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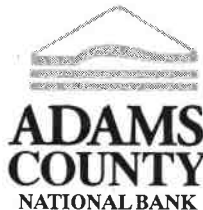
IN THIS ISSUE

NOBLE VS. SMITH

and

IN RE: SPAHR, ADMINISTRATRIX VS. THE TAX CLAIM
BUREAU OF ADAMS COUNTY

Adams County National Bank's commitment to its communities is more than a fleeting promise. It is a tradition founded upon our more than 130 years of service to the individuals, businesses and organizations in these communities.



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-724 issued out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of January, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land SITUATE, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 186 in Section J., Charnita Development, bounded and described as follows:

BEGINNING at a point in the cul desac of Crossland Trail; thence in said cul desac and by Lot No. 185, South 82 degrees 2 minutes 20 seconds East, 196.44 feet to land now or formerly of Columbia Gas Co.; thence by said lands, South 66 degrees 15 minutes East, 5.6 feet to land now or formerly of George F. Herring; thence by said lands, South 23 degrees 45 minutes West, 135 feet to lands now or formerly of George C. Steinberger; thence by said lands, North 66 degrees 15 minutes West, 75 feet to a point; thence continuing by said lands South 23 degrees 45 minutes West, 85.51 feet to Lot No. 202; thence by said lot, North 87 degrees 23 minutes 40 seconds West, 131.11 feet to Lot No. 187; thence by said lot, North 3 degrees 11 minutes 40 seconds West, 200 feet to a point in the center of said Crossland Trail; thence in said Crossland Trail, South 87 degrees 23 minutes 40 seconds East, 100 feet to the place of beginning.

TOGETHER with a right of way and easement over the private roads indicated on said lot plan recorded in Adams County Plat Book No. 1 at page 24, for means of ingress, egress and regress.

BEING 3 Crossland Trail, Fairfield, PA 17320

TAX PARCEL No. 2-21

TITLE to said premises is vested in Gordon M. Sachs and Lisa H. Sachs, husband and wife, by Deed from Douglas S. Penvose and Karen M. Penvose, husband and wife, dated 9/27/90 and recorded 9/27/90 in Deed Book 568, Page 255.

SEIZED and taken into execution as the property of **Gordon M. Sachs and Lisa H. Sachs** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
November 13, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 10, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/29, 12/6 & 13

NOTICE

NOTICE IS HEREBY GIVEN that, on October 1, 1996, the Petition for Change of Name of Cody Allen Parrish was filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change the name of CODY ALLEN PARRISH to CODY ALLEN SHOE-MAKER.

The Court has fixed December 23, 1996, at 9:00 a.m., in Courtroom Number 1 as the date and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

Alison H. Peterson, Esq.
Peterson & Peterson
Attorneys for Petitioner
515 Carlisle Street
Hanover, PA 17331
(717) 632-7171

11/22, 29 & 12/6

NOBLE VS. SMITH

1. In an Ejectment Action, Plaintiffs have the burden of establishing their right to immediate exclusive possession and can recover only on the strength of their own title, not on the weakness of Defendants' title.

2. In an Ejectment Action, Plaintiffs are required to establish the boundaries of the disputed parcel, of which they are out of possession, by a preponderance of the evidence.

3. All things being equal, in determining boundaries Courts resort first to natural objects or landmarks, next to artificial monuments, then to adjacent boundaries and lastly to courses and distances.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-815, DOUGLAS A. NOBLE AND CAROL A. NOBLE VS. JANET E. SMITH AND ROSE MARIE SMITH.

John J. Mooney, III, Esq., for Plaintiffs

Henry O. Heiser, Esq., for Defendants

ORDER PURSUANT TO PA.R.C.P. 1058 AND 1038

Spicer, P.J., April 2, 1996.

This order is entered after a bench trial December 14, 1995, and subsequent conference with counsel.

FACTS

On March 29, 1957, Peter F. Smith, a single man residing in McSherrystown, conveyed what was described as 137.33 acres of land in Reading Township to George Henry Myers and Marguerite Sarah Myers. The description for the conveyance was taken from a draft, or plot, prepared by J.R. Fleming, R.E. (second Fleming) This plot, introduced into evidence as Plaintiffs' Exhibit 5, noted, "This is not a survey. Plotted from deeds, drafts and some actual measurements."

The conveyance was described as a part of the "Jacobs Farm." The grantor retained some 12.08 acres of that farm, which he later conveyed, on December 5, 1960, to Joseph F. Smith.

The earlier deed became part of the chain of title under which plaintiffs' claim, and the later, Joseph F. Smith, deed is part of defendants' chain.

Several plots are available and were produced at trial. However, a plot apparently prepared May 21, 1956, by J.R. Fleming, R.E., (first Fleming) was not available.

There are problems with the second Fleming draft. It does not close. Following some of the calls would result in land crossing the Conewago Creek and it is obvious that all disputed land is to the northeast of that stream. Although it might appear that the distance in a call, which

borders the creek and will be referred to as the creek call, is the source of the problem, witnesses said that more is involved. However, considering the issue in this case, the distance of that call, North 29 degrees 30 minutes West, 47.6 perch, lies at the heart of the problem.

Monuments referred to in the second Fleming draft included a bridge, the creek, pipes, roadway and a driveway. Those referred to in the Joseph F. Smith deed include all but the bridge. Witnesses testified that the bridge presently in existence was constructed at the site of the bridge apparently referred to by Mr. Fleming.

Both the Myers and Joseph F. Smith deed described a corridor from the twelve acre tract to a public road. That driveway was located on the ground and its position ascertained.

According to plaintiffs' surveyors, plaintiffs own the area in dispute. Defendants' surveyors posit the contrary.

The difference in results obtained by those professionals can be explained by their different starting places. Mr. Wildasin began at a bridge and, assuming that the creek call correctly described the distance, plotted to a point to the northwest of a corner established by Mr. Redding. The latter surveyor, on the other hand, began where the driveway entered a public road and worked southward. The Wildasin point of origin is the southeast corner of the second Fleming draft, whereas Mr. Redding's focus was to the northeast. Mr. Redding found most of the pins referred to in the draft. Mr. Wildasin did not.

CONCLUSIONS OF LAW

1. Plaintiffs have not established title to the disputed tract, which is superior to that of defendants.
2. From evidence, defendants' title is superior to that of plaintiffs.
3. Plaintiffs are not entitled to ejectment.

DISCUSSION

Principles controlling this case have been explained in *Doman v. Brogan*, 405 Pa.Super. 254, 592 A.2d 104 (1991).

With respect to plaintiffs' burden, they must establish a right to immediate exclusive possession. Recovery can be had only on the strength of their own title, not on the weakness of defendants' title. They are required to establish the boundaries of the disputed parcel, of which they are out of possession, by a preponderance of the evidence.

All things being equal, courts resort first to natural objects or landmarks, next to artificial monuments, then to adjacent boundaries and lastly to courses and distances. It is generally believed that erroneous descriptions are more probably found in calls for measure-

ments and distances, than in calls for fixed landmarks, either natural or artificial.

Defendants, in our opinion, presented much the stronger case. The driveway's location was established and pins were located. Merely following a call from the bridge for the distance described in the Fleming draft would result in moving the driveway to the northwest of its established position. In this dispute, we find that the monuments discovered by defendants' surveyors prevail and, accordingly, dismiss the ejectment action.

ORDER

AND NOW, this 2nd day of April, 1996, plaintiffs' action in ejectment is dismissed.

IN RE: SPAHR, ADMINISTRATRIX VS. THE TAX CLAIM BUREAU OF ADAMS COUNTY

1. The notice provisions of the Real Estate Tax Sale Law must be strictly construed and if any of the notice requirements have not been fulfilled the sale is not valid.

2. The burden is placed on the Tax Claim Bureau to prove that it has complied with the notice requirements of the Real Estate Tax Sale Law and if it has then a tax sale will not be invalidated just because the owner has not actually received the notice.

3. Tax sales are not authorized for the purpose of punishing persons who for reasons of oversight or error fail to pay their taxes, nor for the purpose of stripping the taxpayer of his property, but rather the purpose is to insure the collection of taxes.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-23, IN RE: CANDY J. SPAHR, ADMINISTRATRIX AND ALBERTA M. GEBHART FOR THE ESTATE OF ROBERT J. MARTIN VS. THE TAX CLAIM BUREAU OF ADAMS COUNTY.

Gary E. Hartman, Esq., for Plaintiff

David K. James, III, Esq., for Defendant

ORDER OF COURT

Kuhn, J., June 14, 1996.

AND NOW, this 14th day of June, 1996, in consideration of the Petition To Set Aside Tax Upset Sale filed January 16, 1996, the Court enters the following:

FINDINGS OF FACT

1. Petitioner, Candy J. Spahr, hereinafter "Spahr," is the Administratrix of the Estate of Robert J. Martin, hereinafter "Martin."

2. Spahr is a daughter of Martin.

3. Martin was the titled owner of real estate located in Mt. Pleasant Township, Adams County, Pennsylvania, known as Tax Map J-11, Parcel 64.

4. On or about June 3, 1994, the Adams County Tax Claim Bureau, hereinafter "the Bureau," sent a notice of return of claim by certified mail to Robert and Charlotte L. Martin at 90 Brickcrafters Road, New Oxford, Pennsylvania for unpaid real estate taxes for the year 1993 in the amount of \$363.27.

5. Said notice contained a "warning" that the property could be sold if the taxes were not paid by July 1, 1995.

6. The certified mail notice was returned by the postal authorities as "unclaimed."

7. An unsworn affidavit in the record alleges that Curtis Fissel posted the notice of return of claim on the property on August 13, 1994.

8. Martin died on May 4, 1995.

9. Spahr was appointed Administratrix of Martin's estate of June 9, 1995.

10. On or about June 16, 1995, the Bureau sent a notice of return of claim by certified mail to Robert and Charlotte L. Martin at the aforementioned address for unpaid real estate taxes for the year 1994 in the amount of \$306.29.

11. Said notice contained a "warning" that the property could be sold if the taxes were not paid by July 1, 1996.

12. Spahr signed for the certified notice on June 30, 1995.

13. Spahr failed to contact any taxing agency regarding Martin's death or her status as Administratrix of the estate.

14. Spahr never arranged with postal authorities to have Martin's mail forwarded to her.

15. On or about July 7, 1995, the Bureau sent a Notice of Public Sale to Martin advising that the real estate would be sold at public sale on September 15, 1995, but it was returned to the Bureau by postal authorities with the notation "deceased."

