MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, EX REL., ERIC S. SCHMITT, ATTORNEY GENERAL AND MISSOURI DEPARTMENT OF NATURAL RESOURCES,
APPELLANTS

vs.

ZILL, INC.,
RESPONDENT

DOCKET NUMBER WD82850

DATE: JUNE 9, 2020

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Sandra Midkiff, Judge

Appellate Judges:

Division Three: Anthony Rex Gabbert, Presiding Judge, Edward R. Ardini, Jr. Judge and W. Douglas Thomson, Judge

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Attorneys:

Amanda Langenheim, for Appellants

Bryan E. Mouber, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, EX REL, ERIC S. SCHMITT, ATTORNEY GENERAL AND MISSOURI DEPARTMENT OF NATURAL RESOURCES, APPELLANTS,

v.

ZILL, INC., RESPONDENT.

WD82850 Jackson County

Before Division Three Judges: Anthony Rex Gabbert, Presiding Judge, Edward R. Ardini, Jr., Judge, and W. Douglas Thomson, Judge

Zill, LLC ("Zill") owned and operated a gas station in Kansas City, Missouri. After petroleum was found in the sewer lines near Zill's gas station, DNR issued a Declaration of Hazardous Substance Emergency to Zill and ordered Zill to remediate the spill. DNR thereafter filed suit, seeking, *inter alia*, injunctive relief based on the allegation that Zill failed to abate the hazardous substance emergency (Count I), reimbursement for cleaning the spilled petroleum (Count II), and injunctive relief and civil penalties based on the allegation that Zill violated the Underground Storage Tank Release Abatement Regulations (Count III). Zill denied that the spilled petroleum was from its tanks. Following a jury trial on Count II and bench trial on Counts I and III, judgment was entered on all counts in favor of Zill. DNR appeals, alleging that the trial court erred by misapplying the law (Points I and II) and by granting judgment in favor of Zill on DNR's claim for civil penalties (Point III).

AFFIRMED.

Division Three holds:

The trial court did not misapply the law as alleged in Point I and Point II. In Point I, DNR claims that the trial court misapplied the law by increasing the burden DNR needed to meet in order to show Zill was responsible for the spill. In Point II, DNR alleged that the trial court considered only portions of the regulations Zill was alleged to have violated. However, the record establishes that the trial court properly applied the law in both situations.

The trial court also did not err in granting judgment in favor of Zill on DNR's claim for civil penalties. Pursuant to section 319.127.2, RSMo, DNR may pursue civil penalties only after issuing an order to the violator. As DNR did not issue such an order to Zill, the trial court properly rejected DNR's request for civil penalties and entered judgment in favor of Zill.

Opinion by: Edward R. Ardini, Jr., Judge Date: June 9, 2020

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