

**NOT DESIGNATED FOR PUBLICATION**

**WAYNE MIXON** \* **NO. 2000-CA-0688**  
**VERSUS** \* **COURT OF APPEAL**  
**CEMBELL INDUSTRIES,** \* **FOURTH CIRCUIT**  
**INC./THE GRAY INSURANCE** \* **STATE OF LOUISIANA**  
**COMPANY** \*

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APPEAL FROM  
THE OFFICE OF WORKERS' COMPENSATION  
NO. 99-04242, DISTRICT "SEVEN"  
Honorable John C. Grout, Workers' Compensation Judge

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**Judge Terri F. Love**

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(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge David S. Gorbaty)

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**REVERSED AND  
REMANDED**

The plaintiff filed a claim for permanent partial disability of his left arm on June 17, 1999. On August 18, 1999, the defendants filed exceptions of prescription and no cause of action. At the hearing on the exception of prescription, the trial court refused to allow the plaintiff to introduce evidence and maintained the defendants' exception of prescription, dismissing the plaintiff's claim with prejudice. We reverse and remand to allow the trial court to consider evidence on the issue of prescription.

**FACTS AND PROCEDURAL HISTORY**

On September 30, 1997, the plaintiff, Wayne Mixon, sustained a burn to his left arm while in the course and scope of his employment with

Cembell Industries, Inc. (“Cembell”), when he touched a hot I-beam with his left forearm and struck his elbow on a pipe handrail. The defendant paid for all of the plaintiff’s medical treatment, and the plaintiff returned to work on October 7, 1997 after having skin graft surgery.

Because Mr. Mixon’s first skin graft surgery was unsuccessful, he underwent a second skin graft surgery on December 9, 1997. Mr. Mixon returned to work on December 13 , 1997. Mr. Mixon missed 3 or 4 days of work after the second surgery and Cembell continued to pay the plaintiff’s full salary during this time. The plaintiff never received any temporary total disability benefits.

On June 17, 1999, the plaintiff filed a claim seeking benefits for permanent partial disability of his left arm. The defendants filed exceptions of prescription and no cause of action on August 18, 1999. The hearing on the exception of prescription was held on October 29, 1999, and the trial judge found for the defendants, maintaining their exception of prescription. At the hearing on the exception, the plaintiff attempted to introduce evidence to prove that his claim had not prescribed, but the trial judge disallowed introduction of the evidence. The plaintiff proffered the evidence and now

appeals the trial judge's dismissal of his claim with prejudice.

## **DISCUSSION**

In his first assignment of error, the plaintiff argues that the trial court erred in not allowing evidence to be introduced at the hearing on the exception of prescription. At the hearing, the defendants objected to the introduction of evidence, arguing that there is no legal provision for introducing evidence at the oral argument of a motion.

Under section 23:1209 of the Louisiana Revised Statutes, the prescriptive period for a worker's compensation claim is one year after the date of injury. When a plaintiff asserts a claim that is prescribed on its face, that plaintiff is obligated to introduce evidence to prove that his claim is not prescribed. *See* La. Code Civ. Proc. Ann. art. 931; *Cook v. Con-Trux Constr. Co.*, 499 So. 2d 169, 173 (La. App. 2 Cir. 1986); *Kerr v. Jefferson Truck Lines*, 389 So. 2d 729, 730-31 (La. App. 4 Cir. 1980).

Mr. Mixon's injury occurred on September 30, 1997, and he filed his claim on June 17, 1999, nearly two years after he was injured. Although the plaintiff argues that his injury is a developmental injury that is entitled to a longer prescriptive period, his claim does not clearly allege that his injury is

developmental. His claim was clearly prescribed on its face. Because his claim was facially prescribed, the plaintiff was obligated to introduce evidence to prove that his claim was timely. Therefore, the trial judge erred in disallowing the introduction of Mr. Mixon's evidence.

In his second and third assignments of error, the plaintiff argues that the trial court erred in maintaining the defendant's exception of prescription because the defendant did not meet its burden of proof and because the plaintiff's proffered evidence proves that the claim is not prescribed. To support these arguments, the plaintiff asserts that the defendant bears the burden of proving that Mr. Mixon's claim is prescribed. Generally, the party raising the exception of prescription bears the burden of proof unless the claim is facially prescribed, in which case the plaintiff bears the burden of proving that the claim is not prescribed. *See Spott v. Otis Elevator Co.*, 601 So. 2d 1355, 1361 (La. 1992). Because Mr. Mixon's claim is facially prescribed, Mr. Mixon has the burden of proving that his claim is timely. To satisfy his burden of proof, Mr. Mixon attempted to introduce evidence at the hearing on the exception of prescription, but the trial judge erroneously disallowed the plaintiff's evidence.

**DECREE**

For the foregoing reasons, we reverse the trial court's judgment maintaining the defendant's exception of prescription and dismissing the plaintiff's claim with prejudice; and, we remand this case to the trial court for consideration of evidence on the issue of prescription.

**REVERSED AND**

**REMANDED**