

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

OLD LYCOMING TOWNSHIP,	:	
Plaintiff	:	DOCKET NO. 12-03,071
	:	CIVIL ACTION – LAW
vs.	:	
	:	
MARIE MCGEE and MICHAEL MCGEE,	:	
Defendants	:	

**OPINION AND ORDER**

This matter comes before the Court on dispute over the pumping of a septic system in Old Lycoming Township, Lycoming County, Pennsylvania. This Opinion supplements the Court’s November 15, 2012 Order, dismissing the Additional Defendant Complaint filed by Defendants (hereinafter “the McGees”).

A brief procedural history is as follows. On September 26, 2012, Old Lycoming Township (Township) filed suit against the McGees. On October 19, 2012, the McGees filed an Answer with New Matter, as well as an Additional Defendant Complaint; the Additional Defendant Complaint requested the naming of Kurtis B. Lentz (Mr. Lentz) as an additional defendant in the matter. On November 6, 2012, Mr. Lentz filed Preliminary Objections to the Additional Defendant Complaint. On November 13, 2012, the Court scheduled a hearing on these objections. On November 6, 2012, the Township filed a Response to the Additional Defendant Complaint. In its response, the Township confirmed that Mr. Lentz works as its Sewage Enforcement Officer. Based upon the Township’s response and the governmental immunity Mr. Lentz possesses as a Township officer, the Court DISMISSED the McGee’s Additional Defendant Complaint by Order dated November 15, 2012.

In this matter, Mr. Lentz is afforded statutory governmental immunity, protecting him from being held liable in his capacity as the Township Sewage Enforcement Officer. *See* 42 Pa.

C.S. §§ 8541-8564; *Gilius v. Bd. of Supervisors*, 552 A.2d 327 (Pa. Cmwlth. Ct. 1988), *appeal denied*, 564 A.2d 1262 (Pa. 1989) (holding that governmental immunity bars a suit, against a sewage enforcement officer, alleging the officer's negligent performance of his duties). *See also Smith v. Porter Township*, 595 A.2d 693 (Pa. Cmwlth. Ct. 1991). As a government agency, Old Lycoming Township is granted governmental immunity; when protected by governmental immunity, a local agency cannot be found civilly liable for its actions, or the actions of its employees, unless the actions can be categorized into one of the eight exceptions to the immunity. *See* 42 Pa. C.S. § 8542. The eight statutory exceptions to governmental immunity include: vehicle liability; care, custody or control of personal property; real property; trees, traffic controls and street lighting; utility service facilities; streets; sidewalks; and care, custody or control of animals. *Id.* An employee of an agency is protected by governmental immunity if the actions alleged would be protected by the immunity if committed by the agency. *See* 42 Pa. C.S. § 8545.

Here, it is uncontested that Mr. Lentz is an employed by Old Lycoming Township; in particular, it is uncontested that Mr. Lentz is the Township's Sewer Enforcement Officer. In their Additional Defendant Complaint, the McGees allege that Mr. Lentz negligently performed his duties by failing to return their phone call. Even taking this allegation as true, this allegation, in and of itself, does not fall within one of the eight exemptions to governmental immunity. Therefore, based upon the grant of sovereign immunity to local government enforcement officers and the applicable case law, the Additional Defendant Complaint filed against Mr. Lentz is DISMISSED.

The Court enters the following Order.

**ORDER**

AND NOW, this 11<sup>th</sup> day of December, 2012, for the reasons stated above, it is hereby ORDERED and DIRECTED that the Court's November 15, 2012 Order, dismissing Defendants' Additional Defendant Complaint is AFFIRMED. The argument scheduled on December 21, 2012, relating to Mr. Lentz's preliminary objections to this complaint is CANCELLED.

The Court will still hear argument on December 21, 2012, regarding Defendants' motion to dismiss. Plaintiff shall file a response to the motion by December 21, 2012, and bring a time-stamped copy to the hearing on that date.

BY THE COURT,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard A. Gray, J.

RAG/abn

cc: Denise Deiter, Esq.  
Michael McGee – 327 Dogwood Lane, Williamsport, PA 17701  
Marie McGee – 11350 Rose Valley Road, Trout Run, PA 17771  
Gary L. Weber, Esq.