16. An unsworn affidavit in the record alleges that Curtis Fissel posted the Notice of Public Sale on the property on August 10, 1995.

17. On or about August 17, 1995, a copy of the notice of public sale was sent by ordinary mail to "The Estate of Robert Martin, 90 Brickcrafters Rd, New Oxford, PA 17350" but was returned by postal authorities with the notation "deceased."

18. The subject real estate was sold at tax sale on September 15, 1995.

19. During Spahr's visits to the real estate between August 10–September 15, 1995, she failed to observe the posted tax sale notice.

20. On September 22, 1995, the Bureau sent a Notice of Property Sold by certified mail to Martin at the aforementioned address but it also was returned by postal authorities with the notation "deceased."

21. The Bureau never checked the Adams County Register of Wills Office after having notices returned with the notation "deceased" to see if an estate had been opened for Martin.

22. The Bureau did send notices to the local tax collector, tax assessor, and voter registration to obtain a valid address for Martin.

23. Spahr claims to have not known of the tax sale until contacted by the purchaser on January 3, 1996.

24. On January 16, 1996, Spahr filed the Petition To Set Aside Tax Sale.

25. Petitioner, Alberta M. Gebhart, hereinafter "Gebhart," is one of Martin's daughters.

26. Gebhart claims that the trailer on the subject real estate has been titled in the name of her husband, Kenneth J. Gebhart, since 1984.

27. Gebhart provided no proof to establish her husband's ownership of the trailer.

28. Neither the Bureau nor the Tax Assessment Office has any record of Mr. Gebhart's ownership of the trailer.

29. Neither Gebhart nor her husband have ever paid taxes on the trailer.

CONCLUSIONS OF LAW

1. This Court has jurisdiction.
2. The Bureau failed to use reasonable efforts to notify the taxpayer of the pending tax sale.
3. The upset tax sale held September 15, 1995, regarding real estate formerly owned by Robert J. Martin, now deceased, and identified as Tax Map J-11 Parcel 64 is declared invalid.

DISCUSSION

The preliminary issue before the Court is whether Petitioner has proceeded properly. The upset sale occurred on September 15, 1995. The Real Estate Tax Sale Law, hereinafter "the Law," provides at 72 P.S. §5860.607(b) and (c) that anyone objecting to an upset sale must do so within 30 days after the court has made a confirmation nisi of the consolidated return of sale. The Bureau argues that Petitioner should have filed a petition seeking leave to file nunc pro tunc. Having first

raised this issue after hearing held on May 20, 1996, we conclude that Bureau has waived this issue. Furthermore, evidence has not been presented to this court that the Bureau filed a consolidated return of sale, therefore, for our immediate purposes we must assume that the 30 day period to file exceptions has not commenced.

The primary issue of concern is whether the Bureau gave proper notice of the upset sale of the subject real estate. The Law clearly provides in 72 P.S. §5860.602 for three types of notice to be given before a property can be exposed to an upset sale—publication, posting and personal service. These notice provisions must be strictly construed and if any of the notice requirements have not been fulfilled the sale is not valid. The burden is placed upon the Bureau to prove that it has complied with the notice requirements. *Krumbine v. Lebanon County Tax Claim Bureau*, 153 Pa. Comlth. Ct. 457, 460, 621 A.2d 1139, 1140 (1993), *aff'd*. 663 A.2d 158 (1995). If the Bureau has complied with all the notice requirements a tax sale will not be invalidated just because the owner has not actually received the notice. *Matter of Tax Sales By the Tax Claim Bureau of Dauphin County*, ___ Pa. Comlth. Ct. ___, ___, 651 A.2d 1157, 1160 (1994), *Alloc. den.* 664 A.2d 978 (1995). For the reasons set forth below we conclude that the Bureau has failed to meet this burden.

For purposes of this disposition we focus on the Bureau's attempt to obtain personal service upon the taxpayer. Section 5860.602(e)(1) requires the Bureau to notify each owner by certified mail, restricted delivery, return receipt requested at least 30 days before the upset sale. An "owner" is basically defined as the owner of record. Section 5860.102. Here the Bureau attempted to satisfy this requirement by sending the Notice of Public Sale on July 7, 1995. That notice, however, was returned clearly noting that Martin was deceased.

At that point the Bureau was required to exercise reasonable efforts to ensure better notification. Section 5860.607a provides, in part,

(a) When any notification of a pending tax sale...is required to be mailed to any owner...and such mailed notification is either returned without the required receipted personal signature of the addressee or under circumstances raising a significant doubt as to the actual receipt of such notification...before the tax sale can be conducted or confirmed, the bureau must exercise reasonable efforts to discover the whereabouts of such person...and notify him. The bureau's efforts shall include, but not

necessarily be restricted to, a search of current telephone directories for the county and of the docket and indices of the county tax assessment offices, recorder of deeds office and prothonotary's office...

It has been said that the Bureau need not make extraordinary efforts to secure the whereabouts of the owner but it must do more than the very minimum required by Section 5860.607a. In *re Tax Claim Bureau of Beaver County*, 143 Pa. Comlth. Ct. 659, 665-6, 600 A.2d 650, 654 (1991). Some courts have described the efforts required as equivalent to ordinary business practices. *Krumbine, supra.*, 153 Pa. Comlth. Ct. at 460, 621 A.2d at 1140. Of course, Martin could not respond to any notification at that point, however, the Bureau personnel were well aware that a deceased taxpayer may have an estate as evidenced by its attempt on August 17, 1995, to send notice of the sale to the "Estate of Robert Martin."

The Court finds the Bureau's efforts to be sorely lacking after July 7, 1995. The Bureau admitted searching the Recorder of Deeds Office for address information. In Adams County the Register of Wills is also the Recorder of Deeds and estate records are maintained in the same office as deed records. Had the Bureau only searched the estate records it would have learned that letters of administration had been given to Spahr, who was the same person who signed for the certified mailed notice of return of claim sent June 16, 1995. Such an inquiry, under the circumstances of this case, is the minimum effort expected to qualify as a reasonable effort on the part of the Bureau.

There is, of course, authority which recognizes that if a taxpayer has actual notice the formal requirements of Section 58602 need not be satisfied. *Casady v. Clearfield Tax Claim Bureau*, 156 Pa. Comlth. Ct. 317, 627 A.2d 257 (1993). Here, Spahr received the notice of return of claim sent the Bureau on June 16, 1995, and did absolutely nothing to inquire about her father's tax status. Her fiduciary responsibilities to the estate required more diligence than was displayed here. Nevertheless, her lack of effort will not excuse the Bureau's failure to satisfy the statutory notice provisions in partial recognition of the fact that the notice received by Spahr warned of a tax sale if taxes were not paid by July 1, 1996. Perhaps Spahr was given reason to believe that urgency was not required.

The Court feels compelled to consistently mention in tax sale cases that tax sales are not authorized for the purpose of punishing persons who for reasons of oversight or error fail to pay their taxes, nor for the

purpose of stripping the taxpayer of his property, but rather the purpose is to insure the collection of taxes. *Tracy v. County of Chester*, 502 Pa. 288, 296, 489 A.2d 1334, 1339 (1985). This purpose can be achieved by granting the relief requested.

Because of this disposition the Court need not address the claim raised by Gebhart. We must assume Martin's ownership of the trailer and because he did not receive proper notice the sale of the trailer is likewise invalidated.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 14th day of June, 1996, the upset tax sale held on September 15, 1995, regarding real estate formerly owned by Robert J. Martin, now deceased, and identified as Tax Map J-11 Parcel 64 is declared invalid.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF EVELYN T. HESS
a/k/a EVELYN SNEERINGER HESS,
DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executors: William J. Hess, Jr., 4832 Cedar Branch Court, Glen Allen, VA 23060; Joseph Edwin Hess, 724 North Second St., 2nd Floor Apt., Allentown, PA 18102
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VERNA C. LIVINSON
a/k/a VERNA C. REYNOLDS, DEC'D
Late of Oxford Township, Adams County, Pennsylvania

Executor: Samuel Stoner, 540 Germany Road, East Berlin, PA 17316
Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

ESTATE OF HAROLD ECKARD MYERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executors: Ellajean M. Key, 1632 Old Taneytown Road, Westminster, MD 21158; Harold E. Myers, Jr., 2104 Hyden Court, Fallston, MD 21047
Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF CHARLES J. CARBAUGH,
DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executrix: Rose M. Topper, 290 Hanover Street, New Oxford, PA 17350
Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF LEO J. FUNK, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executor: Adams County National Bank, Trust Office, Lincoln Square, Gettysburg, PA 17325
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EVA S. SHEARER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Executor: Adams County National Bank, P. O. Box 4566, Gettysburg, PA 17325
Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ANNA M. TIPTON, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Executor: Charles F. Tipton, 78 Lake View Drive, Gettysburg, PA 17325
Attorney: Richard E. Thrasher, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF JOHN MARSHALL TRENT,
DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania
Administratrix: Sandra E. McCleaf, 2215 Biglerville Road, Lot 47, Gettysburg, PA 17325
Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF BYRON WRIGHT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
Executor: Adams County National Bank, P. O. Box 4566, Gettysburg, PA 17325
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF HAZEL S. YOUNG, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
Executor: Clarence M. Swinn, Jr., 29 East Lincoln Ave., Gettysburg, PA 17325
Attorney: Richard E. Thrasher, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF SARAH E. CAREY, DEC'D

Late of 1111 Chambersburg Road, Gettysburg, Pennsylvania 17325
Administratrixes: Wanda Carey, 1111 Chambersburg Road, Gettysburg, PA 17325; Marcy Kidd, 1141 Nissley Road, Lancaster, PA 17601
Attorney: Tracy M. Sheffer, Esq., P. O. Box 215, 20 West Main Street, Fairfield, PA 17320

ESTATE OF CRAIG ALLEN DYARMAN,
DEC'D

Late of Hamilton Township, Adams County, Pennsylvania
Executor: Chad J. Dyarman
Attorney: Samuel A. Gates, Gates & Mooney, 250 York Street, Hanover, PA 17331

ESTATE OF NAOMI E. FRYMYER,
DEC'D

Late of Union Township, Adams County, Pennsylvania
Co-Executrices: Susan A. Frymyer Smith, 382 Wilson Avenue, Hanover, PA 17331; Darlene L. Hawbaker, 861 Littlestown Road, Littlestown, PA 17340
Attorney: Timothy J. Shultis, Esquire, Miller & Shultis, 118 Carlisle Street, Suite 110, Hanover, PA 17331

