[Cite as *Scioto Twp. Zoning Inspector v. Puckett*, 2015-Ohio-1444.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

OFFICE OF THE SCIOTO TOWNSHIP ZONING INSPECTOR BY ABBY SCOTT ZONING INSPECTOR,	:	
Plaintiff-Appellee,	:	Case No. 14CA4
vs.	:	
ROBERT PUCKETT,	:	DECISION AND JUDGMENT ENTRY
and	:	
BERNA PUCKETT,	:	
Defendants-Appellants.	:	**Released: 04/10/15**

APPEARANCES:

James R. Kingsley, Circleville, Ohio, for Appellants.

William L. Archer, Jr., Circleville, Ohio, for Appellee.

McFarland, A.J.

{¶1} Appellants Robert and Berna Puckett appeal the decision of the Pickaway County Court of Common Pleas, granting summary judgment in favor of Appellee, Scioto Township Zoning Inspector, on the issue of whether the operation of Puckett's Pay Pond constitutes aquaculture. They also appeal the trial court's final decision, which issued a permanent

injunction enjoining Appellants from committing a nuisance. On appeal, Appellants question whether 1) the trial court committed prejudicial error when it found they were not engaged in aquaculture; and 2) the trial court committed prejudicial error when it enjoined them from committing a nuisance.

{¶2} Because the question of whether Appellants' operation of a commercial pay lake qualifies as an agricultural use of the property is a question of law that we have resolved in favor of Appellees, we find no merit to Appellant's first assignment of error and it is overruled. Further, because we conclude that the trial court properly determined the operation of the pay lake to be a nuisance and, in its discretion, properly granted an injunction enjoining further operation of the pay lake, Appellants' second assignment of error is overruled. Having found no merit in either assignment of error raised by Appellants, the decision of the trial court is affirmed.

FACTS

{¶3} The operation of Puckett's Pay Lake is now before this Court for a third time. The first time we considered this matter was in 2005, when Appellants appealed from a decision issued by the Scioto Township Board of Zoning Appeals denying Appellants' request for a conditional use permit

to operate a commercial pay lake, which was affirmed by the Pickaway County Court of Common Pleas. On appeal, we affirmed the decision of the trial court upholding the denial of the conditional use permit, and in doing so rejected Appellants' argument that the operation of a commercial pay lake fell under the "public park" exception to the zoning resolution. *Puckett, et al. v. Scioto Township Board of Zoning Appeals*, 163 Ohio App.3d 535, 2005-Ohio-5430, 839 N.E.2d 426 (4th Dist.) (hereinafter "*Puckett "I"*"). Instead, this Court agreed with the trial court's view "that public parks are not for-profit commercial enterprises owned by private individuals for the financial benefit of those individuals." Id. at ¶ 12. Our decision in *Puckett I* was issued on September 28, 2005, and was not appealed.

{¶4} Nonetheless, Appellants continued with the expansion and operations of their pay lake, which is now known as Puckett's Pay Lake where, according to the fishing permit that must be signed prior to fishing, individuals come "for unforgettable fishing fun." A review of the record reveals that subsequent to the initial litigation, which ended with our decision issued in 2005, Appellants attempted ballot initiatives in 2006 and again in 2008, requesting that the conditional uses for the area in which their property was located be amended to include the operation of a pay lake. Neither of these attempts was successful. Thereafter, on August 4, 2009,

Appellee served Appellants with a notice of zoning violation. Appellants appealed to the Board of Zoning Appeals on August 25, 2009, and a hearing was held by the board on September 29, 2009. For the first time, Appellants alleged that their pay lake was actually an aquaculture operation.[1] However, the record indicates that at the time the notice of zoning violation was served, Appellants did not possess an aquaculture permit, which must be obtained prior to engaging in aquaculture, pursuant to OAC 1501:31-39-01. The board took the issue under advisement and another hearing was scheduled on October 27, 2009.

