# STATE OF MICHIGAN

# COURT OF APPEALS

ROBERT WILKE, CONNIE WILKE, JOHN STEINBOCK and HEDWIG STEINBOCK,

Plaintiffs-Appellees/Cross-Appellants,

v

LARRY C. ADKINS,

Defendant,

and

CENTRAL CONCRETE, INC.,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
June 26, 2007

No. 268685
Genesee Circuit Court
LC No. 00-068403-CE

Before: Servitto, P.J., and Jansen and Schuette, JJ.

PER CURIAM.

In this nuisance case, defendant[1] appeals as of right following a bench trial judgment in favor of plaintiffs. On appeal, defendant argues that the trial court erred in concluding that the addition of a redi-mix cement plant ("new plant") on property that abutted plaintiffs' residences constituted a nuisance in fact. Defendant further argues that the trial court erred in admitting plaintiffs' expert testimony regarding damages. Plaintiffs cross-appeal, asserting that the trial court clearly erred in calculating the diminution in value of plaintiffs' residences and the past damages award and that the trial court erred in dismissing Adkins from the case. Because the trial court properly determined that the expansion of a concrete plant's operations constituted a nuisance, that the testimony of plaintiffs' expert appraiser was admissible, and did not err in its award of damages or in dismissing defendant Adkins as a party during trial, we affirm.

[1] Individual defendant Larry C. Adkins was dismissed from the lower court proceedings and is not a party to the present appeal. Thus, we will refer to Central Concrete, Inc., as "defendant."

Defendant Adkins owns defendant Central Concrete, Inc, a business engaged in cement operations. Plaintiffs own property adjacent to the property upon which Central Concrete is located. Prior to 1998, the cement operation was a small plant at the south end of the property that did not affect plaintiffs. In 1998, Central Concrete expanded, adding silos and a building, and, according to plaintiffs, engaging in rock crushing. Plaintiffs brought suit against Adkins and Central Concrete, alleging that after the expansion, diesel trucks began coming and going at all hours, and the amount and duration of the noise from the cement operation increased dramatically, thereby creating a nuisance. A bench trial was held, during which defendant Adkins was dismissed as a party and at the conclusion of which the trial court ruled in favor of plaintiffs.

Defendant first argues that the trial court erred in concluding that the addition of the new plant in 1998 constituted a nuisance in fact. We disagree.

In an appeal from a decision following a bench trial, this Court reviews the trial court's findings of fact for clear error. *City of Essexville v Carrollton Concrete Mix, Inc*, 259 Mich App 257, 265; 673 NW2d 815 (2003). "'A finding is clearly erroneous where, although there is evidence to support the finding, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made.'" *Id*., quoting *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651; 662 NW2d 424 (2003). The trial court's conclusions of law are reviewed de novo. *Essexville, supra* at 265.

A nuisance is defined as an interference with a landowner's use and enjoyment of their land. *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51, 59; 602 NW2d 215 (1999). Michigan has recognized two distinct versions of nuisance: a public nuisance and a private nuisance. *Adkins v Thomas Solvent Co*, 440 Mich 293, 302; 487 NW2d 715 (1992). The present case concerns a private nuisance, which was discussed at length by our Supreme Court in *Adkins*:

> [T]he gist of a private nuisance action is an interference with the occupation or use of land or an interference with servitudes relating to land. There are countless ways to interfere with the use and enjoyment of land including interference with the physical condition of the land itself, disturbance in the comfort or conveniences of the occupant including his peace of mind, and threat of future injury that is a present menace and interference with enjoyment. The essence of private nuisance is the protection of a property owner's or occupier's reasonable comfort in occupation of the land in question. [*Adkins, supra* at 303 (internal footnote and citation omitted).]

A private nuisance is further divided into two separate categories: a nuisance per se and a nuisance in fact. *Rosario v City of Lansing*, 403 Mich 124, 132-133; 268 NW2d 230 (1978). "Nuisances in fact . . . are those which become nuisances by reason of circumstances and surroundings, and an act may be found to be a nuisance as a matter of fact where the natural tendency of the act is to create danger and inflict injury on person or property." *Id*. at 133.