ESTATE OF ADELE M. KEECH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executor: Farmers Bank, a Division of Dauphin Deposit Bank and Trust Company of Hanover, 13 Baltimore Street, Hanover, PA 17331
Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF CECIL VAN DOREN,
DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania
Executrix: Doris C. Van Doren, 5475 Wingborne Court, Columbia, MD 21045
Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

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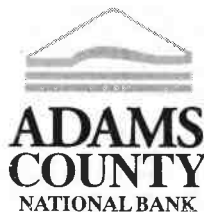
IN THIS ISSUE

**TAYLOR VS. KEMPER NATIONAL
INSURANCE COMPANY, ET AL.**

and

NEUN VS. WAGGONER

**Strong.
Rooted Upon Traditional Values.
Dedicated to Quality.
Customer Service.
Dependable.
Branching Into The Future.
Our Commitment Is You.**



Member FDIC

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-724 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of January, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land SITUATE, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 186 in Section J., Charnita Development, bounded and described as follows:

BEGINNING at a point in the cul de sac of Crossland Trail; thence in said cul de sac and by Lot No. 185, South 82 degrees 2 minutes 20 seconds East, 196.44 feet to land now or formerly of Columbia Gas Co.; thence by said lands, South 66 degrees 15 minutes East, 5.6 feet to land now or formerly of George F. Herring; thence by said lands, South 23 degrees 45 minutes West, 135 feet to lands now or formerly of George C. Steinberger; thence by said lands, North 66 degrees 15 minutes West, 75 feet to a point; thence continuing by said lands South 23 degrees 45 minutes West, 85.51 feet to Lot No. 202; thence by said lot, North 87 degrees 23 minutes 40 seconds West, 131.11 feet to Lot No. 187; thence by said lot, North 3 degrees 11 minutes 40 seconds West, 200 feet to a point in the center of said Crossland Trail; thence in said Crossland Trail, South 87 degrees 23 minutes 40 seconds East, 100 feet to the place of beginning.

TOGETHER with a right of way and easement over the private roads indicated on said lot plan recorded in Adams County Plat Book No. 1 at page 24, for means of ingress, egress and regress.

BEING 3 Crossland Trail, Fairfield, PA 17320

TAX PARCEL No. 2-21

TITLE to said premises is vested in Gordon M. Sachs and Lisa H. Sachs, husband and wife, by Deed from Douglas S. Penrose and Karen M. Penrose, husband and wife, dated 9/27/90 and recorded 9/27/90 in Deed Book 568, Page 255.

SEIZED and taken into execution as the property of **Gordon M. Sachs and Lisa H. Sachs** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
November 13, 1996.

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IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-704 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of January, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Union Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Legislative Route 01029 (Bollinger Road) at corner of land now or formerly of O. Strickler; thence by said land of O. Strickler, and passing through a steel pin set back 42.80 feet from the last mentioned point, South 22 degrees 29 minutes 48 seconds West, 529.29 feet to a steel pin at corner of other land now or formerly of Robert E. Glass, North 78 degrees 55 minutes 43 seconds West, 305.94 feet to a steel pin; thence by the same, and passing through a steel pin set back 27.4 feet from the next mentioned point, North 03 degrees 39 minutes 06 seconds West, 256.86 feet to a point in the center of Legislative Route 01029 aforesaid; thence in said center of Legislative Route 01029, North 71 degrees 28 minutes 39 seconds East, 547.48 feet to a point the place of BEGINNING. CONTAINING 3.3820 acres.

BEING the same which Lawrence V. Young, United States Bankruptcy Trustee, for Ivan E. Arentz, Jr., and Brenda S. Arentz, by deed dated October 26, 1987, and recorded in the office

of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 471 at page 1033, sold and conveyed to Gerald W. Davis and Laura L. Davis, his wife, the Defendants herein.

IMPROVED WITH a bi-level, single-family dwelling with attached two-car garage.

SEIZED and taken into execution as the property of **Gerald W. Davis and Laura L. Davis** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 3, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 10, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/13, 20 & 27

INCORPORATION NOTICE

HEIRBORNE CORP. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

Brian D. Zubatch, Esquire
217 Clifton Avenue
Suite 7
Collingdale, PA 19023

12/13

LEGAL NOTICE

The Annual meeting of the policyholders of Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M. on January 11, 1997 to elect directors and to transact any other business properly presented.

ATTEST,
Marilyn Q. Butt
Secretary-Treasurer
12/13, 20, 27 & 1/3

TAYLOR VS. KEMPER NATIONAL INSURANCE
COMPANY, ET AL.

1. The "Discovery Rule" finds application mostly in personal injury cases and provides that where the existence of the injury is not known to the complaining party and such knowledge cannot be reasonably ascertained within the period prescribed by the statute of limitations, the limitations period does not begin to run until the discovery of the injury is reasonably possible.

2. Where the statute of limitations has run on a claim is usually a question of law for the trial judge, but where the issue involves a factual determination, that determination is for the jury.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 92-S-1024, HENRY L. TAYLOR D/B/A HENRY TAYLOR TRUCKING AND STORAGE SERVICES VS. KEMPER NATIONAL INSURANCE COMPANY, INC., WILLIAM M. THERIT, JR., D/B/A WILLIAM M. THERIT, JR. INSURANCE AGENCY AND EASTERN SHORE CORP.

Matthew Battersby Esq., for Plaintiff
Bruce W. McLaughlin, Esq., for Plaintiff
David L. Rhode, Esq. for Defendant
G. Thomas Miller, Esq., for Defendant

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., April 2, 1996.

For the sake of convenience, we may refer to the parties by abbreviated versions of their names.

Defendant, William M. Therit, Jr., (Therit) attempts to raise the statute of limitations through preliminary objections. For reasons explained, the court finds that this defense should be raised through New Matter and not through preliminary objections.

This case has been previously before the court when plaintiff attempted to recover losses for potato starch which had been damaged by the elements. After summary judgment was entered in favor of the carrier, Lumbermens Mutual Insurance Company, plaintiff shifted focus to the brokers who, he said, procured insurance. Eastern Shore's preliminary objections were sustained on October 12, 1995, and plaintiff was allowed to file an amended complaint. Therit argues that any action against him is time barred.

Argument based upon late joinder cannot be separated from those resting on the statute of limitations. Therit's contention, superficially

divided into two prongs¹, is in reality only one; that is, the cause of action against him is governed by the four year period established in 42 Pa. C.S.A. §5525(8).

Rule 1030 specifically provides that affirmative defenses based on the statute of limitations shall be raised through, or in, New Matter. There may be times when this rule need not be strictly applied, but this case is not one of them. Although it might seem clear that the four year period expired before a complaint was filed against Therit, plaintiff argues that the discovery rule applies and that his action should be allowed to proceed. Therit's response resembles a speaking demurrer, although perhaps based upon the record in this case, primarily developed in the action against Lumbermens Mutual.

The discovery rule finds application mostly in personal injury cases. It has been described as follows:

Generally, once the prescribed statutory period has expired, the complaining party is barred from bringing suit. The "discover rule" however, is an exception to that rule, and its application tolls the running of the statute of limitations. The "discovery rule" provides that where the existence of the injury is not known to the complaining party and such knowledge cannot be reasonably ascertained within the prescribed statutory period, the limitations period does not begin to run until the discovery of the injury is reasonably possible. (citation omitted). The "discovery rule" arises from the inability of the injured party, despite the exercise of reasonable diligence, to know of the injury or its cause. *Hayward v. Medical Center of Beaver County*, 530 Pa. 320, 608 A.2d 1040, 1043 (1992).

In some instances, the rule may be applied to a case arising out of contract. *Romeo & Sons, Inc. v. P.C. Yezbak & Son, Inc.*, 539 Pa. 390, 652 A.2d 830.(1995). See also, *United National Insurance Company v. J.H. France Refractories Co.*, 417 Pa.Super. 614, 612 A.2d 1371 (1992).

It may be difficult to conceive of a situation which would give rise to the discovery rule in the case before us. *Romeo & Sons* involved a latent defect in a construction case. In *United Insurance*, the carrier sought rescission based upon fraud. However, we do not know the factual situation from the pleadings, at this stage, because the issue has

¹ Therit argues that plaintiff was not entitled to join him as a party after the statute had run. He also argues that the cause of action is time barred. He is not joined as an additional defendant, and his contention rises or falls on whether this action is time barred.

not been properly raised. Supreme Court, in *Hayward v. Medical Center*, supra, 608 A.2d at 1043, said:

Whether the statute has run on a claim is usually a question of law for the trial judge, but where the issue involves a factual determination, the determination is for the jury. (citation omitted). Specifically, the point at which the complaining party should reasonably be aware that he has suffered an injury is generally an issue of fact to be determined by the jury; only where the facts are so clear that reasonable minds cannot differ may the commencement of the limitations period be determined as a matter of law.

The issue before this court generally is raised through a motion for summary judgment with a record more fully developed than the one before us. For reasons explained, we overrule the objections and require Therit to answer.

ORDER OF COURT

AND NOW, this 2nd day of April, 1996, preliminary objections are denied. Defendant, William M. Therit, Jr., shall have twenty (20) days to file and answer.

NEUN VS. WAGGONER

1. It is proper for a contractor to join the subcontractor who actually performed the work.
2. A subcontractor owes a duty of indemnification to a contractor and the liability would be a liability over.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-601, DAVID J. NEUN VS. WAYNE L. WAGGONER VS. MICHAEL SMITH AND NINA SMITH, HIS WIFE, INDIVIDUALLY AND T/A ARENTZ ROOFING CONTRACTOR AND ARENTZ ROOFING, INC., A CORPORATION.

John A. Wolfe, Esq., for Plaintiff
C. Roy Weidner, Esq., for Defendant
Chester G. Schultz, Esq., for Additional Defendants

OPINION ON ADDITIONAL DEFENDANTS' PRELIMINARY OBJECTIONS

Spicer, P.J., July 5, 1996.

The procedural background of this case is as follows: Plaintiff filed his complaint June 30, 1995. Defendant's answer was filed August 23, 1995. On September 14, 1995, defendant filed a complaint joining additional defendants, who filed preliminary objections October 5, 1995. Oral argument occurred June 25, 1996.

Allegations in plaintiff's complaint include the following: Plaintiff and Waggoner entered into a contract on September 18, 1989, whereby Waggoner agreed to construct a new home for plaintiff. When the work was completed, plaintiff occupied the premises in April, 1990. The roof and various other places leaked. Waggoner assured plaintiff that the defects would be remedied, but they never were.

Paragraph 12 alleged improper venting, inadequate flashing and other defective construction. Cost of cure was set at \$11,500.00.