{¶5} At that hearing, counsel for both parties agreed that the issue needed to be decided by the trial court, rather than the zoning board. As such, on October 27, 2009, Appellee, Office of the Scioto Township Zoning Inspector, filed a complaint which included a claim for declaratory and injunctive relief against Appellants, Robert and Berna Puckett, in connection with Appellants' operation of a pay lake, or pay pond. Specifically, the complaint alleged that the operation of the pay lake was an unlawful home occupation being conducted in violation of the terms and provisions of the Scioto Township Zoning Resolution. The complaint alleged that the area in which Appellants' pay lake was located is an AG district, or Agriculture

[1] Aquaculture is a type of agriculture as defined in R.C. 519.01 and will be discussed in more detail below.

district. The complaint further alleged that Section 13.05 of the Resolution "limits the Conditional Uses in an AG district to 'public parks and/or nature preserves, and private landing fields for aircraft.' "[2] Appellee's overall complaint contained a claim for declaratory judgment, a permanent injunction, a preliminary injunction, and the assessment of civil sanctions. The claims for declaratory judgment and both the permanent and preliminary injunction requested abatement of all nuisance conditions and uses of Appellants' property. The prayer for relief also contained a request for costs, expenses and attorneys' fees.

{¶6} The matter proceeded along, and at one point was consolidated with another case filed by Appellants' neighbors, *James David Fisher et al., v. Robert Puckett, et al.,* Case no. 2010-CI-0030, which also contained as the primary issue, the operation of Appellants' pay lake. On March 1, 2011, Appellee filed a motion for summary judgment on the issue of Appellants' "pay pond qualifying as aquaculture." On April 8, 2011, Appellants filed their memo contra to Appellee's motion for summary judgment, and also filed their own motion for summary judgment, addressing only the issue of aquaculture. Appellee responded to Appellants' motion for summary

[2] In *Puckett I* all parties were operating under the mistaken belief that Appellants' property was located in an "R-1 Rural Residential District." Prior to the most recent litigation, however, it was determined that Appellants' property is located in an area that is zoned "AG, Agriculture district." This distinction is irrelevant as the only approved conditional uses in both R-1 and AG districts are "public parks and/or nature preserves, and private landing fields for aircraft."

judgment on April 18, 2011.[3] On August 23, 2011, the trial court entered a decision granting summary judgment in favor of Appellees on the issue of "aquaculture" and denied Appellants' motion for summary judgment. Then, on November 1, 2011, the trial court issued a "Judgment Entry On Whether The Defendants Are Engaged In Aquaculture," ultimately deciding that they were not. The matter was then de-consolidated from the other related case on November 14, 2011.

{¶7} Subsequently, on January 17, 2012, Appellants filed a motion for reconsideration, requesting the trial court to reconsider its decision on the issue of aquaculture, which motion was denied by the trial court on February 28, 2012. Finally, on March 19, 2012, the trial court issued a "Final Judgment Entry Containing Permanent Injunction," in which it granted Appellee's request for a permanent injunction, determined Appellants' use of their property for a pay pond constituted the establishment and maintenance of abatable nuisances at common law, and ordered Appellants to "permanently cease any activity related to and associated with the operation of a pay pond[.]"

{¶8} Appellants appealed from both the denial of their motion for reconsideration as well as the trial court's March 19, 2012, decision on

[3] In addition to these summary judgment motions, there were other summary judgment motions filed with respect to the related, consolidated case. However, as these motions are not relevant to our disposition of the current appeal, we omit them from our discussion herein.

March 23, 2012. However, this Court issued a decision on February 7, 2013, dismissing the appeal for lack of a final, appealable order based upon our determination that the trial court had failed to determine the issue of damages, including attorney fees, which were requested in the complaint. *Office of the Scioto Township Zoning Inspector, et al. v. Robert and Berna Puckett*, 4th Dist. Pickaway No. 12CA5, 2013-Ohio-703 (hereinafter "*Puckett II*"). Subsequently, the trial court held a hearing on damages and issued a judgment entry on April 14, 2014, denying Appellee's claim for attorney fees and imposing a statutory penalty of $500.00, which amount was stipulated to by the parties. It is from this decision that Appellants now bring their timely appeal, assigning two errors for our review, in what we will refer to as "*Puckett III*."

ASSIGNMENTS OF ERROR

"I. DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR WHEN IT FOUND DEFENDANTS WERE NOT ENGAGED IN AQUACULTURE?

II. DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR WHEN IT ENJOINED APPELLANT FROM COMMITTING A NUISANCE?"

ASSIGNMENT OF ERROR I

{¶9} In their first assignment of error, Appellants contend that the trial court committed prejudicial error when it found Appellants were not

engaged in aquaculture. A review of the record indicates that the trial court granted summary judgment in favor of Appellee on the issue of whether Appellants' pay lake operation constituted aquaculture. When reviewing a trial court's decision on a motion for summary judgment, we conduct a de novo review governed by the standard set forth in Civ.R. 56. *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8. Summary judgment is appropriate when the movant has established: 1.) there is no genuine issue of material fact; 2.) reasonable minds can come to but one conclusion, and that conclusion is adverse to the nonmoving party, with the evidence against that party being construed most strongly in its favor; and 3.) the moving party is entitled to judgment as a matter of law. *Bostic v. Connor*, 37 Ohio St.3d 144, 146, 524 N.E.2d 881 (1988); citing *Harless v. Willis Day Warehousing Co*., 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978) (per curiam). See Civ.R. 56(C).

{¶10} The burden of showing that no genuine issue of material fact exists falls upon the party who moves for summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 294, 662 N.E.2d 264 (1996). To meet its burden, the moving party must specifically refer to "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action,"

that affirmatively demonstrate the non-moving party has no evidence to support the non-moving party's claims. Civ.R. 56(C). See *Hansen v. Wal-Mart Stores, Inc.*, 4th Dist. Ross No. 07CA2990, 2008-Ohio-2477, ¶ 8. Once the movant supports the motion with appropriate evidentiary materials, the nonmoving party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in [Civ.R. 56], must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E). "If the party does not so respond, summary judgment, if appropriate, shall be entered against the party." Id.

{¶11} Additionally, the question of whether Appellants are using their land for agricultural purposes pursuant to R.C. 519.21(A) is a question of law, which we also review de novo, without deference to the trial court's determination. *Blue Heron Nurseries, L.L.C., et al., v. Funk, et al*., 186 Ohio App.3d 769, 2010-Ohio-876, 930 N.E.2d 824, ¶ 5; citing *Pierson v. Wheeland*, 9th Dist. No. 23442, 2007-Ohio-2474, ¶ 10 and *Eagle v. Fred Martin Motor Co*., 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, ¶ 11. As set forth above, Appellee filed a motion for summary judgment, contending that Appellants' use of their property for the operation of a commercial pay lake did not qualify as "aquaculture" and thus was not an agricultural use of the land, that would have to be permitted under R.C.

519.21(A). Appellants opposed the motion, arguing they were, in fact, engaged in aquaculture, citing in support the fact that they possessed a valid aquaculture permit. Appellants argued the fact that they possessed a valid aquaculture permit was dispositive of the issue of whether or not their pay lake constituted agriculture and thus was a permitted use of their property. For the following reasons, we disagree.

{¶12} R.C. 519.21 is entitled "Prohibition of agricultural uses limited" and provides in section (A) as follows:

> "Except as otherwise provided in division (B) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use of agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure."

Thus, in order for the zoning exception contained in R.C. 519.21(A) to apply to a piece of land, the land must be primarily used for agricultural purposes. *Blue Heron Nurseries* at ¶ 9; citing *Siebenthaler Co. v. Beavercreek Twp. Bd. of Zoning Appeals*, 2nd Dist. No. 09-CA-36, 2009-Ohio-6595, ¶ 42-44.

{¶13} According to R.C. 519.01, "agriculture includes * * * aquaculture * * *." R.C. 1533.632 defines aquaculture as follows in section (A)(1):

> " 'Aquaculture' means a form of agriculture that involves the propagation and rearing of aquatic species in controlled environments under private control, including, but not limited to, for the purpose of sale for consumption as food."

R.C. 1533.632 further provides in section (D) that "[n]o person who does not hold a current valid aquaculture permit shall knowingly sell an aquaculture species while claiming to possess an aquaculture permit." Additionally, OAC 1501:31-39-01, which governs aquaculture permits, provides that "[i]t shall be unlawful for a person to engage in aquaculture without first making application for an aquaculture permit and receiving one from the chief of the division of wildlife."

{¶14} Here, Appellants sought permission for a conditional use of their property in 2005 that would allow them to operate a commercial pay

lake. They reasoned that the pay lake qualified as a public park and should be permitted as a conditional use. Their request was denied by the zoning board. As discussed above, that denial was upheld by the common pleas court and later affirmed by this Court. Appellant failed to appeal this Court's decision in *Puckett I*. Further, at no time during *Puckett I* litigation did Appellants ever raise the issue of aquaculture or claim that their pay lake operation was actually aquaculture. Nor did they claim their pay lake was aquaculture during the course of their ballot initiative attempts in 2006 and 2008. In fact, it was not until they received a notice of zoning violation on August 4, 2009, that they claimed their pond activities constituted aquaculture, which would be a permitted agricultural use that the township could not prohibit under R.C. 519.21. Curiously, however, Appellants did not obtain the required permit to engage in aquaculture until September 29, 2009. Further, as indicated above, both the Ohio Revised Code and Ohio Administrative Codes provide that a permit must be obtained prior to engaging in aquaculture and that engaging in aquaculture without a permit is unlawful.

{¶15} The record indicates that Appellants began construction of their ponds and began stocking them with fish as far back as 2003. The record further indicates that Appellants listed their pay pond business on their

federal tax returns beginning in 2003, yet they did not claim their activities constituted aquaculture until 2009, after six years, previous litigation including an appeal to this Court, and two ballot initiatives. Further, Mr. Puckett testified in his deposition that the fish production procedures he uses now are no different from the procedures he used in 2004, which was during the *Puckett I* litigation. Of importance, Mr. Puckett, testified in his deposition that although he has created some shallow areas in the ponds where fish can lay eggs, he primarily stocks his pay lake with fish purchased elsewhere.

{¶16} Although it appears that Appellants might engage in some limited aquaculture, by virtue of the fact they do have a valid permit and because some reproduction does take place, the primary use of their land is for the operation of a commercial pay lake. Thus, the record indicates that Appellants' land is not primarily used for agricultural purposes, as required by R.C. 519.21(A). Instead, it is clear that while some fish reproduction takes place, Appellants' primary operation is that of a pay lake, not aquaculture.

{¶17} As noted above, R.C. 1533.632 provides that aquaculture involves "the propagation and rearing of aquatic species in controlled environments under private control." Here, Mr. Puckett testified in his

deposition that he does not even feed his fish, because if he does, they will not bite when the fishermen come to fish. In fact, other than dropping them in the ponds after he purchases them elsewhere, there is no "propagation" or "rearing." Although R.C. 1533.632 does not define the terms "propagation" or "rearing," it does, in section (a)(5), define the term "aquaculture production facility." The statute states that an aquaculture production facility "means a facility that has suitable infrastructure and equipment, as determined by the chief, and *that is solely dedicated to the propagation and rearing of an aquaculture species*." (Emphasis added).

{¶18} Here, although the chief of the division of wildlife may have determined, as evidenced by issuance of the aquaculture permit, that Appellants had suitable infrastructure and equipment, their pay lake is by no means "solely dedicated to the propagation and rearing of an aquaculture species." Rather, it is clear that their property is primarily dedicated to the operation of a commercial pay lake. Thus, even if some aquaculture does occur, it is not the primary use, which is a requirement not only under R.C. 1533.632, but also under R.C. 519.21(A). See also, *Blue Heron Nurseries*, supra, at ¶ 9 and 15 (regarding whether the operation of a plant nursery constituted agriculture, an important consideration was whether the nursery

stock originated at the location at issue.) Citing *Marik v. K.B. Compost Servs., Inc.*, 9th Dist. No. 19393, 2000 WL 109155 (Jan. 26, 2000).

{¶19} Noting that although some production occurred at the nursery in the form of propagation and division, the court found important the fact that "everything" at the nursery originated from other nurseries. Id. at ¶ 16. Based upon those facts, the court was "reluctant" to conclude that the primary purpose of the nursery was to engage in agriculture. Id. We find the reasoning of *Blue Heron* to be very persuasive when applied to the facts sub judice, which indicate that, like the Blue Heron nursery stock, the fish in Appellants' lake are purchased elsewhere and brought to Appellants' lake for commercial fishing. The fact that they reproduce in the natural course of things does not constitute propagation and rearing.

