STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT, Plaintiff-Appellee,	UNPUBLISHED July 29, 2014
v	No. 314336 Ingham Circuit Court
STREFLING OIL COMPANY, STREFLING REAL ESTATE INVESTMENTS #1, L.L.C., and RONALD G. STREFLING, Defendants-Appellants.	LC No. 11-000156-CE

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

In this action involving environmental cleanup of contamination from leaking underground storage tanks, defendants appeal by right the partial summary disposition entered in favor of plaintiff and the subsequent judgment holding defendants liable for past and future cleanup costs, civil fines, administrative penalties, and attorney fees.

We affirm the partial summary disposition and affirm the judgment holding defendants liable for past and future cleanup costs and civil fines. We reverse the attorney fee award, because plaintiff's conclusory billing summaries were insufficient to support plaintiff's claim for attorney fees. In addition, we remand the case for the ministerial task of amending the judgment to assess administrative penalties solely against defendant Strefling Oil Company, not against the other two defendants.

I. FACTS AND PROCEDURAL HISTORY

Since at least 1986, defendant Strefling Oil Company (Strefling Oil) owned underground storage tanks on three separate parcels of real property in Berrien County: Galien Filling Station, John's Pro Filling Station, and Strefling Bulk Plant. Strefling Oil used the underground storage tanks in its business of delivering petroleum products to commercial and residential customers. Defendant Ronald Strefling was the vice president of Strefling Oil, his father Walter Strefling was the president, and his mother Frieda Strefling was a member of defendant Strefling Real Estate Investments (SREI). SREI was the title owner of the real properties for John's Pro Station and the Strefling Bulk Plant. By 1990, Ronald Strefling was the title owner of the real property for Galien Filling Station.

Between 1994 and 2001, underground storage tanks at each of the three sites leaked or released petroleum products into the ground. Strefling Oil reported the releases to the State.[1] The State informed Strefling Oil that state laws required Strefling Oil to retain a consultant and to initiate remediation. The State also informed Strefling Oil that state law required Strefling Oil to submit Final Assessment Reports (FARs) for the underground storage tank sites. The purpose of a FAR is to show the extent of contamination at the site and to confirm a corrective action plan to address the contamination. The FARs were due one year after the confirmed release of pollutants.

In September 2006, the State notified Strefling Oil that the FARs for the three sites were overdue, and that administrative penalties would begin to accrue. In February 2007, the State sent follow up letters notifying Strefling Oil that the FARs were still overdue, and that administrative penalties had accrued.

As of 2011, the contamination at the sites had still not been remediated. Plaintiff filed a complaint against all three defendants to require them to perform corrective actions in keeping with the Leaking Underground Storage Tank provisions in the Natural Resources Environmental Protection Act (NREPA), MCL 324.21301a *et seq*. In addition, plaintiff sought to recover costs the State had incurred in monitoring the contamination at the three sites, as authorized by the general Environmental Remediation provisions, MCL 324.20101 *et seq*. The requested costs included attorney fees incurred in enforcing the remediation provisions. MCL 324.20126a, 324.20101(1)(j). Under the general NREPA provisions, plaintiff sought a declaratory judgment that defendants were liable for any future environmental response costs incurred by the State.

Plaintiff moved for partial summary disposition on the liability issues under MCR 2.116(C)(10). To prevail on the motion, plaintiff had the burden of proving, among other things, that defendants were "responsible for an activity causing a release or threat of release" of petroleum products. MCL 324.21303(a); MCL 324.20126(1)(a). After a hearing, the circuit court granted the motion and ordered that SREI and Strefling Oil were jointly and severally liable for past and future response costs at the John's Pro and Strefling Bulk sites, and that Ronald Strefling and Strefling Oil were jointly and severally liable for past and future response costs at the Galien site. The court further determined that defendants would be required to complete remediation at the respective sites, that defendants were liable for civil fines, and that Strefling Oil was liable for administrative penalties for failure to submit the FARs.

The circuit court later held an evidentiary hearing regarding the amount of damages, fines, penalties, and attorney fees. Plaintiff presented testimony indicating that tanks were located within range of groundwater or potable water wells, such that the contamination could affect water supplies. According to plaintiff's expert, plaintiff made plans to perform corrective actions at the sites, but did not undertake the work because defendant Strefling Oil had indicated that it would perform the necessary work. However, Strefling Oil never completed the work.

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[1] Over the years, the name of the state agency having authority over underground storage tanks has varied.

Following the hearing, the court assessed fines against all defendants jointly and severally. In addition, the court awarded plaintiff the costs of corrective actions taken by the State thus far, and attorney fees. Lastly, the court assessed administrative penalties against all defendants jointly and severally.

