/s/ William C. Whitbeck
/s/ Peter D. O'Connell