

Case Name: Larry Zapp v. CSX Transportation

Date Decided: September 25th, 2009

Originally Filed in: ()

Decided by: (State)

Court: Court of Appeals of Kentucky

Judge: Chief Judge Combs, Judge Nickell, Judge Taylor

Citation: 2009 WL 3047630 (Ky.App.)

Background:

Plaintiff, Larry Zapp ("Zapp"), appealed a directed verdict in favor of CSX Transportation. Zapp brought an action under the Federal Employers' Liability Act ("FELA") which was dismissed by the statute of limitations. Zapp, who is in his 70s, had worked for various railroads over 30 years. He retired in December 200, and in 2003, Zapp was diagnosed with bilateral carpal tunnel syndrome. Zapp filed a complaint in December 2003 against CSX for its failure to provide a "reasonably safe place to work" in violation of the FELA, thus causing him to suffer a work-related injury. At the end of trial, CSX moved for a directed verdict which the court granted. Zapp appealed the verdict alleging that the court erred by rendering a directed verdict.

Issue:

Did the circuit court err in granting CSX's motion for a directed verdict?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

The statute of limitation under FELA runs when the plaintiff knows or reasonably should have known of both an injury and its cause. The circuit court rendered a directed verdict after concluding Zapp's testimony was a judicial admission, showing he knew about his injury and the cause prior to 2000, in 1999 thus barring his action under the statute of limitations. The testimony to which CSX directed the court, was Zapp's admission that as he performed his job duties, his condition worsened in 1997-1999. Moreover, Zapp admitted that he knew in 1999 the injury was made worse by his work at the railroad. However, this Court found that Zapp, although he knew about his injury, did not admit to its cause. In fact, it is clear that in 1999, Zapp was unaware of the cause of his injury and that him admitting that his duties made the condition worse did not conclude that he knew his work duties caused it. Accordingly this Court reversed the circuit court's verdict and remanded the trial

Comments:

Zapp's testimony fell short of admitting that he knew of the cause of the injury. Although he

knew his injury was present, his testimony did not establish he knew of the cause and therefore holding that the statute of limitations began running in 1999 was erroneous. Steve Gordon