II. LIABILITY UNDER NREPA

The liability issue in this case involves statutory interpretation, which is a question of law the Court reviews de novo. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 278; 831 NW2d 204 (2013). Specifically, the issue is whether, under NREPA, defendants' familiarity with the use of underground storage tanks in the family petroleum business rendered defendants responsible for an activity causing a release or threat of release.

When the circuit court entered its partial summary disposition order, the applicable NREPA provisions were as follows:

> As used in this part [the underground storage tank liability provisions]:
>
> (a) "Operator" means a person who is presently, or was at the time of a release, in control of or responsible for, the operation of an underground storage tank system and who is liable under part 201.
>
> (b) "Owner" means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located including, but not limited to, a trust, vendor, vendee, lessor, or lessee and who is liable under part 201.
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> * * *
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> (e) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from an underground storage tank system into groundwater, surface water, or subsurface soils.
>
> (g) "Threat of release" or "threatened release" means any circumstance that may reasonably be anticipated to cause a release. [MCL 324.21303 (1996).]

The part 201 liability provision—incorporated by part 213—is as follows:

> Notwithstanding any other provision or rule of law . . . [and subject to exceptions not applicable in this case], the following persons are liable under this part:
>
> (a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release. [MCL 324.20126(1)(a).]

Part 201 defined "facility" as "any area, place, or property where a hazardous substance in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use has been released, deposited, disposed of, or otherwise comes to be located." MCL 324.20101(1)(r).

Part 201 defined "threat of release" as "any circumstance that may reasonably be anticipated to cause a release." MCL 324.20101(1)(uu).

The parties in this case disagree about the meaning of the statutory phrase "responsible for an activity causing a release or threat of a release." Defendants maintain that the phrase establishes a "causation-based" standard for liability, and that there are no facts to support liability under that standard. Plaintiff maintains that the phrase imposes liability on defendants Ronald Strefling and SREI because they owned the real property at the sites, and they were aware of the use of the tanks. Similarly, plaintiff maintains that the phrase imposes liability on defendant Strefling Oil because it filled and used the tanks. The parties cite various nonbinding authorities in support of their respective positions.

We need not rely on nonbinding authorities, because the applicable statutes in this case are unambiguous. As our Supreme Court recently reiterated:

> [T]he objective of statutory interpretation is to give effect to the Legislature's intent, and to ascertain that intent, this Court begins with the statute's language. When that language is unambiguous, no further judicial construction is required or permitted, because the Legislature is presumed to have intended the meaning it plainly expressed. Moreover, when interpreting a statute, courts must ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute, which requires courts to consider the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. [*In re AJR*, ___ Mich ___; ___ NE2d ___ (Docket No. 147522, June 25, 2014), slip op p 6 (quotation marks and citations omitted).]

The NREPA liability provision applicable to the leaking underground storage tanks in this case has a plain directive: the owner or operator of a facility is liable for remediation if the owner or operator "*is responsible for an activity causing a release or threat of release*." MCL 324.20126(1)(a) (emphasis added). With this directive, our Legislature did not limit NREPA liability to owners or operators who caused a release or threat of release. Nor did our Legislature limit liability to owners or operators who were responsible for *the* activity that caused *the* release at issue. Rather, the Legislature imposed liability upon owners or operators who are "responsible for *an* activity causing *a* release or *threat of release*." MCL 324.20126(1)(a).

The Legislature's choice of words demonstrates that plaintiff in this case had no burden to prove that defendants caused the releases at issue. Rather, to prevail on its motion for partial summary disposition, plaintiff had the burden of establishing that (1) defendants were either owners or operators (2) of a facility, and that (3) as owners or operators, defendants were responsible for an activity causing a release or threat of release. The statutory liability provisions do not define the terms "responsible" or "activity." This Court may refer to dictionary definitions to provide meaning to the provision. *Johnson v Pastoriza*, 491 Mich 417, 436; 818 NW2d 279 (2012). The relevant dictionary definitions of "responsible" are: "1. accountable, as for something within one's power. . . . 3. chargeable with being the source or occasion of something (usu. fol. by *for*)." *Random House Webster's College Dictionary* (2001). The relevant definition of "activity" is: "a specific deed, action, function, or sphere of action." *Id.*

A. DEFENDANT STREFLING OIL COMPANY

Application of these definitions is straightforward with regard to defendant Strefling Oil as an operator of underground storage tanks. First, Strefling Oil acknowledged in its briefs that it was an "operator" of the tanks. Second, Strefling Oil acknowledged, and the record demonstrates, that the three sites at issue in this case were contaminated with petroleum products, and thus were "facilities" under MCL 324.20101(1)(r). Third, Strefling Oil owned the tanks at each site and supplied petroleum products for the tanks. Strefling Oil's acts of filling and operating the tanks were activities causing a release of petroleum products from the tanks. Therefore, Strefling Oil was responsible and accountable for the activity and function of the tanks and is liable under MCL 234.20126(1)(a).

