

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

DONNA BRANDENBURG,

Plaintiff,

v.

BYRON TOWNSHIP,

Defendant.

Case No.: 2025-20557-CK
Hon. Christina Mims

*Service of this document was made via 1st Class mail
and electronic mail to all parties as reflected on the
pleadings.*

11/26/2025 /s/ Doreen Engel

Legal Assistant, McGraw Morris PC

Donna Brandenburg
In Pro Per
6842 Byron Shores Court
Byron Center, MI 49315-8045
(616) 430-4410
Contact@donna4mi.com

Bogomir Rajsic, III (P79191)
Tracey R. DeVries (P84286)
McGRAW MORRIS P.C.
Attorneys for Defendant
44 Cesar E. Chavez Avenue, SW, Suite 200
Grand Rapids, MI 49503
(616) 288-3700/Fax (248) 502-4001
brajsic@mcgrawmorris.com
tdevries@mcgrawmorris.com

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO DISMISS
DEFENDANT'S REQUEST FOR SUMMARY DISPOSITION**

Hearing Date: December 5, 2025

Hearing Time: 9:00 a.m.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	i
I. INTRODUCTION	1
LAW AND ARGUMENT	2
II. PLAINTIFF'S "MOTION" SHOULD BE DENIED AND STRICKEN BECAUSE IT IS PROCEDURALLY IMPROPER, AS THERE IS NO BASIS TO "DISMISS" A MOTION FOR SUMMARY DISPOSITION	2
III. PLAINTIFF'S CONFLATES CLAIMS UNDER THE MICHIGAN ENVIRONMENTAL PROTECTION ACT ("MEPA") WITH CLAIMS UNDER THE WETLANDS PROTECTION ACT ("WPA") AND GREAT LAKES PRESERVATION PORTIONS OF THE MICHIGAN NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT ("NREPA"); NEITHER THE WPA OR GREAT LAKES PRESERVATION PARTS OF NREPA PROVIDE FOR A PRIVATE RIGHT OF ACTION.	3
IV. DESPITE PLAINTIFF'S ARGUMENTS TO THE CONTRARY, EVEN IF SHE HAS A PRIVATE RIGHT OF ACTION, HER CLAIMS FAIL AS A MATTER OF LAW	5
A. The Township did not Violate MCL 324.30304 because it Obtained Proper Permitting....	6
B. The Township did not Violate MCL 324.30312.....	7
C. The Township did not Violate MCL 324.32723 because the Project Received the Proper Permitting, and Plaintiff's Factual Allegations are Patently False.	7
D. Plaintiff Concedes that Any Claim for Damages on Her Negligence Claim is Barred by Governmental Immunity and, Even if She Claims Only Injunctive Relief, She has Still Failed to State a Claim for "Negligent Oversight".....	8
CONCLUSION AND REQUEST FOR RELIEF.....	9

TABLE OF AUTHORITIES

Cases

<i>Case v Consumers Power Co</i> , 463 Mich 1; 615 NW2d 17 (2000).....	9
<i>Doe v Henry Ford Health Sys</i> , 308 Mich App 592; 865 NW2d 915 (2014)	9
<i>Forster v Delton Sch Dist</i> , 176 Mich App 582; 440 NW2d 421 (1989).....	5
<i>Stegall v Resource Tech Corp</i> , 514 Mich 327; 22 NW3d 410 (2024).....	5
<i>Sunrise Resort Assn Inc v Cheboygan Cnty Rd Commn</i> , 511 Mich 325; 999 NW2d 423 (2023) ..	9

Statutes

MCL 324.1701	4
MCL 324.1701(1)	4, 5
MCL 324.30304.....	1, 5,6, 7
MCL 324.30312.....	5, 6, 7
MCL 324.30316.....	1, 2, 3
MCL 324.30316(1).....	4
MCL 324.32723	6, 7, 8
MCL 327.32713.....	4
MCL 327.32713(1).....	4

Rules

MCR 2.116(B)	1, 2, 3
MCR 2.116(C)(7).....	2
MCR 2.116(C)(8).....	2
MCR 2.116(C)(9).....	3

I. INTRODUCTION

Plaintiff, Donna Brandenburg, files a motion to “dismiss” Defendant Byron Township’s (the “Township”) motion for summary disposition. Plaintiff’s motion is plainly improper under the Michigan Court Rules. A motion for summary disposition disposes of claims and/or defenses under MCR 2.116(B). Plaintiff’s motion does not seek summary disposition of a claim or defense. For this reason alone, the motion should be denied and stricken.

As previously discussed in the Township’s underlying motion, this case relates to a multi-year sewer extension project (the “Project”) located in the Township whereby dewatering was necessary to complete the construction. Plaintiff filed a Complaint for Emergency Injunctive Relief pursuant to MCL 324.30316 wherein she has asserted four legal theories. The Court previously denied Plaintiff’s request for a Temporary Restraining Order and, impliedly, Plaintiff’s Motion for Preliminary Injunction. In addition to seeking injunctive relief, Plaintiff’s Complaint asserts four causes of action against the Township. Plaintiff’s Count I alleges a violation of MCL 324.30304 (unauthorized wetland draining). Plaintiff’s Count II alleges failure to comply with wetland mitigation requirements. Plaintiff’s Count III alleges a violation of large quantity water withdrawal regulations and Count IV alleges negligence in oversight of authorized activities. None of Plaintiff’s pleaded causes of action are legally viable. As a result of the plain deficiencies in the Complaint, the Township filed its own motion for summary disposition of Plaintiff’s Complaint.

Even if the Court were to consider the merits of Plaintiff’s motion to dismiss a motion, it should be denied and the Township’s motion for summary disposition should be granted.

First, Plaintiff cannot file a private right of action. Under the relevant portions of the Wetlands Protection Act, Plaintiff lacks any sort of authority, capacity, or standing to pursue this matter. As Plaintiff lacks legal capacity, she also lacks the ability to seek emergency injunctive

relief. MCL 324.30316 of the WPA provides that the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) and the Michigan Attorney General have exclusive authority to enforce this provision of the WPA. Plaintiff’s attempt to fit her claims under the Michigan Environmental Protection Act are plainly improper because she has not pled a claim under MEPA.

However, even if Plaintiff did have a private right of action, she is not entitled to relief because her claims still fail as a matter of law. The Township complied with all statutory requirements, obtained permits, and is complying with those permits. Finally, Plaintiff’s negligence claim is without merit because, as Plaintiff concedes, the Township is immune under Michigan’s Governmental Tort Liability Act. To avoid the application of the GTLA, Plaintiff claims she only seeks injunctive relief for her “negligence” claim, but she fails to state a negligence claim by waiving any damages – an element of a *prima facie* claim of negligence.

Consequently, Plaintiff’s motion should be denied and stricken and, instead, the Court should grant summary disposition to the Township pursuant to MCR 2.116(C)(7) and/or (8). The Township respectfully requests that Plaintiff’s claims be dismissed with prejudice.

LAW AND ARGUMENT

II. PLAINTIFF’S “MOTION” SHOULD BE DENIED AND STRICKEN BECAUSE IT IS PROCEDURALLY IMPROPER, AS THERE IS NO BASIS TO “DISMISS” A MOTION FOR SUMMARY DISPOSITION.

Plaintiff’s motion to “dismiss” the Township’s motion for summary disposition is procedurally improper. A dispositive motion is designed to resolve claims and/or defenses. It is not a vehicle to dismiss another party’s own motion. MCR 2.116(B) permits a party to move for dismissal or judgment on “all or part of a claim” or for a party “against whom a defense is asserted” to “move under this rule for summary disposition of the defense.” Plaintiff has not moved this Court to enter summary disposition on any of the Township’s defenses to Plaintiff’s claim. Rather,

Plaintiff requests that the Court “enter an order granting Plaintiff’s motion to dismiss Defendant’s Motion for Summary Disposition.”

