2012 IL App (2d) 111319-U
No. 2-11-1319
Order filed on November 21, 2012
Modified Upon Denial of Rehearing January 7, 2013

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

VERNON NELSON and JOHN Q. NELSON, as Special Administrators for the Estate of Eva Nelson, Deceased,	)	Appeal from the Circuit Court of Kane County.
Plaintiffs-Appellants,	)	
v.	)	No. 04-LK-495
PLASTICS ENGINEERING COMPANY,	)	
Defendant-Appellee	)	
(Aurora Equipment Company, Georgia-Pacific Corporation, Sprinkmann Sons Corporation of Illinois, Occidental Chemical Corporation, BASF Corporation, American Home Products, and American Cyanamid, Defendants).	)	Honorable Robert B. Spence and Robert J. Morrow, Judges, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment in defendant's favor was proper where (1) successor judge did not err in entertaining second motion for summary judgment; (2) motions to reopen discovery were properly denied where the proposed witnesses and information were not newly discovered or did not possess relevant and material information; and (3) plaintiffs did not

produce competent and admissible evidence that the plaintiffs' decedent was exposed to any of defendant's asbestos-containing products.

¶ 2 Plaintiffs, Vernon Nelson and John Q. Nelson, special administrators for the estate of Eva Nelson, appeal from an order of the circuit court of Kane County granting summary judgment in favor of defendant, Plastics Engineering Company. We affirm.

¶ 3 According to plaintiffs' third amended complaint, Eva was employed at Furnas Electric Company[1] in Batavia, Illinois, where she was exposed to asbestos from plastic molding products manufactured by and sold to Furnas by defendant. The complaint alleged that Eva died on January 9, 2005, from conditions of ill being caused by her exposure to the asbestos supplied by defendant and others.

¶ 4 The case was originally pending before Judge Donald C. Fabian. On July 5, 2007, defendant filed a motion for summary judgment. Judge Fabian granted the motion but then granted plaintiffs' motion to reconsider upon the condition that plaintiffs file an affidavit showing medical causation. Plaintiffs filed the required affidavit. Judge Fabian had also granted co-defendant's, Aurora Equipment Company's, motion for summary judgment, and plaintiffs appealed from that order. (See *Nelson v. Aurora Equipment Co.*, 391 Ill. App. 3d 1036 (2009)). While the grant of summary judgment in favor of Aurora Equipment Company was on appeal, Judge Fabian retired. This court issued its mandate on November 24, 2009, and, back in the circuit court, the case was assigned to Judge Robert B. Spence. In June 2011, plaintiffs obtained new counsel, and on July 22, 2011, defendant again moved for summary judgment. Plaintiffs sought to reopen discovery in order to

[1]In the complaint, the company's name is spelled "Furnace," but throughout the record, in documents and depositions, the spelling is "Furnas." Furnas manufactures electrical controls.

locate and depose certain alleged fact witnesses. Judge Spence denied the motion. A third judge on the case, Judge Robert J. Morrow, heard and decided defendant's motion for summary judgment.

¶ 5 In its July 2011 motion for summary judgment, defendant argued that it did not manufacture or supply any asbestos-containing products to which Eva was exposed. According to defendant, Eva was employed by Furnas from 1967 to 1970. During that time, only one product furnished to Furnas by defendant contained asbestos, but that product was molded in Pennsylvania and in Addison, Illinois, before the finished products were supplied to Furnas, so that it was impossible for Eva to have been exposed. Defendant also claimed that plaintiffs' evidence was incompetent and inadmissible. According to defendant, plaintiffs' only evidence that defendant's asbestos-containing products were on site at Furnas during the period Eva worked there was furnished by William Gregory, Eva's supervisor, who testified at a deposition that defendant's salesman—a man named John Atlin (or Aklin)—told Gregory that defendant's products had asbestos in them. Defendant maintained that Gregory's testimony was hearsay, did not come within any hearsay exception, and lacked foundation, as there was no evidence that "Atlin" was defendant's agent. Defendant produced evidence that it never employed a salesman named John Atlin. Moreover, defendant claimed Gregory was unreliable because he was relying on his memory of events that occurred more than 40 years ago.