To recover under a private nuisance theory, a plaintiff must prove four elements:

> (1) The defendant acted with the intent of interfering with that use and enjoyment of the land by those entitled to the use;

(2) There was some interference with the use and enjoyment of the land of the kind intended, although the amount and extent of that interference may not have been anticipated or intended;

(3) The interference that resulted and the physical harm, if any, from that interference proved to be substantial.

* * *

The substantial interference requirement is to satisfy the need for a showing that the land is reduced in value because of the defendant's conduct;

(4) The interference that came about under such circumstances was of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land. This does not mean that the defendant's conduct must be unreasonable. It only means that the interference must be unreasonable and this requires elaboration. [*Adkins, supra* at 304-305 (footnote omitted), quoting Prosser & Keeton, Torts (5th ed), § 87, pp 622-623.]

This Court has recognized that a possessor of land may bring an action for nuisance when the possessor's enjoyment of the land is interfered with by "noise, vibrations, or ambient dust, smoke, soot, or fumes." *Adams, supra* at 67. However, "property depreciation alone is insufficient to constitute a nuisance." *Adkins, supra* at 311. To prevail under a theory that noise or vibrations caused a nuisance, "a possessor of land must prove *significant harm* resulting from the defendant's *unreasonable interference* with the use or enjoyment of the property." *Adams, supra* at 67 (emphasis in original), citing *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 193; 540 NW2d 297 (1995), citing *Adkins, supra* at 304.

Here, we conclude that the trial court's findings of fact regarding the circumstances giving rise to the nuisance are not clearly erroneous. The trial court found that defendant's operations at the new plant and the crushing operations on the north parcel caused a high level of noise that could be heard inside plaintiffs' residences. The trial court primarily relied on plaintiffs' testimony and the expert testimony of defendant's expert witness regarding his decibel readings in and around the properties and the new plant.

The lower court record reflects that the new plant operations and the rock crushing began early in the morning and continued until late in the evening. Irene Spinney, who lived at the Steinbock residence, testified that defendant's operations began as early as 5:30 a.m. and ended as late as 1:00 a.m. and that sounds from the new plant and the rock crushing operations could be heard inside the Steinbock residence. Ms. Spinney also testified that dust gets into the house from defendant's operations and creates a film on the swimming pool.

Hedwig Steinbock similarly testified, noting that the sounds from the new plant and the crushing operations could be heard inside her residence. Moreover, defendants' expert witness, Lawrence Hands, testified that he recorded peak value noise dosimeter readings in the backyard of plaintiffs' residences that were as high as 119 decibels. Hands testified that this was as loud as a "jet engine." A review of the lower court record shows that Hands conducted the noise readings on a weekday from 9:00 a.m. to 12:30 p.m. Finally, an independent review of the

videotapes admitted at trial supports the trial court's conclusion that defendant's operations caused loud noises that could be heard at plaintiffs' residences. Accordingly, based on the foregoing evidence, we conclude that the trial court's findings of fact are not clearly erroneous. *Essexville, supra* at 265.

Furthermore, after de novo review, we conclude that the trial court's conclusions of law are correct. The lower court record reveals that the trial court properly applied the four-element test set forth in *Adkins, supra* at 304-305, and concluded that the noise from the new plant constituted a nuisance in fact. First, the evidence introduced by plaintiffs showed that defendant acted with the intent of interfering with the use and enjoyment of plaintiffs' residences. *Adkins, supra* at 304. "Liability for nuisance may be imposed where (1) the defendant has created the nuisance, [or] (2) the defendant owned or controlled the property from which the nuisance arose . . . ." *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 345; 568 NW2d 847 (1997) (citations omitted). In the present case, the north and south parcels were purchased by defendant in 1993, and the new plant was constructed approximately 500 feet from the back of plaintiffs' residences in June 1998. The lower court record shows that defendant increased its redi-mix operations by 26 percent in one year after the new plant was constructed. This directly corresponds with the time plaintiffs began hearing an increase in noise from trucks and operations at the new plant.