{¶20} Our decision is bolstered by the affidavit of Laura Tiu, who has been employed by the Ohio Center for Aquaculture Research and Development at The Ohio State University South Center since 1998. Ms. Tiu holds a Ph.D. in Extension Education (Aquaculture) from The Ohio State University. In her affidavit, which was filed in support of Appellee's motion for summary judgment, Tiu averred that "[p]ropagation in aquaculture involves spawning or rearing fish during various stages of development (spawn, fry and fingerling) for sale or use in

recreational/business operations like pay lakes." She further averred that "[a]quaculture propagation involves the spawning, feeding and care of fish, including disease control, water quality monitoring (temperature and flow) and aeration." Finally, she averred that although a pay lake is considered a market for aquaculture products, "a pay lake is not considered an aquaculture operation." There is nothing in the record which indicates that Appellants spawn, feed, or really care for their fish in any way. Further, there is no evidence of disease control or water monitoring.

{¶21} Appellants contend that the trial court erred in relying upon the affidavit of Ms. Tiu. Appellee responds that the terms used in the statute, which include "propagation" and "rearing" are not defined in the Revised or Administrative Codes and that Ms. Tiu's knowledge, as an aquaculture expert, assisted the trial court in its interpretation of the undefined terms. "For evidentiary material attached to a summary judgment motion to be considered, the evidence must be admissible at trial." See Civ.R. 56(E) and *Pennisten v. Noel*, 4th Dist. Pike No. 01CA669, *2 (Feb. 8, 2002). Civ.R. 56(E) states: "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit." Thus, affidavits containing opinions must

meet the requirements in the Rules of Evidence governing the admissibility of opinions. See *Tomlinson v. Cincinnati*, 4 Ohio St.3d 66, 446 N.E.2d 454, paragraph one of the syllabus (1983).

{¶22} In general, courts should admit expert testimony whenever it is relevant and satisfies Evid.R. 702. *Valentine v. PPG Industries, Inc.*, 158 Ohio App.3d 615, 2004-Ohio-4521, 821 N.E.2d 580, ¶ 23 (4th Dist.); citing *State v. Nemeth*, 82 Ohio St.3d 202, 207, 694 N.E.2d 1332 (1998); see, also, *State v. Williams*, 4 Ohio St.3d 53, 58, 446 N.E.2d 444 (1983). The trial judge must perform a "gatekeeping" role to ensure that expert testimony is sufficiently relevant and reliable to justify its submission to the trier of fact. *Valentine* at ¶ 23; see also *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152, 119 S.Ct. 1167 (1999) ; *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589, 113 S.Ct. 2786, (1993); *Nemeth* at 211; *Douglass v. Salem Community Hospital*, 153 Ohio App.3d 350, 2003-Ohio-4006, 794 N.E.2d 107, ¶ 32.

{¶23} Although we conduct a de novo review of the trial court's decision to grant summary judgment, we review the court's rulings on the admissibility of evidence for an abuse of discretion. *Lawson v. Y.D. Song, M.D., Inc*., 4th Dist. Scioto No. 97CA2480, 1997 WL 596293, *3 (Sept. 23, 1997); See also, *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343,

paragraph two of the syllabus (1987). The term "abuse of discretion" implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). When applying the abuse-of-discretion standard, a reviewing court may not substitute its judgment for that of the trial court. *Berk v. Matthews*, 53 Ohio St.3d 161, 169, 559 N.E.2d 1301 (1990).

{¶24} In performing its gatekeeping function, the trial court should begin with Evid.R. 702, which provides that a witness may testify as an expert if all of the following apply: "(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons; (B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony; (C) The witness' testimony is based on reliable, scientific, technical, or other specialized information. * * * ." Here, Appellants primarily argue that the trial court should not have needed to look beyond the statutory language to determine the meaning of "propagation" and "rearing" and that as such, Ms. Tiu's testimony did not relate to a matter beyond the knowledge of the trial court. Appellants also argue that Ms. Tiu was not an expert. We disagree.

{¶25} As stated, those terms are not defined in the Ohio Revised or Administrative Codes. As such, Ms. Tiu's affidavit, by virtue of her knowledge, education and years of experience in the area of aquaculture, provided expert guidance to the court, and provides guidance to this Court on matters beyond our experience and knowledge. This Court is unaware of any other case law in Ohio on the subject of aquaculture. Further, we have identified no other cases which have dealt with the issue of whether the operation of a commercial pay lake simultaneously constitutes engaging in aquaculture. As such, we find no error or abuse of discretion in the consideration of the Tiu affidavit in support of Appellee's motion for summary judgment.

{¶26} In light of the foregoing, and reviewing this matter de novo, we conclude that Appellee is entitled to judgment as a matter of law with respect to the question of whether Appellants' commercial pay lake constitutes an aquaculture operation. Based upon the evidence in the record, and construing that evidence in a light most favorable to Appellants, there exists no genuine issue of material fact with respect to the question of whether Appellants' pay lake is actually an aquaculture operation. It was not aquaculture in 2005 during the initial litigation. It was not aquaculture in 2006 or 2008 during the attempted ballot initiatives, nor was it aquaculture

in 2009 when the present litigation began. As such, we affirm the trial court's grant of summary judgment. We further note, for purposes of our analysis of Appellants' second assignment of error, that having determined Appellants' commercial pay lake operation does not qualify as an agricultural use that must be permitted under R.C. 519.21, Appellants' current use of their property is in violation of the Scioto Township Zoning Resolutions as set forth in the complaint filed in *Puckett II* and *III*.

ASSIGNMENT OF ERROR II

{¶27} In their second assignment of error, Appellants contend that the trial court committed prejudicial error when it enjoined Appellants from committing a nuisance. As set forth above, Appellee sought a permanent injunction enjoining Appellants from operating their commercial pay lake in an area zoned for agricultural use, arguing that the operation of the pay lake was in violation of Scioto Township's comprehensive zoning resolution, as well as Chapter 519 of the Ohio Revised Code, and constituted the establishment and maintenance of an abatable nuisance. The trial court found that "the use of the Puckett Property for pay pond uses created uses to be in violation of the above cited provisions of the Scioto Township Zoning Resolution and Chapter 519 of the Ohio Revised Code, and constitute the

establishment and the maintenance of abatable nuisances at common law."[4] Thus, the trial court granted Appellee's request for a permanent injunction.

{¶28} To obtain a permanent injunction, the plaintiff must demonstrate a right to relief under any applicable substantive law. See *Island Express Boat Lines, Ltd. v. Put-in-Bay Boat Line Co*., 6th Dist. Erie No. E-06-002, 2007-Ohio-1041, ¶ 93. In addition, the plaintiff must ordinarily prove, by clear and convincing evidence, that the injunction is necessary to prevent irreparable harm and that the plaintiff does not have an adequate remedy at law. See Id. at ¶ 93. However, "[i]t is established law in Ohio that, when a statute grants a specific injunctive remedy to an individual or to the state, the party requesting the injunction 'need not aver and show, as under ordinary rules in equity, that great or irreparable injury is about to be done for which he has no adequate remedy at law * * *.' " *Ackerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St.2d 51, 56, 378 N.E.2d 145 (1978); quoting *Stephan v. Daniels*, 27 Ohio St. 527, 536 (1875). "Therefore, statutory injunctions should issue if the statutory requirements are fulfilled." *Columbus Steel Castings Co. v. King Tool Co*., 10th Dist. Franklin Nos. 11AP-351 & 11AP-355, 2011-Ohio-6826, ¶ 66; citing

[4] The specific sections of the Scioto Township Zoning Resolution at issue were sections 29.02, 29.06, 13.03, 13.04, 13.05 and 4.01 which address zoning requirements related to unlawful home occupations, pond requirements, changes in use of existing buildings or accessory buildings, as well as accessory and conditional uses.

Ackerman at 57. Ordinarily, trial courts "retain broad discretion to fashion the terms of an injunction." *Adkins v. Boetcher*, 4th Dist. Ross No. 08CA3060, 2010-Ohio-554, ¶ 35. Therefore, we will not reverse a court's ruling on the scope of an injunction absent an abuse of discretion. See, id. The phrase "abuse of discretion" implies "the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶29} Here, Appellee alleged violations of the township zoning resolution and R.C. Chapter 519. Chapter 519 of the Ohio Revised Code governs township zoning and provides in section 519.24 "Action to prevent violations of zoning regulations; special counsel" as follows:

> "In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used or any land is or is proposed to be used in violation of sections 519.01 to 519.99, inclusive, of the Revised Code, or of any regulation or provision adopted by any board of township trustees under such sections, such board, the prosecuting attorney of the county, the township zoning inspector, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other

> remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use. The board of township trustees may employ special counsel to represent it in any proceeding or to prosecute any actions brought under this section."

