Affirmed and Opinion filed July 14, 2020.

In The

Fourteenth Court of Appeals

NO. 14-19-00133-CV

MIRIAM LATOUCHE; KERWYN LATOUCHE; CHANEL LATOUCHE; KERWYN LATOUCHE, JR., Appellants

V.

PERRY HOMES, LLC, Appellee

On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Cause No. 17-DCV-24725

O P I N I O N

Members of the LaTouche family appeal a summary judgment dismissing their construction defect claims against Perry Homes, LLC. In 2017, the LaTouches sued Perry Homes, alleging negligence and violations of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), relating to a new home purchased in 2007. Perry Homes moved for summary judgment based on affirmative defenses of statute of repose and statute of limitations. The trial court rendered summary

judgment without stating the basis for its ruling. Because we conclude that the applicable statutes of limitations bar the LaTouches' claims, we affirm the trial court's judgment.

Background

On December 21, 2007, Perry Homes sold a newly constructed house to Miriam and Kerwyn LaTouche. That day, Miriam and Kerwyn moved into the house with their children, Chanel and Kerwyn Jr.

In December 2009, Miriam submitted a warranty request to Perry Homes. She listed several items in need of repair and stated additionally that she recently replaced the carpet in the house "because I have been sick since I move [sic] in my new home. Attched [sic] are photos of my floor when the carpet was removed. I would like for someone to give me a call back after reviewing my photo, I have more photos if needed."

Miriam repeated similar complaints to Perry Homes about four years later. On May 25, 2013, Miriam spoke with a warranty representative. She said that "her family members have been sick and in some cases hospitalized and she thinks it is from the paint on the HVAC supply grills." The next month, Miriam complained to the representative during a meeting at the property that "the subfloor under the carpet is dirty and that dirt has been making them [the family] sick."

Three years passed. On February 17, 2016, Miriam submitted another warranty request, which stated: "My Family and I have been sick since we moved into our new home. [O]ver the past 7 years we all had health problems that we never had before moving to our new home. . . . [W]e feel better when we are out of our new home than when we are in it. We strongly feel that our home is making us sick." The family also moved out of the house on February 17. As Miriam stated

in her affidavit, "We discovered that we generally felt better when we were not residing in the home. We were going to and from our hotel and our home. We discovered that our symptoms, such as heart palpitations and headaches got somewhat better when we were outside the home, but returned when we got back."

Between February 2016 and July 2017, the family saw medical professionals such as a cardiologist, a rheumatologist, an internal medicine doctor, a neurologist, an ophthalmologist, a pulmonary care doctor, and "others." The record does not reveal the results of these visits.

In the meantime, Miriam retained a company in August 2016 to perform environmental testing in the house. Results showed that mold was present throughout the house.

By June 2017, the LaTouches retained counsel, who sent Perry Homes a demand letter on June 2, 2017. The demand letter asserts that "mold remediation will be required for the entire house, to include . . . the full interior, with restoration of the house required following remediation."

The following month, in mid-July 2017, Miriam contacted Dr. Scott McMahon in Roswell, New Mexico, who specializes in mold-based illnesses. She scheduled a family appointment with Dr. McMahon for November 1, 2017. During that appointment, Dr. McMahon diagnosed Miriam, Chanel, and Kerwyn Jr. with Chronic Inflammatory Response Syndrome ("CIRS").

The next month, on December 20, 2017, Miriam filed the present lawsuit against Perry Homes. Miriam was the only named plaintiff at that time. Dr. McMahon subsequently diagnosed Kerwyn with CIRS on April 25, 2018. Kerwyn, Chanel, and Kerwyn Jr. joined the lawsuit as plaintiffs two days later, on April 27. The family asserted claims against Perry Homes for negligence and DTPA

violations. They alleged that Perry Homes (1) negligently built a defective home and (2) violated the DTPA by breaching the implied warranty of habitability, engaging in an unconscionable action or course of action, breaching the implied warranty of good and workmanlike performance, and making various misrepresentations. The LaTouches pleaded that the discovery rule applied to their claims.

Perry Homes pleaded the affirmative defenses of statutes of limitations and statute of repose and later moved for traditional summary judgment on both grounds. Regarding limitations, Perry Homes argued in its summary-judgment motion that the LaTouches' claims were governed by two-year statutes of limitations, which had long expired by the time they filed suit. Perry Homes addressed the discovery rule and argued that, as a matter of law, the rule either did not apply or, if it applied, did not save the LaTouches' claims because they discovered or in the exercise of reasonable diligence should have discovered the nature of their injuries more than two years before filing the lawsuit. Additionally, regarding the statute of repose defense, Perry Homes alleged that a ten-year statute of repose precluded the LaTouches' claims.