Second, the evidence introduced at trial shows that there was some interference with the use and enjoyment of plaintiffs' land. *Adkins, supra* at 304. The lower court record reveals that defendant operated the new plant late at night and early in the morning. The operations included loading and unloading cement trucks, manufacturing redi-mix at the new plant and reprocessing concrete on the north parcel. Plaintiffs testified that they were unable to use the back portions of their houses because of the noise from the new plant and the reprocessing activities. Spinney testified that the noise often "woke her up" in the early morning and late evening hours and that she was unable to fall asleep on numerous occasions. Connie Wilke testified that she and her husband were unable to sleep because of the noise from the new plant and that they were unable to hear the television or the radio inside their home on numerous occasions late at night. Hedwig testified that she was unable to sit in her backyard because of the noise from the new plant. Noise, especially at night, "may be of such a character as to constitute a nuisance in fact, even though it arises from the operation of a factory, industrial plant, or other lawful business or occupation." *Borsvold v United Dairies*, 347 Mich 672, 680-681; 81 NW2d 378 (1957), citing 39 Am Jur, Nuisances, § 47, pp 330-333. "The character and magnitude of the industry or business complained of and the manner in which it is conducted must also be taken into consideration, and so must the character and volume of the noise, the time and duration of its occurrence, the number of people affected by it, and all the facts and circumstances of the case." *Id*. Examining the circumstances of the present case, the trial court properly concluded that the noise from defendant's activities interfered with the use and enjoyment of plaintiffs' properties.

Third, the interference with plaintiffs' properties was substantial. *Adkins, supra* at 304; *Adams, supra* at 67. The videotape evidence introduced at trial showed that, on numerous occasions from 1999 to 2004, defendant operated the new plant as early as 5:30 a.m. and as late as 12:54 a.m. The new plant's operations continued unabated on weekends and some holidays. According to Hands's testimony, operations at the new plant exceeded 100 decibels. Hands testified on cross-examination that these peak values sounded like the noise a jet engine would

make from 200 feet away. Coupled with plaintiffs' testimony that they were unable to function inside their homes because of defendant's operations, Hands's testimony established that the noise from the new plant constituted a substantial interference.

Finally, the trial court properly concluded that the noise constituted an unreasonable interference with the use and enjoyment of plaintiffs' lands. *Adkins, supra* at 305. When determining whether a defendant's conduct was unreasonable under the circumstances, a court must make a public-policy assessment of the overall value of the defendant's activity. *Adams, supra* at 67. Although plaintiffs were aware of the original plant's existence when they purchased their respective properties, the expansion of the new plant in 1998 constituted an unreasonable interference with the use and enjoyment of plaintiffs' land. As noted, *supra*, the new plant operated during the early morning hours, late at night, on holidays and on weekends. While defendant's operation is undoubtedly valuable to the surrounding community, it must be balanced against plaintiffs' rights to "reasonable comfort in occupation of the land in question." *Adkins, supra* at 303. Based on defendant's extended hours of operation and the effect it had on plaintiffs' enjoyment of the land, the trial court properly concluded that the noise level was unreasonable.

Defendant finally argues that the trial court erred in admitting the expert testimony of plaintiffs' expert Carey Schmidt regarding damages. We disagree.

This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004). The trial court's decision regarding the qualification of an expert witness is also reviewed for an abuse of discretion. *Clerc v Chippewa War Mem Hosp*, 267 Mich App 597, 601; 705 NW2d 703 (2005). An abuse of discretion exists when the trial court's decision is outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). A trial court must ensure that any expert testimony admitted at trial is reliable, and "while the exercise of this gatekeeper role is within a court's discretion, a trial judge may neither 'abandon' this obligation nor 'perform the function inadequately.'" *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 780; 685 NW2d 391 (2004) (internal footnotes omitted).

As amended January 1, 2004, MRE 702 provides as follows:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

A trial court must ensure that all expert opinion testimony, regardless of whether it is based on novel science, is reliable. *Gilbert, supra* at 781. "MRE 702 requires the trial court to ensure that each aspect of an expert witness's proffered testimony-including the data underlying the expert's theories and the methodology by which the expert draws conclusions from that data-is reliable." *Id*. at 779. The facts or data on which an expert bases an opinion or inference must be in

evidence, but the trial court may receive expert testimony subject to the condition that the factual bases of the opinion be admitted in evidence at a later time. MRE 703.