Interestingly, the contract between the parties, attached to the complaint as Exhibit A, indicated that the contractor was Battlefield Builders. The signature page indicated:

BATTLEFIELD BUILDERS
CORP. SIGNATURE _____

The signature that was placed in the blank was "Wayne L. Waggoner /Jmd"

In his answer, Mr. Waggoner said, "On the contrary, Plaintiff's contract comprising Exhibit "A" to his complaint is with Battlefield Builders and was signed by a person other than Wayne L. Waggoner as such." ¶3. Defendant's brief attempts to explain the signature on plaintiff's Exhibit A by saying, "Defendant Wayne L. Waggoner's name was signed to the contract on the corporate signature line by a third party."

Defendant's answer raised the statute of limitations in New Matter, denied allegations of defective construction and representations, and specifically denied that Wayne L. Waggoner was the contractor. Instead, Waggoner alleged the contract was between plaintiff and Gettysburg Builders, a division of Gettysburg Concrete Builders, Inc., a Pennsylvania corporation. In that and subsequent pleadings, Waggoner has referred to Gettysburg Concrete Builders, Inc. and Battlefield Builders collectively as "Battlefield Builders." ¶3 of Answer; ¶5 of Complaint Joining Additional Defendant.

Defendant did not, however, join either Gettysburg Concrete Builders, Inc. or Gettysburg Builders, nor has plaintiff attempted to do so. Instead, Waggoner filed a complaint against additional defendants alleging, among other things, that Gettysburg Builders entered into a contract with additional defendants who thereby agreed to do the roofing for Mr. Neun's house. Defendant denied that construction was

defective but, if it were, said it was the fault of additional defendants. Waggoner also alleged that "In the event that there were any actionable misrepresentations made to Plaintiff concerning repairs to the Plaintiff's roof, which is denied, they were made at the direction of Additional Defendants or on the basis of information supplied by Additional Defendants concerning the repairs to the Plaintiff's roof..." ¶14.

Interestingly, Exhibit A attached to the Complaint Joining Additional Defendants contains a bid, termed a Proposal and Contract, from Arentz Roofing Contractor to Battlefield Builders. The agreement, however, appears to be between Arentz Roofing Contractor, which we assume is a misspelling-spelling, and Gettysburg Concrete Builders, Inc.

Ordinarily, we would overrule the preliminary objections without hesitancy. Although the Complaint Joining Additional Defendants does not, when read alone, allege sufficient ground for liability, it incorporates plaintiff's complaint and sufficiency of allegations must be determined by reading both pleadings. 7 Goodrich Amram 2d §2252(b):4, page 166. Ignoring, for a moment, the question of parties to the suit, it is proper for a contractor to join the subcontractor who actually performed the work. *id.* (a):11, page 148.

The real problem arises out of the identity of the parties. Defendant has clearly alleged that the proper defendant is, or should have been, Battlefield Builders, a division of Gettysburg Concrete Builders, Inc. His prayer for relief includes, "Defendant and Battlefield Builders demands judgment against Additional Defendants." Finally, we note that the contract by which the subcontractor agreed to build the roof was signed by Wayne L. Waggoner, V.P. for Gettysburg Concrete Builders, Inc.

Rule 2252 permits joinder of an additional defendant who is: (1) solely liable on the plaintiff's cause of action or; (2) liable over to the joining party on plaintiff's cause of action or; (3) jointly and severally liable with the joining party on plaintiff's cause of action or; (4) liable to the joining party on any cause of action arising out of the same transaction or occurrence or series of transactions or occurrences upon which the plaintiff's cause of action is based.

It would seem clear that additional defendants are not solely liable to plaintiff. A subcontractor owes a duty of indemnification to a contractor, *Thomas H. Ross, Inc. v. Siegfried*, 405 Pa.Super 558, 592 A.2d 1353 (1991) and the liability would be a liability over. There is no indication that the contractor and subcontractor intended to benefit Mr. Neun, or that he was either a creditor beneficiary or a donee beneficiary. Plaintiff, therefore could not have proceeded directly

against additional defendants, lacking privity of contract. See, Dressel Associates Inc. v. John A Welsch Real Estate Appraisers, Inc., 429 Pa.Super 379, 632 A.2d 906 (1993).

Pleadings fail to state liability of any kind flowing from additional defendants to Mr. Waggoner. On the contrary, such liability extends to an entity which is not a party to this lawsuit. We are not told what Battlefield Builders is, other than a division of Gettysburg Concrete Builders, Inc. It might be that it is a fictitious name, or another corporation. Whatever the correct description, and who might be the real defendant in this suit, it is clear that neither Gettysburg Concrete Builders, Inc. nor Battlefield Builders is presently involved. If both plaintiff and defendant proved all they have alleged, there would be no liability from additional defendants to either defendant or plaintiff. Defendant has alleged that another entity is responsible, and then proceeded as if this is of no importance. A corporation has a legal existence separate and apart from its shareholders and officers, and cannot be ignored in this suit. Kosor v. Harleysville Mutual Insurance Company, 407 Pa.Super. 68, 595 A.2d 128 (1991).

In short, we find that the original complaint and the complaint which joined additional defendants fail to state a cause of action against additional defendants. Although we have doubts about successful amendment, we will allow it.

The attached order shall be entered.

ORDER OF COURT

AND NOW, this 5th day of July, 1996, Additional Defendants' preliminary objections are sustained. Defendant may file an amendment to his Complaint Joining Additional Defendants within twenty days. Upon failure to do so, the Complaint Joining Additional Defendants will be dismissed.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF LILLIAN I. HAMM a/k/a LILLIAN N. HAMM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Administrator CTA: Larry R. Hamm, 3685 Carlisle Pike, New Oxford, PA 17350
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, Pennsylvania 17331

ESTATE OF PAUL A. SCHECK, DEC'D
 Late of Straban Township, Adams County, Pennsylvania

Executrix: Doris S. Clarke, 979 Sunset Avenue, Gettysburg, PA 17325
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

STATE OF FRANCIS PAUL SHULTZ, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Co-Executors: Brenda K. Kime, 1255 Belmont Rd., Gettysburg, PA 17325; Gary L. Shultz, 1260 Goldenville Rd., Gettysburg, PA 17325
 Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore St., Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF EVELYN T. HESS a/k/a EVELYN SNEERINGER HESS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: William J. Hess, Jr., 4832 Cedar Branch Court, Glen Allen, VA 23060; Joseph Edwin Hess, 724 North Second St., 2nd Floor Apt., Allentown, PA 18102
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VERNA C. LIVINSTON a/k/a VERNA C. REYNOLDS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Samuel Stoner, 540 Germany Road, East Berlin, PA 17316
 Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

ESTATE OF HAROLD ECKARD MYERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: Ellajean M. Key, 1632 Old Taneytown Road, Westminster, MD 21158; Harold E. Myers, Jr., 2104 Hyden Court, Fallston, MD 21047
 Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF CHARLES J. CARBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executrix: Rose M. Topper, 290 Hanover Street, New Oxford, PA 17350
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF LEO J. FUNK, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
 Executor: Adams County National Bank, Trust Office, Lincoln Square, Gettysburg, PA 17325
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EVA S. SHEARER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
 Executor: Adams County National Bank, P. O. Box 4566, Gettysburg, PA 17325
 Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ANNA M. TIPTON, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: Charles F. Tipton, 78 Lake View Drive, Gettysburg, PA 17325
 Attorney: Richard E. Thrasher, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF JOHN MARSHALL TRENT, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania
 Administratrix: Sandra E. McCleaf, 2215 Biglerville Road, Lot 47, Gettysburg, PA 17325
 Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF BYRON WRIGHT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
 Executor: Adams County National Bank, P. O. Box 4566, Gettysburg, PA 17325
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF HAZELS YOUNG, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executor: Clarence M. Swinn, Jr., 29 East Lincoln Ave., Gettysburg, PA 17325
 Attorney: Richard E. Thrasher, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 96-S-596
Action to Quiet Title

HUGH G. GAUCH, JR., Plaintiff,
vs.

JONATHAN WRIGHT, THOMAS WRIGHT, WILLIAM BATEMAN, WILLIAM OYSTER, AKA WILLIAM OISTER, ELIZABETH OYSTER, AKA ELIZABETH OASTER, AKA ELIZABETH EYSTER, JACOB EYSTER, MICHAEL NEWMAN, SAMUEL EYSTER, AKA SAMUEL OASTER, AKA SAMUEL OYSTER, JONAS ROUTSONG, AKA JONAS RAUNZAHN, AKA JONAS RAUTZAHN, JOHN DOE, BEN THOMAS, LEROY ROUTSONG, WILLIAM O. ROUTSONG, JR., ALEX S. CICHESKIE, DOROTHY R. CICKESKIE, R. DANIEL KETCHUM, JASON L. BOWIE, SR., ALICE L. BOWIE, and PAUL J. KUHN, their respective heirs and/or assigns, Defendants.

TO: Jonathan Wright, Thomas Wright, William Bateman, William Oyster, aka William Oister, Elizabeth Oyster, aka Elizabeth Oaster, aka Elizabeth Eyster, Jacob Eyster, Michael Newman, Samuel Eyster, aka Samuel Oaster, aka Samuel Oyster, Jonas Routsong, aka Jonas Raunzahn, aka Jonas Rautzahn, John Doe, Ben Thomas, their respective heirs and/or assigns:

NOTICE

You are notified that the Plaintiff has commenced an action to quiet title against you by complaint filed to the above docket number on June 9, 1996, which action you are required to defend.

You are required to plead to the said complaint within twenty (20) days after service has been completed by publication, or judgment by default may be entered against you.

This action concerns the premises hereinafter described:

ALL that tract of land situate in Menallen Township, Adams County, Pennsylvania, more particularly described as follows: Parcel No. 38 on Map E 5 in the records of the Adams County Mapping Department. Now shown as Parcel No. 38A in the records of the Adams County Mapping Department.

Being Parcel D which Suburban Bank, a Maryland banking corporation, and Susan G. Coles, personal representatives of the Last Will and Testament of Hugh G. Gauch, deceased, by deed dated May 15, 1984, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 385 at page 958, conveyed unto Hugh G. Gauch, Jr., the Plaintiff herein.

If you wish to defend, you must take action by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or

objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Adams County Courthouse
Baltimore Street
Gettysburg, PA 17325
Telephone: (717) 334-6781

Bigham & Puhl
Edward G. Puhl, Esquire
Attorney for Plaintiff
16 Lincoln Square
Gettysburg, PA 17325

12/13

NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, December 23, 1996, at 9:00 o'clock a.m.

WHISLER—Orphans' Court Action Number OC-138-96. The First and Final Account of Frederick L. Whisler and A. Jean Martin, Co-Executors of the Estate of Ralph H. Whisler, deceased, late of Oxford Township, Adams County, Pennsylvania.

BAUERLINE—Orphans' Court Action Number OC-145-96. The First and Final Account of Andrew J. Bauerline, Executor of the Estate of Andrew S. Bauerline, deceased, late of Straban Township, Adams County, Pennsylvania.

OVERHOLTZER—Orphans' Court Action Number OC-148-96. The First and Final Account of Adams County National Bank, Executor of the Estate of Melvin Overholtzer, Jr., deceased, late of Mt. Joy Township, Adams County, Pennsylvania.

REYNOLDS—Orphans' Court Action Number OC-149-96. The First and Final Account of Dauphin Deposit Bank and Trust Company, Executor of the Estate of Mark LaRue Reynolds, deceased, late of Berwick Township, Adams County, Pennsylvania.

SHERMAN—Orphans' Court Action Number OC-150-96. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Mares Sherman, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

BALTOZER—Orphans' Court Action Number OC-151-96. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Kathleen M. Baltozer, deceased, late of Straban Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

12/13, 20

NOTICE OF INTENTION TO
INCORPORATE

NOTICE IS HEREBY GIVEN, pursuant to the Pennsylvania Business Corporation Law, 15 Pa.C.S.A. § 1307, of the intention to file Articles of Incorporation. The name of the proposed corporation is BOLGER, INC. The proposed corporation is to be organized under the Business Corporation Law of 1988.

Hartman & Yannetti
126 Baltimore Street
Gettysburg, PA 17325
Attorneys for Applicant

12/13

Adams County Legal Journal

ol. 38

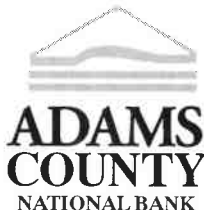
December 20, 1996

No. 30, pp. 173-178

CONTINUING LEGAL EDUCATION PROGRAMS

1. *Estate Planning for the Owner of a Family Business*
Thursday, January 16, 1997—9:00 a.m. – 1:30 p.m.
Room 307B, Adams County Courthouse—Substantive Law—4 credits.
Ethics—0 credits. Registration through P.B.I. 800-932-4637.
2. *Equitable Distribution Update*
Thursday, February 13, 1997—9:00 a.m. – 1:30 p.m.
Room 307B, Adams County Courthouse—Substantive Law—4 credits.
Ethics—0 credits. Registration through P.B.I. 800-932-4637.

Adams County National Bank's commitment to its communities is more than a fleeting promise. It is a tradition founded upon our more than 130 years of service to the individuals, businesses and organizations in these communities.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published every Friday by Adams County Bar Association, Donald G. Oylar, Esq., Editor and Business Manager.

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Business Office - 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

Second-class postage paid at Gettysburg, PA 17325.

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All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-704 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of January, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Union Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Legislative Route 01029 (Bollinger Road) at corner of land now or formerly of O. Strickler; thence by said land of O. Strickler, and passing through a steel pin set back 42.80 feet from the last mentioned point, South 22 degrees 29 minutes 48 seconds West, 529.29 feet to a steel pin at corner of other land now or formerly of Robert E. Glass, North 78 degrees 55 minutes 43 seconds West, 305.94 feet to a steel pin; thence by the same, and passing through a steel pin set back 27.4 feet from the next mentioned point, North 03 degrees 39 minutes 06 seconds West, 256.86 feet to a point in the center of Legislative Route 01029 aforesaid; thence in said center of Legislative Route 01029, North 71 degrees 28 minutes 39 seconds East, 547.48 feet to a point the place of BEGINNING. CONTAINING 3.3820 acres.

BEING the same which Lawrence V. Young, United States Bankruptcy Trustee, for Ivan E. Arentz, Jr., and Brenda S. Arentz, by deed dated October 26, 1987, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 471 at page 1033, sold and conveyed to Gerald W. Davis and Laura L. Davis, his wife, the Defendants herein.

IMPROVED WITH a bi-level, single-family dwelling with attached two-car garage.

SEIZED and taken into execution as the property of **Gerald W. Davis and Laura L. Davis** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 3, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 10, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10

days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/13, 20 & 27

INCORPORATION NOTICE

NOTICE is hereby given that Articles of Incorporation were filed on or about December 10, 1996, with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania for the purpose of incorporating a nonprofit corporation under the Pennsylvania Nonprofit Corporation Law of 1988.

The name of the corporation is HOLY FAMILY SANCTUARY, INC.

The purposes for which it is to be organized are: To provide knowledgeable Catholic family care and counseling.

Thomas E. Miller, Esquire
Miller & Shultis
Solicitor

12/20

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about December 12, 1996, for the incorporation of FROZEN DREAMS, INC., under the Pennsylvania Business Corporation Law of 1988. The corporation shall sell ice cream and food items and shall have the authority to engage in all activities permitted by law. The initial registered office of the corporation is 69 W. Hanover Street, Gettysburg, Pennsylvania 17325.

Wilcox, James and Cook
Attorneys at Law
234 Baltimore Street
Gettysburg, PA 17325

12/20

LEGAL NOTICE

The Annual meeting of the policyholders of Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M. on January 11, 1997 to elect directors and to transact any other business properly presented.

ATTEST,
Marilyn Q. Butt
Secretary-Treasurer

12/13, 20, 27 & 1/3

LEGAL NOTICE

NOTICE IS HEREBY GIVEN to all persons of interest that RODNEY E. HEAGEY GENERAL CONTRACTOR, INC., a Pennsylvania corporation, having its registered office at 3534 Hunterstown-Hampton Road, New Oxford, PA 17350, will be filing Articles of Dissolution with the Department of State of the Commonwealth of Pennsylvania, pursuant to and in accordance with the provisions of the Business Corporation Law of Pennsylvania of 1988, and that the said corporation is winding up its affairs in the manner prescribed by law, so that its corporate existence shall be ended upon the issuance of a Certificate of Dissolution by the Department of State of the Commonwealth of Pennsylvania.

Catherine J. Gault, Esquire
Solicitor

12/20

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application has been filed under the Fictitious Names Act, 54 Pa. C.S.A. §§ 301 et seq., as amended, with the Secretary of the Commonwealth, in Harrisburg, Pennsylvania, on November 20, 1996, for conducting business under the assumed or fictitious name of GETTYSBURG MILITARY PUBLISHING. The address of the principal office or place of business to be carried on under or through the fictitious name is: 1 White Oak Trail, Gettysburg, Pennsylvania 17325. The name and address of the only person who is a party to the registration is: Mary I. Sutphen, 1 White Oak Trail, Gettysburg, PA 17325.

John W. Phillips, Esq.
Attorney

12/20

RITTER VS. WAYNESBORO HOSPITAL, ET AL.

1. While Courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs.

2. Pennsylvania follows a liberal rule of expert testimony in questions of medical causation.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-455, CARL RITTER AND MARY JEAN RITTER, PARENTS AND NATURAL GUARDIANS OF LINDSAY RITTER, A MINOR, AND CARL RITTER AND MARY JEAN RITTER, INDIVIDUALLY VS. WAYNESBORO HOSPITAL, LAWRENCE E. ROGINA, M.D., ELENA KEHOE, POTOMAC OB/GYN ASSOCIATES, ROBERT N. NAVARRO, M.D.

Thomas W. Hall, Esq., for Plaintiffs

Thomas J. Williams, Esq., for Waynesboro Hospital

Michael M. Badwoski, Esq., for Rogina, Kehoe and Potomac Ob/Gyn

OPINION ON MOTIONS IN LIMINE

Spicer, P.J., April 9, 1996.

Plaintiffs seek to exclude certain defense evidence at trial. This evidence may broadly be described as consisting of testimony of: (a) Richard L. Naeye, M.D., who is prepared to state that an in utero injury to Lindsay Ritter occurred 17 hours before birth; (b) the mother, Mary Jane Ritter's, description of herself as a person intensely interested in alternative birthing, who dislikes and distrusts institutionalized health care; and (c) various witnesses who may describe the mother's lack of cooperation with medical personnel not only on the date when the child was born, but also on prior occasions.

Plaintiffs argue that Dr. Naeye's theory, upon which his testimony is based, lacks acceptance in the medical community and that both 42 Pa. C.S.A. §5929 and Pa. R.C.P. 4003.6. forbid his testifying without the consent of plaintiffs. They further contend that testimony falling into categories (b) and (c) lacks relevance and is based on hearsay.

All parties have submitted extensive arguments through thoughtful and well researched briefs. This writer regrets that time and other obligations limit the court's discussion, and that we have not addressed each and every point raised in argument. Issues are both complex and important, but trial is scheduled to begin within weeks and a decision is required. Rulings will be briefly explained, but this opinion is hardly intended as a definitive statement in the field of medical evidence.

This is a malpractice action arising out of the birth of Lindsay Ritter. Unfortunately, the child suffers from cerebral palsy and the question is, who, if anyone is to blame. Ms. Ritter initially planned on a vaginal delivery with the aid of a midwife, Elena Kehoe. Apparently, one of the reasons Ms. Ritter selected Ms. Kehoe was the latter's association with Potomac OB/GYN Associates, with the resulting professional help that would be available. Complications occurred, requiring hospitalization. Ms. Ritter was taken to Waynesboro Hospital, where birth was accomplished by Cesarean section around 11:04 a.m. May 17, 1992.

Briefs portray somewhat conflicting versions of facts. According to plaintiffs, the mother agreed promptly with Ms. Kehoe's recommendation that she be taken to the hospital and that she also promptly agreed to a Cesarean delivery. According to plaintiffs, the attending physician and hospital staff then delayed the actual procedure for over an hour and a half, without monitoring Ms. Ritter. Defendants, on the other hand, say that the mother dragged her feet in going to the hospital, then delayed final resolution further by refusing to promptly agree to the Cesarean procedure. They also cite examples of dilatory behavior, such as the mother's rejection of certain standard procedures, such as receiving oxygen by mask. They also want to paint a portrait of Ms. Ritter as being a head-strong person who rejected or questioned medical advice on prior occasions.

We make no effort to resolve factual disputes. Plaintiffs' argument may be summarized by saying: (1) what Ms. Ritter may have said or done in the past is not relevant to determine what occurred on May 17, 1992; (2) general descriptions of a resistant or reluctant attitude on her part are not probative; and (3) the lack of specific conduct, such as a refusal, is fatal to defendants' attempts to absolve themselves of negligence or to prove Ms. Ritter contributorily negligent. With respect to this final point, plaintiffs attack descriptions of delay on Ms. Ritter's part, which would amount to conduct, as hearsay and, therefore, inadmissible.