¶ 6 Plaintiffs responded to the 2011 motion for summary judgment by first arguing that defendant could not relitigate a summary judgment motion that Judge Fabian had denied. Plaintiffs incorporated their pleadings and arguments from the first motion for summary judgment, essentially arguing that the evidence created genuine issues of material fact. According to plaintiffs, Eva worked at Furnas as a molding press operator. Gregory, who had been Eva's supervisor at Furnas,

testified in a deposition that he saw "foggy dust" come up every time Eva placed defendant's product into her press. Gregory said the "foggy dust" was like a smoking automobile. Gregory claimed that he had spoken regularly with defendant's employees and agents and that a salesman named John Atlin, or Aklin, told him that defendant's products contained asbestos. According to plaintiffs, the testimony of Jeffrey Mohr, defendant's secretary and general counsel, that defendant's records showed that defendant never employed a salesman by the name of John Atlin and never furnished asbestos-containing products to Furnas while Eva was employed there simply created fact issues when considered against Gregory's recollection of events. Plaintiffs included exhibits showing that Eva died as a result of complications from mesothelioma, which is caused by exposure to asbestos. Finally, plaintiffs requested the opportunity to produce "newly discovered" evidence that Eva was exposed to asbestos from defendant's products. In support of this request, plaintiffs provided an affidavit of their attorney, Steven R. Penn. The Penn affidavit contained the following information.

¶ 7 Penn spoke with Mark Palasz, Dudley Sook, and Joe Houlne, all of whom had been employed by Furnas. Penn was unable to obtain these gentlemen's affidavits because of their noncooperation, and Penn was unable to issue subpoenas because his motion to reopen discovery had been denied. Additionally, Sook resided in Iowa, which would require a commission in Iowa to obtain a subpoena. Penn stated that he expected Sook to testify to Furnas's processes for making low and high voltage equipment molds. Penn expected Palasz to testify to the difference in molding materials for high voltage molds and low voltage molds. Penn expected Houlne to testify to the materials used for thermostat molding and explain that when Furnas learned that the material used contained asbestos fibers, Furnas ceased using it. The affidavit recited that one of the plaintiffs spoke with an individual named Larry Miller, who had worked at Furnas and currently worked at the

company that purchased Furnas. Miller refused to supply an affidavit and was a witness for his employer in other asbestos litigation. Miller was expected to testify in the present case that large amounts of defendant's products were used by Furnas in the sixties and early seventies. Miller did not know that these materials contained asbestos until Furnas stopped using them.

¶ 8 Judge Morrow ruled on the motion for summary judgment in a written order entered December 1, 2011. The order first stated that fact discovery had been closed by Judge Fabian on May 15, 2007, and that Judge Spence had denied plaintiffs' motion to reopen discovery on July 27, 2011. The order next dealt with Penn's affidavit in support of the request to allow him to produce newly discovered evidence. The court found that there were deficiencies in each proposed witness's disclosures. Sook's disclosure contained no dates; Palasz had no knowledge of the content of the fiber used by Furnas for high voltage equipment molds and did not mention Eva; Houlne had been an inspector in Furnas's mold department, was uncertain of the years he was so employed, and did not mention Eva; and Miller had worked at Furnas (and its successor) since 1969 and made no mention of Eva. Additionally, the court concluded that "[t]here has been no showing that these witnesses were unavailable upon diligent inquiry prior to the closing of fact discovery." The court next found Gregory's evidence to be unreliable and inadmissible, because plaintiffs' counsel had conceded that John Atlin (or Aklin) was not the name of the salesman Gregory had spoken to, leaving the speaker's identity and relationship to Furnas unknown. The court concluded that "a foundation for reliability cannot be established on the current state of the record to allow such a statement into evidence at trial as an exception to the hearsay rule." The court next found that defendant had produced evidence to show that one product containing asbestos was sold by defendant to Furnas in 1969 in seven shipments but that the product in those shipments had not been

processed on site at Furnas. The court concluded that "plaintiffs have failed to present admissible evidence in their Response to [defendant's] Motion for Summary Judgment from the available record to raise a genuine issue of material fact in this case that [Eva] was exposed to asbestos from [defendant's] product ***." The court ruled that the "frequency, regularity and proximity" test plaintiffs were required to meet was not supported by "some" evidence. The court accordingly granted defendant's motion for summary judgment, denied plaintiffs' request to reopen fact discovery, and dismissed the complaint against defendant with prejudice.

¶ 9 Plaintiffs filed a timely appeal.

¶ 10 Plaintiffs first argue that the court erred in allowing defendant to relitigate its motion for summary judgment before Judge Morrow after Judge Fabian had denied it. Plaintiffs assert that the second motion was identical to the first and should not have been litigated, analogizing to the law-of-the-case doctrine. The analogy is not apt. In general, the law-of-the-case doctrine prohibits reconsideration of issues that have been decided in a prior appeal. *In re Christopher K.*, 217 Ill. 2d 348, 365 (2005). The doctrine also bars relitigation of an issue decided in the same case. *Christopher K.*, 217 Ill. 2d at 365. While the doctrine is not a jurisdictional limitation on a court's power to address an issue, it expresses the practice of courts generally to decline to reopen what has been decided where there has been no material change in the facts. *Christopher K.*, 217 Ill. 2d at 365. However, as plaintiffs recognize, a finding of a final judgment is required to sustain application of the doctrine. *People v. Patterson*, 154 Ill. 2d 414, 469 (1992). Here, as plaintiffs also recognize, Judge Fabian's order granting reconsideration of his grant of summary judgment (in effect denying the motion for summary judgment) was not a final judgment.

¶ 11 Plaintiffs urge that the "federal model" offers "insight" into the law-of-the-case doctrine. Plaintiffs cite *Best v. Shell Oil Co.*, 107 F. 3d 544 (7th Cir. 1997), and *Williams v. C.I.R.*, 1 F. 3d 502 (7th Cir. 1993). In *Best*, the magistrate judge before whom the case was being tried reconsidered *sua sponte* the order entered by the district judge denying summary judgment in favor of the defendant. *Best*, 107 F. 3d at 546. The magistrate judge ordered the parties to rebrief the motion for summary judgment, and the plaintiff failed to file a response to the defendant's motion or to appear at a status conference. *Best*, 107 F. 3d at 546. The magistrate judge then granted the defendant's motion. *Best*, 107 F. 3d at 546. In *Williams*, a judge of the Tax Court granted partial summary judgment in favor of the taxpayers. *Williams*, 1 F. 3d at 503. The case was later reassigned to a different judge who reached the opposite conclusion. *Williams*, 1 F. 3d at 503. In both *Best* and *Williams*, the Seventh Circuit said in this situation, when judges are changed midstream, litigants have a right to expect that the change in judges will not mean going back to square one. *Williams*, 1 F. 3d at 503; *Best*, 107 F. 3d at 546. In discussing the law-of-the-case doctrine as applied by federal courts to federal cases, neither *Best* nor *Williams* alluded to any rule that a final judgment is required to sustain application of the doctrine. We cannot, as plaintiffs urge us to do, follow the federal courts' "insight," because our supreme court in *Patterson* clearly stated that a final judgment is required before we may apply the law-of-the-case doctrine to bar the second motion.

¶ 12 In a situation presented by the case at bar, a judge has the power to reconsider the ruling of another judge derived from the traditional power of a court to amend and revise interlocutory orders. *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 119 (1978). "An interlocutory order may be modified or vacated at any time." *Richichi v. City of Chicago*, 49 Ill. App. 2d 320, 325 (1964). In *Richichi*, the court held that a judge has the right to review a prior judge's order "if in his judgment it was

erroneous and he has the duty to do so if changed facts or circumstances make the prior order unjust." *Richichi*, 49 Ill. App. 2d at 325. The limitation on this principle is where there is evidence of bad faith or judge shopping by the party who obtains an adverse ruling. *Bank of Ravenswood v. City of Chicago*, 307 Ill. App. 3d 161, 165 (1999). Here, plaintiffs argue in their brief that there were no changed facts or circumstances, and they assert that defendant was judge shopping.

¶ 13 When we look at all of the filings in connection with the first motion for summary judgment, we disagree that defendant's 2011 motion for summary judgment parroted its 2007 motion. The 2007 motion is different, because the reply memorandum in 2007 raised the issue of medical causation. Therefore, in addition to arguing that Eva was not exposed to defendant's asbestos-containing products, the 2007 motion also argued that plaintiffs failed to prove that Eva's condition of ill being was caused by exposure to defendant's products. Judge Fabian's order granting defendant summary judgment ruled only on the medical causation issue. The order stated: "Plaintiffs have failed to present admissible evidence in their Response to [defendant's] Motion for Summary Judgment to raise an issue of fact as to the medical cause of [Eva's] injuries." Because defendant did not raise the issue of medical causation until its reply brief, and plaintiffs had no opportunity to respond, Judge Fabian granted plaintiffs' motion to reconsider upon the condition that they file an affidavit establishing medical causation, which they did (Dr. Carlos Bedrossian opined within a reasonable degree of medical and scientific certainty that Eva died as a result of malignant mesothelioma caused by exposure to asbestos and that any exposure to defendant's asbestos-containing products was a substantial factor causing Eva's mesothelioma). Thus, on the record before us, defendant never obtained a ruling from Judge Fabian on the issue of whether there was any admissible and competent evidence that Eva was exposed to defendant's asbestos-containing

product. Defendant's 2011 motion for summary judgment presented the exposure issue but did not attempt to relitigate the medical causation issue, and Judge Morrow's decision was based solely on the exposure issue. Thus, really, Judge Morrow did not review Judge Fabian's decision.