The LaTouches timely filed a response to the summary-judgment motion. They asserted that the discovery rule tolled the accrual of their claims until the family was diagnosed with CIRS in 2017, which they asserted meant their claims were timely filed. The LaTouches also argued that their lawyer's June 2, 2017 letter extended the statute of repose by two years.

An associate judge denied Perry Homes' summary-judgment motion. Perry Homes appealed to the district judge,[1] who granted the motion for summary judgment and dismissed the LaTouches' claims.

The LaTouches timely appealed the trial court's ruling, challenging each alternative ground on which Perry Homes moved for summary judgment.

Standard of Review

We review a trial court's ruling on a motion for summary judgment de novo. *Tarr v. Timberwood Park Owners Ass'n, Inc.*, 556 S.W.3d 274, 278 (Tex. 2018). Courts review the record "in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion." *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005). A defendant moving for summary judgment must conclusively negate at least one element of the plaintiff's theory of recovery or plead and conclusively establish each element of an affirmative defense. *Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995); Tex. R. Civ. P. 166a(c). "Undisputed evidence may be conclusive of the absence of a material fact issue, but only if reasonable people could not differ in their conclusions as to that evidence." *Buck v. Palmer*, 381 S.W.3d 525, 527 (Tex. 2012).

When, as here, the trial court renders summary judgment without specifying the grounds for the ruling, we will affirm the judgment if any one of the independent summary-judgment grounds is meritorious. *See State v. Ninety Thousand Two Hundred Thirty-Five Dollars & No Cents in U.S. Currency*, 390 S.W.3d 289, 292 (Tex. 2013).

[1] Tex. Gov't Code § 54A.011.

Analysis

Perry Homes moved for summary judgment on two grounds: (1) statute of repose;[2] and (2) statutes of limitations. Because we determine that the statute of limitations defense is dispositive of this appeal, we confine our opinion to that defense and we do not reach the other ground. *See* Tex. R. App. P. 47.1.

A. Applicable Law Regarding Limitations and the Discovery Rule

The LaTouches asserted claims for negligence and DTPA violations.[3] These claims are subject to two-year statutes of limitations. *See* Tex. Civ. Prac. & Rem. Code § 16.003(a) (person must bring suit for personal injury not later than two years after the day the cause of action accrues); Tex. Bus. & Com. Code § 17.565 (DTPA claims must be brought within two years "after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice").

A statute of limitations restricts the period within which a party can assert a right, and the limitations period begins to run when the claim accrues. *Landers v. Nationstar Mortg., LLC*, 461 S.W.3d 923, 925 (Tex. App.—Tyler 2015, pet. denied). Generally, a claim accrues when facts come into existence that authorize a claimant to seek a judicial remedy, when a wrongful act causes some legal injury, or whenever one person may sue another. *Am. Star Energy & Minerals Corp. v. Stowers*, 457 S.W.3d 427, 430 (Tex. 2015).

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[2] *See* Tex. Civ. Prac. & Rem. Code § 16.009(a) (providing for a ten-year statute of repose for construction defect claims).

[3] The LaTouches contend that they also asserted a claim for breach of an express warranty included in the home purchase agreement. Their live pleading does not include such a claim. The only allegations in the live pleading relating to a warranty are that Perry Homes breached the implied warranty of habitability and the implied warranty of good and workmanlike performance, both of which the LaTouches asserted were actionable under the DTPA.

One exception to the general rule of accrual is the discovery rule. The discovery rule is limited to those rare "circumstances where 'the nature of the injury incurred is inherently undiscoverable and the evidence of injury is objectively verifiable.'" *Cosgrove v. Cade*, 468 S.W.3d 32, 36 (Tex. 2015) (quoting *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 456 (Tex. 1996)). An injury is not inherently undiscoverable when it could be discovered through the exercise of reasonable diligence. *BP Am. Prod. Co. v. Marshall*, 342 S.W.3d 59, 66 (Tex. 2011).