Defendants argue that plaintiff failed to establish that Strefling Oil's activities caused a release. Specifically, defendants state, "[i]t is equally likely that a prior owner, or operator of the USTs on one of the properties caused the release of the hazardous substances." This statement misconstrues plaintiff's burden. As previously discussed in this opinion, plaintiff was not required to prove that a specific activity caused the releases at issue in this case. To hold Strefling Oil liable, plaintiff was required to present undisputed facts that Strefling Oil was responsible for *an* activity that caused *a* release or threat of release. Plaintiff fulfilled this burden. Strefling Oil does not dispute that it filled and used the tanks at each site. The use of the tanks rendered Strefling Oil responsible for the tanks and responsible for releases of petroleum products from the tanks. Accordingly, the circuit court correctly entered partial summary disposition against Strefling Oil on the liability issue.

B. DEFENDANTS RONALD STREFLING AND SREI

The unique facts of ownership in this case demonstrate that defendants Ronald Strefling and SREI are liable as facility owners who were responsible for activities causing a release or threat of release. First, the undisputed facts establish that both Ronald Strefling and SREI were "owners," because the term "owner" includes a person who holds, or at the time of a release who held, an interest in the property on which an underground storage tank system is located. MCL 324.21303(1)(b). Ronald Strefling and SREI acknowledge that they owned the real property on which the tanks were located. Second, the undisputed facts also establish that the real properties at issue are "facilities," in that hazardous substances—petroleum products—were found in the soil on the properties. MCL 324.20101(1)(r).

Third, the record establishes that Ronald Strefling and SREI had sufficient knowledge of the operation of underground storage tanks on their properties to render them accountable for activities related to those tanks. The accountability in this case derives from the extensive involvement of Ronald Strefling and SREI in the oil business. The record demonstrates that Strefling Oil was a family business that delivered fuel to commercial and residential customers. Walter Strefling, Freida Strefling, and Ronald Strefling served as officers for the company and had duties in the general operation of the company. As a Strefling Oil employee, Ronald Strefling delivered fuel to and performed maintenance on underground storage tanks, and worked on fuel dispensers. These facts confirm that Ronald Strefling knew and understood the oil company business, as did Freida Strefling as a member for SREI. Given their knowledge and understanding of the business, and of the use of the underground storage tanks, they were

responsible for activities related to the underground storage tanks on the real property they owned.

Ronald Strefling and SREI argue that imposing liability on the basis of their knowledge of the tanks is akin to imposing strict liability. We disagree. The record confirms that neither Ronald Strefling nor SREI were isolated real property owners. Instead, the record demonstrates that both Ronald Strefling and SREI were familiar with the fuel business, the purpose of underground storage tanks, and the contents of the tanks. The fact that they did not own the tanks does not insulate them from liability, because they controlled the real property on which the tanks were located and had extensive knowledge of the tank operations. As real property owners familiar with the oil business, Ronald Strefling and Frieda Strefling had the power to control how and when Strefling Oil Company employees entered the real property for purposes of operating the tanks. This power, control, and knowledge renders them responsible under the statute.

The activities for which Ronald Strefling and Frieda Strefling were responsible include activities causing a threat of release. In other words, the use of underground storage tanks on their property may reasonably have been anticipated to have caused a release of petroleum products into the soil. Accordingly, the record supports the imposition of liability on Ronald Strefling and SREI.

III. TIMELINESS OF CLAIMS

Defendants contend that all of plaintiff's claims in Count II of the complaint are time-barred. Count II contained claims under part 213 of the NREPA to require defendants to implement corrective actions at the sites under MCL 324.21323(1)(a), pay administrative penalties under MCL 324.21313a(1), and pay civil fines under MCL 324.21319a(4).[2] This Court reviews de novo the issue of timeliness of plaintiff's claims. *Vanslembrouck v Halperin*, 277 Mich App 558, 560; 747 NW2d 311 (2008).

Defendants argue that plaintiff's causes of action under part 213 accrued on the dates the FARs for each site were first due. Under MCL 213.21311a, the FARs for each site were due one year after the discovery of the release of petroleum products, which made defendants' final FAR due in 2002. Defendants further argue that because part 213 did not specify a limitations period for causes of action, the circuit court should have applied the six-year general limitations period for statutory causes of action found in MCL 600.5813. Defendants conclude that the six-year limitations period expired in 2008, three years before plaintiff filed the complaint.