In her brief, Plaintiff confusingly asserts that “‘Liar liar, pants on fire’ is not a proper legal defense, and thus dismissal of Defense’s groundless motion is appropriate under MCR 2.116(C)(9).” Unsurprisingly, the Township did not assert a defense in its answer and affirmative defenses of “liar liar, pants on fire”. Plaintiff does not seek summary disposition of any of the Township’s defenses under MCR 2.116(C)(9). She seeks to dismiss a motion. The Township’s underlying motion for summary disposition is neither a claim nor a defense under MCR 2.116(B).

Plaintiff’s motion is procedurally improper and should be denied and stricken from the record.

III. PLAINTIFF’S CONFLATES CLAIMS UNDER THE MICHIGAN ENVIRONMENTAL PROTECTION ACT (“MEPA”) WITH CLAIMS UNDER THE WETLANDS PROTECTION ACT (“WPA”) AND GREAT LAKES PRESERVATION PORTIONS OF THE MICHIGAN NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (“NREPA”); NEITHER THE WPA NOR THE GREAT LAKES PRESERVATION PARTS OF NREPA PROVIDE FOR A PRIVATE RIGHT OF ACTION.

In her motion, Plaintiff attempts for the first time to assert a new claim under MEPA. This is a new theory; Plaintiff’s claims in her Complaint include: (1) Count I – alleged violation of MCL 324.30304 (unauthorized wetland draining); (2) Count II – alleged violation of MCL 324.30312 (wetland mitigation plans); and (3) Count III – alleged violation of MCL 324.32723 (permitting for groundwater withdrawal). None of these claims are under MEPA. Plaintiff’s argument is a thinly veiled attempt to avoid summary disposition of her claims by trying to pivot to MEPA instead of the WPA and Great Lakes Preservation portions of NREPA.

Counts I and II of Plaintiff’s Complaint are based on the WPA or Part 303 of NREPA, which contains its enforcement provision at MCL 324.30316. As addressed at length in the

Township's brief in support of its motion for summary disposition, MCL 324.30316(1) states, in relevant part:

The attorney general may commence a civil action for appropriate relief, including injunctive relief **upon request of the department** under section 30315(1). An action under this subsection may be brought in the circuit court for the county of Ingham or for a county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance with this part. In addition to any other relief granted under this section, the court may impose a civil fine of not more than \$10,000.00 per day of violation. A person who violates an order of the court is subject to a civil fine not to exceed \$10,000.00 for each day of violation.

The WPA, Part 303 of NREPA, does not create a private right of action. It vests exclusive enforcement in the Attorney General's office.

Similarly, Count III of Plaintiff's Complaint is pled under MCL 324.30316, Part 327 of NREPA. Part 327 of NREPA, at MCL 327.32713(1), vests enforcement with the Attorney General's office, and does not provide for a private right of action:

The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a rule promulgated under this part, including falsifying a record submitted under this part. An action under this section shall be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. [emphasis added].

As with Counts I and II under Part 303 of NREPA, Plaintiff's claim under Part 327 of NREPA does not provide for a private cause of action.

To avoid this reality, Plaintiff tries to pivot her claim to the MEPA – Part 17 of NREPA – which is an entirely different statutory scheme. None of Plaintiff's claims pled in her Complaint fall under MCL 324.1701, *et seq.* Plaintiff's reasoning for attempting this pivot is transparent: Part 17 of NREPA or MEPA permits actions for declaratory and/or injunctive relief to be brought by an individual. MCL 324.1701(1) provides:

The **attorney general or any person** may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction. [emphasis added].

On its face, MEPA – Part 17 of NREPA – permits an individual to maintain a private right of action for declaratory or equitable relief. But Plaintiff has not asserted a claim under MEPA. Moreover, contrary to Plaintiff’s argument, the fact that MEPA, at MCL 324.1701(1), permits a private right of action, in addition to vesting enforcement in the Attorney General’s office, further supports the Township’s position that Counts I, II, and III – asserted under Parts 303 and 327 of NREPA – do not provide a private right of action. *See Stegall v Resource Tech Corp*, 514 Mich 327, 343; 22 NW3d 410 (2024); *Forster v Delton Sch Dist*, 176 Mich App 582, 584-585; 440 NW2d 421 (1989). The Legislature opted to *not* permit a private right of action under Parts 303 and 327 of NREPA, instead vesting enforcement in the Attorney General’s office alone.