On the other hand, defendants contend that the jury should be allowed to view the whole picture, and not be restricted solely to the last ninety some minutes of this unfortunate saga.

It is the court's opinion that Ms. Ritter's conduct on May 17, 1992, is relevant and admissible. Examples of uncooperative behavior prior to that date would not be. If, however, she were to testify that she didn't understand what she was being asked, or took issue with Ms. Kehoe's description of foot dragging, some evidence of her past experiences with and attitude toward institutionalized medicine may also be admis-

sible. While it is true that doing an act on one occasion is generally not relevant to prove that the person did a similar act on another, habits, attitudes and state of mind may become probative to explain what occurred on May 17, 1992. See *Commonwealth v. Jones*, 391 Pa. Super. 292, 570 A.2d. 1338 (1990).

The record simply does not support plaintiffs' contention that testimony of Terri Waltz was based on hearsay. The witness described a conversation which occurred between Ms. Ritter and others, it is true, but Ms. Waltz was present and heard the conversation. While Dr. Rogina's understanding of the situation was based on what others told him, the issue is whether the assessment was correct, based on the facts.

It must be pointed out that these rulings may change, depending on what is developed at trial. Rulings in limine, in areas such as this, may provide guidance, but final resolution must await trial. It may be true that testimony may not differ from depositions, and we may rule as if an offer has been made. However, it may be that testimony at trial may be developed significantly differently than in the depositions.

The situation may be somewhat clearer with respect to Dr. Naeye, because of the nature of the objections.

The statute, *supra*, provides, in part:

No physician shall be allowed, in any civil matter, to disclose any information which he has acquired in attending the patient in a professional capacity, and which was necessary to enable him to act in that capacity, which shall tend to blacken the character of the patient, without consent of said patient, except in civil matters brought by such patient, for damages on account of personal injuries.

The rule, *supra*, provides in part:

Information may be obtained from the treating physician of a party only upon written consent of that party or through a method of discovery authorized by this chapter. This rule shall not prevent an attorney from obtaining information from (1) the attorney's client, (2) an employee of the attorney's client, or (3) an ostensible employee of the attorney's client.

It would seem that the child was transferred to Hershey Medical Center from the Waynesboro Hospital when neurological deficiencies were discovered. Dr. Naeye is a pathologist at Hershey.

As part of her consent, Ms. Ritter released tissue samples for scientific and medical research. When her child went to Hershey, Waynesboro Hospital forwarded the placenta. Dr. Naeye examined it and found what he considered to be evidence of an inflammation, chorioamnionitis, and the presence of infant fecal matter, meconium.

He made no pathological findings and apparently the plaintiffs were unaware of his actions until he surfaced as a defense witness.

Neither side has presented Pennsylvania cases on point. Both urge us to consider decisions in other jurisdictions. Defendants further argue that the statute was intended to protect communications, not scientific findings.

Dr. Naeye certainly doesn't fit the common image of a treating physician. The record indicates that he provided no advice, care or information. Nonetheless, we cannot agree that communications are the sole subject of protection, or that a doctor and his or her patient must always meet face to face for the former to become subject to restrictions on disclosure. There are times when laboratory and pathology results should be guarded from prying eyes. We think that some relationships are derivative, and it would seem that Dr. Naeye's standing to either Ms. Ritter or to Lindsay would depend upon whether he was requested to perform an examination by a physician engaged in treatment of the child. Nothing indicates this occurred. From the record, it is just as probable that the placenta examination was requested by the Waynesboro Hospital to prepare for a lawsuit. Or, it may have been part of a routine research study.

We, therefore, decline to preclude the testimony because of either the rule or the statute.

A review of Dr. Naeye's deposition indicates that medical science has found no definitive answers as to when injuries may occur which cause neurological deficiencies in new born infants. The doctor described several causes, including early viral infection, but hypoxia and asphyxia account for twenty percent of such cases. Damage from this latter cause may consist of lesions, caused by partial hypoxia or asphyxia, and more serious injury to deep gray matter caused by severe hypoxia. Means of detecting the time of injury has eluded the profession. Fetal monitoring produces only a .002 correlation between positive indications of damage and those children actually born with the condition.

Meconium is a cause of hypoxia, because it constricts blood vessels. In the doctor's opinion, many cases which are explained by injuries sustained during delivery are actually attributable to conditions present before the mother arrives at a hospital.

Dr. Naeye appears to be a deeply interested in solving a very serious problem. He described his experience in Africa and elsewhere. Reports of high altitude experiments attracted his interest. He said he had to go outside medical literature, since nothing appeared in that field, to pursue his theory. He decided that monitoring lymphocytes could provide a timetable for determining when an injury occurred.

According to the doctor, when hypoxia occurs, the thymus dumps lymphocytes into the blood. The only other triggering cause is bacteria associated with whooping cough. Thus, influx could easily be ascribable to asphyxia and hypoxia. The cells are meant to last, and the high level persists, twenty four hours. Because introduction is virtually instantaneous and increased levels limited in time, the cells provide a convenient means of ascertaining the time of an insult or injury. Although a person's lymphocyte count may fall below normal for a number of days, Dr. Naeye says that a normal count of 10,000 occurs twenty-four hours after injury.

Lindsay's blood indicated a count of 15,700 at birth, 13,462 thirty minutes thereafter and 3,700 ten hours after birth. From these tests, Dr. Naeye concluded that the normal count of 10,000 occurred 7 hours after birth and the injury seventeen hours before birth.

Although the doctor said he has considered 91 or 92 cases since, support for his theory is mainly derived from a study of 16 cases. An article describing the study and its results was published in the very prestigious *New England Journal of Medicine*. However, at a hearing, the court heard testimony from a reviewer, who said if knew then what he knows now he could never have recommended acceptance of the article. We also heard testimony which established internal inconsistencies and problems with the study.

Initially, the question is by what standard admissibility of scientific theory is judged. Defendants argue that most applications of *Frye v. United States*, 54 App.D.C. 46, 293 F. 1013 (1923) involve criminal actions, where the Commonwealth seeks to introduce scientific evidence. They question whether *Frye* applies to civil actions at all, and urge us to follow *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S., 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). However, the United States Supreme Court's decision was based on Federal Rule of Evidence 702, and those rules do not apply in this Commonwealth. More importantly, our own Supreme Court has announced that *Frye* remains the rule in Pennsylvania. *Commonwealth v. Crews*, 536 Pa. 508, 640 A.2d 395 (1994).

The *Frye* test is described, *supra.*, at page 1014, as follows:

Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made

must be sufficiently established to have gained general acceptance in the particular field to which it belongs.

Superior Court has said inquiry is divided into three prongs. First, is the underlying theory generally accepted in the scientific community? Second, do techniques or experiments currently exist capable of producing generally acceptable and reliable results? These two are matters of admissibility. The third is a matter of credibility and concerns whether the testing agency correctly performed the scientific techniques when analyzing forensic samples. *Commonwealth v. Rodgers*, 413 Pa.Super. 498, 605 A.2d 1228 (1992).

The problem is immediately evident. Dr. Naeye's theory is based upon his experiment and is, by his own description, novel. Thus, correct performance is more than a matter of credibility, since the theory is not generally accepted in the community.

Thus, Dr. Naeye may not testify as to the exact time of injury.

This does not end the inquiry, however. Pennsylvania follows a liberal rule of expert testimony in questions of medical causation. Plaintiffs have not argued that theories described by Dr. Naeye, concerning elevated lymphocyte counts triggered by hypoxia, are not supported in the medical community. In fact, Dr. Naeye was apparently upset when Dr. Pereira, a plaintiffs' expert, suggested that there was a well known association between elevation of lymphocyte counts and response to fetal hypoxia, and that 24 hours was required to normalize the count (deposition, 69).

In *Commonwealth v. Crews*, supra., our Supreme Court held that plausibility studies in the DNA field had not yet gained acceptance. It, therefore, ruled that evidence based on such studies was inadmissible. However, it also held that an expert could say that a match of three out of four loci made identity more probable than not.

We cannot rule out the possibility that Dr. Naeye may testify as to the probability that injury occurred before the mother's arrival at the hospital. If he can say that the opinion is based on principles known and generally accepted in the medical community, and is based upon a reasonable degree of medical certainty, it would seem like the type of medical testimony we hear all the time. However, he may not use his studies as support for the opinion, nor may he describe the exact time of injury.

ORDER OF COURT

AND NOW, this 9th day of April, 1996, in accordance with the attached opinion, in limine motions are granted in part and refused in part.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF CHARLES HENRY GEBENSLEBEN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: George M. Gebensleben, 250 York Street, Hanover, PA 17331
 Attorney: John J. Mooney, III

ESTATE OF FRANCIS R. LUTTER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Executrix: Wanda Mariea Whitcomb, 200 Rr. Oliver Street, Hanover, PA 17331
 Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF MARY L. MILLISON, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: John R. White, 122 Baltimore Street, Gettysburg, PA 17325
 Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF PAULINE E. WILLIAMS, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
 Executor: Adams County National Bank, 16 Lincoln Square, Gettysburg, PA 17325
 Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF THOMAS S. ZIEGLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executor: John M. Ziegler, 27 Whispering Pines Lane, Birdsboro, PA 19508
 Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF LILLIAN I. HAMM a/k/a LILLIAN N. HAMM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Administrator CTA: Larry R. Hamm, 3685 Carlisle Pike, New Oxford, PA 17350
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, Pennsylvania 17331

ESTATE OF PAULA. SCHECK, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executrix: Doris S. Clarke, 979 Sunset Avenue, Gettysburg, PA 17325
 Attorney: Ronald J. Hagaman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FRANCIS PAUL SHULTZ, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Co-Executors: Brenda K. Kime, 1255 Belmont Rd., Gettysburg, PA 17325; Gary L. Shultz, 1260 Goldenville Rd., Gettysburg, PA 17325
 Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore St., Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF EVELYN T. HESS a/k/a EVELYN SNEERINGER HESS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: William J. Hess, Jr., 4832 Cedar Branch Court, Glen Allen, VA 23060; Joseph Edwin Hess, 724 North Second St., 2nd Floor Apt., Allentown, PA 18102
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VERNA C. LIVINSTON a/k/a VERNA C. REYNOLDS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Samuel Stoner, 540 Germany Road, East Berlin, PA 17316
 Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

ESTATE OF HAROLD ECKARD MYERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: Ellajean M. Key, 1632 Old Taneytown Road, Westminster, MD 21158; Harold E. Myers, Jr., 2104 Hyden Court, Fallston, MD 21047
 Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, December 23, 1996, at 9:00 o'clock a.m.