The discovery rule defers accrual of a claim until the injured party discovered, or in the exercise of reasonable diligence should have discovered, the nature of the party's injury and the likelihood that the injury was caused by the wrongful acts of another. *See Cosgrove*, 468 S.W.3d at 36; *Childs v. Haussecker*, 974 S.W.2d 31, 36, 40 (Tex. 1998); *B. Mahler Interests, L.P. v. DMAC Constr., Inc.*, 503 S.W.3d 43, 49 (Tex. App.—Houston [14th Dist.] 2016, no pet.). The rule expressly requires a plaintiff to use reasonable diligence to investigate the nature of the injury and its likely cause once the plaintiff is apprised of facts that would make a reasonably diligent person seek information. *See Childs*, 974 S.W.2d at 47. It is the discovery of the injury and its general cause, not discovery of the exact cause in fact, that starts the running of the limitations period. *Bayou Bend Towers Council of Co-Owners v. Manhattan Constr. Co.*, 866 S.W.2d 740, 743 (Tex. App.—Houston [14th Dist.] 1993, writ denied). "Knowledge of injury initiates the accrual of the cause of action and triggers the putative claimant's duty to exercise reasonable diligence to investigate the problem, even if the claimant does not know the specific cause of the injury or the full extent of it." *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 209 (Tex. 2011).

Generally, when a plaintiff discovers or should have discovered the cause of the injury and whether a particular plaintiff exercised due diligence in so discovering

the injury are fact questions. *See Childs*, 974 S.W.2d at 44; *Wheeler v. Methodist Hosp.*, 95 S.W.3d 628, 637 (Tex. App.—Houston [1st Dist.] 2002, no pet.). However, if reasonable minds could not differ about the conclusion to be drawn from the facts, the commencement of the limitations period may be determined as a matter of law. *Childs*, 974 S.W.2d at 44. A defendant moving for summary judgment on the affirmative defense of limitations bears the burden of conclusively establishing the elements of that defense. *Schlumberger Tech. Corp. v. Pasko*, 544 S.W.3d 830, 833 (Tex. 2018) (per curiam). This burden includes conclusively establishing when the claim accrued. *Id.* at 833-34. In cases in which the plaintiff pleads the discovery rule, the defendant moving for summary judgment on limitations bears the additional burden of negating the rule. *Id.* at 834; *Childs*, 974 S.W.2d at 44. Defendants may meet this burden by either conclusively establishing that (1) the discovery rule does not apply, or (2) if the rule applies, the summary-judgment evidence shows no genuine issue of material fact about when the plaintiff discovered, or in the exercise of reasonable diligence should have discovered, the nature of the injury. *See Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223-24 (Tex. 1999); *Childs*, 974 S.W.2d at 36; *Pirtle v. Kahn*, 177 S.W.3d 567, 572 (Tex. App.—Houston [1st Dist.] 2005, pet. denied).

Once the defendant produces evidence sufficient to establish the right to summary judgment, the burden shifts to the plaintiff to come forward with competent controverting evidence that raises a fact issue as to one element of the defendant's affirmative defense. *Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 511 (Tex. 2014). If the movant does not satisfy its initial burden, however, the burden does not shift, and the nonmovant need not respond or present any evidence. *Id.* at 511-12.

B. Application

In its motion for summary judgment, Perry Homes raised two general arguments regarding limitations and the discovery rule. First, Perry Homes argued that the discovery rule did not apply because the alleged injuries are not inherently undiscoverable. Second, assuming the discovery rule applies, and based on the LaTouches' repeated assertions, beginning in December 2009, that the house made them sick, they knew or through reasonable diligence should have known of the nature of their injuries long before they filed suit. According to Perry Homes, waiting until 2017 to file suit was too late because the LaTouches were aware of facts as early as 2009 that would cause reasonable people to diligently seek information about their illnesses and likely causes. Perry Homes cited *Pirtle* in support of its argument.

In response, the LaTouches argued that the discovery rule applied and that Perry Homes failed to establish that the family's claims accrued earlier than two years before filing suit. In particular, the LaTouches asserted that Perry Homes' evidence does not establish as a matter of law that the LaTouches' "sickness from the dirty carpets and subfloor had any relation whatsoever to the CIRS Plaintiffs were eventually diagnosed with."

The latest action by Perry Homes of which the LaTouches complain occurred in December 2007, when the company completed construction of the house. Under the general rule of accrual, the applicable two-year limitations periods expired in December 2009—well before Miriam first filed suit against Perry Homes in December 2017. Perry Homes' evidence established the accrual date under the general rule. Thus, absent tolling, the LaTouches' claims are barred by limitations.

Because the LaTouches invoked the discovery rule, we consider whether the limitations period was tolled and, if so, whether it was tolled for a sufficient length

of time to render the LaTouches' claims timely filed.[4] We first consider Miriam's claim because she was the first to file. Miriam filed her lawsuit on December 20, 2017. For Perry Homes to be entitled to summary judgment on limitations grounds, the record must show conclusively that Miriam's claims accrued before December 20, 2015. To answer the question we must consider whether Miriam discovered, or in the exercise of reasonable diligence should have discovered before December 20, 2015, the nature of her injury and the likelihood that it was caused by the wrongful acts of another. *See Childs*, 974 S.W.2d at 40.

Miriam first told Perry Homes in December 2009 that she had been sick since she moved into the house, and she at least implied to Perry Homes at that time that the cause of her illness was related to the carpet or something under the carpet. More than three years later, in May and June 2013, Miriam complained to a Perry Homes warranty representative that "her family members have been sick and in some cases hospitalized," and that she believed their sickness was caused by the subfloor or the paint. After another three years passed, Miriam yet again asserted to Perry Homes that the entire family had been sick since moving into the house. She stated in her February 2016 warranty request: "My Family and I have been sick since we moved into our new home. [O]ver the past 7 years we all had health problems that we never had before moving to our new home. . . . [W]e feel better when we are out of our new home than when we are in it. We strongly feel that our home is making us sick." According to the uncontroverted evidence Perry Homes presented, Miriam knew she was sick as early as 2008 (shortly after she moved into the house), that her

[4] The parties dispute whether the LaTouches' alleged injuries are inherently undiscoverable, and thus whether the discovery rule applies. For argument's sake, we presume without deciding that the discovery rule applies to the circumstances presented. *See Hennen v. McGinty*, 335 S.W.3d 642, 650 (Tex. App.—Houston [14th Dist.] 2011) (assuming without deciding discovery rule applied), *rev'd on other grounds*, 372 S.W.3d 625 (Tex. 2012) (per curiam).

sickness persisted until she vacated the house in 2016, that she told Perry Homes in December 2009, May 2013, June 2013, and February 2016, that she believed something in the house was responsible for her illness, and that by June 2013 at least one or more family members had been hospitalized due to the illness she attributed to the house.

Perry Homes relies heavily on *Pirtle*, a case in which a tenant sued her landlord for personal injury damages after the tenant allegedly contracted a mold-induced illness. *See Pirtle*, 177 S.W.3d at 570. The tenant had become sick shortly after moving into her apartment and was diagnosed with various ailments over the next several years. *Id.* at 569. A number of years later, the tenant noticed a leak in the ceiling and found mold. *Id.* In her deposition, the tenant stated that she had a "major revelation" when she found the mold and that "I was delighted to have found a leak because I believed that was why—that made sense to me that my health had been absolutely deteriorating since the moment I moved in there." *Id.* at 569-70.

The tenant did not sue the landlord until almost eight years had passed after moving into the apartment and more than three years after she found the mold. *Id.* at 570. The landlord asserted a limitations defense, arguing that the tenant's claims accrued when she moved into the apartment or, at the latest, when the tenant found mold. *Id.* at 570, 572. The tenant, on the other hand, contended that her claims did not accrue until she received the results of environmental mold tests and was diagnosed with mold-related illnesses. *Id.* at 572. The court of appeals held that the tenant was on notice, as of the date she found mold, of facts that would cause a reasonable person to make inquiries sufficient to discover the claims. *Id.* at 573. From that date, the tenant's personal-injury claims were subject to a two-year limitations period, but the tenant did not file her lawsuit until more than three years

later. *Id.* at 573-74. Accordingly, the court concluded that the tenant's personal-injury claims were barred by limitations. *Id.*

