[Cite as *State ex rel. Petro v. Pure Tech Sys., Inc.*, 2015-Ohio-1638.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101447

STATE OF OHIO, EX REL. JIM PETRO

PLAINTIFF-APPELLEE

vs.

PURE TECH SYSTEMS, INC., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-06-597766

BEFORE: Jones, P.J., E.A. Gallagher, J., and Stewart, J.

RELEASED AND JOURNALIZED: April 30, 2015

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LARRY A. JONES, SR., P.J.:

{¶1} The appellants in this case are Pure Tech Systems, Inc., K&B Capital, Inc., and Robert Kattula. They are three of the five defendants in this action, that was initiated in 2006 by the state of Ohio, through its attorney general, to enforce the state's hazardous waste and water pollution control laws. They appeal the trial court's judgments (1) granting the state's motion for summary judgment and denying their motion for summary judgment, (2) granting the state injunctive relief against them, (3) piercing the corporate veil to hold Kattula personally liable, (4) ordering civil penalties against them, and (5) holding Kattula in contempt of court. We affirm.

I. Procedural History

{¶2} In addition to the appellants, the December 2006 second amended complaint named Research Oil Company and Alan Gressel as defendants. The second amended complaint set forth 19 counts alleging that the defendants violated numerous Ohio hazardous waste and water pollution control laws. The appellants answered the second amended complaint and defendant Gressel filed a motion to dismiss.

{¶3} Defendant Research Oil Company failed to answer or otherwise defend against the second amended complaint, and in 2007 default judgment was granted against it. After a penalty hearing was had, the trial court assessed $846,000 against Research Oil Company. In 2009, defendant Gressel settled with the state by entering into a consent order, under which he had to pay a $4,500 civil penalty.

{¶4} The appellants filed a motion for summary judgment and the state filed a

motion for summary judgment. The trial court denied appellants' motion. The court granted the state's motion against Pure Tech and K&B on all 19 counts, and set the claims as they related to Kattula for trial, that was held in January 2013. The court pierced the corporate veil and found Kattula personally liable. The court also issued a permanent injunction against appellants.

{¶5} In May 2014, after a hearing had been held, the trial court assessed approximately $6.1 million in civil penalties against appellants, jointly and severally. The court also found Kattula in contempt of court.

II. Facts

{¶6} This case revolves around hazardous waste operations that occurred at a facility located at 2777-79 Broadway Avenue, permanent parcel numbers 122-27-012 and 122-27-020. Broadway Avenue was formally known as Rockefeller Avenue. The facility in general is commonly referred to as the "Rockefeller Avenue facility," and parcel number 122-27-012 is commonly referred to as the "Hill property." At issue here was whether the Hill property, that was subject to numerous environmental violations, was under the control of the defendants.

Background

{¶7} The record demonstrates that the facility and surrounding land have served as the grounds for petroleum and hazardous substance operations dating back to the 1880s when a Rockefeller oil refinery (the Standard Oil Company) operated there. The

Rockefeller Avenue facility consisted of a "W-2 Tank Farm," which was the Hill property, as well as an "oil/water separator" and a "corporate tank." Hazardous waste operations took place on the Hill property. Another property, referred to as the "Transport Road facility," was located nearby and also was a site for hazardous waste operations.

{¶8} In 1967, the city of Cleveland purchased the property from the Standard Oil Company. The city was in control of the property until 1989, and operated the separator on the property. In 1989, the city sold the property to defendant Research Oil. Pursuant to the city and Research Oil's purchase agreement, Research Oil was required to operate the separator and comply with all environmental regulations.

{¶9} Research Oil divided the property, thereby creating parcel numbers 122-27-012 and 122-27-020. Defendant Gressel was the president, CEO, and director of Research Oil. Research Oil also used the Transport Road facility. During its period of control over the property, Research Oil was cited numerous times by the state and city of Cleveland for environmental violations. Because of the citations, the Ohio EPA ordered "closure" of the facility.[1]

{¶10} In 1998, Research Oil borrowed $3.5 million from Finova Capital Corporation. In exchange for the loan, Research Oil granted Finova a security interest in its assets.