{¶30} We already determined under Appellants' first assignment of error that Appellants' use of their property as a commercial pay pond is not aquaculture and therefore does not constitute agriculture. We further upheld the trial court's grant of summary judgment in favor of the township, reasoning that because Appellants' use of their property did not constitute agriculture, the use was a violation of the Scioto Township Zoning Resolutions as set forth in the complaint filed in *Puckett II* and *III*. Further, Appellants concede in their appellate brief that "[i]t was proper for the court to issue an injunction to cease and desist zoning violations in this case." However, Appellants contend that a nuisance was not pled in the complaint filed by Appellee, and the evidence as to nuisance was not part of this case, but rather was part of the case involving the neighbors, which was consolidated with this case for a time, but was de-consolidated prior to the

issuance of the injunction. For the following reasons, we find no merit to Appellants' argument.

{¶31} First, Appellee's complaint alleged the establishment and maintenance of a nuisance in three out of the four claims contained in its complaint. Second, with respect to the evidence related to nuisance, insofar as Appellants contend that the only evidence of nuisance exists as part of the case involving the neighbors, which was de-consolidated from this case, all of the deposition transcripts of the neighbors were filed in this case and contain the underlying case number for this case. Further, all of those deposition transcripts were transmitted with the record of this case and are before this Court on appeal.

{¶32} However, we find there is no need to resort to the evidence of nuisance as it pertains to the neighbor's case. According to *Garcia v. Gillette*, 11th Dist. Ashtabula No. 2013-A-0015, 2014-Ohio-1868, ¶ 2, "violations of zoning ordinances are public nuisances." Although the *Garcia* case addressed the violation of a municipal zoning ordinance, we find the reasoning applicable to violations of township zoning resolutions. Further, R.C. 519.24 contains very similar language to R.C. 713.13, which addresses municipal zoning violations and was at issue in *Garcia*. A "public nuisance" is defined as follows:

> "[a]n unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property. * * * Such a nuisance may lead to a civil injunction or a criminal prosecution." Black's Law Dictionary, 9th Ed.2009).

Here, the trial court described Appellants' commercial pay lake as an "abatable nuisance." An "abatable nuisance" is defined as follows:

> "a nuisance so easily removable that the aggrieved party may lawfully cure the problem without notice to the liable party, such as overhanging tree branches. * * * A nuisance that reasonable persons would regard as being removable by reasonable means." Id.

{¶33} This Court recently reasoned as follows with regard to the various types of nuisances and the language employed by courts in describing nuisances, when presented with an argument that the trial court mislabeled the nuisance at issue:

> "[E]ven if we were to assume that the trial court mislabeled the nuisance, that error was harmless. Regardless of the label placed on the nuisance, the trial court retained broad discretion

> in fashioning an injunctive remedy and found that the terms of its injunction afforded the only appropriate relief based on the evidence." *Adkins v. Boetcher*, at ¶ 1.

" 'There is perhaps no more impenetrable jungle in the entire law than that which surrounds the word "nuisance." It has meant all things to all people, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie.' " Black's Law Dictionary, 9th Ed.2009; quoting Prosser and Keeton on the Law of Torts section 86, at 616 (W. Page Keeton Ed., 5th Ed.1984).

{¶34} Further, it has been stated that " '[a] nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.' " Id.; quoting *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114 (1926). We conclude that is precisely what Appellants' commercial pay lake is, a right thing in the wrong place, according to the Scioto Township Zoning Resolution, and thus, it is a nuisance and a violation of the zoning resolutions, which the trial court properly abated by issuance of a permanent injunction pursuant to R.C. 519.24. Based upon the foregoing, we find no merit to Appellant's second assignment of error.

{¶35} Having found no merit in the assignments of error raised by Appellants, they are overruled and the decision of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that the Appellee recover of Appellants any costs herein.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. & *Delaney, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland,
Administrative Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

*****Judge Patricia A. Delaney, from the Fifth Appellate District, sitting by assignment of The Supreme Court of Ohio in the Fourth Appellate District.