NO. 5-10-0129

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

DEBORAH BELL, Plaintiff-Appellant, v. BUDSLICK MANAGEMENT, JOHN BUDSLICK, AMEREN CIPS, JACKSON STREET APARTMENTS, and All Unknown Owners, Defendants-Appellees.	)	Appeal from the Circuit Court of Jackson County. No. 09-L-108 Honorable William G. Schwartz, Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Chapman and Justice Spomer concurred in the judgment.

R U L E 2 3 O R D E R

Held: The plaintiff's personal injury claim for repeated exposures to carbon monoxide was barred by the statute of limitations, and the discovery rule did not toll the limitations period, where the plaintiff's initial exposure to carbon monoxide was a "sudden traumatic event" that put her on notice of her injury and its wrongful cause, although she might not have known the full extent of her injuries from the repeated exposures.

On March 2, 2010, the circuit court of Jackson County dismissed as barred by the statute of limitations the amended complaint of the plaintiff, Deborah Bell, against the defendants–Budslick Management, John Budslick, Jackson Street Apartments, AmerenCIPS, and all unknown owners–for personal injuries she suffered when natural gas leaked from a cooking stove in the apartment she rented. Gas leaks allegedly occurred on three occasions–October 17, 2007, October 25, 2007, and November 7, 2007, and on each occasion the plaintiff allegedly required medical treatment. The plaintiff's complaint was not filed until November 2, 2009, more than two years after the first two incidents but within two

years of the third incident. Her amended complaint sought damages for injuries due to "this repeated and sustained exposure to carbon monoxide." On a motion of the defendants, the circuit court dismissed the claim pursuant to section 2-619(a)(5) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(5) (West 2008)) as time-barred by the statute of limitations. The plaintiff appeals. We affirm. We note that the plaintiff proceeded before the circuit court, and proceeds before this court, *pro se*.

The amended complaint alleges that the plaintiff was a tenant in the Jackson Street Apartments, owned and operated by John Budslick and Busdslick Management. The apartment came equipped with a gas cooking stove, the gas to which was provided by AmerenCIPS. On three occasions–October 17, 2007, October 25, 2007, and November 7, 2007, the plaintiff became ill and the fire department was called to the premises. On each occasion, the fire department determined that there was an unhealthy level of carbon monoxide gas in the apartment emanating from the area of the gas cooking stove. On each occasion the plaintiff required medical treatment at the local hospital.

The complaint alleges that on each of the three occasions the plaintiff was made significantly, violently, and physically ill. Her symptoms included light-headedness, drowsiness, dizziness, nausea, stomach and bowel irritation, breathing difficulties, headache, and memory loss. On more than one of the occasions, the plaintiff was taken from the apartment by ambulance. She has found it necessary to seek additional medical attention for the "long-term effects of the prolonged and repeated exposures." The complaint further alleges, "[A]s a direct and proximate result of this repeated and sustained exposure to carbon monoxide the Plaintiff, Deborah Bell, has sustained and will continue to sustain significant injuries."

AmerenCIPS filed a motion pursuant to section 2-619(a)(5) of our Code of Civil Procedure (735 ILCS 5/2-619(a)(5) (West 2008)) for an involuntary dismissal because the

action was not commenced within the time limited by law. AmerenCIPS noted that our Code of Civil Procedure provides that all actions for damages for an injury to the person must be commenced within two years next after the cause of action accrued. 735 ILCS 5/13-202 (West 2008). The motion argues that the plaintiff's cause of action accrued on October 17, 2007, when she first became aware of her exposure to carbon monoxide and suffered injury for which she sought medical attention. Relying on *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 415 (1981), the motion argues that even under the "discovery rule," the limitations period begins to run when the party seeking relief knows or reasonably should know of her injury and also knows or reasonably should know that it was wrongfully caused. The plaintiff knew of her injury and its cause upon her first exposure, October 17, 2007.