WHISLER—Orphans' Court Action Number OC-138-96. The First and Final Account of Frederick L. Whisler and A. Jean Martin, Co-Executors of the Estate of Ralph H. Whisler, deceased, late of Oxford Township, Adams County, Pennsylvania.

BAUERLINE—Orphans' Court Action Number OC-145-96. The First and Final Account of Andrew J. Bauerline, Executor of the Estate of Andrew S. Bauerline, deceased, late of Straban Township, Adams County, Pennsylvania.

OVERHOLTZER—Orphans' Court Action Number OC-148-96. The First and Final Account of Adams County National Bank, Executor of the Estate of Melvin Overholtzer, Jr., deceased, late of Mt. Joy Township, Adams County, Pennsylvania.

REYNOLDS—Orphans' Court Action Number OC-149-96. The First and Final Account of Dauphin Deposit Bank and Trust Company, Executor of the Estate of Mark LaRue Reynolds, deceased, late of Berwick Township, Adams County, Pennsylvania.

SHERMAN—Orphans' Court Action Number OC-150-96. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Mares Sherman, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

BALTOZER—Orphans' Court Action Number OC-151-96. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Kathleen M. Baltozer, deceased, late of Straban Township, Adams County, Pennsylvania.

Peggy J. Breighner
 Clerk of Courts

12/13, 20

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 96-S-866
Action to Quiet Title

JAMIE M. ESPY, A/K/A JAMIE M. MCGLAUGHLIN, Plaintiff,

vs.

CONRAD HIPKINS AND KATHLEEN HIPKINS, husband and wife, their heirs, administrators, successors and assigns, Defendants.

TO: Conrad Hipkins and Kathleen Hipkins, husband and wife, their heirs, administrators, successors and assigns:

TAKE NOTICE that on October 8, 1996, Jamie M. Espy, a/k/a Jamie M. McGlaughlin, filed a Complaint in Action to Quiet Title, against Conrad Hipkins and Kathleen Hipkins, husband and wife, their heirs, administrators, successors and assigns, averring that Jamie M. Espy is the owner of the real property described herein. The Complaint requests the Court to extinguish any possible interest you may have in said real estate. The subject property is a tract of land situate in Liberty Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Flo Trail at Lot No. 37; thence in the cul-de-sac and by said lot North 46 degrees 6 minutes West, 225 feet to Lot No. 30; thence by said lot North 43 degrees 54 minutes East, 100 feet to Lot No. 35; thence by said lot South 66 degrees 37 minutes 20 seconds East, 135 feet to Lot 61; thence by said lot and in the cul-de-sac of said Flo Trail South 10 degrees 12 minutes 40 seconds West, 177.32 feet to the place of BEGINNING.

BEING THE SAME WHICH Charnita, Inc. by its deed dated December 2, 1971 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 300 at Page 304 on May 22, 1972, sold and conveyed unto Conrad Hipkins and Barbara Hipkins, Grantors herein.

The Complaint requested the Court to enter a Decree and Order that the title of the property described above is in the Plaintiff, and that the Defendants be forever barred from asserting any right, lien, title or interest in the said land inconsistent with the interests of the Plaintiffs as set forth in their Complaint.

WHEREFORE, by Order dated December 3, 1996, the Court of Common Pleas of Adams County, Pennsylvania, has ordered that service of the Complaint be made on the above Defendants, their respective heirs, personal representatives, successors and assigns, by publication. Plaintiff will request the Court to

enter a final judgment ordering that any possible legal interest the Defendants might have had in the property be extinguished.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the Complaint filed in the Adams County Court of Common Pleas at No. 96-S-866 and described hereinabove, you must take action within twenty (20) days after this publication by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgement may be entered against you by the Court without further notice for the relief requested by the Plaintiff. You may lose property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Telephone: (717) 334-6781

Hartman & Yannetti
Gary E. Hartman, Esquire
Attorney for Plaintiff
126 Baltimore Street
Gettysburg, PA 17325

ALL that certain tract of land situated in Carroll Valley, Adams County, Pennsylvania, being more particularly described as Charnita Area Section B, Lot No. 323, as shown on records of the Adams County Mapping Department and recorded in the Office of Recorder of Deeds of Adams County, Pennsylvania in Miscellaneous Docket 4 at Page 654, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING THE SAME which Charnita, Inc., a Pennsylvania corporation, by deed dated June 29, 1967, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 262 at Page 585, sold and conveyed unto James D. Lindner and Barbara L. Lindner, husband and wife; and BEING THE SAME which the Adams County Tax Claim Bureau, by their deed dated October 7, 1985, and recorded in the aforementioned office in Record Book 410 at Page 477, sold and conveyed unto Michael S. Lach; and BEING THE SAME which Michael S. Lach, by deed dated March 27, 1987, and recorded in the aforementioned office in Record Book 452 at Page 445, sold and conveyed unto LPG Limited, Trustee, Plaintiff herein.

Hartman & Yannetti
Gary E. Hartman, Esquire
Attorney for Plaintiff
126 Baltimore Street
Gettysburg, PA 17325

12/20

12/20

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 96-S-844
Action to Quiet Title

LPG LIMITED, TRUSTEE, Plaintiff,

vs.

JAMES D. LINDNER AND BARBARA L. LINDNER, their heirs, administrators, successors and assigns, Defendants.

TO: James D. Lindner and Barbara L. Lindner, their heirs, administrators, successors and assigns:

You are notified that an Order has been entered on December 3, 1996, directing that within thirty (30) days after this publication, you shall commence an Action in Ejectment or other appropriate action against the Plaintiff above to assert any claim you may have in and to the lands herein described or be forever barred from asserting any right, lien, title or interest inconsistent with the interest or claim set forth in Plaintiff's Complaint with respect to the land herein described:

Adams County Legal Journal

Vol. 38

December 27, 1996

No. 31, pp. 179-182

CONTINUING LEGAL EDUCATION PROGRAMS

1. *Estate Planning for the Owner of a Family Business*

Thursday, January 16, 1997—9:00 a.m. – 1:30 p.m.

Room 307B, Adams County Courthouse—Substantive Law—4 credits.
Ethics—0 credits. Registration through P.B.I. 800-932-4637.

2. *Equitable Distribution Update*

Thursday, February 13, 1997—9:00 a.m. – 1:30 p.m.

Room 307B, Adams County Courthouse—Substantive Law—4 credits.
Ethics—0 credits. Registration through P.B.I. 800-932-4637.

Strong.
Rooted Upon Traditional Values.
Dedicated to Quality.
Customer Service.
Dependable.
Branching Into The Future.
Our Commitment Is You.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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Business Office - 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-704 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of January, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Union Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Legislative Route 01029 (Bollinger Road) at corner of land now or formerly of O. Strickler; thence by said land of O. Stricker, and passing through a steel pin set back 42.80 feet from the last mentioned point, South 22 degrees 29 minutes 48 seconds West, 529.29 feet to a steel pin at corner of other land now or formerly of Robert E. Glass, North 78 degrees 55 minutes 43 seconds West, 305.94 feet to a steel pin; thence by the same, and passing through a steel pin set back 27.4 feet from the next mentioned point, North 03 degrees 39 minutes 06 seconds West, 256.86 feet to a point in the center of Legislative Route 01029 aforesaid; thence in said center of Legislative Route 01029, North 71 degrees 28 minutes 39 seconds East, 547.48 feet to a point the place of BEGINNING. CONTAINING 3.3820 acres.

BEING the same which Lawrence V. Young, United States Bankruptcy Trustee, for Ivan E. Arentz, Jr., and Brenda S. Arentz, by deed dated October 26, 1987, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 471 at page 1033, sold and conveyed to Gerald W. Davis and Laura L. Davis, his wife, the Defendants herein.

IMPROVED WITH a bi-level, single-family dwelling with attached two-car garage.

SEIZED and taken into execution as the property of **Gerald W. Davis and Laura L. Davis** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 3, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 10, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10

days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/13, 20 & 27

LEGAL NOTICE

The Annual meeting of the policyholders of Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M. on January 11, 1997 to elect directors and to transact any other business properly presented.

ATTEST,

Marilyn Q. Butt

Secretary-Treasurer

12/13, 20, 27 & 1/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State, Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, on April 3, 1996, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is JOHANNES BAKERY & COFFEE CO., INC.

John W. Phillips, Esq.
101 West Middle Street
Gettysburg, PA 17325
Attorney for Corporation

12/27

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the Pennsylvania Business Corporation Law, 15 Pa.C.S.A. § 1307, of the intention to file Articles of Incorporation. The name of the proposed corporation is LETO, INC. The proposed corporation is to be organized under the Business Corporation Law of 1988.

Wolfe & Rice
47 West High Street
Gettysburg, PA 17325
Attorneys for Applicant

12/27

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Friday, January 10, 1997, at 10:30 a.m.

HADLOCK—Orphans' Court Action Number OC-156-96. The First and Final Account of Thomas E. Hadlock, Administrator of Estate of Marie K. Hadlock, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

BEARD—Orphans' Court Action Number OC-155-96. The First and Final Account of Ven Ralf Patterson, Executor of the Estate of Jack R. Beard a/k/a Jac' Robert Beard, deceased, late of Cumberland Township, Adams County, Pennsylvania.

BYNAKER—Orphans' Court Action Number OC-157-96. The First and Final Account of Adams County National Bank, Executor of the Estate of James L. Bynaker a/k/a Beverly A. Bynaker, deceased, late of Reading Township, Adams County, Pennsylvania.

LONGANECKER—Orphans' Court Action Number OC-158-96. The First and Final Account of Mary S. Longanecker, Executrix of the Estate of Reida Longanecker, deceased, late of Straban Township, Adams County, Pennsylvania.

DUTTERA—Orphans' Court Action Number OC-159-96. The First and Final Account of John W. Duttera, Jr. and Shirley D. Black, Executors of the Estate of Ruth F. Duttera a/k/a Ruth Pauline Duttera a/k/a Ruth Feiser Duttera, deceased, late of Straban Township, Adams County, Pennsylvania.

SMITH—Orphans' Court Action Number OC-160-96. The First and Final Account of Adams County National Bank, Executor of the Will of Edward F. Smith, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

RAMER—Orphans' Court Action Number OC-75-94. The First and Final Account of Adams County National Bank and Doris Large, Co-Executors of the Estate of P. Ross Ramer, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

12/27, 1/3

CLAPSADL VS. CLAPSADL

1. The person seeking to invalidate a post-nuptial separation agreement has the burden of proving its invalidity by clear and convincing evidence.