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[2] Plaintiff's claims for reimbursement of past and future response activity costs were asserted under part 201, and defendants do not challenge those claims on appeal. The circuit court, when entering judgment for the costs of remediation, used the terms in the 2012 version of part 213. The 2012 amendment to part 213 recategorized the term "response activity costs" as "corrective action costs." MCL 324.20137(1) (response activity costs); MCL 324.21323b(1) (corrective action costs).

Defendants' argument incorrectly assumes that plaintiff's causes of action accrued on the initial due date of the FARs. If this assumption were correct, a person liable for environmental remediation from a leaking underground storage tank could simply refuse to submit a FAR, engage in six years of monitoring activities or negotiations concerning the leak, and then be absolved of liability by the running of the limitations period. This result is inconsistent with part 213's stated purpose: "This part is intended to provide remedies for sites posing a threat to the public health, safety, or welfare, or to the environment, regardless of whether the release or threat of release of a regulated substance occurred before or after January 19, 1989 . . . ." MCL 324.21301a(1).

Defendants' argument is also inconsistent with part 213's requirement for FARs. The statutory requirements for FARs mandate that liable persons report to the State on the corrective actions that have been taken to address the contamination at the sites. MCL 324.21307a. The FAR must include a schedule for implementing correcting actions. MCL 324.21311a. Each day the liable person delays in providing a schedule for implementing the corrective action, the contamination remains unabated. Consequently, each day that defendants in this case failed to submit FARs constituted a new violation of the reporting requirement. Plaintiff's causes of action accrued with each new violation. Because defendants had not submitted FARs by the time plaintiff filed the complaint, the limitation period had not begun to run as of the date the plaintiff filed the complaint. Cf. *Nat'l Parks Conservation Assoc, Inc v Tennessee Valley Authority*, 480 F3d 410, 419 (2007) (violations accrue each day of defendant's failure to obtain appropriate source contamination permits and to comply with air emission control technology). Plaintiff's complaint was timely.

IV. ATTORNEY FEES

Defendants argue the circuit court should have denied plaintiff's attorney fee request on the ground that plaintiff failed to present detailed attorney fee billing records. We review the attorney fee award for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).

A party seeking attorney fees has the burden of demonstrating the reasonableness of the hours expended. *Khouri*, 481 Mich at 479, citing *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573, 588; 321 NW2d 653 (1982). In this case, plaintiff submitted affidavits from three attorneys who attested to the total number of hours they spent working on enforcement matters at each site and on matters relating to the sites collectively. The affidavits contain tables that state each attorney's yearly total of hours worked. However, nothing in the tables or in the affidavits identifies the amount of time any attorney spent on any specific task. Rather, the affidavits contain conclusory statements, such as: "The legal work that I did on this case included initial case review regarding the liability, meeting with client, research, document review, review of property ownership documentation and drafting of the Complaint." Nothing in the record provides documentation of the number of hours spent on research, on meetings, on document review, or on any other legal work.

The circuit court reduced the hourly rates requested by plaintiff's attorneys and awarded attorney fees on the basis of the reduced rates. Plaintiff maintains this reduction adequately accounted for the lack of detailed billing records. We disagree. As this Court explained in

reversing an attorney fee award in *Augustine v Allstate Ins Co*, 292 Mich App 408, 432-433; 807 NW2d 77 (2011):

> plaintiff had the burden of supporting the claim for fees. But plaintiff did not demonstrate by a document, an example, or with specific testimony that a billable item was performed in the amount of time listed or, for that matter, even completed. The billing summary alone did not explain the work that was actually performed by plaintiff's attorneys . . . .

In this case, the billing summaries presented by plaintiff provided no realistic opportunity for defendants to challenge the time and labor required to perform the legal services. As such, the trial court erred in awarding attorney fees to plaintiff.

V. ADMINISTRATIVE PENALTIES

The circuit court assessed administrative penalties against all three defendants. Plaintiff and defendants agree on appeal that the court erred by ordering that all defendants are jointly liable for the administrative penalties. The parties agree that only Strefling Oil is liable for the penalties. Accordingly, we remand for the ministerial task of amending the judgment to assess administrative penalties against Strefling Oil only.

The judgment assessing civil fines and the costs of past and future corrective actions is affirmed. In addition, the order requiring defendants to complete corrective actions is affirmed. The award of attorney fees is reversed. The cause is remanded for the ministerial task of amending the judgment to assess administrative penalties against Strefling Oil Company only. We do not retain jurisdiction.

No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello