

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JESSE R. HILES,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 16-2229
	:	
BOROUGH OF LANSFORD,	:	
	:	
Defendant	:	
	:	
Robert T. Yurchak, Esquire		Counsel for Plaintiff
Michael S. Greek, Esquire		Counsel for Defendant

DECISION AND VERDICT

Serfass, J. - June 1, 2018

On September 14, 2016, Jesse R. Hiles (hereinafter "Plaintiff") filed a Complaint against the Borough of Lansford (hereinafter "Defendant") asserting that water run-off caused by Defendant's construction is damaging his triangularly shaped property located at the intersection of Cortright Street and West Ridge Street.

On February 3, 2017, Defendant filed an Answer and New Matter averring that storm water is a common enemy that enters Plaintiff's property as a natural effect of the elevation.

Following a non-jury trial held before this Court on July 25, 2017, and September 22, 2017, proposed Findings of Fact and Conclusions of Law were submitted by counsel for both parties on November 3, 2017. Upon review of counsels' submissions and careful

consideration of the evidence presented at trial, we make the following:

FINDINGS OF FACT

1. Plaintiff, Jesse R. Hiles, is the owner of the real property and the attendant grounds situated at 390 West Snyder Avenue, Lansford, Carbon County, Pennsylvania.

2. Defendant, Borough of Lansford, is a municipal corporation and a political subdivision of the Commonwealth of Pennsylvania.

3. The subject property is a triangular tract of land with West Ridge Street on the southern edge, both West Snyder Avenue and Dock Street on the northern edge, and both Cortright Street and Plaintiff's business, Sports Zoo, on the eastern side.

4. The subject property is situated downhill from Cortright Street and West Ridge Street.

5. Storm water naturally flows downhill from Cortright Street and West Ridge Street to Plaintiff's property during rainfall as a result of the difference in elevation.

6. West Ridge Street and Cortright Street were laid out, graded, and improved by Defendant prior to Plaintiff acquiring ownership of the subject property.

7. A drainage pipe located at the northwestern portion of Plaintiff's property, which was installed prior to Plaintiff's

ownership, channeled storm water from that property to Panther Creek.

8. The aforesaid drainage pipe, which was installed to allow storm water to enter the subject property, traverse across it, and drain through the pipe into Panther Creek, is now obstructed.

9. Plaintiff purchased the subject property in 1988 and constructed an addition to the building situated on the property in 1990.

10. In approximately 1996, a sewer line collapsed on Cortright Street and, as part of the repair project, Defendant repaved portions of Cortright Street and West Ridge Street above Plaintiff's property.

11. In approximately 2010, Plaintiff first complained to Lansford Borough Council regarding storm water entering the buildings on his property.

12. Via instrument dated October 15, 2012, Defendant obtained an easement over a portion of Plaintiff's property and subsequently undertook an improvement project on that property, which included the installation of curbing, inlets, and handicap ramps, to prevent storm water from entering into the buildings on said property.

13. Defendant's improvement project was successful in preventing water from entering and damaging the buildings on Plaintiff's property.

14. Plaintiff made no complaints at the time of the improvement project about storm water entering and eroding the triangular parcel that he uses as a parking lot and concert venue.

15. Curbing along Plaintiff's parcel would prevent storm water from entering thereon as evidenced by Exhibit C to Plaintiff's Complaint which includes an estimate for repair which includes the cost of 170 feet of curbing in the amount of \$4,080.00.

16. Section 1801 of the Borough Code, 8 Pa. C.S.A. § 1801, places the responsibility of the cost of installation or repair of curbing on the property owner.

17. The Plaintiff refuses to install curbing on his property to prevent storm water damage.

18. No evidence was presented that storm water from Cortright Street or West Ridge Street was channeled or directed onto Plaintiff's property but for the elevation.

19. Storm water draining from Cortright Street and West Ridge Street is the result of the elevation.

20. Storm water does not cause damage to the Plaintiff's property during normal rainfalls.

21. Storm water only enters upon Plaintiff's property during heavy rainfalls which causes erosion to said property.

22. No curbing has been installed along Plaintiff's lot to prevent any storm water from entering onto Plaintiff's property.

23. No storm water that is collected by Defendant's storm water collection system through piping is discharged upon Plaintiff's property.

24. Despite the alleged erosion, Plaintiff was able to utilize his property for parking and the annual "Zoostock" event, and he has not suffered any loss of revenue relating to his business due to erosion.

25. Defendant did not remove a storm water inlet from the northeastern portion of Cortright Street.

DISCUSSION

This case concerns a triangular tract of land located between West Ridge Street, West Snyder Avenue, and Cortright Street in the Borough of Lansford, Carbon County, Pennsylvania. Plaintiff claims that Defendant, in repairing a collapsed sewer line over twenty (20) years ago, repaved portions of Cortright Street and West Ridge Street in such a way as to channel storm water onto Plaintiff's land thereby causing the erosion of that land. Plaintiff seeks damages for the costs to repair the property and to recuperate monetary losses incurred in rehabilitating the property over the past twenty (20) years. Plaintiff also seeks an injunction ordering

Defendant to repair the roadway so that storm water does not continue to flow onto and damage his property.

Defendant asserts that Cortright Street and West Ridge Street are situated at a higher elevation than Plaintiff's property and that water flows naturally downhill onto Plaintiff's property during rainstorms. Defendant also asserts that Plaintiff has failed to prove that, in repaving the streets, Defendant changed them in such a way as to artificially divert the water toward Plaintiff's land.

Pennsylvania courts follow the "Common Enemy Rule" under which an owner of higher land is not liable for damages to an owner of lower land caused by water naturally flowing from one level to another. Chamberlin v. Ciaffoni, 95 A.2d 140, 142 (Pa. 1953). However, the upper landowner will be liable for the effects of surface water run off where he has diverted the water from its natural channel by artificial means or where he has unreasonably or unnecessarily increased the quantity or quality of water discharged upon his neighbor. LaForm v. Bethlehem Township, 499 A.2d 1373, 1378 (Pa.Super. 1985).

It has long been recognized in this Commonwealth that municipalities are authorized to open, grade, and improve streets, that some disturbance of the surface drainage is inevitable in such development and that, without negligence, the municipality is not liable for the results. See Carr v. Northern Liberties, 35 Pa.

324 (1860). Pursuant to the holding of our Supreme Court in Kunkle v. Ford City Borough, 175 A. 412 (Pa. 1934), a municipality is not liable for damage resulting from a municipal improvement causing a flow of water onto a plaintiff's land.

In the case at bar, both Plaintiff and his brother, David Hiles, testified that the natural flow of storm water onto the subject property from West Ridge Street and Cortright Street increased after Defendant repaired the sewer line in approximately 1996. Both brothers claim that the road changed from a swale, where the water flows down the middle, to a crown, where the water flows down each side of the road. However, Plaintiff has produced neither expert testimony to that effect nor any concrete evidence that the contour of the road changed following that construction project. Moreover, Plaintiff and his brother testified that during normal rainfalls, water does not necessarily enter onto or cause erosion on the triangular parcel but does so during heavy rain storms. Absent evidence that Defendant diverted the natural flow of storm water toward Plaintiff's property, Defendant cannot be held liable for damages resulting from storm water runoff.

Based upon our Findings of Fact and analysis of the relevant legal authority as set forth hereinabove, we reach the following:

CONCLUSIONS OF LAW

1. Under the "Common Enemy Rule" in Pennsylvania, an owner of higher land bears no liability for damages to an owner of lower

land caused by water which naturally flows from one level to another. Chamberlin v. Ciaffoni, 95 A.2d 140, 142 (Pa. 1953).

2. An upper landowner is liable for the effects of surface water running off his property only where he has diverted the water from its natural channel by artificial means or unreasonably or unnecessarily increased the quantity or quality of water discharged upon his neighbor. LaForm v. Bethlehem Township, 499 A.2d 1373, 1378 (Pa.Super. 1985).

3. Plaintiff has not demonstrated by a preponderance of the evidence that Defendant, in making repairs to Cortright Street and West Ridge Street, diverted the water from its natural channel downhill on Cortright Street and West Ridge Street onto Plaintiff's property.

4. Plaintiff has not demonstrated by a preponderance of the evidence that Defendant, in making repairs to Cortright Street and West Ridge Street, unreasonably or unnecessarily increased the quantity or quality of the water which naturally flows downhill toward Plaintiff's property during rain storms.

5. Defendant, as the upper landowner, is not liable for the effects of surface water which flows naturally downhill off its property onto Plaintiff's property.

6. To prevail in an action for an injunction, Plaintiff must establish that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be

compensated by damages, and that greater injury will result from refusing, rather than granting, the requested relief, but a court may not grant injunctive relief where an adequate remedy exists at law. Harding v. Stickman, 823 A.2d 1110, 1111 (Pa.Commw. 2003).

7. Plaintiff has not established that his right to relief is clear because he has not proven that Defendant caused an increase in the amount of water that runs from West Ridge Street and Cortright Street onto his property.

8. Plaintiff is not entitled to injunctive relief.

9. Plaintiff has failed to set forth a cause of action for storm water trespass.

10. The natural flow of water occurring as a result of rainfall from the higher elevation on Cortright Street and West Ridge Street to the lower elevation of Plaintiff's property does not constitute either an actual or de facto taking by Defendant.

Upon careful consideration of the above Findings of Fact and Conclusions of Law, we enter the following:

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BOROUGH OF LANSFORD,	:	
	:	
Defendant	:	
	:	
Robert T. Yurchak, Esquire		Counsel for Plaintiff
Michael S. Greek, Esquire		Counsel for Defendant

VERDICT

AND NOW, to wit, this 1st day of June, 2018, following a Non-Jury Trial held before the undersigned in the above-captioned action, and in accordance with our Decision bearing even date herewith, our Verdict is as follows:

1. With regard to all claims set forth in Plaintiff's Complaint, we find **IN FAVOR** of Defendant, Borough of Lansford, and against Plaintiff, Jesse R. Hiles; and

2. Pursuant to Pa. R.C.P. No. 227.4, the Prothonotary shall, upon praecipe, enter judgment on the Verdict if no motion for post-trial relief has been filed under Pa. R.C.P. 227.1 within ten (10) days after the filing of this Verdict.

BY THE COURT:

Steven R. Serfass, J.