On March 2, 2010, the circuit court entered an order involuntarily dismissing the plaintiff's cause of action, stating that the question posed was whether the plaintiff knew or should have known that she was injured and that the injury might have been wrongfully caused on October 25, 2007, or earlier. In answering this question, the circuit court quoted from *Knox College*, 88 Ill. 2d at 416:

> " 'At some point the injured person becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved. At that point, under the discovery rule, the running of the limitations period commences.' "

The court held that the plaintiff became possessed of sufficient information no later than October 25, 2007, because of the repeated nature of the carbon monoxide exposure and the necessity of medical care involving the same chemical in such a short period of time. It was on that date that the limitation period commenced. The court further held that this was true even though the full extent of the injury might not have been known until after the third exposure. The court quoted from *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 364

(1995):

> " 'This court has never suggested that plaintiffs must know the full extent of their injuries before the statute of limitations is triggered. Rather, our cases adhere to the general rule that the limitations period commences when the plaintiff is injured, rather than when the plaintiff realizes the consequences of the injury or the full extent of her injuries.' "

The court dismissed the plaintiff's cause of action. The plaintiff appeals.

This court's review of a dismissal pursuant to section 2-619(a)(5) is *de novo*. *Wackrow v. Niemi*, 231 Ill. 2d 418, 422 (2008). The factual allegations of the plaintiff's complaint are taken as true, along with all the reasonable inferences that can be gleaned from those facts. *Wackrow*, 231 Ill. 2d at 422. The court must interpret all the pleadings and supporting documents in the light most favorable to the plaintiff. *Wackrow*, 231 Ill. 2d at 422.

For the first time on appeal, the plaintiff argues that the four-year statute of limitations for actions based upon tort, contract, or otherwise against any person for an act or omission in the design, planning, supervision, observations, or management of the construction or the construction of an improvement to real property, found in section 13-214 of the Code of Civil Procedure (735 ILCS 5/13-214 (West 2008)), applies. She argues that the installation or repair of a permanent fixture such as a cooking stove is a "phase of construction and[/]or improvement to the real property." The plaintiff did not raise this argument before the circuit court, and it is therefore forfeited. *Jackson v. Hooker*, 397 Ill. App. 3d 614, 617 (2010) (questions not raised in the trial court are forfeited and may not be raised for the first time on appeal).

The statute of limitations applicable to claims for personal injuries provides that any action for damages must be brought within two years next after the cause of action accrued.

735 ILCS 5/13-202 (West 2008). There is no question that the plaintiff's first two exposures to carbon monoxide fall outside this statute of limitations and are time-barred unless the "discovery rule" serves to toll the time and extend the limitations period.

As a general rule, a cause of action for personal injuries accrues, and the statute of limitations begins to run, when the plaintiff suffers an injury. *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 360 (1995). Traditionally, the limitations period was not tolled simply because the plaintiff was unaware of the existence of an injury. *Golla*, 167 Ill. 2d at 360. Thus, a mechanical application of the statute of limitations could, in some situations, bar plaintiffs from bringing suit before the plaintiff was even aware that she was injured. *Golla*, 167 Ill. 2d at 360. For example, an individual may contract silicosis or asbestosis as a result of long-term exposure to dangerous substances, but the symptoms of the illness may not manifest until many years after the exposure. *E.g.*, *Urie v. Thompson*, 337 U.S. 163, 93 L. Ed. 2d 1282, 69 S. Ct. 1018 (1949); *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161 (1981). The injury remains both unknown and unknowable to the plaintiff until years after it had occurred. Under a mechanical application of the statute of limitations, such a plaintiff would be barred from bringing suit upon learning of her injury.

To alleviate the harsh consequences that would flow from a literal application of the limitations period, the judiciary created the "discovery rule." *Golla*, 167 Ill. 2d at 360. The effect of the discovery rule is to postpone the commencement of the period of limitations until the injured party knows or should know that he was injured and that his injury was wrongfully caused. *Golla*, 167 Ill. 2d at 361. The discovery rule is an equitable device designed to eliminate the unfairness that would result to a plaintiff whose right to bring an action for an injury is cut off before she is aware of the existence of the action. *Golla*, 167 Ill. 2d at 363.

Nevertheless, the supreme court has repeatedly held that where the plaintiff's injury

is caused by a sudden traumatic event, the plaintiff's cause of action accrues when the injury occurred. See *Golla*, 167 Ill. 2d at 361-62. The rationale supporting this rule is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved. *Golla*, 167 Ill. 2d at 363.