{¶11} In 1999, Research Oil defaulted under the terms of the loan and had to surrender the agreed upon assets to Finova. At the time, there were still numerous

[1]Hazardous waste "closure" means conducting environmental remedial actions.

environmental citations relative to the property. Research Oil stopped operations but without completing closure. Research Oil had approximately $3 million in assets and $25 million in liabilities, including several million in penalties owed to the Ohio EPA.

Appellant Kattula Purchases Property

{¶12} Appellant Kattula and representatives from Finova began discussing the possibility of Kattula purchasing the Research Oil assets. To that end, Kattula met with representatives from the Ohio EPA. It is Kattula's position that at no time during his meetings with the EPA representatives was the Hill property ever discussed. Gregory Orr, the representative from the EPA who met with Kattula, testified that he discussed the general conditions and obligations relative to the "Research Oil facilities."

{¶13} Kattula ultimately purchased the Research Oil assets. To effectuate the purchase, in July 1999, Kattula had a company, Mason Plastics, Inc., an Ohio corporation formed in 1998 and of which Kattula was the sole shareholder, purchase the Research Oil assets from Finova. Mason Plastics then transferred the assets to another of Kattula's businesses, appellant Pure Tech. Pure Tech was registered as an Ohio corporation on July 15, 1999, and the assets were transferred to it on July 26, 1999. Kattula was Pure Tech's sole shareholder. Kattula maintains that none of these transfers included the Hill property. Pursuant to these transfers, defendant Research Oil came to be under Kattula's control.[2]

{¶14} Pure Tech then became the "operator" of the Transport Road and Rockefeller

[2]Defendant Gressel and the other corporate officers were forced to resign after the default.

Avenue facilities. The Transport Road facility was still subject to the Ohio EPA's closure order.

{¶15} To effectuate the operation of the facilities, Kattula had to secure a line of credit. Kattula formed another business, appellant K&B, that guaranteed the line of credit and provided financing for various undertakings relative to operating the facilities. Kattula's wife owned 1% of K&B, and the remaining 99% was owned by the Kattula family's trust. K&B was a Michigan corporation formed in May 2000. It was registered as an Ohio foreign limited liability company in September 2003.

{¶16} Appellant Pure Tech operated an oil reprocessing business on the property. Kattula maintains that the business only operated at the Transport Road facility; he maintains that neither he nor any of his businesses had any involvement with the Hill property.

{¶17} In 1999, Pure Tech entered into a consent order with the state of Ohio to address air quality issues at the Transport Road facility. Also in 1999, Kattula and the state entered into a second consent order that detailed the closure of hazardous waste operations at the Transport Road facility.

Rockefeller Avenue Facility

{¶18} In November 1999, the city of Cleveland inspected the property and found violations of the city and state fire codes; *the violations included one at the Hill property* and related to a lack of permits for the installation of above ground storage tanks. A citation, that ordered closure of the facility, was issued to Pure Tech. Pure Tech's plant

manager/compliance manager responded to the citation and addressed how the company would correct the violations, that included applying for permits to bring the property in compliance.

{¶19} In March 2000, Pure Tech entered into a consent order with the city of Cleveland to address the property violations, *including the Hill property violation. Kattula signed the order as "president" of Pure Tech*.

{¶20} Meanwhile, Gregory Orr, from the Ohio EPA, became aware in December 1999 that the city of Cleveland had initiated regulatory compliance actions against Pure Tech. In March 2000, the Ohio EPA began regulatory compliance actions against Pure Tech, and as a result of the actions, Pure Tech entered into two consent orders with the Ohio EPA.

{¶21} Mason (Kattula's company) took additional loans from Finova to get funds for the environmental remediation. Pure Tech guaranteed Mason's obligations and provided Finova with a secured interest in the assets. Under the agreement, Pure Tech was to conduct closure of the Rockefeller Avenue facility.

{¶22} In 2001, Mason and Pure Tech defaulted under the terms of the agreement and litigation ensued. The parties reached a settlement, under which K&B purchased Finova's security interests in the assets of Mason and Pure Tech. The property was then assigned to TAJ Graphics, L.L.C.,[3] another one of Kattula's businesses.

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[3]TAJ was not a registered corporation until April 2003, when it registered in Michigan as being formed in 2000, but without annual statements on record for 2001 and 2002.

