IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COGAN HOUSE TOWNSHIP, Counterclaim Defendant,	:	No. CV 14-02,035
vs.	:	CIVIL ACTION - LAW
DAVID and DIANE LENHART, Counterclaim Plaintiffs.	:	

OPINION AND ORDER

AND NOW, this 18th day of September, following argument held on June 20, 2023, on Counterclaim Plaintiffs' Motion for Post-Trial Relief, the Court issues the following Opinion and Order.

I. BACKGROUND.

Following a twelve-day non-jury trial, the Court issued an Opinion and Verdict on May 10, 2023 finding in favor of Counterclaim Defendant Cogan House Township (the "Township") and against Counterclaim Plaintiffs David and Diane Lenhart (the "Lenharts"). On May 22, 2023, the Lenharts filed a timely Post Trial Motion.[1] On June 8, 2023, the Township filed a Response in Opposition to the Post Trial Motion. Argument on the Lenharts' Post Trial Motion was held on June 20, 2023. This Opinion and Order follows.

II. THE LENHARTS' POST TRIAL MOTION.

The Lenharts allege the Court made the following fourteen (14) errors in its Findings of Fact and ten (10) errors in its Conclusions of Law.

---

[1] Pa. R. Civ. P. 227.1(c)(1) provides that "[p]ost-trial motions shall be filed within ten days after ... verdict." Pursuant to 1 Pa. C.S. § 1908, however, "[w]hen any period of time is referred to in any statute, such period ... shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, ... such day shall be omitted from the computation." The tenth day after entry of the Court's verdict was Saturday, May 20, 2023. Thus, the Lenhart's filing of their Motion on the following Monday, May 22, 2023, was timely.

A. Alleged Errors in the Court's Findings of Fact:

1. The Court erred in its description of the pleadings when it concluded that that the Lenharts had placed sediment to filter pollutants.

2. Finding of Facts 17 through 24 were against the "great weight" of the evidence to the extent the Court concluded that the culverts placed during the 2011 road project were oriented or running in the same direction as the replaced culverts.

3. Finding of Fact 19 was in error in that it simply recites the position of the parties without a recognition that the weight of the evidence shows the 30" pipe installed at the Lenhart driveway replaced a 33" pipe.

4. Finding of Fact 20 was in error in that it simply recites the position of the parties without a recognition that the weight of the evidence shows that the Bear Run culvert was 46" in diameter and was replaced with a 48" pipe.

5. Finding of Fact 24 (concluding that when the partially or entirely blocked culverts were replaced with unblocked culverts, they necessarily deposited more storm water runoff than before) was against the weight of evidence.

6. Finding of Fact 30 (finding that the Lenharts acknowledged that some stormwater runoff that had reached their property originated in the area of Frenchman's Ridge Road and thus was not attributable to the work on Post Road) was against the weight of the evidence.

7. Finding of Fact 31 was in error to the extent that it found that the sediment carried by the stormwater runoff "inevitably reaches the Bear Run Tributary and Bear Run."

8. Finding of Fact 33 was in error in finding that Lake Randall, the Lenharts' expert witness, established that the Lenharts could have resolved the erosion of their driveway from overtopping by paving or otherwise altering a portion of their original driveway for a substantially lower cost than the installation of their new driveway.

9. Findings of Fact 34 through 36 were all in error as the Court should not have found the testimony of Crossclaim Defendant's witness, Pennoni Engineer, Daniel Miller, to be credible.

10. Finding of Fact 36 that "to the extent that there were any differences between the old culvert and the new culvert replacing it, such as in diameter and orientation, those differences were minor", was against the weight of the evidence.

11. Finding of Facts 38 through 45 are in error as, "The Court entirely ignores the fact that the stormwater system belongs to the Township and no matter where the water comes from that enters the system, the Township is responsible for it and for the proper operation and stewardship of the system."

12. Finding of Fact 44 that "Two of the three storm events resulting in significant overtoppings of the Lenharts' driveway – Hurricane Lee in September 8, 2011 and the storm of late February 2016 – featured extreme amounts of precipitation that would have resulted in overtopping even if the Driveway Culvert had been much larger", was in error as being "beside the point".

13. The Court erred in "ignoring" evidence of aerial maps and Lenhart expert witness Lake Randall, and instead crediting the testimony of CHT's expert, Jerry Snyder, P.E.

14. Finding of Fact 46 that "The work on Post Road increased the impervious area of Post Road to the extent that it expanded Post Road's shoulders past their previous widths. The majority of the work performed within the roadway, however, was conducted on surfaces that were already impervious", was in error as there is a difference between gravel, impervious and paved.

B. Alleged Errors in the Court's Conclusions of Law:

1. Conclusions of Law 6 and 7 (that prior to CHT's commencement of the 2011 Post Road Project and subsequent 2014 improvements, it was not clear that the SWMA and Chapter 102 requirements applied to its work. And, even if it did, the Lenharts failed to establish that a violation of these requirements was the proximate cause of their injuries), are "entirely contrary to law and the law of this case".

2. Conclusion of Law 8 (that the Lenharts have not proven negligence, gross negligence or willful misconduct) is in error.

3. Conclusion of Law 9 (that due to the Lenharts' failure to establish with any specificity the extent to which any harms they suffered were attributable to CHT, the Court cannot say that the work on Post Road is a proximate cause of any redressable harm), is in error.

4. Conclusion of Law 10, 11, 12 and 13, that the Lenharts have failed to establish either a public or private nuisance, are in error.

5. Conclusion of Law 14, that the Lenharts have failed to establish a common law trespass, was in error.

6. Conclusion of Law 15 (that regardless of whether the Lenharts have satisfied the elements of their common law nuisance or trespass claims, they have failed to establish the degree to which any nuisance or trespass *attributable* to CHT has caused them injury or damages with sufficient specificity to remove the matter from the realm of the purely speculative), was in error.

7. Conclusions of Law 16, 17 and 18, that the Lenharts failed to establish their right to a permanent injunction, was in error.

8. The Court erred in essentially conducting a trial *de novo*.

9. The Court erred in its decision to quash the subpoena directed to Mr. Miller.

10. The Court erred in finding any of the Township's experts credible.

III. SUPPLEMENTAL FINDINGS OF FACT.

After consideration of the Lenharts' written Post Trial Motion, the Township's written Response in Opposition, and arguments held on June 20, 2023, the Court supplements and clarifies its 46 Findings of Fact and makes additional Findings of Fact, as follows:

47. Resolution of the factual dispute as to whether the original culverts that passed under Post Road were 12" culverts or 15" culverts, or whether the culvert at the original Lenhart driveway was 30" or 33", or whether the Bear Run Culvert was originally 46" or 48", as discussed in prior Findings of Fact 17, 19 and 20, is ultimately immaterial to resolution of whether the Lenharts have met their burden of persuasion with regard to any of their claims.

48. The comparison surveys relied upon by the Lenharts and their witnesses assume the accuracy of the Archibald survey; however, the Lenharts' expert Lake Randall concedes that the Archibald survey is inaccurate.

49. The Lenharts' surveyor, James Welshaw, testified that his comparison surveys are only accurate if the Archibald survey is accurate.

50. Dan Miller, whose company completed the Archibald survey, concedes that the survey is rudimentary and not intended to be used to determine *precise* location, orientation and direction of pipes and culverts pre and post construction.

51. The location of the new pipe at the Kile driveway, as discussed in prior Findings of Fact 23, is on land acquired by the Lenharts after commencement of the first trial in September of 2017, which the Court previously held in its June 14, 2022 Order and Opinion, cannot support a claim for damages.

52. The 1,000 feet of U-Dain, as discussed in prior Finding of Fact 29, does not carry a significant amount of water or change the overall drainage pattern.

53. The U-Drain was installed to address soft spots caused by underground springs and is intended to carry away dampness and negligible amounts of water caused by underground springs to mitigate against soft soils under the roadway.

54. The U-Drain does not change the drainage pattern because the rock-lined ditch within which the U-Drain is located will convey surface stormwater to the same location as the U-Drain.

55. The Lenharts have failed to establish that a greater volume of water is discharged onto their property as a result of the 2011 construction, than would have been discharged had the clogged pipes simply been cleaned and unclogged rather than replaced.

56. The Lenharts have further failed to establish that even if there is a greater volume of water being discharged onto their property post 2011 construction, that the cause is not a result of the purported diversion terrace constructed on the Ryder farm or a result of the work completed on Frenchman's Ridge Road.

57. Ultimately, the Lenharts did not direct their expert to analyze the effects of the improvements to Frenchman's Ridge Road during the period relevant to this litigation.

58. The Lenharts have failed to establish that any changes to the routes of storm water runoff as a result of the 2011 construction, would have been different than had the clogged pipes simply been cleaned and unclogged rather than replaced, so that the existing storm water system was working as originally intended.

59. As discussed in prior Findings of Fact 33, paving the apron of the Lenharts' original driveway and installing a brush guard to prevent the culvert from becoming blocked would have reasonably resolved the concern over the driveway becoming impassable.

60. The Lenharts' expert Lake Randall's hydrological analysis used to determine peak rate, volume and velocity of stormwater runoff from watersheds draining to the Lenhart's property, is ultimately

unpersuasive and unreliable because, in reaching his conclusions, Mr. Randall chose to break out individual soil types and create sub-watersheds rather than calculating the weighted average curve numbers within a watershed area. Consequently, Mr. Randall artificially obtained stormwater flow rates higher than would be obtained had he used the generally accepted methodology and guidance of the TR-55 model, which Mr. Randall had done in his own 2016 report, and Mid-Penn Engineering had done on its other projects.

61. This Court's previous Finding of Fact 31 that stated, "...certain areas of the Lenharts' property have become perpetually wet." did not mean to suggest that the Lenhart property was continuously wet, even in dry conditions, but rather that their property will continuously become wet during and following rainstorms as a result of stormwater runoff.

62. Importantly, the Lenharts have failed to establish that the stormwater runoff post 2011 is greater either in volume or in velocity than if the clogged culverts had simply been unclogged rather than replaced, or that the wet conditions were not caused in whole or part by the purported Ryder Farm diversion terrace or Frenchman's Ridge Road construction.

IV. LAW AND ANALYSIS.

A. Law governing a bench trial.

"In a bench trial, the trial judge acts as the fact-finder and has the authority to make credibility determinations and to resolve conflicts in evidence."[2] Thus, when serving as the finder of fact, the judge determines the credibility of the witnesses and weighs their testimony.[3] In so doing, he "is free to believe all, part or none of the evidence presented,"[4] because he is "in the sole position to observe the demeanor of the witnesses and assess their credibility."[5] Questions about

---

[2] *Merrell v. Chartiers Valley School Dist.*, 51 A.3d 286, 293 (Pa. Commw. 2012) (citing *Ruthrauff, Inc. v. Ravin, Inc.*, 914 A.2d 880 (Pa. Super. 2006)).
[3] *Allegheny County v. Monzo*, 500 A.2d 1096, 1101 (Pa. 1985).
[4] *Haan v. Wells*, 103 A.3d 60, 72 (Pa. Super. 2014) (citing *Turney Media Fuel, Inc. v. Toll Brothers, Inc.*, 725 A.2d 836, 841 (Pa. Super. 1999)).
[5] *Hirsch v. EPL Technologies, Inc.*, 910 A.2d 84, 88 (Pa. Super. 2006), *alloc. denied*, 920 A.2d 833 (Pa. 2007) (citing *Commw., Dep't of Trans. v. O'Connell*, 555 A.2d 873, 875 (Pa. 1989); *Roman Mosaic & Tile Co. v. Thomas P. Carney, Inc.*, 729 A.2d 73, 76 (Pa. Super. 1999)).

inconsistent testimony and motive concern the witnesses' credibility.[6] A trial judge's findings made after a bench trial have the same weight and effect as a jury verdict.[7]

Generally, the party who pleads the existence of certain facts bears the burden of establishing those facts.[8] "As such, that party bears the risk that he will not persuade the trier of fact or that the trier of fact will not be persuaded to infer any facts from the facts proven to draw a conclusion of liability."[9] Thus, plaintiffs bear the burden of proving their claims,[10] and defendants bear the burden of proving their counterclaims.[11]

Similarly, plaintiffs bear the burden of proving damages on their claims, and defendants (counterclaim plaintiffs) bear the burden of proving damages on their counterclaims.

> The general rule in this Commonwealth is that the plaintiff bears the burden of proof as to damages.... The determination of damages is a factual question to be decided by the fact-finder.... The fact-finder must assess the testimony, by weighing the evidence and determining its credibility, and by accepting or rejecting the estimates of the damages given by the witnesses.... Although the fact-finder may not render a verdict based on sheer conjecture or guesswork, it may use a measure of speculation in estimating damages.... The fact-finder may make a just and reasonable estimate of the damage

---

[6] *Commonwealth v. Boxley*, 838 A.2d 608, 612 (Pa. 2003).
[7] *Levitt v. Patrick*, 976 A.2d 581, 588-89 (Pa. Super. 2009) (citing *Baney v. Eoute*, 784 A.2d 132, 135 (Pa. Super. 2001)).
[8] *Dep't of Pub. Welfare v. L & L Boiler Maint., Inc.*, 407 A.2d 98, 99 (Pa. Commw. 1979) (citing *Hervitz v. New York Life Ins. Co.*, 52 A.2d 368 (Pa. Super. 1947)).
[9] *Id.* (citing 9 J. Wigmore, Evidence 270-274 (3rd ed. 1940)).
[10] *Arco Metalscraft Co. v. Shaw*, 70 A.2d 850, 853 (Pa., 1950) (holding that the court's failure to instruct the jury that the burden of proof rested upon plaintiff was reversible error). The burden of proof is the "risk of non-persuasion." *Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 856 (Pa. 1950) (citing 9 J. Wigmore, Evidence, § 2485 (3rd ed. 1940)). "'The term 'burden of proof' ... imports the duty of ultimately establishing any given proposition.... [T]his phrase, 'the burden of proof,' ... marks ... the peculiar duty of him who has the risk of any given proposition on which parties are at issue,—who will lose the case if he does not make this proposition out, when all has been said and done.'" *Id.* (quoting J.B. Thayer, A Preliminary Treatise on Evidence at the Common Law, Chapt. 9, pp. 353-55 (1898)).
[11] *Dep't of Pub. Welfare v. L & L Boiler Maint., Inc.*, 407 A.2d 98, 99 (Pa. Commw. 1979) (citing 4 Stan. Pa. Prac. 425-426).

based on relevant data, and in such circumstances may act on probable, inferential, as well as direct and positive proof.[12]

On appeal from a bench trial, an appellate court will defer to the trial court in matters of fact and credibility that are supported by the record and free of legal error.[13] "If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion."[14] An appellate court "may reverse the trial court only if its findings of fact are predicated on an error of law or are unsupported by competent evidence in the record."[15]

B. Claims of error in the Court's findings of fact.

The Court will address the Lenharts' claims of error in the Court's findings of fact *seriatim*:

1. The Court did not err in its description of the pleadings when it concluded that the Lenharts had placed sediment to filter pollutants.

As the Township pointed out in its Response to the Lenharts' Motion for Post-Trial Relief,[16] Paragraphs 7 and 8 of the the Lenharts' Answer with New Matter states that "... [the Lenharts] have sought ... to control the transportation of noxious, smelly and dangerous excrement of hogs and liquid body parts ..."[17] and "[the Lenharts] have [not] placed 'aggregate materials' in said swales but only stones in one location to help filter and slow down the volume of water...."[18] Thus, the Court accurately described the Pleadings.

---

[12] *Penn Elec. Supply Co. v. Billows Elec. Supply Co.*, 528 A.2d 643, 645 (Pa. Super. 1987).
[13] *Rizzo v. Haines*, 555 A.2d 58, 61 (Pa. 1989).
[14] *In re Adoption of S.P.*, 47 A.3d 817 (Pa. 2012).
[15] *Parker Oil Co. v. Mico Petro and Heating Oil, LLC*, 979 A.2d 854, 856 (Pa. Super. 2009) (citations omitted).
[16] Plaintiff's Response in Opposition to Defendants' Motion for Post-Trial Relief, filed June 9, 2023, ¶ 11.
[17] Defendants' Answer with New Matter, filed August 18, 2014, ¶ 7.
[18] *Id.*, ¶ 8.

2. ***Finding of Facts 17 through 24 were not against the "great weight" of the evidence to the extent the Court concluded that the culverts placed during the 2011 road project were oriented or running in the same direction as the replaced culverts.***

In discharging its duty as finder of fact, the Court determined the credibility of and weighed the testimony and evidence. In so doing, the Court was "free to believe all, part or none of the evidence presented,"[19] because it was "in the sole position to observe the demeanor of the witnesses and assess their credibility."[20] In this instance, the Lenharts' perception of the weight of the evidence does not match the credibility and weight the Court assigned to the evidence. In the interests of clarity, however, the Court supplemented its Findings of Fact with new Findings of Fact Nos. 47, 55-58 and 62 that further address this objection.

3. ***Finding of Fact 19 was not in error concerning whether the 30" pipe installed at the Lenhart driveway replaced a 33" pipe.***

See, *supra*, the response to claim of error No. 2, above.

4. ***Finding of Fact 20 was not in error concerning whether the 48" pipe installed at the Bear Run culvert replaced a pipe that was 46" in diameter.***

See, *supra*, the response to claim of error No. 2, above.

5. ***Finding of Fact 24 was not in error concerning whether the partially or entirely blocked culverts that were replaced with unblocked culverts necessarily deposited more storm water runoff than before.***

See, *supra*, the response to claim of error No. 2, above.

---

[19] *Haan v. Wells*, *supra*, 103 A.3d at 72.
[20] *Hirsch v. EPL Technologies, Inc.*, *supra*, 910 A.2d at 88.

6. ***Finding of Fact 30 was not in error concerning whether the Lenharts acknowledged that some stormwater runoff that reached their property originated in the area of Frenchman's Ridge Road and thus was not attributable to the work on Post Road.***

See, *supra*, the response to claim of error No. 2, above.

7. ***Finding of Fact 31 was not in error concerning the Court's finding that the sediment carried by the stormwater runoff "inevitably reaches the Bear Run Tributary and Bear Run."***

In making its Findings of Fact, the Court carefully reviewed the testimony and evidence presented during trial and made its findings accordingly.

8. ***Finding of Fact 33 was not in error concerning the Court's finding that Lake Randall, the Lenharts' expert witness, established that the Lenharts could have resolved the erosion of their driveway from overtopping by paving or otherwise altering a portion of their original driveway for a substantially lower cost than the installation of their new driveway.***

In explaining this objection, the Lenharts focus on testimony from Mr. Randall to the effect that paving alone would not resolve the overtopping issue. In so doing, they ignore testimony concerning the impact of physical blockage of the drain pipe and the Lenharts' other reasons for wanting to relocate their driveway—*e.g.*, that it is steep and shaded and, therefore, becomes icy in winter conditions. The Leharts' concerns regarding overtopping of their driveway by stormwater could have been resolved reasonably by less expensive alternatives than the one they chose. Supplemental Finding of Fact No. 59 addresses this.

Ultimately, the Lenharts' expert testified that there were less expensive alternate solutions available to them to mitigate their concerns.[21] A plaintiff suing

[21] N.T. 12/14/2022, at 89:10-18.

in tort has a duty to mitigate damages.[22] The defendant has the burden of proving failure to mitigate,[23] and once defendant has done so, the court will reduce the damages payable to plaintiff.[24] The Court found here that Counterclaim Plaintiffs were not entitled to any damages, primarily because they failed to prove causation and damages, which are necessary elements for them to recover; however, if the Lenharts are entitled to any damages relating to overtopping of their driveway, those damages are appropriately reduced by their failure to mitigate.

9. Findings of Fact 34 through 36 were not in error, as the Court properly found the testimony of Crossclaim Defendant's witness, Pennoni Engineer Daniel Miller, to be credible.

The Court did not make a finding that Mr. Miller is an expert; however, it did find him to be a credible lay witness and assigned an appropriate weight to his testimony, in accordance with the Court's role as finder of fact. The Court further addresses this objection in its Supplemental Findings of Fact Nos. 47-50, 52-59, and 62. Further, the Lenharts' assertions that Mr. Miller's testimony is unreliable largely depends on the Archibald survey being accurate. Undisputed testimony was that the Archibald survey was primarily performed to establish quantities of materials for maintenance projects[25] and was not intended to determine the precise location, orientation and direction of pipes and culverts pre- and post-construction, as the Court found in its Supplemental Finding of Fact No. 50.

---

[22] *Mader v. Duquesne Light Company*, 199 A.3d 1258, 1267 (Pa. Super. 2018) (citing *Stultz v. Reese Bros.*, 835 A.2d 754, 764 (Pa. Super. 2003)).
[23] *Id.*
[24] *Id.* (citing *Forest City Grant Liberty Assocs. v. Genro II, Inc.*, 652 A.2d 948, 952 (Pa. Super. 1995)); *see also State Public School Bldg. Authority v. W. M. Anderson Co.*, 410 A.2d 1329, 1331 (Pa. Commw. 1980) (citing Restatement of Contracts, § 336 (1932) ("the amount recoverable by the damaged party must be reduced by the amount of losses which could have been avoided by that party's reasonable efforts to avoid them")).
[25] N.T. 9/8/2022, at 72:7-14.

Most importantly, however, as the Township points out, even if the Lenharts were able to prove there were changes in the stormwater management system as a result of the Township's project, they must still prove that those changes caused them actual damages.[26] The Lenharts have failed to do so. They have not provided competent evidence either that their property has received increased runoff or, if there is increased runoff, that it was caused by the Township's work, as opposed to other projects done in the area. In short, the Lenharts cannot succeed on a claim of negligence against the Township because they have failed to establish that the Township breached a duty that it owed to them *and* that the breach of that duty caused them damages.

10. The Court's Finding of Fact 36, that "to the extent that there were any differences between the old culvert and the new culvert replacing it, such as in diameter and orientation, those differences were minor," was not against the weight of the evidence.

The Court made this finding based upon the testimony and evidence presented to it and the credibility and weight the Court assigned to that testimony and evidence. The Lenharts make much of the Commonwealth Court's conclusion that the Township's project made various changes to the stormwater management infrastructure in the area at issue.[27] Contrary to the Lenharts' claims, however, the Commonwealth Court's conclusion is not inconsistent with Finding of Fact No. 36. The context of this Court's Finding is further clarified with its Supplemental Findings of Fact Nos. 47 and 62, *i.e.*, that regardless of whether there were

---

[26] *Reeves v. Middletown Athletic Ass'n*, 866 A.2d 1115, 1126 (Pa. Super. 2004) ("To prevail on a negligence claim, a plaintiff must demonstrate the following: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) a causal relationship between the breach and the resulting injury suffered by the plaintiff; and (4) actual loss suffered by the plaintiff").
[27] *Cogan House Twp. v. Lenhart*, 197 A.3d 1264, 1270 (Pa. Commw. 2019).

differences in the old and new culverts, the Lenharts did not establish that post-2011 their property received more runoff than it would have received if the drainage pipes had simply been cleaned; that, if there was such an increase, that it was caused by the Township's project and not by other work performed in the area; or that they met their burden with respect to any of their claims.[28] Given that context, any changes to the culvert were minor, as this Court found. To the extent that the Commonwealth Court was concerned with whether there was "alteration or development of land that *could* affect storm water runoff characteristics,"[29] the Commonwealth Court did *not* find that there was a non-minor alteration in the culvert that caused the Lenharts to incur damages or that the Lenhart's damages, if any, were caused by the Township's work and not by any one of a number of other projects.

11. Finding of Facts 38 through 45 are not in error, as the Court did not ignore the fact that the stormwater system belongs to the Township and that the Township is responsible for the system and for the proper operation and stewardship of it.

The Lenharts take the position that the source of the water on their property is irrelevant and that the Township is responsible for storm water runoff on to their property "whether the water comes from the sky, from the Ryder field, or from Frenchman's Ridge."[30] They seek to impose strict liability on the Township for water on their property. The Commonwealth Court found that the Township should have filed for storm water management permits.[31] Nevertheless, the

---

[28] Supplemental Finding of Fact Nos. 47 & 62.
[29] *Cogan House Twp. v. Lenhart*, *supra*, 197 A.3d at 1270.
[30] Lenharts' Post Trial Motion, filed May 25, 2023, p. 17.
[31] *See Cogan House Twp. v. Lenhart*, *supra*, 197 A.3d at 1271-76.

Township is not responsible for Acts of God,[32] crimes or torts committed by third parties,[33] acts or omissions of independent contractors engaged by the Township,[34] or even for negligent design of the storm water management system itself.[35] Here, the Court found the Lenharts did not prove that the Township's negligence caused their damages. As such, the Township cannot be liable for the Lenharts' damages, and this Finding is consistent with applicable law.

12. Finding of Fact 44, that "Two of the three storm events resulting in significant overtoppings of the Lenharts' driveway – Hurricane Lee in September 8, 2011 and the storm of late February 2016 – featured extreme amounts of precipitation that would have resulted in overtopping even if the Driveway Culvert had been much larger," was not in error and was not "beside the point."

The Lenharts acknowledge that storms occur but go on to claim that "[t]his is why requirements exist for the creation of storm water management plans and erosion and sediment control plans."[36] Here again, they seem to contend that the Township is strictly liable for water on their property. This is simply incorrect. It

---

[32] *See, e.g., Finn v. City of Phila.*, 645 A.2d 320, 325 (Pa. Commw. 1994) ("[s]ince ice, snow, oil and grease are all foreign substances which can naturally accumulate on the sidewalk or real estate itself, government entities are not liable for injuries caused solely by the presence of these substances on a sidewalk or on real property"); *Woodbine Auto, Inc. v. Southeastern Pa. Transp. Auth.*, 8 F. Supp. 2d 475, 479 (E.D. Pa. 1988) (citing *Mickle v. City of Phila.*, 669 A.2d 520, 522-23 (Pa. Commw. 1996)) (holding that a city is not liable for flood damage unless the plaintiff can plead and prove an exception to the city's "general cloak of immunity from suit").

[33] *See, e.g., Thomas v. City of Phila.*, 668 A.2d 292, 297 (Pa. Commw. 1995) (holding that harms caused by third parties are outside of the scope of the statutory exceptions to the exceptions to governmental immunity); *Southeastern Pa. Transp. Auth. v. Hussey*, 588 A.2d 110 (Pa. Commw. 1991), *alloc. denied*, 607 A.2d 258 (Pa. 1992) (holding that a governmental agency is not responsible for the intervening criminal acts of a third party, even if those acts were facilitated by the agency's act or omission).

[34] *See, e.g., Nardo v. City of Phila.*, 988 A.2d 740, 746 (Pa. Commw. 2010) (holding that a city is not responsible for the negligent acts independent contractors engaged by the city).

[35] *See, e.g., Woodbine Auto, supra*, 8 F. Supp. 2d at 480 (citing *City of Washington v. Johns*, 474 A.2d 1199, 1201-02 (Pa. Commw. 1984); *Yulis v. Borough of Ebensburg*, 128 A.2d 118 (Pa. Super. 1956)) ("[W]hile a municipal entity cannot be held liable for an inadequate storm water management system, liability may be assessed where it has been shown that the system was negligently constructed or maintained").

[36] Post Trial Motion, pp. 19-20.

has long been the law of Pennsylvania that a municipality cannot be liable for a storm water management system's insufficient capacity but can only be liable for its disrepair or defective construction.[37] *See also*, *supra*, Part IV.B.11.

13. The Court did not err by "ignoring" evidence of aerial maps and Lenhart expert witness Lake Randall and instead crediting the testimony of the Township's expert, Jerry Snyder, P.E.

When sitting as finder of fact, the Court "is free to believe all, part or none of the evidence presented,"[38] being "in the sole position to observe the demeanor of the witnesses and assess their credibility."[39] In making its findings of fact, the Court assessed the testimony and evidence presented by the parties. The Lenharts and the Township each put forth expert testimony and attacked the testimony provided by opposition witnesses. The Court considered the testimony brought before it, assigned credibility and weight to each witnesses' testimony, and made its findings of fact accordingly.[40]

---

[37] *See*, *e.g.*, *Fair v. City of Phila.*, 88 Pa. 309, 311 (1879). *See also*, *supra*, n. 35.
[38] *Haan v. Wells*, *supra*, 103 A.3d at 72. *See*, *supra*, Part IV.A.
[39] *Hirsch v. EPL Technologies, Inc.*, *supra*, 910 A.2d at 88. *See*, *supra*, Part IV.A.
[40] The Lenharts appear to contend that there is no basis to question Mr. Randall's testimony. As the Township pointed out, however, there were "methodological errors" in his report and "numerous inconsistencies" in his testimony. Township's Response to the Lenharts' Motion for Post Trial Relief, filed June 8, 2023, pp. 20-22. For example, Mr. Randall created subwatersheds and assessed their cumulative impact on stormwater runoff rather than calculating the weighted average thereof in a given watershed area, thus creating artificially high flow rates compared to the generally accepted methodology. *Id.*; *see also* Supplemental Finding of Fact No. 60. The methodology he used was different than the methodology he used in other reports on this and other projects. Response to Motion for Post Trial Relief, pp. 20-22. In addition, he assumed existence of an additional 20 acres of drainage area that the Court concluded did not occur. *Id.* Questions about inconsistent testimony concern a witnesses' credibility, *Commonwealth v. Boxley*, *supra*, 838 A.2d at 612, so the Court had ample basis to find as it did.

The Court is fully cognizant that the testimony of the Township's expert, Mr. Snyder, is subject to attack, as the Lenharts demonstrate, by virtue of his primary work with water mains and wastewater collection and treatment. Lenhart's Post Trial Motion, p. 19. As the Township points out, however, he has decades of experience with stormwater runoff models. Township's Response, p. 22. As with Mr. Randall, the Court heard Mr. Snyder's testimony and assigned such credibility and weight to it as the Court deemed fit and proper.

14. The Court did not err by failing to consider that there is a difference between gravel, impervious and paved surfaces in making its Finding of Fact No. 46, that "The work on Post Road increased the impervious area of Post Road to the extent that it expanded Post Road's shoulders past their previous widths. The majority of the work performed within the roadway, however, was conducted on surfaces that were already impervious."

The Court finds this assignment of error puzzling. The Court recognizes that different surface types have different impacts on stormwater flows. Finding of Fact No. 46 merely recognizes that the majority of the work performed by the Township was within the existing roadway but that the impervious area increased with the widening of Post Road's shoulders.

C. Claims of error in the Court's conclusions of law.

As before, the Court will address the Lenharts' claims of error in the Court's conclusions of law *seriatim*:

1. Conclusions of law Nos. 6 and 7, concerning negligence per se, are not in error contrary to law or contrary to the law of the case.

As this Court noted in its Opinion and Verdict,

> "[Negligence *per se* is] conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances. Pennsylvania recognizes that a violation of a statute or ordinance may serve as the basis for negligence *per se*."[41]

To prove a claim of negligence *per se* based on violation of a statute, the plaintiff must show (1) that the purpose of the statute is, at least in part, to protect a group of individuals rather than the general public; (2) that the statute clearly applies to

---

[41] *Schemberg v. Smicherko*, 85 A.3d 1071, 1074 (Pa. Super. 2014) (quoting *Mahan v. Am-Gard, Inc.*, 841 A.2d 1052, 1058–1059 (Pa.Super.2003)).

the defendant's conduct; (3) that the defendant violated the statute; and (4) that such violation proximately caused plaintiff's injuries.[42]

a. Whether the statute clearly applies to the Township's conduct, Conclusion of Law No. 6.

The Court's Conclusion of Law No. 6 is that prior to the Township commencing work on Post Road in 2011 and 2014, it was not clear that the statutes and regulations at issue here applied to the work being done. The Court found that the Township's representatives testified credibly that prior to commencing work, detailed efforts were made to analyze and understand the regulations at issue.[43] Subsequently, the Commonwealth Court found that the applicable regulations applied to the Township's work and that the Township should have applied for a permit.

Essentially, the Court found that at the time the Township was beginning its Post Road project and should have been applying for stormwater management permits, the regulations did not "clearly" require the Township to file for and obtain a permit, based upon communication with DEP and other officials.[44] It was only

---

[42] *Id.*

[43] These efforts included a review of the regulations administered by the Department of Environmental Protection ("DEP"), as well as communication with DEP and various other officials.

[44] The Lenharts properly recognize that a mistake of law typically does not excuse violation of the law—*i.e.*, "ignorance of the law is not excuse." *See, e.g., United States v. International Minerals and Chemical Corp.*, 402 U.S. 558, 563 (1971). Notwithstanding that well-known maxim, however, in rare instances mistake of law is a proper defense to violation of law, particularly in the regulatory context where governmental action deprives the defendant of notice that his conduct is illegal. *See, e.g., Commonwealth v. Kratsas*, 764 A.2d 20, 28-33 (Pa. 2001) (holding that due process requires a defendant not be convicted of a crime requiring intent where government actions deprive the defendant of fair warning that his conduct is illegal).

Here, the Township conferred with DEP prior to commencing work and was advised that no permit was necessary. Specifically, Daniel Miller, a consulting engineer who worked with the Township, testified that the Township's engineers made telephone calls to the Conservation District and the Department of Environmental Protection, attended a seminar put on for the oil and gas industry, and consulted publications prepared by the Department of Environmental Protection and the Department of Transportation. N.T. Daniel Miller, 9/8/22, at 183-86. Hence, the Court found that the Township properly exercised due diligence in an attempt to understand the regulations at issue but was misled about the requirements of those regulations by the actions of the regulators

after the Commonwealth Court ruling that the need for a permit became clear. Thus, the Court properly found that the Township was not negligent *per se* because the regulations it violated did not *clearly* apply to the Township *at the time of the violation*. The Lenharts' position is based on 20/20 hindsight, which the Court rejects.

b. Causation, Conclusion of Law No. 7.

The Court's Conclusion of Law No. 7 is that the Lenharts did not establish that the Township's violation of stormwater management regulations was the proximate cause of their injuries. Based upon the testimony and evidence and the credibility and weight assigned to them by the Court in its role as Finder of Fact, the Court concluded, *inter alia*, (1) that there was no evidence that the Township would not have received a permit with no substantial changes to the Township's project, (2) that the Lenharts failed to establish the extent to which any damage to their property was caused by the Township's work rather than by other work done by other parties or by nature itself, and (3) that the Lenharts failed to establish with specificity many of their claims of damages.[45] The Lenharts strongly dispute these findings, but their argument, essentially, is that the Court should have given more credibility and weight to their witnesses' testimony and the evidence they introduced than the Court ultimately did.[46] The Court, as finder of fact, disagrees with the Lenharts and assigned credibility and weight to the testimony and evidence presented as the Court deemed fit and proper.

---

charged with enforcing them. Accordingly, the Township did not knowingly violate the regulations, and the regulations did not "clearly" apply to the Township's Post Road project.

[45] Finding of Fact No. 7.

[46] Post-Trial Motion, pp. 22-26.

The Court also found that the Lenharts failed to establish overtopping of their driveway occurred *as a result of the Township's work*, as opposed to other artificial or natural causes. The Lenharts testified that between 2000 and 2011 storm water never ran over top of their driveway but that between 2011, after the Township completed its project, and the present it did so eleven times. Their position appears to be that this automatically means the Township's work caused that problem,[47] despite the fact that they did not account for weather events, work done by other parties on other projects, or the effect of the storm drains simply being cleaned out to function as intended.[48] They did not demonstrate that the Township's project *caused* their problem.

The Lenharts also complain that the Court found that one of the reasons they relocated their driveway was to *prevent* overtoppings, claiming instead they built the new driveway *because* of overtoppings.[49] Semantics aside, it is well-settled that parties whose property is damaged must mitigate their damages.[50] The Lenharts expended considerable sums to relocate their driveway, when the overtopping could have been addressed with several simple and relatively inexpensive fixes.[51] To the extent the Lenharts proved damages, which they did not, their damages must be reduced by their failure to mitigate.

---

[47] Motion for Post Trial Relief, pp. 26-27.
[48] *See, e.g.*, Response to Post Trial Motion, p. 24.
[49] Motion for Post Trial Relief, pp. 27-28.
[50] *See, e.g., Gambale v. Allstate Ins. Co.*, 228 A.2d 58, 60 (Pa. Super. 1967) (citing 25 C.J.S. Damages § 35); *see also Thompson v. De Long*, 110 A. 251, 253 (Pa. 1920) ("[P]laintiff cannot recover for any damages which could have been avoided by the exercise of reasonable care on his part (17 Corpus Juris, 767), and the test is what would an ordinarily prudent man be expected to do under like circumstances (Id. 770). There can be no recovery for damages which by the exercise of reasonable care plaintiff might have avoided (Id. 926)").
[51] *See* Finding of Fact No. 33; Supplemental Finding of Fact No. 59.

In sum, the Court properly found that the Township was not negligent *per se* because they failed to prove that the regulations the Township violated proximately caused the injuries, if any.

2. *Conclusion of law No. 8, concerning negligence, gross negligence and willful misconduct, is not in error.*

To establish a claim for negligence, a plaintiff must prove

> (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) a causal relationship between the breach and the resulting injury suffered by the plaintiff; and (4) actual loss suffered by the plaintiff.[52]

"Gross negligence" is "an 'extreme departure' from the standard of care ... and is the failure to exercise even 'scant care.'"[53] It is a "'flagrant' or 'gross deviation' from the standard.[54] "Willful misconduct" is more than negligence or gross negligence and is "misconduct committed voluntarily and intentionally."[55] It means "that the actor desired to bring about the result that followed, or at least that he was aware that it was substantially certain to ensue."[56]

As noted above, the Lenharts have failed to demonstrate that any act or omission by the Township caused them damages.[57] Absent proof of causation or damages, the Lenharts cannot prevail on claims of negligence, gross negligence or willful misconduct. Moreover, the Lenharts have not demonstrated that their

---

[52] *Reeves v. Middletown Athletic Ass'n*, 866 A.2d 1115, 1126 (Pa.Super.2004) (citing *Burman v. Golay & Co., Inc.*, 616 A.2d 657 (Pa. Super. 1992)).
[53] *Feleccia v. Lackawanna College*, 215 A.3d 3, 20 (Pa. 2019) (quoting *Royal Indem. Co. v. Security Guards, Inc.*, 255 F. Supp. 2d 497, 505 (E.D. Pa. 2003)).
[54] *Id.*, at 21 (citing *Bloom v. Dubois Regional Medical Center*, 597 A.2d 671, 679 (Pa. Super. 1991)).
[55] Black's Law Dictionary, misconduct (11th ed. 2019).
[56] *Evans v. Philadelphia Transp. Co.*, 212 A.2d 440, 440-43 (Pa. 1965).
[57] *See, supra*, Part IV.C.1.b. *See also* Findings of Fact Nos. 34-46 and Supplemental Findings of Fact Nos. 55-58.

negligence claims are sufficient to overcome governmental immunity.[58] Thus, the Court properly found that the Lenharts' cannot recover on their claims against the Township for negligence, gross negligence and willful misconduct.

3. Conclusion of law No. 9, concerning causation, is not in error.

The Court found that, due to the Lenharts' failure to establish with any specificity that the harms they claim to have suffered were attributable to the work done by the Township,[59] "the Court cannot say that the work on Post Road is a proximate cause of any redressable harm."[60] As a general matter, negligent conduct alone "does not automatically entitle a plaintiff to damages. A plaintiff also must prove causation before being allowed to proceed to the question of damages."[61] As discussed extensively above, the Lenharts failed to show that any act or omission by the Township caused their damages, if any. As such, they are not entitled to recover.

4. Conclusion of law No. 10, concerning public nuisance, is not in error.

To establish a public nuisance, a plaintiff must demonstrate "an inconvenience or troublesome offense that annoys the whole community in general," affecting the "health, safety or morals" of the community.[62] The Lenharts claim that the Township's violation of the Stormwater Management Act is a public

---

[58] *See* 42 Pa. C.S. § 8541 ("Except as otherwise provided ..., no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person").
[59] Conclusion of Law No. 9; *see also* Findings of Fact Nos. 34-46 and Supplemental Findings of Fact Nos. 55-58.
[60] Conclusion of Law No. 9.
[61] *Rogers v. Thomas*, 291 A.3d 865, 874 (Pa. Super. 2023). The requirement that a plaintiff establish causation in order to recover damages is not limited to negligence actions. *See, e.g.*, *Logan v. Mirror Printing Co. of Altoona, Pa.*, 600 A.2d 225 (Pa. Super. 1991) ("In order to recover for damages pursuant to a breach of contract, the plaintiff must show a causal connection between the breach and the loss").
[62] *SPTR, Inc. v. City of Philadelphia*, 150 A.3d 160, 166-67 (Pa. Commw. 2016).

nuisance *per se*.[63] Even if the Lenharts are correct, they must still demonstrate that the Township's acts or omissions caused them damages, which they have not done.[64] Furthermore, as the Township points out, it has an easement to discharge stormwater on to the Lenharts' property.[65]

5. *Conclusions of law Nos. 11-13, concerning private nuisance, are not in error.*

To establish a private nuisance, a plaintiff must show that the defendant's conduct:

> is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either
>
> (a) intentional and unreasonable, or
>
> (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.[66]

The Lenharts argue that the Court found that the Township intentionally deposited stormwater on to their property and then fails to hold the Township accountable for the same. As previously discussed, however, the Lenharts leap from misconduct to damages without demonstrating the necessary causation. Furthermore, they fail to demonstrate that the improvements to Post Road deposited any more storm water on their property than would have been deposited had the culverts merely been cleaned.[67] The Township was permitted to deposit

---

[63] *See* 32 P.S. § 680.15 ("Any activity conducted in violation of the provisions of this act or of any watershed storm water plan, regulations or ordinances adopted hereunder, is hereby declared a public nuisance").
[64] *See*, *supra*, Part IV.C.3.
[65] Response to Motion for Post Trial Relief, pp. 25-26, ¶ 27. A landowner may have an easement to discharge stormwater on to another landowner's property. *See*, *e.g.*, *Gehres v. Falls Twp.*, 948 A.2d 249 (Pa. Commw. 2008).
[66] Restatement (Second) of Torts § 822. This section of the Restatement has been adopted by our courts. *See Liberty Place Retail Associates, L.P. v. Israelite School of Universal Practical Knowledge*, 102 A.3d 501, 509 n.8 (Pa. Super. 2014).
[67] *See*, *e.g.*, Finding of Fact No. 36.

storm water on the Lenhart property due to its existing easement,[68] so the Lenharts could not recover without first showing the Township exceeded its easement.

The Lenharts make much of the Court's finding that the Township's failure to obtain permits was inadvertent, and consequently that they, therefore, failed to prove a private nuisance.[69] They argue that ignorance of the law is no excuse and that the Court is absolving the Township of any consequence for its mistake. The Court addressed this issue at length above.[70]

6. Conclusion of law No. 14, concerning trespass, is not in error.

A plaintiff may demonstrate a common law trespass by showing that the defendant "intentionally enter[ed] land in the possession of the [plaintiff], or cause[d] a thing or a third person to do so," without privilege to take such action.[71]

The Lenharts make a similar objection to this Finding as they made to the preceding Findings, and the Court will deny their objection for the same reasons.[72]

7. Conclusion of law No. 15, concerning causation, is not in error.

The Lenharts failed to establish that any act or omission by the Township caused their damages, if any. The Court addressed this issue at length above and will not do so further here.[73]

---

[68] *See*, *supra*, Part IV.C.4.
[69] *See* Conclusion of Law 12-13.
[70] *See*, *supra*, Part IV.C.1.a. As noted there, mistake of law can excuse a violation of the law, particularly in situations such as this, where the mistake of law occurs in a regulatory context as a result of misleading actions taken by the government itself. *Id.*, n. 43.
[71] *Liberty Place Retail Associates, L.P. v. Israelite School of Universal Practical Knowledge*, *supra*, 102 A.3d at 506; *Kopka v. Bell Telephone Co. of Pa.*, 91 A.2d 232, 235 (Pa. 1952).
[72] *See*, *supra*, Parts IV.C.4. & 5.
[73] *See*, *supra*, Parts IV.C.1.b. & 3.

8. Conclusions of law Nos. 16-18, concerning injunction, are not in error.

A party seeking the award of a permanent injunction "must establish [1] that his right to relief is clear, [2] that an injunction is necessary to avoid an injury that cannot be compensated by damages, and [3] that greater injury will result from refusing rather than granting the relief requested."[74]

The Court already has granted the Lenharts injunctive relief in the form of requiring the Township to obtain permits. As the Township points out, it will now be required to apply for permits and to comply with any conditions required by the Department of Environmental Protection. It remains to be seen what, if any, additional measures the Department will require, and the Lenharts will have applicable remedies available to them under the operative statutes.[75] The Lenharts failed to prove entitlement to any additional remedies because they did not demonstrate causation, as discussed above.

D. Additional Issues.

The Lenharts complain that the Court directed the parties to present witnesses and evidence that had previously been presented in the trial of this matter in 2017. In its June 14, 2022 Order, however, the Court made clear that it would not rely on a cold record in making its decision here:

> ... As discussed throughout this Opinion, the conclusions of the Commonwealth Court bind this Court, and certain issues may not be relitigated on remand. A significant portion of the Commonwealth Court's Opinion, however, was premised on this Court's incorrect determination of threshold questions which ultimately resulted in the Court failing to reach issues it should have reached. *A cold record will not reveal the extent to which this Court relied on a particular statement or piece of evidence in reaching its conclusions*, and the

---

[74] *City of Philadelphia v. Armstrong*, 271 A.3d 555, 560 (Pa. Commw. 2022).
[75] Response to Motion for Post Trial Relief, ¶ 32.

> extent to which this Court previously determined a fact to be conclusively established is obscured both by the remand and the failure to reach questions of liability on common law claims that were squarely presented.
>
> ... *This Court must determine liability on the Lenharts' common law claims, and in doing so it must assess the credibility of the witnesses. Significant overlap between testimony and evidence presented in September of 2017 and evidence presented at the upcoming trial in this matter is unavoidable.* To the extent that a piece of evidence is offered solely to undermine a proposition the conclusive determination of which is inherent in the Commonwealth Court's remand, that evidence will be disallowed. All other testimony, however, will be permitted subject to any more specific objection.
>
> Of course, *if a witness testifies at the upcoming trial contrary to their testimony at the previous trial, the adverse party may impeach them. If experts base their conclusions on facts that are contrary to testimony and evidence from the first trial (or established through any other means), they may certainly be confronted with this discrepancy in an effort to highlight shortcomings in their conclusions*. The Court ultimately concludes, however, that it must give the parties significant leeway to present testimony and evidence, and will err on the side of admission. This is especially warranted when the Court is sitting as factfinder, and thus there is no danger of a jury misunderstanding just how a certain piece of evidence or testimony may be used (and may not be used) in light of the Commonwealth Court's specific directions.[76]

Thus, well in advance of the trial, this Court made clear to the parties that it would not rely on a cold record. The Court emphasized that it would need all relevant evidence to be presented in order to discharge its duty as fact-finder.[77] Under the circumstances, it was right and proper for the Court to conduct the trial as it did.

---

[76] Opinion and Order, June 14, 2022, pp. 82-83 (emphasis added).

[77] This is particularly warranted in that the previous trial occurred five years earlier *in front of a different judge*. Under no circumstance would this Court made credibility determinations based solely on a transcript of testimony from a trial that had occurred that long ago in front of a different judge when the witnesses were available to testify live and the evidence was available to be presented.

The Lenharts also assert that the Court wrongly quashed a subpoena served upon a witness[78] mid-trial. The Lenharts sought material from his file which they did not have. The Court ruled properly, as the Lenharts had ample opportunity to subpoena the materials they sought prior to trial, and they could have deposed the witness prior to trial, as well.

The Lenharts disagree vociferously with the Court's credibility determinations concerning the expert testimony presented by the parties.[79] Ultimately, however, when a trial judge sits as finder of fact, he determines the credibility of the witnesses and weighs their testimony.[80] In so doing, he "is free to believe all, part or none of the evidence presented,"[81] because he is "in the sole position to observe the demeanor of the witnesses and assess their credibility."[82] The Court viewed the testimony and evidence presented by the Lenharts and, in the end, found it wanting.

Finally, the Lenharts complain that this Court is somehow minimizing the Township's violation of law as determined by the Commonwealth Court.[83] The Court has done no such thing. The Court explicitly directed the Township to comply with the law: "To the extent that CHT has failed to comply with the Commonwealth Court's requirement that they obtain an NPDES permit under Chapter 102, and submit a written E&S plan to DEP, they shall do so forthwith."[84] The Court fails to apprehend how this is minimizing the Township's actions. The

---

[78] The witness was Daniel Miller, an engineer who had performed work for the Township in connection with the Post Road project.
[79] Post Trial Motion, Assignment of Error No. 35, pp. 44-50.
[80] *Allegheny County v. Monzo*, *supra*, 500 A.2d at 1101. *See also*, *supra*, Part IV.A.
[81] *Haan v. Wells*, *supra*, 103 A.3d at 72.
[82] *Hirsch v. EPL Technologies, Inc.*, *supra*, 910 A.2d at 88.
[83] Post Trial Motion, Assignment of Error No. 36, p. 50.
[84] Opinion and Verdict, May 10, 2023, p.31.

Township has been required to apply for permits and submit plans to the Department of Environmental Protection in connection therewith. The Department may very well order the Township to perform some or all of the mitigation work demanded by the Lenharts.[85] It is not for this Court to make a ruling that the Township must submit a permit *and then impose technical solutions that go hand in hand with the permitting process.*

V. CONCLUSION.

For the reasons explained above, the Motion for Post-Trial Relief filed by Counterclaim Plaintiffs David and Dianne Lenhart on May 22, 2023 is hereby DENIED.

IT IS SO ORDERED.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/bel

cc: Mark L. Freed, Esq. and Theresa Golding, Esq.
2005 S. Easton Road, Suite 100, Doylestown, PA 18901
Lauren M. Williams, Esq.
8 Atkinson Drive, #1746, Doylestown, PA 18901
Eric M. Brown, Esq., Brigitte M. Meyer, Esq., and Robert T. Sing, Esq.
941 Pottstown Pike, Suite 200, Chester Springs, PA 19425
Gary Weber, Esq. (Lycoming Reporter)

[85] The Court notes that DEP is in a far better position to determine which, if any, work should be done. Essentially, the Lenharts have demanded that this Court act as a regulatory agency or planning board, determining the merits of competing technical stormwater management proposals. The Court has neither the education nor the experience to perform such tasks, which are far better left to the responsible regulatory body.