MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Paul Lechner,
Appellant-Plaintiff,

v.

Consolidated Rail Corporation,
Appellee-Defendant.

August 10, 2022

Court of Appeals Case No. 22A-CT-182

Appeal from the Hendricks Superior Court

The Honorable Stephenie D. Lemay-Luken, Judge

Trial Court Cause No. 32D05-1907-CT-90

Mathias, Judge.

[1] Paul Lechner appeals the trial court's entry of summary judgment for Consolidated Rail Corporation ("Conrail") on Lechner's complaint for damages. Lechner raises two issues for our review, but we need only consider

the following dispositive issue: whether Lechner's complaint is barred by the relevant statute of limitations. We affirm.

Facts and Procedural History

[2] Between 1976 and 1981, Lechner worked as a signal maintainer for Conrail at the Avon Big Four Yard. During that time, Lechner "was exposed to excessive and harmful amounts of toxic substances, including diesel exhaust, benzene, creosote, and/or asbestos . . . ." Appellant's App. Vol. 2, p. 18.

[3] In August 2010, Lechner was diagnosed with Hodgkin's lymphoma. Lechner did not ask his medical providers about a potential cause for that disease. In February 2011, Lechner was diagnosed with kidney cancer. He again did not ask his medical providers about any potential cause. In January 2014, Lechner's kidney cancer spread to his brain. Although his medical providers may have provided him with written materials explaining these diseases, Lechner "doubt[ed] that [he] read [them]." *Id.* at 116. As Lechner would later describe his reactions to these diagnoses, he "just . . . played the hand [he] was dealt." *Id.* at 117.

[4] In 2016, Lechner saw a law firm advertisement that stated that former employees of Conrail who have developed cancer may have a cause of action against Conrail. Lechner contacted that firm, and, in January 2018, he filed his suit against Conrail in a Pennsylvania trial court seeking damages under the Federal Employers' Liability Act, 45 U.S.C. § 51 *et seq.* ("FELA"). The

Pennsylvania trial court dismissed Lechner's complaint as an inconvenient forum, and Lechner refiled his complaint in the Hendricks Superior Court.[1]

[5] Conrail moved for summary judgment on the ground that Lechner's 2018 complaint was outside the three-year statute of limitations that applied to FELA claims.[2] After a hearing, the trial court agreed with Conrail and entered summary judgment accordingly. This appeal ensued.

Standard of Review

[6] Lechner appeals the trial court's entry of summary judgment for Conrail. Our standard of review in summary judgment appeals is well established. As our Supreme Court has made clear, "[w]e review summary judgment de novo, applying the same standard as the trial court." *G&G Oil Co. v. Cont'l W. Ins. Co.*, 165 N.E.3d 82, 86 (Ind. 2021). "Indiana's distinctive summary judgment standard imposes a heavy factual burden on the movant." *Siner v. Kindred Hosp. Ltd. P'ship*, 51 N.E.3d 1184, 1187 (Ind. 2016). We draw all reasonable inferences in favor of the nonmoving party and affirm summary judgment only "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (quoting Ind. Trial Rule 56(C)). And we "give careful scrutiny to assure that the losing party is not improperly prevented from having its day in

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[1] There is no dispute that the Hendricks Superior Court has jurisdiction to hear Lechner's FELA claim.

[2] The parties agree that this is the proper statute of limitations. *See* 45 U.S.C. § 56.

court." *Id.* (quoting *Tankersley v. Parkview Hosp., Inc.*, 791 N.E.2d 201, 203 (Ind. 2003)).

Discussion and Decision

[7] As the United States Court of Appeals for the Seventh Circuit has summarized:

> Following the guidance of the Supreme Court [of the United States in *Urie v. Thompson*, 337 U.S. 163, 170 (1949)] . . . , a cause of action [under FELA] accrues for statute of limitations purposes when a reasonable person knows *or in the exercise of reasonable diligence should have known of both the injury and its governing cause. Both components require an objective inquiry into when the plaintiff knew or should have known, in the exercise of reasonable diligence, the essential facts of injury and cause.* Moreover, the injured plaintiff need not be certain which cause, if many are possible, is the governing cause but only need know or have reason to know of a potential cause. That *this rule imposes on injured plaintiffs an affirmative duty to investigate the potential cause of his injury* has not been lost on the courts. However, to apply any other rule would thwart the purposes of repose statutes which are designed to apportion the consequences of time between plaintiff and defendant and to preclude litigation of stale claims.

Fries v. Chicago & Nw. Transp. Co., 909 F.2d 1092, 1095 (7th Cir. 1999) (emphases added; citations omitted); *see also Matson v. Burlington N. Santa Fe R.R.*, 240 F.3d 1233, 1236 (10th Cir. 2001) ("knowledge of the specific cause of a work-related injury is not required to trigger the statute of limitations in a FELA action. Rather, a FELA claim accrues when the plaintiff knows or should know that his injury is merely work-related.").

[8] Despite that clear authority, Lechner asserts that the trial court erred when it entered summary judgment because he did not have "definite knowledge" of the potential link between his diagnoses and his employment at Conrail until he saw the law firm advertisement in 2016. The analytical fulcrum for Lechner's argument is a fifty-three-year-old footnote in an opinion of the United States Court of Appeals for the Fifth Circuit, in which the court stated:

> The [Supreme] Court has noted that there is a less rigid standard applied in determining when limitations begin to run for occupational diseases as compared to determining when limitations start for subsequent manifestations of latent effects of one injury.
>
> The Court has rejected "mechanical analysis" of a similar limitation provision in [FELA actions]. *Urie v. Thompson*, 337 U.S. 163, 69 S. Ct. 1018, 93 L. Ed 1282 (1949). The Court considered occupational disease cases a special category and noted that *the statute of limitations could only begin to run when the employee has definite knowledge that his injury or disease is work-related*. *Accord Young v. Clinchfield R.R. Co.*, 4 Cir. 1961, 288 F.2d 499.

Aerojet-General Shipyards, Inc. v. O'Keeffe, 413 F.2d 793, 796 n.4 (5th Cir. 1969) (emphasis added; some citations omitted).

[9] There are several problems with Lechner's reliance on that footnote. First, it is obvious dicta, as the *Aerojet* opinion concerns the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, and is not a FELA case. *Id.* at 794. Second, in *Urie*, the Supreme Court made clear that the statute of limitations in a FELA occupational-disease action begins to run not from the

date of the last infliction of the injury—which might be unknowable—but from "when the accumulated effects of the deleterious substance manifest themselves," that is, from a diagnosis. 337 U.S. at 170. That the statute of limitations commences once the plaintiff is aware of his injury rather than when he is last exposed to the harm is not equivalent to saying, as the Fifth Circuit did, that the statute of limitations in a FELA action "could only begin to run when the employee has definite knowledge that his injury or disease is work-related." *Aerojet-General Shipyards, Inc.*, 413 F.2d at 796 n.4. Third, the Fourth Circuit opinion cited by the Fifth Circuit in the footnote says, like the Supreme Court in *Urie*, that the commencement of the statute of limitations in a FELA occupational-disease action "does not depend on when the injury was inflicted" but instead on "when the plaintiff has reason to know he has been injured." *Young*, 288 F.2d at 503 (discussing *Urie*, 337 U.S. at 170). Thus, the Fifth Circuit's statement that a plaintiff must have "definite knowledge that his injury or disease is work-related" before the statute of limitations in a FELA action begins to run is dicta and unsupported by the authorities it purports to be based on. *Aerojet-General Shipyards, Inc.*, 413 F.2d at 796 n.4.

[10] The definiteness of Lechner's awareness that his diagnoses may have been caused by his work-related exposures is not the question—the question is whether, under an "objective inquiry," Lechner "should have known" of a potential causal link between his diagnoses and his employment at Conrail within three years of his diagnoses. *See Fries*, 909 F.2d at 1095. We conclude that the designated evidence makes clear that Lechner made no inquiry

whatsoever, let alone an objectively reasonable one, into any cause for his Hodgkin's lymphoma diagnosis in 2010 or his kidney cancer diagnosis just a few months later in 2011, which in 2014 spread to his brain. Lechner did not ask his doctors regarding possible causes. He did not read literature provided to him by his doctors regarding his diagnoses. He sought no second opinions or other medical advice regarding the diagnoses. He did no independent research whatsoever on possible causes. Instead, as he aptly put it, he "just . . . played the hand [he] was dealt." Appellant's App. Vol. 2, p. 117. And Lechner does not dispute that news articles and websites existed online near the time of his diagnoses that would have informed him of a possible causal link between his exposure to diesel exhaust and his ensuing cancer. *See* Appellee's Br. at 27 (citing, *inter alia*, a June 2012 CNN internet article entitled, "WHO: Diesel exhaust can cause cancer").

[11] A plaintiff has "an affirmative duty to investigate the potential cause of his injury" in a FELA action. *Fries*, 909 F.2d at 1095. Instead of engaging in his affirmative duty, Lechner "played the hand [he] was dealt" for six years after his initial diagnosis with Hodgkin's lymphoma, until he saw a law firm advertisement that suggested he might have a cause of action against Conrail. Appellant's App. Vol. 2, p. 117. Two years after seeing that advertisement—eight years after his initial diagnosis and four years after his kidney cancer had spread to his brain—Lechner filed his complaint for damages against Conrail.

[12] A reasonably diligent person would have engaged in *some* inquiry regarding causality following the diagnoses for Hodgkin's lymphoma and kidney cancer.

And a plaintiff cannot sit idly by on his "affirmative duty" and then use his ignorance as a shield against a statute-of-limitations defense. Accordingly, we must conclude that Lechner failed to file his complaint within the three-year statute of limitations, and, thus, his complaint was not timely filed. The trial court properly entered summary judgment for Conrail, and we affirm the trial court's judgment.

[13] Affirmed.

Brown, J., and Molter, J., concur.