{¶23} Also in 2001, Pure Tech, K&B and TAJ entered into an agreement to transfer all of their respective interests to General Environmental Management, L.L.C. ("GEM"). The companies' interests were transferred at a reduced price due to the environmental remediation efforts that needed to be completed. As part of the agreement between the parties, GEM was released from existing or future liability associated with the Rockefeller Avenue facility, including the Hill property.

{¶24} Further facts will be discussed in addressing the assignments of error.

III. Assignments of Error

I. The trial court committed reversible error in denying Appellants', Kattula's, Pure Tech Systems, Inc.'s and K&B Capital, Inc.'s, motion for summary judgment and granting Appellee's motion for summary judgment against Pure Tech Systems, Inc. and K&B Capital, Inc. because appellee failed to raise a genuine issue of material fact that appellants were owners, operators or generators of hazardous waste at the Hill property.

II. The trial court committed reversible error in denying appellants', Kattula's, Pure Tech System Inc.'s and K&B Capital, LLC's, motion for summary judgment and granting appellee's motion for summary judgment against Pure Tech Systems. Inc. and K&B Capital, LLC because appellee's claims were barred by the applicable statute of limitations.

III. The trial court committed reversible error in granting appellee's motion for summary judgment against Pure Tech Systems Inc. and K&B Capital, Inc. because appellee failed to submit any sworn, certified or authenticated documentary evidence.

IV. The trial court's judgment in favor of appellee and against appellant Kattula is against the manifest weight of the evidence because there is no evidence that Kattula was an owner, operator or generator of hazardous waste at the Hill property.

V. The trial court's judgment in favor of appellee and against appellant Kattula is against the manifest weight of the evidence because there is no evidence to justify piercing the corporate veil.

VI. The trial court's judgment in favor of appellee and against appellant Kattula is against the manifest weight of the evidence because there is no evidence that Kattula personally participated in any of the alleged statutory violations at the Hill property.

VII. The trial court committed reversible error in entering a permanent injunction against all appellants because appellee failed to join a necessary and indispensable party.

VIII. The trial court committed reversible error in entering a permanent injunction against all appellants because the order is not authorized by any statute.

IX. The trial court committed reversible error in ordering the appellants to pay civil penalties.

X. The trial court committed reversible error in finding appellant Kattula in continuing contempt of court.

IV. Law and Analysis

Summary Judgment

{¶25} In the first four assignments of error, appellants contend that the trial court erred in denying their motion for summary judgment and granting the state's motion for summary judgment. We review the trial court's judgment de novo, using the same standard that the trial court applies under Civ.R. 56(C). *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Civ.R. 56(C) provides that summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) after construing the evidence most favorably for the party against whom the motion is made, reasonable minds can only reach a conclusion that is adverse to the nonmoving party. *Zivich v. Mentor Soccer Club, Inc.*,

82 Ohio St.3d 367, 369-370, 696 N.E.2d 201 (1998); *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977).

Owners, Operators or Generators of Hazardous Waste at Hill Property

{¶26} In the first assignment of error, appellants contend that the trial court erred in granting the state's summary judgment motion because the state failed to demonstrate that they were owners, operators or generators of hazardous waste at the Hill property. We disagree.

{¶27} The record demonstrates that Pure Tech and K&B were indeed owners or operators of the Hill property. For example, in regard to Pure Tech, its response to the city of Cleveland's violations after the city's November 1999 inspection of the property was that it would get the required permits so that above ground storage tanks on the Hill property would be in compliance. Further, in 2000, Kattula entered into a consent order with the city to address violations, including the Hill property violation.

{¶28} In regard to K&B, it acquired the assets of Pure Tech. The law is clear that when there is a transfer of assets involving real property on which hazardous wastes are generated, stored and spilled, the liability accompanying the asset also transfers. For example, R.C. 3734.02(C) provides that "[*n*]*o person shall continue* to operate a solid waste facility" when a permit has been denied and a facility ordered closed. (Emphasis added.) Thus, when K&B acquired the Hill property it acquired the same liability Pure Tech had.