¶ 14 Plaintiffs attempt to convince us otherwise. In their reply brief, plaintiffs assert that Judge Fabian did rule on all aspects of defendant's 2007 motion for summary judgment, because Judge Fabian ruled that Mohr's affidavit in support of the motion for summary judgment provided a sufficient factual foundation to support the affiant's statement in paragraph 11 of the affidavit, which averred that defendant made no sales of any products to Furnas in 1968 or 1970. Judge Fabian's November 13, 2007, order ruled seriatim on three motions: (1) plaintiff's motion to strike paragraph 11 of Mohr's affidavit as not substantiated by sufficient factual allegations; (2) defendant's motion for summary judgment; and (3) Aurora Equipment Company's motion for summary judgment. In context, the record is clear that Judge Fabian's ruling that paragraph 11 of Mohr's affidavit provided a sufficient factual basis to support the allegation was a ruling on the motion to strike the affidavit, not a basis for the ruling on defendant's motion for summary judgment. While paragraph F of Judge Fabian's order recited that there were no genuine issues as to any material facts in the proceedings both as to defendant and as to Aurora Equipment Company, the only basis that Judge Fabian articulated for granting defendant summary judgment was the lack of medical causation. In his February 5, 2008, order ruling on plaintiffs' motion to reconsider, Judge Fabian gave plaintiffs the opportunity to cure the defect. The February 5 order further provided that, if plaintiffs cured the defect, their motion to reconsider would be granted.

¶ 15 Nonetheless, the last sentence of Judge Fabian's order of February 5, 2008, is subject to interpretation. Paragraph 2 of the order granted plaintiffs' motion to reconsider "provided" that

plaintiffs filed the required medical affidavit. The next sentence reads: "Otherwise defendant Plastics Engineering's motion for summary judgment is denied." Does this sentence mean that, if the affidavit was filed as ordered, the remainder of the motion for summary judgment was denied, meaning Judge Fabian ruled on the entire 2007 motion? Or was the word "denied" mistakenly written instead of "granted," meaning that if the affidavit was not filed, the motion for summary judgment was granted? Defendant at oral argument urged the latter interpretation, which we believe is correct, given the entire context.

¶ 16 As to the judge-shopping claim, we fail to see how defendant went judge shopping. Judge Fabian retired while this case was on appeal, an occurrence over which defendant had no control. Judge Spence was then assigned to the case. Plaintiffs argue that defendant sat by and did not bring the motion before Judge Spence, but waited until Judge Morrow came on board. There is nothing in the record to support the inference that defendant knew that Judge Spence might be hostile to a motion for summary judgment or that defendant knew he would be departing, or that defendant knew that Judge Morrow would be assigned. Moreover, at the hearing on the 2011 motion for summary judgment before Judge Morrow, plaintiffs' counsel conceded that defendant had not judge shopped. Accordingly, Judge Morrow did not err in entertaining the 2011 motion for summary judgment.

¶ 17 Plaintiffs next argue that it was error to deny their motions to reopen fact discovery. The first motion was addressed to Judge Spence upon defendant's filing the 2011 motion for summary judgment. The second motion was addressed to Judge Morrow in the form of a request to produce "newly discovered evidence" in plaintiffs' response to the 2011 motion for summary judgment. A trial judge has broad discretion as to whether or not to reopen discovery, and his or her decision will not be disturbed absent an abuse of discretion. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 19.

Plaintiffs contend that both trial judges abused their discretion, because (1) the entry of new plaintiffs' counsel and a new judge into the case constituted a change in circumstances; (2) two potential witnesses needed to be deposed; (3) the court granted defendant the courtesy of allowing defendant to "reopen" its motion for summary judgment and in fairness should have extended the courtesy to plaintiffs of reopening fact discovery; and (4) Judge Morrow incorrectly weighed the credibility of the potential witnesses plaintiffs listed in their response to the 2011 motion for summary judgment.

¶ 18 Plaintiffs fail to articulate how the arrival into the case of new plaintiffs' counsel and a new judge required reopening fact discovery. In their motion to reopen discovery that was filed upon the filing of the 2011 motion for summary judgment, new counsel alleged that there were two witnesses whom he needed to depose. However, plaintiffs did not disclose in their motion what relevant testimony either potential witness would provide, and the record shows that both witnesses were known to plaintiffs prior to when Judge Fabian closed discovery in 2007. The fact that Judge Spence succeeded Judge Fabian has no bearing on the issue whatsoever. Judge Spence's assignment to the case could not affect whether plaintiffs could develop evidence that Eva died as a result of exposure to any of defendant's asbestos-containing products. A change of circumstance is what occurred in *Cometo v. Foster McGaw Hospital*, 167 Ill. App. 3d 1023 (1988), where the plaintiff's medical expert, who had refused to cooperate with the plaintiff, suddenly began cooperating. The witness's cooperation had a direct bearing on the plaintiff's ability to prove his case, so that the trial court abused its discretion in refusing to reopen discovery. *Cometo*, 167 Ill. App. 3d at 1029. *Cometo*, relied upon by plaintiffs, is inapposite.

¶ 19 We also reject plaintiffs' argument that fairness dictated that the court reopen fact discovery since it "reopened" the motion for summary judgment. As we detailed above, the 2011 motion for summary judgment was not identical to the 2007 motion, and Judge Morrow did not review Judge Fabian's judgment. Moreover, we agree with defendant that the two issues are unrelated. Judge Fabian gave plaintiffs almost two years years to discover evidence to support their cause of action, and neither motion to reopen discovery suggested that the effort would prove fruitful or justify the time and expense involved in ongoing discovery.

¶ 20 Lastly, we consider whether Judge Morrow improperly weighed the credibility of the witnesses plaintiffs averred in their response to the 2011 motion for summary judgment were necessary to their case. In his written order, Judge Morrow noted certain deficiencies in the witnesses' proposed evidence. These deficiencies were not matters related to credibility but went to the materiality and relevance of the evidence. None of the four witnesses could provide evidence that defendant supplied asbestos-containing material to Furnas during the time Eva was employed by Furnas or even shed light on the question. Moreover, Judge Morrow found that there was no showing that the witnesses were unavailable prior to the closing of discovery in 2007. Accordingly, the circuit court did not abuse its discretion in denying either motion to reopen fact discovery.

¶ 21 Plaintiffs' last issue is that there are enough factual disputes in the record that it was improper to grant summary judgment in defendant's favor. A summary judgment is a drastic remedy and should be granted only where 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 judgment as a matter of law. *Gassner v. Raynor Manufacturing Co.*, 409 Ill. App. 3d 995, 1004 (2011). If the facts are not in dispute but are subject to conflicting inferences, or if reasonable

people can draw different inferences and conclusions from the undisputed facts, summary judgment is not appropriate. *Gassner*, 409 Ill. App. 3d at 1004-05. The purpose of summary judgment is not for the trial court to try a question of fact but to determine whether there are triable issues of fact. *Hartz Construction Co. v. Village of Western Springs*, 2012 IL App (1st) 103108, ¶ 23. Generally, in order to survive summary judgment, the nonmoving party does not have to prove its case but the nonmoving party has to present some factual basis that arguably entitles the party to a judgment. *Hartz*, 2012 IL App (1st) 103108, ¶ 23. Summary judgments are reviewed *de novo*. *Hartz*, 2012 IL App (1st) 103108, ¶ 23.

¶ 22 The instant case is an asbestos case to which the "frequency, regularity, and proximity" test applies. *Thacker v. U N R Industries, Inc.*, 151 Ill. 2d 343, 359 (1992). Although defendant must establish its right to summary judgment as a matter of law, in order to defeat the motion, plaintiffs must show that Eva was exposed to a particular asbestos-containing product of defendant's. *Johnson v. Owens-Corning Fiberglass Corp.*, 284 Ill. App. 3d 669, 675 (1996). "To allow [the] plaintiff to present her case to the jury based on mere allegations would be inconsistent with the requirement of some proof that the defendant's conduct caused the injury." *Johnson*, 284 Ill. App. 3d at 676. The plaintiff cannot present his or her case to the jury unless there is sufficient evidence for the jury to conclude that the defendant's conduct was a cause of the plaintiff's injury. *Johnson*, 284 Ill. App. 3d at 676. In other words, a plaintiff must prove that the defendant's asbestos was the cause in fact of the injury. *Zickuhr v. Ericsson, Inc.*, 2011 IL App (1st) 103430, ¶ 36. The plaintiff may meet his or her burden by putting forth some evidence tending to show (1) that the plaintiff regularly worked in an area where the defendant's asbestos was frequently used and (2) that the plaintiff worked close enough to this area to come into contact with the defendant's product. *Johnson*, 284 Ill. App. 3d at