Plaintiff does not have a private right of action under either Part 303 or 327 of NREPA and her attempt to pivot to MEPA – Part 17 of NREPA – without pleading such a claim in her Complaint.

Plaintiff’s motion should be denied, and the Court should enter summary disposition on Counts I, II, and III of Plaintiff’s Complaint in favor of the Township because Plaintiff does not have a private right of action under Parts 303 or 327 of NREPA.

IV. DESPITE PLAINTIFF’S ARGUMENTS TO THE CONTRARY, EVEN IF SHE HAS A PRIVATE RIGHT OF ACTION, HER CLAIMS FAIL AS A MATTER OF LAW.

Even if Parts 303 or 327 of NREPA did create a private right of action, Plaintiff’s claims I, II, and III fail as a matter of law. The Township did not violate MCL 324.30304 because it obtained proper permitting. The Township did not violate MCL 324.30312 by failing to have a

wetland mitigation plan because MCL 324.30312 does not discuss or require mitigation plans, nor does the WPA require the Township to obtain a mitigation plan. The Township did not violate MCL 324.32723 because the Project received the proper permitting from EGLE which set the groundwater removal parameters for the Project.

The Township will not recite its arguments from its Brief in Support of Motion for Summary Disposition in its entirety here in the interest of judicial economy. The Township incorporates by reference its arguments from its Brief in Support of Motion for Summary Disposition. However, the Township will re-address certain issues below to respond to Plaintiff's motion.

A. The Township did not Violate MCL 324.30304 because it Obtained Proper Permitting.

MCL 324.30304 prohibits removing soil from a wetland, operating in a wetland, and draining surface water from a wetland without a permit from EGLE. MCL 324.30304 provides:

Except as otherwise provided in this part or by a permit issued by the department under this part and pursuant to part 13, a person shall not do any of the following:

- (a) Deposit or permit the placing of fill material in a wetland.
- (b) Dredge, remove, or permit the removal of soil or minerals from a wetland.
- (c) Construct, operate, or maintain any use or development in a wetland.
- (d) Drain surface water from a wetland.

It is undisputed that the Township applied for Part 303 permitting (as acknowledged by Plaintiff in paragraph 20 of her Complaint) and obtained said permits. (*See* Exhibit 3 to the Township's Brief in Support of Motion for Summary Disposition, WPA-related Permits; Exhibit 1 to the Township's Brief in Support of Motion for Summary Disposition, ¶ 25). In other words, the Township completely complied with the requirements of Part 303 and Plaintiff's claim has no merit.

Plaintiff's only argument regarding this claim is that the Township was issued a citation by the Kent County Road Commission regarding soil erosion and sedimentation. However, this does not demonstrate some alleged violation of Part 303 of NREPA, nor is it even remotely relevant to the allegations in Plaintiff's Complaint. Count I of Plaintiff's Complaint asserts the Township violated MCL 324.30304 by allegedly improperly draining surface and groundwater. Whether or not the Township received a citation regarding soil erosion and/or sedimentation does not affect this cause of action in any way. Finally, Plaintiff engaged in no attempt to argue this point, simply providing a single sentence "argument" in support of this claim.

The Township did not violate MCL 324.30304 and is entitled to summary disposition.

B. The Township did not Violate MCL 324.30312.

Plaintiff alleges that the Township violated MCL 324.30312 by failing to have a wetland mitigation plan. MCL 324.30312 does not discuss or require mitigation plans. Regardless, the WPA does not require the Township to obtain a mitigation plan in this instance. This is because the impact on the wetland areas is temporary, and the impacted areas will be restored once construction of the sewer is complete. *Id.* at, ¶ 28.

Plaintiff's motion does not dispute that MCL 324.30312 does not discuss or require mitigation plans or that the WPA does not require the Township to obtain a mitigation plan in this instance. She claims that "mitigation measures required by the permit were not followed", but there is not requirement for a mitigation plan under MCL 324.30312. Her argument is devoid of any merit, and the Township should be entitled to summary disposition of her claim under MCL 324.30312.