{¶29} Further, both K&B and Pure Tech admitted in their answer to the second

amended complaint that Pure Tech "operated" at the Hill property. *See* record at 89, ¶ 8. They further admitted that "at certain times Defendant, Pure Tech Systems, Inc., generated hazardous waste," "managed and stored hazardous waste," and that "D028 hazardous waste was stored on site" at the Hill property. *Id.* at ¶ 10, 11, and 12.

{¶30} In light of the above, the evidence demonstrated that Pure Tech and K&B were owners, operators or generators of hazardous waste at the Hill property. Summary judgment was, therefore, properly granted in favor of the state on this issue.

{¶31} Appellants' first assignment of error is overruled.

Statute of Limitations and Long Arm Statute

{¶32} For their second assigned error, the appellants contend that the state's action against them was barred by the statute of limitations. They also contend that they could not be served with the state's second amended complaint because they no longer operated in the state of Ohio. We disagree with both contentions.

{¶33} This action was brought under R.C. 3734.13(C). That statute provides in part that "[a]ny action under this section is a civil action, governed by the Rules of Civil Procedure." *Id.* Appellants contend that, under R.C. 2305.11, the state had a one-year limitation for its civil penalty claims, and under R.C. 2305.07, a six-year limitation for its injunctive relief claims. But the Ohio Supreme Court has held that generally-worded statutes of limitations do not apply to the state. *Ohio Dept. of Transp. v. Sullivan*, 38 Ohio St.3d 137, 139, 527 N.E.2d 798 (1988). Both statutes cited by appellants are generally worded and, therefore, do not apply to the state.

{¶34} Rather, R.C. 3745.31 sets forth the statute of limitation for obtaining civil or administrative penalties due to violations of environmental law, and it specifically includes the state. Under the statute, a five-year limitation is imposed for civil penalty claims for violations of state environmental laws. R.C. 3745.31(A). R.C. 3745.31 became effective on July 23, 2002. Pursuant to the statute, the state was allowed to seek penalties for environmental violations that it knew about and that commenced within five years of the July 23, 2002 effective date, including violations that occurred before July 23, 2002. The state therefore had until July 23, 2007 to commence this action. It filed this case in August 2006, well before the expiration of the statute of limitations. Thus, because the appellants' second assignment of error relates to the statute of limitations, it is overruled.

{¶35} Appellants also contend in this assignment of error that service of process and jurisdiction could not be obtained after June 2001 because that is when K&B and Pure Tech ceased business operations in Ohio. But R.C. 2307.381(A), Ohio's long arm statute, provides that a court may exercise personal jurisdiction over a person who acts directly or by an agent to cause an action arising from the person transacting business in the state, causing tortious injury by an act or omission in Ohio, or by having an interest in, or possessing real property in Ohio. Because "transacting business in the state" is so broad, transacting business for purposes of personal jurisdiction does not require physical presence in Ohio. *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 236, 638 N.E.2d 541 (1994).

{¶36} The record demonstrates that appellants were "transacting business" in Ohio

and their activities in the state continued to cause injury in the state. The long arm statute therefore subjected them to personal jurisdiction in Ohio.

{¶37} In light of the above, the second assignment of error is overruled.

State's Evidence in Support of Summary Judgment

{¶38} In their third assignment of error, appellants contend that the state failed to submit sworn, certified, or authenticated documentation in support of its summary judgment motion, and the trial court, therefore, erred in relying on the state's documentation.

{¶39} Under Civ.R. 56(C),

> [s]ummary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Our review of the record demonstrates that the state properly supported its summary judgment motion with appropriate evidence pursuant to Civ.R. 56(C). For example, the state relied on the following in support of its motion: (1) appellants' answer to the amended complaint, (2) the affidavits of Gregory Orr and Isaac Wilder, environmental specialists with the Ohio EPA, (3) discovery responses, (4) deposition testimonies, and (5) the parties' written stipulations.

{¶40} Collectively, this evidence established that appellants were owners, operators, or generators of hazardous waste at the Hill property and were in violation of environmental laws and regulations. The third assignment of error is, therefore,

overruled.

Kattula as an Owner, Operator, or Generator of Hazardous Waste: Piercing Corporate Veil

{¶41} In the fourth and fifth assignments of error, Kattula challenges the trial court's finding that he, in his individual capacity, was an owner, operator, or generator of hazardous waste at the Hill Property and, thus, its judgment piercing the corporate veil. In the sixth assignment of error, Kattula contends that there was no evidence that he personally participated in the violations at the Hill property.

{¶42} In *Dombroski v. WellPoint, Inc.*, 119 Ohio St.3d 506, 2008-Ohio-4827, 895 N.E.2d 538, ¶ 18, the Supreme Court of Ohio stated the following in regard to determining whether to pierce the corporate veil:

> In *Belvedere* [*Condominium Unit Owners' Assn. v. R.E. Roark Cos., Inc.*, 67 Ohio St.3d 274, 617 N.E.2d 1075 (1993)], this court established a three-pronged test for courts to use when deciding whether to pierce the corporate veil, based on a test developed by the United States Court of Appeals for the Sixth Circuit in *Bucyrus-Erie Co. v. Gen. Prods. Corp.* (C.A.6, 1981), 643 F.2d 413, 418. *Belvedere*, 67 Ohio St.3d at 288-289, 617 N.E.2d 1075. This test focuses on the extent of the shareholder's control of the corporation and whether the shareholder misused the control so as to commit specific egregious acts that injured the plaintiff: "The corporate form may be disregarded and individual shareholders held liable for wrongs committed by the corporation when (1) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will, or existence of its own, (2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong." *Id.* at paragraph three of the syllabus. All three prongs of the test must be met for piercing to occur.

{¶43} Kattula maintains that, as it relates to the Hill property, "there is not a shred

of evidence" that he owned or used it, or conducted, or authorized someone else to conduct, operations there. The record belies his contention.

{¶44} For example, in March 2000, Kattula entered into a consent order as president of Pure Tech with the city of Cleveland to address numerous violations at the Rockefeller facility, which included the Hill property. One of the violations was specific to the Hill property, and a representative from Pure Tech had previously responded to the city as to how the company was going to address the violation.

{¶45} The record further demonstrates that Kattula was in complete control of Pure Tech, K&B, Research Oil, TAJ, and Mason. He was the sole shareholder of at least Mason and Pure Tech, and K&B was his family's business. He used these companies to conduct his personal dealings. In fact, K&B conducted significant business activity in Ohio, including purchasing Pure Tech's assets and sale of the assets to GEM before it was even registered as a business in Ohio. Similarly, TAJ engaged in real estate transfers with Research Oil prior to being registered as an Ohio business. The record supports the trial court's finding that Kattula controlled the appellant corporations such that they had no separate mind, will, or existence of their own, which is the first *Belvedere* finding for piercing the corporate veil.

{¶46} The record also shows that Kattula assumed personal liability for the corporate liabilities of Pure Tech, Research Oil, TAJ, and Mason. For example, he personally paid $1.5 million to GEM for environmental corrective actions. He even conducted business for the companies on his own personal stationery.

{¶47} In controlling the appellant corporate entities, Kattula diverted or commingled the companies corporate assets for personal use. Examples of this are demonstrated by Kattula: (1) conveying the Rockefeller Avenue property (that included the Hill property), to TAJ, that, at the time was his wife's business (it was not registered as an Ohio business at the time); (2) transferring the Rockefeller Avenue facility from TAJ back to appellant Research Oil without a corporate resolution; and (3) seeking personal reimbursement from a private insurance policy established by Research Oil for closure services, despite his claim that TAJ performed the closure of Research Oil and Pure Tech's facility.

{¶48} The record demonstrates that Kattula exercised control over the appellant corporations in such a manner that it would be fraudulent not to hold him personally accountable for the violations at issue here, which meets the second *Belvedere* prong for piercing the corporate veil.

{¶49} The final prong of the *Belvedere* test, that the state would suffer an injury or unjust loss because of Kattula's control if he were not held personally liable, was also demonstrated. As discussed, Kattula controlled the appellant companies. The companies failed to address ongoing hazardous waste violations. The violations were harmful to the environment and citizens of the state.

{¶50} The law has allowed that in situations relating to public health and welfare laws, persons, including corporate officers, can be held individually liable for a corporation's violation of public health legislation. *United States v. Park*, 421 U.S. 658,

665, 95 S.Ct. 1903, 44 L.Ed.2d 489 (1975); *United States v. Hodges X-Ray, Inc.*, 759 F.2d 557, 561 (6th Cir.1985).

{¶51} In light of the above, the record demonstrates that the appellant corporations existed at the will of Kattula, and that in exercising control over them, Kattula was personally involved in their violations of law. The trial court therefore did not err in piercing the corporate veil to hold him personally liable.

{¶52} The fourth, fifth, and sixth assignments of error are overruled.

Permanent Injunction

{¶53} In their seventh assignment of error, appellants contend that the trial court erred in granting a permanent injunction against them because the state failed to join a necessary and indispensable party, the current owner of the Hill property. In their eighth assignment of error, appellants contend that the trial court erred in entering a permanent injunction against them because such an order was not authorized by any statute.

{¶54} Civ.R. 19 governs joinder of persons needed for just adjudication and provides in relevant part as follows:

> A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical matter impair or impede his ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest, or (3) he has an interest relating to the subject of the action as an assignor, assignee, subrogor, or subrogee.

{¶55} In its injunction order, the court addressed the possibility that a person or

entity other than appellants may own the property. Specifically, the court ordered that if the appellants did not own the property, they would be required to "enter into an access agreement or access agreements with the current property owner or owners." The court further ordered that "[c]opies of the signed access agreement or access agreements shall be submitted to Ohio EPA within thirty (30) days of the Effective Date." Under the access agreement(s), appellants and their representatives and contractors would have "access to the Rockefeller Ave. facility and any other property to which access is necessary to effectuate the actions required by [the trial court's] Order."

{¶56} The record here demonstrates that appellants were the owners, operators of hazardous waste at the property, that led to the state filing this action in 2006. Thus, they were the parties responsible for the violations. There was no need to make the current property owner a party to this case. The record does not demonstrate that (1) the current owner's interest were impaired; (2) the appellants were subjected to a "substantial risk of incurring double, multiple or otherwise inconsistent obligations" by virtues of the current owner's claimed interest; or (3) that complete relief cannot be had with the appellants as parties.

{¶57} Moreover, the Ohio Supreme Court has held that when the state seeks injunctive relief for violations of statutory and regulatory violations, it is not bound by the strict requirements of traditional equity as developed in private litigation. *Akerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St.2d 51, 56, 378 N.E.2d 145 (1978). Rather, the state need only prove that the conditions set forth by the statue authorizing

such relief have been met. *Id.* at 57.

{¶58} The state's request for injunctive relief was based on "R.C. Chapter 3767, R.C. Chapter 3734 and the rules adopted thereunder, and R.C. Chapter 6111 and the rules adopted thereunder * * *." Second amended complaint, p. 29. Those statutes allow for injunctive relief. For example, under R.C. 3734.10,

> [t]he attorney general * * * where a violation has occurred, is occurring, or may occur, upon request of the * * * director of environmental protection, shall criminally prosecute to termination or bring an action for injunction against any person who has violated, is violating, or is threatening to violate any section of this chapter, rules adopted under this chapter, or terms or conditions of permits, licenses, variances, or orders issued under this chapter.

{¶59} In light of the above, the state was authorized by statute to obtain injunctive relief and it was not necessary to join the current property owner to do so. The seventh and eighth assignments of error are therefore overruled.

Civil Penalties

{¶60} For the ninth assignment of error, appellants contend that the trial court erred by ordering them to pay civil penalties.

{¶61} The state's request for civil penalties was made under R.C. 3734.13(C) and 6111.09(A). In environmental enforcement actions, civil penalties are punitive sanctions designed to deter violations of environmental law, thereby promoting beneficial environmental objectives in the state of Ohio. *State ex rel. Petro v. Tri-State Group, Inc.*, 7th Dist. Belmont No. 03 BE 61, 2004-Ohio-4441, ¶ 102.

{¶62} If there has been a violation of environmental law, a trial court has no

discretion on whether to impose a penalty, but exercises its discretion in how much to impose up to the statutory maximum amount. *Id.* at ¶ 102-103. The trial court in this case used a civil penalty worksheet prepared by the Ohio EPA to calculate a civil penalty for the counts on which appellants were held liable. The worksheet summarized the hazardous waste counts, listed the approximate length of time the violation had occurred, or if it was still occurring, and suggested a corresponding penalty amount for each offense. The worksheet followed the factors set forth by the Second Appellate District in *State ex rel. Brown v. Dayton Malleable, Inc.*, 2d Dist. Montgomery No. 6722, 1981 Ohio App. LEXIS 12103 (Apr. 21, 1981), and *State ex rel. Brown v. Dayton Malleable, Inc.*, 1 Ohio St.3d 151, 438 N.E.2d 120 (1982), for determining the appropriate amount of a civil penalty in an environmental case.[4]

{¶63} Upon review, we find that the trial court did not abuse its discretion in determining the amount of the penalties. It considered many facts in reaching its determination. For example, some of the chemicals at the Rockefeller Avenue facility were carcinogenic, and the extent of their risk to the environment and human health were unknown. The trial court also considered that Kattula was aware of the closure order and violations for numerous years, and he avoided the costs associated with the orders because of his recalcitrance. The court also considered the significant costs incurred by the state

[4]The factors are: (1) the harm or threat of harm posed to the environment by the person violating the statute; (2) the level of recalcitrance, defiance, or indifference demonstrated by the violator of the law; (3) the economic benefit gained by the violation; and (4) the extraordinary costs incurred in enforcement. *Dayton Malleable* at *8-9.

in attempting to obtain compliance and in prosecuting this case.

{¶64} We find that the trial court gave proper consideration to the factors used to determine a civil penalty and calculated an amount that would serve the purpose for a civil penalty, that is, punish the offenders and deter others.

{¶65} In light of the above, the ninth assignment of error is overruled.

Contempt Order Against Kattula

{¶66} In the final assignment of error, Kattula contends that the trial court erred in finding him in civil contempt.

{¶67} As stated in *ConTex, Inc. v. Consol. Technologies, Inc.*, 40 Ohio App.3d 94, 531 N.E.2d 1353 (1st Dist.1988):

> The purpose of sanctions imposed for civil contempt is to coerce compliance with the underlying order or to compensate the complainant for loss sustained by the contemnor's disobedience. Punishment for civil contempt may, therefore, be either: (1) remedial or compensatory in the form of a fine to compensate the complainant for the contemnor's past disobedience; or (2) coercive and prospective, i.e., designed to aid the complainant by bringing the defendant into compliance with the order, and conditional, wherein confinement may be terminated by the contemnor's adherence to the court's order.

(Citations omitted.) *Id.* at 96.

{¶68} The standard of proof for civil contempt is clear and convincing evidence. *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253, 416 N.E.2d 610 (1980). Thus, if the trial court had before it competent and credible evidence an appellate court cannot reverse the trial court's decision. *ConTex* at 97. "To show contempt, it is necessary to establish a valid court order, knowledge of the order, and a violation of it." *Arthur Young*

& Co. v. Kelly, 68 Ohio App.3d 287, 295, 588 N.E.2d 233 (10th Dist.1990).

{¶69} Kattula contends that he never had notice that the order assessing civil penalties was to be assessed against him. We disagree.

{¶70} The record demonstrates that as early as 2000, Kattula was put on notice of environmental concerns at the Rockefeller Avenue facility. It was at this time that the Ohio EPA started to pursue closure proceedings. Throughout the ensuing years, appellants, including Kattula, had actual notice of the liabilities. Specifically, in August 2007, default judgment was awarded to the state against Research Oil, that Kattula owned and operated. Further, in March 2012, the state's motion for summary judgment against Pure Tech and K&B was granted; as with Research Oil, Kattula owned and operated Pure Tech and K&B.

{¶71} In sum, the record demonstrates that Kattula was in complete control of the defendant companies and, despite that, did not follow the court's orders regarding closure of the Rockefeller Avenue facility. Civ.R. 65 provides in part that, orders of injunctive relief are "binding upon the parties to the action, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the order * * * ." Civ.R. 65(D). Kattula, in his role as the managing corporate actor, knew of, and became personally liable for, the violations of the corporate defendants.

{¶72} In light of the above, the tenth assignment of error is overruled.

{¶73} Judgments affirmed.

It is ordered that appellee recover of appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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

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

LARRY A. JONES, SR., PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
MELODY J. STEWART, J., CONCUR