Though Miriam did not discover the specific problem of mold in the house before December 2015, *Pirtle* is nonetheless supportive of Perry Homes' argument. Miriam experienced a relatively quick onset of symptoms, which she repeatedly brought to Perry Homes' attention through a series of complaints that spanned years. Perry Homes' uncontroverted evidence is sufficient to establish that—as early as December 2009 and by June 2013 at the latest (when at least one or more family members had been hospitalized)—Miriam had a duty of reasonable diligence, inherent in the discovery rule,[5] to make inquiries into the cause of the illness she blamed on Perry Homes for years. *See Hennen*, 335 S.W.3d at 650 (holding duty to investigate arose before plaintiff knew mold growing; negligence and DTPA claims barred by limitations); *Pirtle*, 177 S.W.3d at 573-74 ("[I]t is clear that appellant obtained facts sufficient to require her to investigate a causal connection between the mold and her illnesses . . . when she found the leak in her apartment, saw the mold, and immediately drew the inference that the mold caused her illnesses," which was outside limitations period); *Bayou Bend*, 866 S.W.2d at 743 (recurring leaks put owners on notice to investigate causes); *Allen v. Roddis Lumber & Veneer Co.*, 796 S.W.2d 758, 762 (Tex. App.—Corpus Christi 1990, writ denied) (defendant's evidence showed that plaintiff knew defendant's product contained formaldehyde in 1981 and that plaintiff allegedly was injured by excessive formaldehyde in 1983; court held that plaintiff discovered or should have discovered that defendant's use of formaldehyde caused injury more than two years prior to filing suit in 1986). Miriam was not reasonably diligent in waiting years until February 2016 to seek the medical cause of her ailments, particularly after family members had been

[5] *See Childs*, 974 S.W.2d at 47.

hospitalized before June 2013.[6] *See Childs*, 974 S.W.2d at 47 (claimant not reasonably diligent in waiting one year to seek medical advice about injury and potential cause). We conclude that a reasonably diligent investigation beginning at least by June 2013 would have led Miriam to discover before December 20, 2015, the nature of her injury and the likelihood that it was caused by the wrongful acts of another. *See Pirtle*, 177 S.W.3d at 573-74; *see also Markwardt v. Tex. Indus., Inc.*, 325 S.W.3d 876, 888-90 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (holding that reasonable minds could not differ that plaintiff obtained, or through reasonable diligence should have obtained, information outside of limitations that injuries were caused by defendant's actions).[7] We therefore hold that Perry Homes established that Miriam discovered, or in the exercise of reasonable diligence should have discovered before December 20, 2015, the nature of her injury and the likelihood that it was caused by the wrongful acts of another. *See Childs*, 974 S.W.2d at 40. Thus, the limitations period for the negligence and DTPA claims began running before December 20, 2015, and those claims are untimely.

Contrary to the LaTouches' argument, Perry Homes was not required to prove the date on which Miriam learned the specific nature of her injury and its particular cause. The tolling effect of the discovery rule ends "even if the plaintiff is not yet aware of the full extent of its injury or of the causes of that injury." *Brent v. Daneshjou*, No. 03-04-00225-CV, 2005 WL 2978329, at *8 (Tex. App.—Austin Nov. 4, 2005, no pet.) (mem. op.) (citing *Bayou Bend*, 866 S.W.2d at 744); *Hennen*, 335 S.W.3d at 650 (date that plaintiff knew of water intrusion, although not

[6] Our record contains no documentation from any hospital visit.

[7] According to Miriam's evidence, the amount of time between her first consult with doctors and the date of her CIRS diagnosis was twenty-one months. In fact, she did not contact Dr. McMahon until July 2017, and he diagnosed her with CIRS only four months later during her initial visit.

necessarily of mold growing throughout the house, was start of "limitations clock" on negligence and DTPA claims).

For the same reasons, we also hold that Kerwyn's, Chanel's, and Kerwyn Jr.'s claims accrued before December 20, 2015, and certainly no later than February 17, 2016, the date the family vacated the house. Family members had been sick and in some cases hospitalized by June 2013, and the family collectively believed by February 17, 2016 that the house was making them sick enough to require moving out of the house. Perry Homes thus established that Kerwyn, Chanel, and Kerwyn Jr. discovered, or in the exercise of reasonable diligence should have discovered before February 17, 2018, the nature of their injuries and the likelihood that the injuries were caused by the wrongful acts of another. *See Childs*, 974 S.W.2d at 40; *Pirtle*, 177 S.W.3d at 573-74. Because Kerwyn, Chanel, and Kerwyn Jr. did not file suit for their alleged injuries until April 27, 2018, their claims are likewise barred by limitations.[8]

