



L4 and L5 disc spaces. On December 12, 2005, the plaintiff saw Dr. Gornet. Dr. Gornet diagnosed degenerative changes at the L1 and L2 disc spaces.

On December 28, 2007, the plaintiff filed a complaint pursuant to the Federal Employer's Liability Act (FELA) (45 U.S.C. §51 *et seq.* (2006)) against Illinois Central and alleged that he was injured "when he was subjected to numerous repetitive traumas and walking on unstable ballast, operating machines, throwing tie plates, unloading ballast trains, operating backhoes, and repairing railroad tracks." Specifically, he alleged that he had "sustained severe and permanent injuries to his back, neck, spine, knees and body." The plaintiff alleged that he had also incurred lost wages and lost earning capacity. Illinois Central filed an answer and affirmative defenses on January 23, 2008, alleging, *inter alia*, that the plaintiff had failed to file the suit within the three-year statute-of-limitations period for FELA claims.

The plaintiff was deposed on March 12, 2009, and gave a history regarding his back injuries. He testified that he had a back injury in 1982 when he had chipped a vertebra in his lower back. He sought treatment for the injury and settled this claim with Illinois Central. He also experienced a "pop" in his lower back while picking up a ramp after loading a backhoe onto a trailer in 1997. He filled out personal injury reports and sought treatment. He recalled that the next time he had a back injury was when he went to see a chiropractor, Dr. Stanfield, in 2004. He saw Dr. Stanfield three or four times for adjustments. The plaintiff did not recall stating that his back pain was work-related. He then saw Dr. Gornet in December 2005 for back problems. The plaintiff admitted telling Dr. Gornet in December 2005 that the back problems began "years" previously.

On October 15, 2009, Illinois Central filed a motion for a partial summary judgment, alleging that the plaintiff had failed to present any evidence regarding the knee injury, lost wages, and lost earning capacity. On October 22, 2009, Illinois Central then filed a motion

for a partial summary judgment regarding the plaintiff's ballast claims, arguing that his ballast claim was precluded by the Federal Railroad Safety Act (FRSA) (49 U.S.C. § 20101 *et seq.* (2006)) and regulations promulgated by part 213 of the Track Safety Standards. Illinois Central argued that the federal regulations set the standard for ballast and that the plaintiff had not alleged or provided any evidence that Illinois Central violated those regulations.

On January 11, 2010, the trial court entered a partial summary judgment in favor of Illinois Central and against the plaintiff regarding his claims for the knee injury, lost wages, and lost earning capacity. On March 1, 2010, the court granted a partial summary judgment in favor of Illinois Central and against the plaintiff on the basis that the ballast claim was precluded by the FRSA and Federal Railroad Administration.

On March 17, 2010, Illinois Central filed a motion for a partial summary judgment regarding the plaintiff's claim of injuries to his back, arguing that the claim was barred by the three-year statute of limitations which applies to FELA claims. Illinois Central argued that the plaintiff's complaint had been filed on December 28, 2007, and that, accordingly, the plaintiff's claim must have accrued no later than December 28, 2004, in order for his complaint to be timely filed. Illinois Central argued that the plaintiff's claim for back injuries accrued for statute-of-limitations purposes no later than July 5, 2004, and was thus time-barred. The plaintiff filed an opposition to the motion on April 1, 2010, arguing that there is a genuine issue of material fact regarding when his cause of action accrued or when he knew or reasonably should have known about his injury and its relation to his employment at Illinois Central. According to the plaintiff, he did not know about his injury until December 2005 and his complaint was filed within three years of that date and was not barred by the statute of limitations. Attached to the opposition was a signed affidavit that stated as follows:

"4. At no time did any of my treating doctors indicate that my back problems were work related until I saw Dr. Matthew Gornet in December of 2005.

5. December of 2005[] was the first indication that my back problems were related to my railroad employment."

On May 5, 2010, the trial court granted Illinois Central's motion for a partial summary judgment regarding the plaintiff's back claim, finding that the plaintiff had actual knowledge of the injury no later than July 5, 2004. On May 6, 2010, Illinois Central filed a motion for a summary judgment on the plaintiff's neck claim, arguing that the plaintiff had insufficient evidence to pursue his claim. On the same date, the plaintiff filed a motion to reconsider the trial court's judgment entered on May 5, 2010. The trial court also entered a summary judgment in favor of Illinois Central on the plaintiff's neck claim and denied the plaintiff's motion to reconsider. On June 2, 2010, the plaintiff filed a timely appeal of the trial court's judgments entered on May 5 and May 6, 2010.

On appeal, the plaintiff first argues that he was not aware of his back injury until December 2005 and that his complaint was timely filed within the three-year statute of limitation for FELA claims. A summary judgment will be granted only if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Bright Horizons Children's Centers, LLC v. Riverway Midwest II, LLC*, 403 Ill. App. 3d 234, 246 (2010).

