RENDERED: November 22, 2002; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000133-MR

M. WILEY BROWN — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 00-CI-000352

CSX TRANSPORTATION, INC. — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: COMBS, DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: M. Wiley Brown brings this appeal from a December 12, 2001 summary judgment of the Jefferson Circuit Court. We affirm.

Appellant worked as a "carman" for appellee, CSX Transportation, Inc., (CSX), the operator of a railroad system. His duties involved checking railroad cars in the yard and on incoming trains to discover defects and the need for repair. He performed the task by driving a three-quarter-ton Ford truck the length of the train in order to observe the cars. There came a time when the Ford truck was replaced by a smaller Mitsubishi manufactured truck. The essence of his claim is that he suffered

impairment to his body, especially the low back as a result of riding in the smaller Mitsubishi. Appellant terminated his employment with CSX on March 3, 1999.

On January 18, 2000, he filed this action in the Jefferson Circuit Court under the Federal Employers' Liability Act (the Act)(45 U.S.C.S. §§ 51 *et seq.* (Law. Co-op. 2002)). He alleged to have suffered an injury to his low back.

On December 12, 2001, the circuit court entered summary judgment concluding that appellant filed his action outside of the time prescribed by the Act's statute of limitations. This appeal follows.

Appellant contends the circuit court committed error by entering summary judgment. Specifically, appellant contends that his action under the Act is not time-barred. Summary judgment is appropriate if there exists no material issue of fact, and movant is entitled to judgment as a matter of law. Ky. R. Civ. P. 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991).

Under the Act, a cause of action must be brought within three years from the date the cause of action accrued. 45 U.S.C.S. § 56 (Law. Co-op. 2002). Applying the discovery rule, a cause of action accrues when "the plaintiff reasonably should have discovered both cause and the injury." Hicks v. Hines, Inc., 826 F.2d 1543, 1544 (6th Cir. 1987). See also Fonseca v. Consolidated Rail Corporation, 246 F.3d 585 (6th Cir. 2001).

The record indicates that appellant suffered knee injury as early as 1996. At that time, appellant's knee injury

was directly attributed to the Mitsubishi work truck. We view the following facts, as recited by the circuit court, pivotal:

> The record herein reflects that this is not a case of two separate injuries. **Rather, the knee injury was symptomatic of the back injury.** The Plaintiff's knee problems were diagnosed and attributed to the Mitsubishi work truck as early as 1996. At that time, Dr. Sartori noted that he had a possible lumbar problem. (emphasis added).

It is uncontroverted that appellant suffered injury in 1996 which he suspected was directly related to work. We think the full extent of such injury could have been reasonably discovered by appellant at that time. See Id.; Campbell v. Grant Truck Western Railroad Company, 238 F.3d 772 (6th Cir. 2001). Accordingly, we conclude that appellant's cause of action for his back injury accrued in 1996, and that appellant's action under the Act is time-barred. We thus think summary judgment was proper.

For the foregoing reasons, the summary judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kerry R. McDonald
Norman R. Lemme
Shepherdsville, Kentucky

BRIEF FOR APPELLEE:

David R. Monohan
James T. Blaine Lewis
Louisville, Kentucky