In *Golla*, the plaintiff was involved in a car accident on September 3, 1985, which forced the plaintiff's seat to slide violently forward, subjecting her left shoulder to trauma from the seat belt. She sought medical treatment immediately after the accident and continued to seek medical treatment for pain in her left shoulder, arm, and wrist until April 8, 1986. She filed her complaint against the manufacturer almost four years after the accident, on August 7, 1989, after developing reflex sympathetic dystrophy (RSD) in her left shoulder. In response to the defendant's assertion that her action was barred by the statute of limitations, the plaintiff argued that the discovery rule applied and the statute did not begin to run until the doctors diagnosed her condition as RSD in March 1988. She claimed that she did not experience symptoms of RSD until November 1987 and that the condition was not diagnosed until March 1988. The circuit court ruled for the defendant and the plaintiff appealed.

On appeal, the defendant argued that the plaintiff's cause of action accrued at the time of the accident. The plaintiff asked the court to apply the discovery rule to find that her cause of action did not accrue until she "discovered" that she was suffering from RSD. She argued that two medically distinct injuries arose out of the accident and that the latent injury, RSD, could not have been discovered within the two-year limitation period.

Applying the "sudden traumatic event" rule, the supreme court rejected the plaintiff's argument, holding that she knew at the time of the accident that she had suffered an injury and that it was wrongfully caused. Thus, she knew at the time of the accident of her right to sue, and the two-year limitation period commenced to run. *Golla*, 167 Ill. 2d at 363. She

was simply unaware of the ultimate extent of the damages she sustained. The court held that a plaintiff need not know the full extent of her injuries before the statute of limitations is triggered; the limitations period commences when the plaintiff is injured, rather than when the plaintiff realizes the consequences of the injury or the full extent of her injuries. *Golla*, 167 Ill. 2d at 364.

We find the case at bar to be similar to *Golla*. There can be little question that the plaintiff knew that she was injured upon her first exposure to carbon monoxide, as well as on her second exposure. On both occasions she sought immediate medical care and on at least one occasion might have been transported to the hospital in an ambulance. These exposures constituted "sudden traumatic events" within the meaning of *Golla*. She also knew on both of these occasions that her injuries were wrongfully caused, because the fire department told her that there were unsafe levels of carbon monoxide in her apartment and that the source was the cooking stove. That she did not know the full extent or consequences of her injuries due to this repeated exposure to carbon monoxide did not toll the statute of limitations.

In the case at bar it is apparent that the plaintiff knew or should have known of the existence of the right to sue the defendants no later than her second exposure to carbon monoxide on October 25, 2007. At that time there was, without question, an injury of some magnitude to the plaintiff. The plaintiff sought immediate medical attention for that injury. It is also apparent that the plaintiff was on notice that her injury might have been wrongfully caused. Accordingly, the statute of limitations with respect to the plaintiff's claim began to run no later than October 25, 2007, her second exposure to dangerous levels of carbon monoxide.

As in *Golla*, 167 Ill. 2d at 366-67, the case at bar is not a case involving a latent injury such as silicosis or asbestosis that was not, and could not have been, discovered until long

after the negligent acts occurred. *E.g.*, *Urie v. Thompson*, 337 U.S. 163, 93 L. Ed. 2d 1282, 69 S. Ct. 1018 (1949); *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161 (1981). In those cases, the plaintiffs did not know that the toxic products to which they were exposed were harmful at the time of the exposure, and their injuries did not become apparent or even discoverable until many years after the exposure to the toxic products. *Golla*, 167 Ill. 2d at 366. The discovery rule was properly applied in those "nontraumatic event" cases to toll the running of the limitations period until the plaintiff either knew or reasonably should have known that he was injured and that the injury was wrongfully caused. *Golla*, 167 Ill. 2d at 366. As the supreme court explained in *Golla*, 167 Ill. 2d at 367:

> "In those cases, the plaintiffs did not discover that they suffered *any* injury until long after the tortious conduct occurred. Application of the discovery rule in such cases was necessary to prevent the unfairness of charging the plaintiff with knowledge of facts which were 'unknown and inherently unknowable.' " (Emphasis in original.)