The LaTouches contend that their evidence raised genuine issues of material fact defeating Perry Homes' right to summary judgment. They rely on *Nugent v. Pilgrim's Pride Corp.*, 30 S.W.3d 562 (Tex. App.—Texarkana 2000, pet. denied). In *Nugent*, the defendants dumped chemicals and chicken waste, which, by rainfall and accompanying erosion, contaminated the adjoining farm owned by the plaintiffs

[8] Although Miriam filed her original petition against Perry Homes within two years of February 17, 2016, the other three plaintiffs cannot rely on that filing to satisfy the statute of limitations. With limited exceptions not applicable here, an amended pleading adding a new party does not relate back to the original pleading for limitations purposes. *See Alexander v. Turtur & Assocs., Inc.*, 146 S.W.3d 113, 121 (Tex. 2004) ("Ordinarily, an amended pleading adding a new party does not relate back to the original pleading."); *Chavez v. Andersen*, 525 S.W.3d 382, 387 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (citing *Univ. of Tex. Health Sci. Ctr. at San Antonio v. Bailey*, 332 S.W.3d 395, 400 (Tex. 2011)); *see also Brown v. Enter. Recovery Sys., Inc.*, No. 02-11-00436-CV, 2013 WL 4506582, at *11 (Tex. App.—Fort Worth Aug. 22, 2013, pet. denied) (mem. op.).

(husband and wife). *Id.* at 565. The plaintiffs were aware of the soil contamination in 1991. *Id.* at 566. In 1994, the wife was diagnosed with skin cancer and the plaintiffs promptly filed suit. *Id.* The husband was later diagnosed with a chronic inflammatory illness; both plaintiffs' illnesses were attributed to exposure to the contaminants that had polluted their farm. *Id.* at 566, 571. The defendants argued that the plaintiffs' personal injury claims were time-barred under a two-year statute of limitations because the plaintiffs knew of the "first actionable injury" in 1991, when the defendants contaminated the plaintiffs' farm. *Id.* at 571. The court of appeals disagreed, holding that the discovery rule tolled the accrual of the personal injury claims until the wife was diagnosed with skin cancer. *Id.* at 574.

In reaching its decision, the *Nugent* court relied upon the supreme court's precedent on latent injuries. In *Childs*, the supreme court held that the discovery rule applies to cases in which an injured party was exposed to a hazardous substance and remained asymptomatic for an extended time, beyond the expiration of the statute of limitations. *Childs*, 974 S.W.2d at 39. The discovery rule applies in such cases because the nature of the disease or injury is initially undetectable, inherently dormant, and characterized by prolonged latency, and no immediate injury manifests itself to alert the potential plaintiff. *Id.* at 37-38. Therefore, in such cases, the plaintiff has no reason to know of actionable harm until the disease manifests itself. *Id.* at 37-40.

Nugent, even if it were precedent binding on this court, would not support reversal here because the LaTouches were not asymptomatic for an extended time, but rather developed symptoms almost immediately after moving into the house. Moreover, the evidence does not reveal an inherently dormant injury, characterized by prolonged latency, but one that promptly manifested itself to such a degree that hospitalization was required before June 2013. Miriam attributed her family's

sickness to the house and so informed Perry Homes many times over several years. Beginning in December 2009, and certainly by June 2013, the LaTouches were aware of their injuries and connected them to the allegedly defectively built house.

Additionally, the LaTouches' evidence does not raise a fact question as to whether a reasonably diligent investigation would have led Miriam to discover before December 20, 2015, the nature of her injury and the likelihood that it was caused by the wrongful acts of another. According to Miriam's affidavit, the LaTouches did not seek medical attention for their illnesses until February 2016, when they moved out of the house. We are told that they did not seek medical advice until then despite believing since December 2009 that their respective illnesses were attributable to the house and despite the fact that someone in the family was hospitalized before June 2013 in connection with the illness. The record does not reveal the results of consultations with any medical professionals other than Dr. McMahon, whom Miriam did not contact until July 2017. Once she met with Dr. McMahon, however, Miriam was diagnosed with CIRS on her first visit, November 1, 2017. The LaTouches' evidence confirms that in reasonable diligence they should have discovered their alleged injuries before December 20, 2015.

Conclusion

We conclude that the LaTouches' claims are barred by the applicable statutes of limitations, and that the trial court did not err in granting Perry Homes' motion for summary judgment on that ground. We need not address the parties' alternative arguments regarding the statute of repose. *See* Tex. R. App. P. 47.1.

We affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Chief Justice Frost and Justices Jewell and Spain.