676-77. In our case, plaintiffs recognize that their failure to identify any exposure to an asbestos product of defendant's will provide a sufficient basis for summary judgment against them. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (the moving party is entitled to a judgment as a matter of law where the nonmoving party has failed to make a sufficient showing on an essential element with respect to which she has the burden of proof). "A *Celotex*-type motion presents the rare situation of a motion for summary judgment where the burden of proof is essentially on the nonmovant." *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill. App. 3d 351, 355 (2000).

¶ 23 In support of their argument that the record contains proof of causation in fact, plaintiffs point to what they term the equivocal testimony of Jeffrey Mohr, defendant's secretary and general counsel, on the issue of whether asbestos-containing material was sent to Furnas while Eva worked there; Gregory's recollection that Eva removed defendant's product from a barrel and then breathed in airborne dust; the collective "testimony" of the four potential witnesses contained in plaintiffs' response to the 2011 motion for summary judgment; and the affidavit of medical causation that plaintiffs furnished in connection with their 2007 motion to reconsider that Judge Fabian granted.

¶ 24 The record shows that defendant manufactured plastic molding compounds that were granular in appearance and that were identified through their product numbers and colors. Some of these granular compounds were used by Furnas to mold a final product that Furnas sold to consumers. The record is not entirely clear what Eva's job was, although it appears that she was responsible for placing material into a machine that turned out molds for the electrical controls Furnas sold. The evidence produced by defendant shows that in 1969, which was during the time Eva was employed at Furnas, defendant sold to Furnas only one type of asbestos-containing granular

compound, which was identified in invoices as "2010 Green Epxy." However, the evidence also shows that certain batches of the 2010 Green were not shipped to Furnas but were shipped to Rebling Plastics in Pennsylvania, where the 2010 Green was molded. Invoices show that the other batches of 2010 Green were shipped directly to Furnas. However, Mohr testified that Furnas then shipped the 2010 Green to a concern called E-Jay Plastics for molding. Mohr testified at his deposition that "none" of the asbestos-containing 2010 Green was molded at Furnas.

¶ 25 Plaintiffs contend that Mohr was "less than unequivocal." Plaintiffs point to Mohr's affidavit where he said that defendant did not have a document-retention policy from 1966 to 1970 and that Mohr had only "a pretty good idea" that defendant had all of the invoices related to its transactions with Furnas. Plaintiffs choose selectively from the record in making this argument. In his affidavit, Mohr stated that, despite having no document-retention policy from 1966 to 1970, which would cover the period that Eva was employed by Furnas, it was his experience that defendant's practice since 1950 had been to keep physical records and then to store them on microfilm. At his deposition, Mohr testified that defendant's billing records related to Furnas and its production records of what was made for Furnas "match up." Mohr denied that there were any mistakes in defendant's records, and he testified that defendant had produced in discovery all of defendant's records related to the 2010 Green sold to Furnas. Moreover, Mohr was unequivocal in his testimony that Eva could not have been exposed to the 2010 Green, because none of it was molded at Furnas. Plaintiffs have taken certain of Mohr's words out of context to try to convey the impression of uncertainty in his evidence where none exists.

¶ 26 Thus, nothing in Mohr's evidence linked the 2010 Green to Eva. As we discussed above, the proposed testimony of the four individuals named in plaintiffs' affidavit in response to the 2011

motion for summary judgment did not link defendant's 2010 Green to Eva. Neither did Gregory's deposition testimony link the 2010 Green to Eva. Gregory testified that defendant's salesman, John Atlin (or Aklin) told him that defendant's products used by Furnas contained asbestos, but Judge Morrow ruled this testimony inadmissible, because plaintiffs' counsel admitted that Atlin (or Aklin) did not exist and, therefore, plaintiffs could not prove that whomever Gregory spoke to had any agency relationship to defendant. On the state of the record, plaintiffs simply cannot demonstrate that Eva regularly worked in an area where defendant's 2010 Green was frequently used, because the unrebutted evidence is that the 2010 Green was not molded at Furnas. There is no competent evidence in the record that Eva ever came into contact with any asbestos-containing product of defendant's. Accordingly, the trial court did not err in granting summary judgment in favor of defendant.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 28 Affirmed.