The case at bar is not such a case. The plaintiff knew on the occasions of her first and second exposures that she had suffered an injury. She also knew on both of those occasions that the substance to which she had been repeatedly exposed was toxic. She did not suffer from a latent injury the existence of which was "unknown and inherently unknowable" during the limitation period. She merely alleges that she did not know the full extent of her injury until later. This is not sufficient to toll the limitation period.

Finally, as did the court in *Golla*, 167 Ill. 2d at 369, we reject the plaintiff's argument that while she was aware of some injuries from the first and second exposures to carbon monoxide, those injuries were *de minimis* compared to the long-term cumulative effects arising from the third exposure. As did the plaintiff in *Golla*, 167 Ill. 2d at 369, the plaintiff in the case at bar argues that commencing the limitation period based upon a *de minimis* injury would encourage plaintiffs to sue over virtually every minor injury for fear that more

significant injuries might appear later. In *Golla*, 167 Ill. 2d at 369, the supreme court rejected this argument, stating as follows:

> "The injuries that the plaintiff suffered at the time of the accident, even if appropriately characterized as *de minimis*, were sufficient to put her on notice that her rights had been violated and gave her a reasonable opportunity to bring an action within the limitations period. To hold that the statute of limitations did not begin to run until the plaintiff realized the full extent of her damages would circumvent the legislature's intent to promote the prompt resolution of claims."

We also reject the plaintiff's argument. The injuries the plaintiff suffered as a result of her first and second exposures to carbon monoxide, even if characterized as *de minimis*, were sufficient to put her on notice that her rights had been violated and gave her a reasonable opportunity to bring an action within the limitations period. She failed to do so.

Our decision is also informed by *Wilson v. Devonshire Realty of Danville*, 307 Ill. App. 3d 801 (1999). In that case the plaintiff filed suit against the defendants for injuries sustained as a result of exposure to noxious chemicals at her place of employment. Her initial symptoms arose in January 1985, and she sought medical help in August 1995. She did not file her complaint until February 11, 1998. The plaintiff argued that the latent nature of her injury triggered the application of the discovery rule to delay the commencement of the limitations period until April 1997, at which time she was diagnosed with a pulmonary illness. She claimed that although she was immediately aware of symptoms of an illness, she was not aware of the latent pulmonary disease until much later.

The appellate court held that the discovery rule did not apply because the plaintiff knew she had suffered *some* injury no later than August 1995. *Wilson*, 307 Ill. App. 3d at 806. Thus, the case did not involve a plaintiff who failed to discover *any* injury but, rather, a plaintiff who failed to discover the full extent of her injuries before the expiration of the

statute of limitations. *Wilson*, 307 Ill. App. 3d at 806. The limitations period commences when the plaintiff is injured, rather than when the plaintiff realizes the consequences of the injury or the full extent of the injury. *Wilson*, 307 Ill. App. 3d at 806. Once the plaintiff was aware of *any* injury and its possible cause, she was aware of her right to sue. *Wilson*, 307 Ill. App. 3d at 806.

Similarly, in the case at bar, the plaintiff knew that she had suffered *some* injury no later than October 25, 2007, although she claims not to have known the consequences or full extent of the injury. Nevertheless, once the plaintiff was aware of *any* injury and its possible wrongful cause, she was aware of her right to sue and the limitations period began to run. The discovery rule has no application to this case.

The question of when a party knew or reasonably should have known both of an injury and its wrongful cause is one of fact, unless the facts are undisputed and only one conclusion may be drawn from them. *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981). That is the case here. The circuit court did not err in dismissing the plaintiff's cause of action as barred by the applicable statute of limitations.

Finally, we reject the plaintiff's argument, made for the first time in her brief on appeal, that her claim of an injury from the exposure of November 7, 2007, is a new, independent, and separate cause of action which is not time-barred. The plaintiff did not raise this argument before the circuit court, and it is therefore forfeiture. *Jackson v. Hooker*, 397 Ill. App. 3d 614, 617 (2010) (questions not raised in the trial court are forfeited and may not be raised for the first time on appeal). In any event, it is not consistent with the allegations of the plaintiff's amended complaint, which is predicated upon "repeated and sustained exposure to carbon monoxide."

For the foregoing reasons, the judgment of the circuit court of Jackson County is hereby affirmed.

Affirmed.