

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN M. REIDY and KELLY REIDY,
Plaintiffs

vs.

LYCOMING COUNTY WATER AND
SEWER AUTHORITY,
Defendant

: NO. 05 – 02,230
:
: CIVIL ACTION
:
:
:
:
: Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendant’s motion for summary judgment, filed December 18, 2008. Argument on the motion was held February 25, 2009.

In their Complaint, Plaintiffs allege that because of the negligence of Defendant, sewage backed up into their home and has caused damages in the form of damage to personal property, increase in homeowner’s insurance premiums, and decrease in the fair market value of the property. Plaintiffs also seek those same damages under a claim for intentional infliction of emotional distress. In the motion for summary judgment, Defendant argues that Plaintiffs are precluded from asserting a claim for intentional infliction of emotional distress by the Political Subdivision Tort Claims Act, that their claim for negligence is not supported by sufficient evidence and that the Tort Claims Act precludes their damages claim.

With respect to the claim for intentional infliction of emotional distress, the Court agrees that such is precluded by the Political Subdivision Tort Claims Act. As was noted in Kearney v. City of Philadelphia, 616 A.2d 72 (Pa. Commw. 1992), Section 8542(a)(2) of the Act mandates that the injury must be caused by negligent acts of the agency or its employees, and intentional infliction of emotional distress does not encompass alleged negligence. Judgment on this count will, therefore, be entered in favor of Defendant.

With respect to the claim for damages, Defendant argues that the claims for increase in insurance premiums and decrease in fair market value are precluded by the Tort Claims Act as such provides for only the following:

§ 8553. Limitations on damages

...

(c) TYPES OF LOSSES RECOGNIZED.-- Damages shall be recoverable only for:

(1) Past and future loss of earnings and earning capacity.

(2) Pain and suffering in the following instances:

(i) death; or

(ii) only in cases of permanent loss of a bodily function, permanent disfigurement or permanent dismemberment where the medical and dental expenses referred to in paragraph (3) are in excess of \$ 1,500.

(3) Medical and dental expenses including the reasonable value of reasonable and necessary medical and dental services, prosthetic devices and necessary ambulance, hospital, professional nursing, and physical therapy expenses accrued and anticipated in the diagnosis, care and recovery of the claimant.

(4) Loss of consortium.

(5) Loss of support.

(6) Property losses.

42 Pa.C.S. Section 8553(c). Again, the Court agrees. Courts are to interpret subsection (c) narrowly in order to promote the mandate of the legislature to limit governmental liability. *See Walsh v. City of Philadelphia*, 585 A.2d 445 (Pa. 1991). In so doing, increases in insurance premiums and a decrease in the fair market value of a property cannot properly be termed “property losses”. Therefore, judgment will be entered in favor of Defendant on the negligence count as well.¹

¹ In light of the determination that the damages sought are precluded by the Political Subdivision Tort Claims Act, the Court considers it unnecessary to address Defendant’s argument that Plaintiff has failed to provide sufficient evidence of its negligence.

ORDER

AND NOW, this 3rd day of March 2009, for the foregoing reasons, Defendant's motion for summary judgment is hereby granted. Judgment is hereby entered in favor of Defendant and against Plaintiffs.

BY THE COURT,

Dudley N. Anderson, Judge

cc: James D. Casale, Esq.
J. David Smith, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson