IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD and ELAINE SCOTT, Plaintiffs	:	NO. 14 - 02,511
	:	CIVIL ACTION - LAW
vs.	:	
CHARLES and LOUISE FERGUSON, Defendants	:	Non-jury Trial

OPINION AND VERDICT

Before the court is Plaintiffs' claim for property damage, allegedly caused by Defendant's guinea fowl nesting in Plaintiffs' yard, as well as Defendants' counterclaim for property damage allegedly caused by water being directed by Plaintiffs onto Defendants' property. A trial was held March 3, 2017 and a site view conducted on March 6, 2017.

The parties reside next door to each other in a rural neighborhood in South Williamsport, somewhat far up the slope on which the borough is built. The land in that area runs downhill from the back of the parties' lots to the front, and to a much lesser extent, from the west to the east, that is, from Plaintiffs' lot to Defendants' lot. Plaintiffs built their home in 1996; Defendants moved to theirs in 2010.

According to Plaintiffs, soon after Defendants moved in, guinea hens owned by Defendants began coming onto Plaintiffs' property, disturbing the mulch, eating flowers, "pooping" on the fence and agitating Mr. Scott's sister by their excessive noise as they attempted to roost in the mulch under her bedroom window. Mr. Scott testified that he replaced the mulch under his sister's window with stones (which the hens did not like), replaced other mulch with more mulch and replaced certain flowers. He also testified to having purchased and used

"fowl repellant" but that it didn't work. Plaintiffs ask for $466.93 for these expenses, as well as $126.58, the costs from the magistrate's proceeding.[1]

Defendants admitted to having kept the guinea hens, but protested that they were not aware of Plaintiffs' complaints until June 2014. The hens were then eliminated by Defendants, but the last one was not killed until the day before the magistrate's hearing on August 27, 2014. Although Defendants suggested that perhaps rabbits or other birds caused the damage complained of, the evidence belied that suggestion, and established that Defendants' hens were responsible for such.

The court finds as necessarily related to the trespassing hens (1) the costs for replacing the mulch under Mr. Scott's sister's window with stones (the cost of the stones as well as the black plastic) and (2) the magistrate's fees. Mulch is replaced frequently by every homeowner and evidence that the hens disturbed it does not support an award for the cost of replacing it. As for the flowers, the evidence that flowers were purchased in April 2014 was insufficient to establish that the flowers purchased were to specifically replace flowers eaten by the hens, and in any event, the purchase in April 2014 preceded the time when the problem was made known to Defendants. As for the repellant, the court finds Plaintiffs failed to mitigate their damages as, if the product did not work, they could have returned it to Lowes for a refund. Therefore, Plaintiffs will be awarded $170.22.[2]

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[1] Plaintiffs originally filed their claim before the magistrate and a judgment in their favor was entered, from which Defendants appealed.

[2] $12.16 for the plastic (Exhibit P-4), $31.48 for stones (P-6, supplemented by testimony), and $126.58 for magistrate's fees (Exhibit P-7).

Defendants originally complained in their counter-claim that Plaintiffs installed a pipe that drains water from their property onto Defendants' property and that such water had caused damage to their driveway, necessitating repairs estimated at $3,320. Plaintiffs answered that the water actually drained into the road, and that the pipe had been installed in 1996 by the contractor when the house was built. Defendants then amended their counter-claim to acknowledge the pipe directed water to the road but contend the water then went from the road onto Defendants' property, to note that they had actually made the repairs to their driveway at the estimated cost, and to add that Plaintiffs had now disconnected the afore-mentioned pipe and have "directed their stormwater runoff directly to Defendants' yard", where it constituted a nuisance as it damages topsoil and landscaping as well as their drainfield and septic system. Defendants asked for damages of $8000 to $13,000 and an injunction which would require Plaintiffs to re-direct the water elsewhere.

Through their testimony at trial, Defendants explained that they believed the subject pipe drained into the road from the French drain around Plaintiffs' house, that originally the downspout on the side of Plaintiffs' house nearest their property had been directed into that French drain but that Plaintiffs had, since the counter-claim was originally filed, disconnected that downspout so that the water now drained into a swale running along the side of the house, and that the water now ran down that swale and then "turned left" onto their property. Defendants asserted through testimony that their side yard is extremely wet and that a cherry tree had died as a result. Defendants asked the court to require Plaintiffs to re-connect the downspout to the French drain (even though the original counter-claim complained of that very situation) or to require them to direct the water

from their roof to the other side of their house. They also explained that the repairs to their driveway had eliminated the problem of water running from the road into their driveway.[3] During the site view this "fix" – an area of raised macadam at the edge of the road – was pointed out. Defendants also showed the court how the water ran down the swale but, as it appeared there was no way the water could "turn left", they instead asserted the water ran underground from the swale and entered their yard from underneath, pointing out "holes" in the ground at the edge of the swale.

Plaintiffs denied having disconnected any downspout from the French drain. According to Plaintiffs, the downspout had *never* been directed into the French drain. In an attempt to establish that Plaintiffs were not being truthful with the court, Defendants presented testimony from a codes enforcement officer who had become involved in the dispute before suit was filed, but that testimony did not establish their contention.

In any event, the court finds it unnecessary to decide whether Plaintiffs directed the water to Defendants' yard as it cannot find that water is running from Plaintiffs' property onto Defendants' property in the first place. Therefore, Defendants are not entitled to an injunction requiring Plaintiffs to relocate their downspout.[4]

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[3] The claim for damage to the septic system was not pursued at trial.

[4] While not necessary under this order, Plaintiffs could, according to Mr. Scott, "quite easily" connect the downspout to a pipe which runs from that corner of the house to the street, thus eliminating water running down the swale. While this more likely than not will not make a difference in the degree of wetness in Defendants' side yard, the court makes the suggestion as it should serve to eliminate the Fergusons' irritation with the Scotts over the matter.

VERDICT

AND NOW, this day of March 2017, for the foregoing reasons, Judgement is hereby entered on the Plaintiffs' claim in favor of Plaintiffs and against Defendants in the amount of $170.22. Judgment on Defendants' counter-claim is entered in favor of Plaintiffs.

BY THE COURT,

Dudley N. Anderson, Judge

cc: G. Scott Gardner, Esq.
Marc S. Drier, Esq.
Gary Weber, Esq. (Lycoming Reporter)
Hon. Dudley Anderson