



In this personal injury action, the Plaintiffs<sup>1</sup>, Arthur and Alfreida Davis, filed suit against the Defendant, Bob Patterson, and the Defendant, One Memphis Place Venture (“Venture”), for injuries resulting from exposure to contaminants at the Plaintiff’s place of employment. The Plaintiffs took a voluntary nonsuit as to the Defendant, Bob Patterson. Venture filed a motion for summary judgment asserting that the Plaintiffs’ claims were barred by the one year statute of limitations. The trial court granted Venture’s motion for summary judgment. The Plaintiffs’ have appealed the trial court’s order granting Venture’s motion for summary judgment. For the reasons stated hereafter, we affirm the judgment of the trial court.

## FACTS

From January 2, 1991 through September of 1994, the Plaintiff was employed as a tax assessor in the office of the Defendant, Bob Patterson. The building at which the Plaintiff worked was owned by Venture.

During his employment with the Defendant Patterson, the Plaintiff experienced various health problems including coughing, irritation of the skin, itching and other related illnesses. The Plaintiff compiled a diary describing the health problems that he experienced. In his diary, the Plaintiff stated as follows:

[m]y employment began in the Trustee’s Office on January 2, 1991. During the spring of 1991, under the administration of Bob Patterson, there was [sic] various construction projects in the office which entailed extensive renovations of the Delinquent Tax Department, of which I work. During this renovation period, I began experiencing coughing, irritation of the skin, itching and other related illnesses.

I began to notice my surroundings and realized that fibrous materials were blowing out of the ceiling where repairs were being made and where a new wall was being constructed. When I brought to the attention of the construction crew, that material was falling from the ceiling and blowing over the office, they immediately draped plastic around the specific area where they were working in an attempt to contain it. When the work was finished, they failed to correct the problem with this material, now blowing from the vents.

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<sup>1</sup>The Plaintiffs, Arthur and Alfreida Davis, brought this action; however, the action by Alfreida Davis is derivative in nature. References to Plaintiff in the singular, therefore, refer to the Plaintiff, Arthur Davis.

I first saw my doctor during this same time period on May 3, 1991, and was diagnosed as having an upper respiratory infection which was repeatedly brought on because I was continuously breathing in this substance.

**It was not until November 13, 1992 that I realized that my illness was caused by a substance within my place of employment.** I had recurrences on November 26, 1991, November 2, 1992, November 18, 1992, March 1, 1993, March 3, 1993, March 18, 1993 and April 26, 1993. (emphasis added)

On November 13, 1992, the Plaintiff stated in his diary that he spoke with his employer “concerning fibers of insulation that ha[d] been blowing out of AC [sic] vents for months since renovation of office.” On November 16, 1992, the Plaintiff noted in his diary that he made a visit to the employee health clinic and informed the doctor of the “fiberglass insulation exposure in Trustees Office.” The Plaintiff further stated in his diary that he returned to work on November 16, 1992 and was “[a]dvised to contact a personal doctor.”

On November 18, 1992, the Plaintiff visited his primary physician, Dr. Joseph E. Allen. The Plaintiff showed Dr. Allen samples of the fibrous pollutants which came out of the vents in the Plaintiff’s office. Dr. Allen advised the Plaintiff that exposure to fiberglass insulation “can cause serious health problems.” Dr. Allen further advised the Plaintiff that breathing such contaminants would cause respiratory problems.

On February 16, 1993, the Plaintiff informed his employer of the “continuing problems with insulation blowing out of air conditioning vent.” On February 17, 1993, the Plaintiff contacted the Occupational Safety and Health Administration regarding the contaminants that the Plaintiff was breathing at work. The Plaintiff also informed Interstate Realty Company, the management company for Venture, of the problems that the Plaintiff was experiencing.

Dr. Allen wrote the Plaintiff a letter dated March 3, 1993 stating that the Plaintiff’s “exposure needs to be eliminated.”

At some point prior to December 20, 1993, the Plaintiff consulted an attorney, Jack V. Delany, about a potential worker's compensation claim against the Defendant Patterson. In a letter dated December 20, 1993, Delany informed the Plaintiff of the one year statute of limitations for personal injury actions. In his letter to the Plaintiff, Mr. Delany stated: "[s]ince Dr. Allen first went on record as diagnosing you as suffering from occupational lung disease on March 3, 1993, you have until March 2, 1994 to pursue this matter further."

The Plaintiff filed his complaint on August 25, 1994.

## LAW

The issue before this Court is whether the one year statute of limitations for personal injury actions bars the Plaintiffs' cause of action. The Plaintiffs argue that their cause of action did not accrue until August 25, 1993 when the Plaintiff's pulmonary specialist, Dr. William Potter, confirmed the initial diagnosis of the Plaintiff's primary physician, Dr. Allen, and informed the Plaintiff that he was suffering from an occupational lung disease.

Pursuant to T.C.A. § 28-3-104, the statute of limitations for personal injury actions is one year. Under Tennessee law, a statute of limitations begins to run when the plaintiff discovers or, in the exercise of reasonable care and diligence for his own health and welfare, should have discovered the resulting injury. Teeters v. Currey, 518 S.W.2d 512, 517 (Tenn. 1974); McCroskey v. Bryant Air Conditioning Co., 524 S.W.2d 487, 491 (Tenn. 1975); Roe v. Jefferson, 875 S.W.2d 653, 656 (Tenn. 1994); Wyatt v. A-Best Products Co., Inc., 924 S.W.2d 98, 103 (Tenn. Ct. App. 1995).

In applying this rule to the case at bar, we are in agreement with the trial court's order holding that the one year statute of limitations bars the Plaintiffs' cause of action. The Plaintiff admits in his diary that on November 13, 1992 he realized his illness was caused by exposure to substances at his place of employment. Moreover, Dr. Allen wrote

the Plaintiff a letter dated March 3, 1993 and informed him that he was suffering from an occupational lung disease. The Plaintiff was further notified by an attorney, Jack Delany, that there was a one year statute of limitations for personal injury actions and that the Plaintiff's cause of action would expire on March 2, 1994. Because the Plaintiffs did not commence their action until August 25, 1994, the one year statute of limitations under T.C.A. § 28-3-104 bars this action.

The judgment of the trial court is hereby affirmed. Costs on appeal are taxed to the Appellant, for which execution may issue if necessary.

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HIGHERS, J.

CONCUR:

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LILLARD, J.

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McLEMORE, S.J.