C. The Township did not Violate MCL 324.32723 because the Project Received the Proper Permitting, and Plaintiff's Factual Allegations are Patently False.

MCL 324.32723 requires a person to obtain a permit in certain instances where a project proposal would involve the withdrawal of either 2,000,000 or 1,000,000 gallons of water per day, depending on the purpose of the project. Plaintiff accuses the Township of not having a permit. (See Compl. ¶ 27). This, however, is untrue. The Township's Part 327 Approval from EGLE is Exhibit 5 Township's Brief in Support of Motion for Summary Disposition. The Township obtained this approval in February of 2025. The Approval sets the parameters for the removal of groundwater on the Project. It also states that the withdrawal is not likely to cause an adverse resource impact. Further, Plaintiff's claims that the Township is withdrawing more than 24 million gallons per day are wholly unsupported by evidence, including the exhibits attached to her Complaint. As explained above, Plaintiff fails to describe the basis of her numbers. At all relevant times, the Township and its agents have complied with all applicable approvals. (See Exhibit 1, ¶¶ 23, 26, and 36).

Plaintiff's motion now concedes that the Township does have a permit but baldly claims – without any support – the Township is in violation of the permit. The Township is not, as discussed in its principal brief, but that is beside the point: Plaintiff's claim in her Complaint is that the Township does not have a permit to withdraw groundwater. (See Compl., ¶27). Her concession that the Township has a permit is fatal to this claim.

The Township is entitled to summary disposition on Plaintiff's claim under MCL 324.32723.

D. Plaintiff Concedes that Any Claim for Damages on Her Negligence Claim is Barred by Governmental Immunity and, Even if She Claims Only Injunctive Relief, She has Still Failed to State a Claim for “Negligent Oversight”.

In Plaintiff's motion she concedes that the Michigan Governmental Tort Liability Act immunizes governmental entities from tort damages. Plaintiff claims, nevertheless, that her

negligence claim can survive because she seeks only equitable or injunctive relief. This admission is fatal to Plaintiff's "negligence" claim. In an ordinary negligence case, a plaintiff must establish: "(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Not only has Plaintiff failed to plead damages in her Complaint (see Compl. ¶¶29-32), but she now concedes that she does not seek damages at all. To state a claim for negligence, Plaintiff is required to plead damages. *See Doe v Henry Ford Health Sys*, 308 Mich App 592, 602; 865 NW2d 915 (2014). Moreover, Plaintiff has failed to allege that any claimed breach of a duty to "monitor" caused any damages.

Ultimately, Plaintiff's attempt at dancing around government immunity is fatal to her "negligence" claim. Plaintiff cannot allege any damages because, if she did, the GTLA would bar her claim. However, if she attempts to avoid the GTLA by omitting any damages and seeking only injunctive relief, she fails to state a claim for negligence. *See Sunrise Resort Assn Inc v Cheboygan Cnty Rd Commn*, 511 Mich 325, 343; 999 NW2d 423 (2023) (rejecting the plaintiff's claim for injunctive relief as the only remedy in a trespass-nuisance claim when injunctive relief is tied to a claim that could not otherwise be maintained under the GTLA).

Plaintiff's negligence claim fails as a matter of law and should be dismissed.

CONCLUSION AND REQUEST FOR RELIEF

Plaintiff's Complaint fails to state a cause of action, and Defendant, Byron Township, respectfully requests that this Court deny Plaintiff's improper Motion to Dismiss Defendant's Motion for Summary Disposition and, instead, grant summary disposition in Defendant's favor and dismiss Plaintiff's Complaint with prejudice.

McGRAW MORRIS, P.C.
Attorney for Defendant Byron Township

Dated: November 26, 2025

BY: /s/ *Bogomir Rajsic, III*
Bogomir Rajsic, III (P79191)
Tracey R. Devries (P84286)
44 Cesar E. Chavez Avenue SW, Ste 200
Grand Rapids, MI 49503
(616) 288-3703
brajsic@mcgrawmorris.com
tdevries@mcgrawmorris.com