Defendant argues that Schmidt's determination of the decrease in market value of plaintiffs' properties was based on insufficient facts and data and that his testimony was based on unreliable principles and methods that were misapplied to the facts of the present case. Specifically, defendant contends that Schmidt erred in using the paired sales analysis and that his determination of the decrease in the market value was based on nonexistent comparable homes. Furthermore, defendant claims that Schmidt failed to account for certain variables, such as traffic count, proximity to local amenities, and school districts, when he conducted the paired sales analysis.

Although Michigan courts have not specifically addressed the admissibility of an expert's testimony concerning paired sales analysis, other courts have considered the issue. For instance, in *Tax Increment Financing Comm of Kansas City v Romine*, 987 SW2d 484, 489 (Mo App, 1999), the Missouri Court of Appeals affirmed the trial court's ruling that expert testimony regarding the subject was admissible. The *Romine* court noted that the paired sales analysis and the comparable sales approach were both commonly used in the appraisal industry to calculate the decrease in value of a property. *Id*. at 488-489. Additionally, in *Lapp v Village of Winnetka*, 833 NE2d 983, 996 (Ill App, 2005), the Illinois Court of Appeals affirmed a decision introducing expert witnesses testimony regarding the affect that adding a new garage to a house would have on the surrounding neighborhood. The paired sales analysis testimony introduced in *Lapp* involved four sets of homes and two pending transactions near the subject property. *Id*.

In the present case, the trial court correctly concluded that Schmidt's use of the paired sales analysis, and his determination that defendant's new plant caused a reduction in the market value of plaintiffs' residences, was based on sufficient facts and data. Schmidt, who is a licensed real estate appraiser, testified that he analyzed seven paired sales in an around Mount Morris Township and Flushing to determine the decrease in market value of plaintiffs' properties. Schmidt based his analysis of each paired sale on local market information obtained from the Multiple Listing Service (MLS), which he testified is the customary means of obtaining information for an appraiser. Schmidt also testified that he conducted seven paired sales so that he could ensure valid results. Although defendant correctly notes on appeal that Schmidt admitted during cross-examination to errors in his paired sales analysis report, including misidentifying a primary property that was supposedly located across from a landfill, the trial court correctly concluded that these errors did not render Schmidt's testimony inadmissible. An opposing party's disagreement with an expert's opinion or interpretation of facts is directed to the weight to be given the testimony, and not its admissibility. *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 401; 628 NW2d 86 (2001). As the trial court correctly noted, Schmidt's paired sales technique was not invalidated. It is noteworthy that defendant did not employ an expert of its own to contest the testimony of plaintiffs' expert or offer additional evidence to refute the factual findings introduced by Schmidt.

Furthermore, contrary to defendant's argument on appeal, the lower court record reveals that Schmidt examined certain variables and adjusted the value of each primary and comparable property based on the existence of these variables, which included the age of the house, size of the residence, size of the lot, bedroom count, condition, school system and location. The fact that Schmidt failed to include an adjustment for the traffic count outside each property or adjust

for each property's proximity to various amenities goes to the weight of the evidence the trial court should afford his final value determination. Where an expert's knowledge is limited but the limits of his knowledge are revealed in testimony, then those limits go to the weight of his testimony, not the admissibility. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 175; 530 NW2d 772 (1995). Again, we note that defendant did not employ an expert witness to testify regarding the affect, if any, that these last two variables would have had they been included in Schmidt's analysis. Accordingly, based on the foregoing, we conclude the trial court did not abuse its discretion when it admitted Schmidt's testimony pursuant to MRE 702.

On cross-appeal, plaintiffs assert that the trial court erred in ignoring the expert testimony of Schmidt regarding the damages caused by the operation of the new plant. Plaintiffs claim that the trial court's judgment of $9,392 in favor of the Steinbocks and $9,112 to the Wilkes was unsupported by the evidence at trial.[2] We disagree. This Court reviews a trial court's award of damages following a bench trial for clear error. *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002).