The FELA provides its own statute of limitations, which provides, "No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued." 45 U.S.C. §56 (2006). The plaintiff bears the burden of proof of alleging and proving that his cause of action was commenced within the three-year period. *Crisman v. Odeco, Inc.*, 932 F.2d 413 (5th Cir. 1991). Accordingly, the plaintiff has the

burden of proving the date of discovery when seeking to come within the "discovery rule" exception to the statute of limitations. *Krause v. Du Pont Pharmaceuticals, Inc.*, 237 Ill. App. 3d 254 (1992). Under the discovery rule, a claim accrues when the plaintiff knows or should have known in the exercise of due diligence the essential facts of his injury and its causes. *Tolston v. National R.R. Passenger Corp.*, 102 F.3d 863, 865 (7th Cir. 1996). The United States Supreme Court has held that when an injury results from continual exposure to a harmful condition over an extended period of time, a plaintiff's cause of action accrues when the injury manifests itself. *Urie v. Thompson*, 337 U.S. 163, 170 (1949).

After applying these standards to the instant case, we find that the plaintiff's claim regarding his back was properly barred. The record reveals that no later than July 5, 2004, the plaintiff had actual knowledge of his alleged back injury because he was given a confirmed diagnosis by Dr. Stanfield. The plaintiff had indicated that he believed that this injury was caused by "work." On the "Welcome Form," he indicated that "work" was the reason for his visit to Dr. Stanfield. The plaintiff received treatment from Dr. Stanfield for his alleged back pain, and on the same day, lumbar spine films were taken and revealed degenerative disc changes at the L5 and L4 disc spaces. Accordingly, the plaintiff knew that he had a diagnosed lower back problem on July 5, 2004, but he failed to file the suit within three years as required by FELA. In order for the plaintiff's claim to be timely, he must have filed the claim by July 5, 2007. The plaintiff failed to do so, and he did not file his claim until December 28, 2007.

The plaintiff argues that he was not aware of his injury until December 2005, and he directs us to his signed affidavit. However, the plaintiff's affidavit belies the record. The medical "Welcome Form" that the plaintiff filled out on July 5, 2004, indicated that he was seeing Dr. Stanfield for back problems and that the reason for his visit was "work." The affidavit contradicts the medical record. Illinois courts have held that where a medical record

filled out by a plaintiff and thus establishing his knowledge is contradicted by a later affidavit signed by the plaintiff in response to a motion for a summary judgment, the plaintiff must present specific facts to support the assertions in the affidavit. *Churkey v. Rustia*, 329 Ill. App. 3d 239 (2002); *Wallace v. Alexian Brothers Medical Center*, 389 Ill. App. 3d 1081 (2009). The plaintiff has not done so here. The affidavit cites no factual basis in the record to support the statement in his affidavit regarding his knowledge that his alleged injuries were work-related. The plaintiff's affidavit must present specific supporting facts to show why he is now asserting a lack of knowledge that he earlier possessed, as evidenced in the July 5, 2004, medical record. Without this, the affidavit does not create a genuine issue of material fact to defeat a summary judgment.

We further reject the plaintiff's argument that a plaintiff must be "sure of the cause" of his injury before the claim accrues. A plaintiff need not be sure which cause is predominant, as long as he knows or has reason to know of a potential cause. A cause of action 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 the governing cause. *Fries v. Chicago & Northwestern Transportation Co.*, 909 F.2d 1092, 1095 (7th Cir. 1990). Here, the plaintiff was diagnosed on July 5, 2004, at which time the plaintiff indicated that his symptoms were work-related and the reason for the visit. The plaintiff had actual knowledge that the cause of his injury was work-related on July 5, 2004. Accordingly, we reject the plaintiff's argument and conclude that the trial court did not err in granting a summary judgment in favor of Illinois Central where the evidence reveals that the plaintiff failed to commence his claim within the three-year statute-of-limitations period.

Next on appeal, the plaintiff argues that the trial court erred in granting a summary judgment in favor of Illinois Central and against him regarding the ballast claim. In response, Illinois Central correctly points out that the plaintiff's counsel presented no trial

court record or evidence on the ballast issue, did not file any response to the motion regarding ballast, and did not present any record of a hearing on the matter. Arguments not presented to the trial court are forfeited on appeal. *Skolnick v. Altheimer & Grey*, 191 Ill. 2d 214, 237 (2000). Moreover, it is the plaintiff's duty to provide the appellate court with an adequate record on appeal to support his claim. *Corral v. Mervis Industries*, 217 Ill. 2d 144 (2005). Any doubts arising from the inadequacy of the record will be resolved against the appellant. *Corral*, 217 Ill. 2d at 157. Without an adequate record preserving the claim on appeal, the reviewing court must presume that the circuit court had a sufficient factual basis for its holding that its order conforms with the law. *Corral*, 217 Ill. 2d at 157. Accordingly, Illinois Central argues that the plaintiff has forfeited this issue on appeal and urges this court to resolve any doubts in its favor. The plaintiff has not presented any evidence that Illinois Central used ballast that was improper or that Illinois Central violated any regulations governing ballast. Therefore, we conclude that the plaintiff's ballast claim is forfeited on appeal because he failed to provide an adequate record preserving the claim on appeal.

For the foregoing reasons, the judgment entered by St. Clair County circuit court is hereby affirmed.

Affirmed.