2. To invalidate a contract for duress, there must be that degree of restraint or danger, either actually inflicted or threatened and impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness.

3. In the absence of threats of actual bodily harm, there can be no duress sufficient to invalidate a contract where the contracting party is free to consult with counsel.

4. A provision in a post nuptial agreement that each party had the opportunity to seek the advice of independent counsel is presumptively persuasive that a wife voluntarily waived her right to independent counsel where there was no evidence that the husband coerced her into signing the agreement.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-865, LUKE J. CLAPSADL VS. CHERYL L. CLAPSADL.

Samuel K. Gates, Esq., for Plaintiff

Tracy Sheffer, Esq., for Defendant

OPINION ON VALIDITY OF POST NUPTIAL AGREEMENT

Kuhn, J., April 11, 1996.

Before the Court is Wife's claim that a Post Nuptial Agreement executed on September 16, 1994, is invalid.

Evidence received by the Court indicated the following background. The parties were married on December 7, 1968. In May, 1981, Wife was involved in an automobile accident which, according to her, resulted in head injury and slowed her comprehension of some matters. She did have employment after the accident. She further reported three hospitalizations for psychiatric problems but these visits were not corroborated.

Sometime in 1993 the parties separated. Wife lived with her son for two months and then moved to Michigan for 17 months. Wife said that while in Michigan she was receiving Social Security disability due to her mental capacity and was also attending school to obtain her high school diploma. At that time she was living with another man and had filed for a divorce. Husband traveled to Michigan in an attempt to effectuate a reconciliation and two days later Wife returned to the marital home.

In June, 1994, Husband presented Wife with cocaine which she began using. This apparently was not the first time the parties used cocaine. Before the beginning of August, 1994, the parties again separated. Wife eventually reported her drug use to the police and committed herself for in-patient rehabilitation at Mountain Manor from August 1-31, 1994. While in that facility Wife received distressing news. First, Husband informed Wife that their son was in jail as a

suspect in a homicide or attempted homicide matter. Second, Wife learned that her mother was diagnosed with cancer.

Upon being released from Mountain Manor, Wife went to live with her mother and began working the second shift at Hanover Shoe. Sometime after leaving rehabilitation Wife wrote Husband a note (Ex. A of Husband's Answer filed July 27, 1995) wherein she stated she wanted a divorce. She further wrote,

"All I ask is what you were sent through the letter. I want what I got from my Daddy & Grandpa's inheritance money. You have the house, T.V., couch & recliner."

Based on the mentioned letter Husband had his attorney draft the subject Post Nuptial Agreement. The agreement provided for mutual waivers of support, alimony pendente lite and alimony. Certain items of personal property were designated for Wife, including her 1993 Chevrolet Lumina. Husband was to retain all other property including the marital home and to be responsible for any liens on the marital home.

On September 16, 1994, Husband took the draft agreement to Wife's residence. The parties signed the agreement in the presence of Wife's mother. There was no indication that Husband threatened or pressured Wife to sign at that time. Wife had an opportunity to read the Agreement and, in fact, made some handwritten changes on page 5. Paragraph 13(b) addressed the issue of seeking advice of counsel but Wife signed without seeking such advice.

Wife now asks that the Agreement be declared invalid because the Agreement is unreasonably favorable to Husband and that because of her diminished mental capacity she did not understand the contents of the Agreement.

It has been said that the validity of a post-nuptial separation agreement is dependent upon the presence of (1) a reasonable provision for the claiming spouse; or (2) a full and fair disclosure of the other's worth. *Nitkiewicz v. Nitkiewicz*, 369 Pa. Super. 504, 535 A.2d 664, 665 (1988), *Alloc. den.* 551 A.2d 216 (1988). The person seeking to invalidate the agreement has the burden of proving its invalidity by clear and convincing evidence that both elements were lacking. 369 Pa. Super. at 508, 535 A.2d at 666. Here, Wife challenges the reasonableness of the agreement. Reasonableness is determined at the time the agreement is entered and depends upon the surrounding facts and circumstances. *Nigro v. Nigro*, 371 Pa. Super. 625, 630, 538 A.2d 910, 913 (1988).

Here, Wife offered no evidence regarding the reasonableness of the Agreement. Instead, she seems to rely upon an inference that reasonableness is lacking based upon a mere comparison of the lists of property set aside for each party. Such a reference does not establish

Wife's burden by clear and convincing evidence. Husband offered testimony which was not contradicted. He stated that the parties had no bank accounts and that the car he retained had been driven 195,000 miles. The marital home was a two piece modular structure situated on a rented lot. The home was listed for sale at \$26,600 and was encumbered by a lien of \$24,600. Husband has a tenth grade education. He has been a truck driver for Round Hill Foods for 5 1/2 years. In late 1994 that company started a 401K pension plan where 3% of Husband's pay (net pay \$400-480 per week) is contributed. Wife offered no evidence of property values or her wages and benefits.

Wife suggests that her diminished mental capacity and lack of understanding of the Agreement entitle her to have it set aside. The record does not support this allegation. While Wife's mental capacity may have been diminished by her earlier injury there was no evidence that she suffered from mental weakness so great that she was unable to understand the Agreement. *Adams v. Adams*, 414 Pa. Super. 634, 639, 607 A.2d 1116, 1119 (1992), Alloc. den. 619 A.2d 699 (1993). Other than her own limited testimony she offered no corroborating evidence of her mental aptitude. There is no clear dividing line between adequate and inadequate mental capacity to enter into a contract but more is required than has been presented here.

There is no evidence that Wife was forced or coerced into signing the Agreement. The document was signed in her home in the presence of her mother. She offered no testimony that Husband was physically abusive or threatening at that time. She did indicate that he struck her in the past but it was not clear how long ago that occurred. She may understandably have been upset by her life's circumstances but she was not under duress of the type and magnitude to invalidate a contract. Duress has been defined as

That degree of restraint or danger, either actually inflicted or threatened and impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness . . . Moreover, in the absence of threats of actual bodily harm there can be no duress where the contracting party is free to consult with counsel.

Adams v. Adams, supra., 414 Pa. Super. at 639, 607 A.2d at 1119.

Here, Wife had an opportunity to consult with counsel before signing the Agreement but declined to do so. Paragraph 13 of the Agreement provided, in part, that

13. Acknowledgment: Each party to this agreement acknowledges and declares that he or she respectively:

. . .

(b) enters into this agreement voluntarily and intelligently after receiving the advice of independent counsel, or after having had the opportunity to seek the advice of independent counsel, or having been fully advised of the advisability of seeking the advice of independent counsel, free from . . . coercion or duress of any kind; and

...

(d) has carefully read each provision of this agreement; and

(e) fully and completely understands each provision of this agreement; and

(f) agrees that the provisions of this agreement are fair

...

Language similar to that set forth in Paragraph 13(b), above, was held to be presumptively persuasive that a wife voluntarily waived her right to independent counsel where there was no evidence that the husband coerced her into signing a post nuptial agreement in *Nigro v. Nigro*, supra., 371 Pa. Super. at 633, 538 A.2d at 914. In *Adams v. Adams*, supra. the court spoke very pointedly on this issue when it stated,

The agreement clearly mentions Appellant's rights to equitable distribution, support, alimony and/or maintenance on the first page. It also mentions alimony pendente lite and counsel fees as rights discharged by the agreement. The fact that Appellant chose not to hire an attorney to clarify any misunderstanding she may have had concerning the agreement is of no consequence. Contracting parties are normally bound by their agreements, without regard to whether the terms thereof were read and fully understood and irrespective of whether the agreements embodied reasonable or good bargains. . . . "To impose a *per se* requirement that parties entering a prenuptial agreement must obtain independent legal counsel would be contrary to traditional principles of contract law, and would constitute a paternalistic and unwarranted interference with the parties' freedom to enter contracts."

414 Pa. Super. at 638-9, 607 A.2d at 1119.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 11th day of April, 1996, Defendant's Petition To Determine Validity of Post Nuptial Agreement is denied.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF FLOYD G. CURRENS, DEC'D

Late of Highland Township, Adams County, Pennsylvania
 Administratrix: Janet B. Currens, 2890 Fairfield Rd., Gettysburg, PA 17325
 Attorney: John W. Phillips, Esq., Attorney at Law, 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF GEORGE EMIG, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Administrator: Donald J. Emig
 Attorney: Michael E. Dows, 515 Carlisle Street, Hanover, PA 17331

ESTATE OF BIRNIE W. REINAMAN, a/k/a BERNIE W. REINAMAN, DEC'D

Late of Germany Township, Adams County, Pennsylvania
 Administrator, c.t.a.: Wayne A. Reinaman, 253 High Meadow Road, Reisterstown, MD 21136
 Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF GLENN M. SHIELDS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Administratrix: Lynn M. Shields, 59 Knoxlyn Road, Gettysburg, PA 17325
 Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MABEL KATHRYN WOLF, a/k/a MABEL K. WOLF, DEC'D

Late of Berwick Township, Adams County, Pennsylvania
 Executrix: Loretta K. Wentz, 79 Heritage Court, New Oxford, PA 17350
 Attorney: Louis T. Guthrie, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF CHARLES HENRY GEBENSLEBEN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: George M. Gebensleben, 250 York Street, Hanover, PA 17331
 Attorney: John J. Mooney, III

ESTATE OF FRANCIS R. LUTTER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Executrix: Wanda Mariea Whitcomb, 200 Rr. Oliver Street, Hanover, PA 17331
 Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF MARY L. MILLISON, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: John R. White, 122 Baltimore Street, Gettysburg, PA 17325
 Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF PAULINE E. WILLIAMS, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
 Executor: Adams County National Bank, 16 Lincoln Square, Gettysburg, PA 17325
 Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF THOMAS S. ZIEGLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executor: John M. Ziegler, 27 Whispering Pines Lane, Birdsboro, PA 19508
 Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF LILLIAN I. HAMM a/k/a LILLIAN N. HAMM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Administrator CTA: Larry R. Hamm, 3685 Carlisle Pike, New Oxford, PA 17350
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, Pennsylvania 17331

ESTATE OF PAULA A. SCHECK, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executrix: Doris S. Clarke, 979 Sunset Avenue, Gettysburg, PA 17325
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FRANCIS PAUL SHULTZ, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Co-Executors: Brenda-K. Kime, 1255 Belmont Rd., Gettysburg, PA 17325; Gary L. Shultz, 1260 Goldenville Rd., Gettysburg, PA 17325
 Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore St., Gettysburg, PA 17325