"Liability for damage caused by a nuisance may be imposed where the defendant creates the nuisance, owns or controls the property from which the nuisance arose, or employed another that it knows is likely to create a nuisance." *Citizens Ins Co v Bloomfield Twp*, 209 Mich App 484, 488; 532 NW2d 183 (1994). "[D]amages for a nuisance can be recovered for a diminution of the value of property or on the basis of a claim that the nuisance was of such an extent as to prevent the use of a home." *Travis v Preston (On Rehearing)*, 249 Mich App 338, 351; 643 NW2d 235 (2002), citing *Kobs v Zehnder*, 326 Mich 202, 207; 40 NW2d 120 (1949).

Michigan's private nuisance statute, MCL 600.2940, provides, in relevant part:

> (2) **Private nuisance; judgment for damages, abatement**. When the plaintiff prevails on a claim based on a private nuisance, he may have judgment for damages and may have judgment that the nuisance be abated and removed unless the judge finds that the abatement of the nuisance is unnecessary.
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> *** * ***
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> (5) **Actions equitable in nature; damages**. Actions under this section are equitable in nature unless only money damages are claimed.

In *Oakwood Homeowner's Ass'n Inc v Marathon Oil Co*, 104 Mich App 689, 693; 305 NW2d 567 (1981), this Court held that:

> In a nuisance case, where the injury is permanent, a plaintiff may recover future or prospective, as well as past damages. Where the injury is of a

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[2] This award was distributed as follows: (1) $6,800 loss in value of the Steinbock residence; (2) $2,592 loss in use and enjoyment of the Steinbock residence; (3) $6,520 loss in value of the Wilke residence; and (4) $2,592 loss in use and enjoyment of the Wilke residence.

> temporary, recurrent or removable character, a plaintiff may recover damages occurring after the commencement of the action if he seeks in one action both equitable relief by an abatement of the nuisance and damages, in which case, damages may be awarded to the time of trial. [Citing 66 CJS, Nuisances, § 171, p 976.]

"If injuries from a nuisance are of a permanent character and go to the entire value of the estate . . . all damages-past, present, and future-are recoverable therein." *Traver Lakes, supra* at 347, quoting Am Jur 2d, Nuisances, §§ 273-275, pp 875-878. "[W]here a nuisance is temporary, damages to property affected by the nuisance are recurrent and may be recovered from time to time until the nuisance is abated." *Id*.

In the present case, the trial court did not clearly err in calculating the diminution of the value of plaintiffs' properties. Schmidt testified at length regarding his paired sales analysis of the seven homes within close proximity to plaintiffs' properties and his calculation of the fair rental value of each of plaintiffs' residences. However, a review of the lower court record shows that he only analyzed one property that abutted defendant's operations. Schmidt testified that a house at 4116 North Elms Road, which is next door to the Wilke residence, sold in March 1997 before the addition of the new plant. Using a comparable property on Clovis Road, Schmidt testified that the 4116 North Elms Road residence sold for 23 percent less because of the presence of the original plant. Ultimately, using all seven paired sales, Schmidt concluded that the presence of the new plant caused a 28 percent reduction in the value of plaintiffs' properties. However, on cross-examination, Schmidt testified that the only reduction in value to plaintiffs' residences after 1998 was caused by the addition of the new plant. The trial court could properly conclude from Schmidt's testimony that plaintiffs' residences were already reduced in value by 23 percent because of the presence of the original plant. Thus, the record supports the trial court's conclusion that the addition of the new plant in 1998 caused a five percent reduction in value.

Although the trial court accepted the evidence that the addition of the new plant in 1998 caused a five percent reduction in value of plaintiffs' properties, the trial court chose to reduce this figure to four percent. We note that the trial court was aware of the flaws in Schmidt's damages calculations through defendant's lengthy cross-examination. Schmidt conceded some of the errors and omissions in his paired sales analysis and corrected them while testifying. He also fully explained how he arrived at his calculations, allowing the trial court to reject his ideas if it chose to do so. An award of damages cannot be based on speculation or conjecture, although mathematical certainty in the calculation of damages is not required. *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 511; 421 NW2d 213 (1988). Further, the trial court's reduction in value of the percent decrease in market value reflects its difference of opinion over what constitutes a relevant factor for determining damages. Where reasonable minds could differ regarding the level of certainty to which damages have been proved, this Court is careful not to invade the fact-finder's role and substitute its own judgment. See *Severn v Sperry Corp*, 212 Mich App 406, 415-416; 538 NW2d 50 (1995). Accordingly, we conclude that the trial court did not clearly err in calculating the diminution of the value of plaintiffs' properties.

Moreover, we conclude that the record supported the trial court's past damage award. Schmidt first testified that plaintiffs could have expected to rent their homes from to 1998 to

2004 for $900 a month. Robert Selley, a certified public accountant and business valuation specialist, then testified that there was a direct correlation between the reduction in market value and the reduction in rental value that plaintiffs would likely receive had they rented their homes from 1998 to 2004, i.e., because the new plant would reduce the market value by a certain percentage, it was proper to conclude that the rental value would also be reduced by the same percentage. Based our conclusion, *supra*, that the trial court properly adopted a four percent reduction in value based on the presence of the new plant, it was fitting that the trial court applied the same figure to the reduction in rental value of plaintiffs' residences. Thus, the trial court's calculation in the loss in use of enjoyment of plaintiffs' residences was not clearly erroneous.

Plaintiffs finally claim on cross-appeal that the trial court erred in dismissing Adkins from the case after the close of plaintiffs' proofs. We disagree.

This Court reviews an involuntary dismissal de novo. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). The trial court's findings of fact in this regard are reviewed for clear error. *Id*.

In a bench trial, a defendant may move for involuntary dismissal at the close of the plaintiff's proofs "on the ground that on the facts and the law the plaintiff has shown no right to relief." MCR 2.504(B)(2). "[A] motion for involuntary dismissal calls upon the trial judge to exercise his function as trier of fact, weigh the evidence, pass upon the credibility of witnesses and select between conflicting inferences." *Marderosian v The Stroh Brewery Co*, 123 Mich App 719, 724; 333 NW2d 341 (1983). Unlike a motion for directed verdict, the plaintiff is not given the advantage of the most favorable interpretation of the evidence. *Id*.

Under Michigan law, a nuisance is classified as a tort. See *Pohutski v Allen Park*, 465 Mich 675, 684-685; 641 NW2d 219 (2002). "It is a familiar principle that the agents and officers of a corporation are liable for torts which they personally commit, even though in doing so they act for the corporation, and even though the corporation is also liable for the tort." *Hartman & Eichhorn Bldg Co, Inc v Dailey*, 266 Mich App 545, 549; 701 NW2d 749 (2005) (citations omitted). Officers of a corporation may also be held individually liable when they personally cause their corporation to act unlawfully or when they participate in a tortious or criminal act, whether on behalf of themselves or of the corporation. *People v Brown*, 239 Mich App 735, 739-740; 610 NW2d 234 (2000).

In the present case, Adkins testified at a motion hearing for a preliminary injunction that he was the sole owner of Central Concrete, Inc. and that he began receiving complaints approximately a year before plaintiffs' filed their complaint. At trial, however, plaintiffs did not offer any evidence establishing that Adkins was an officer or agent of defendant. The court, in ruling on defendants' motion to dismiss Adkins as a defendant noted that none of the witnesses testified about Adkins personally or individually and, "in fact the Court is not educated as to what his status in the corporation is." Moreover, plaintiffs failed to introduce any evidence in the present case that Adkins personally committed or participated in the nuisance at issue. *Hartman, supra* at 549.

Plaintiffs rely on *Attorney General v Ankersen*, 148 Mich App 524, 557-558; 385 NW2d 658 (1986) to support their assertion that Adkins should be held personally liable for the

corporation's tortious conduct. In that case, however, a panel of this Court noted that, "[t]he record is replete with evidence of [owner of corporation's] participation in the creation of this nuisance. Moreover, [owner of corporation] participated in violating some of the conditions of DNR order M00071, including, and most importantly, instructing employees to continue accepting hazardous wastes in violation of that order." In contrast, there was no evidence presented at trial in the instant matter concerning Adkins' status in the corporation or his personal involvement in the nuisance at issue. Accordingly, we conclude that plaintiffs' final argument on cross-appeal is without merit.

Affirmed.

/s/ Deborah A. Servitto
/s/ Kathleen Jansen
/s/ Bill Schuette