

Adams County Legal Journal

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IN THIS ISSUE

PA. BUILDERS ASSN. ET AL VS. CARROLL VALLEY

This opinion continued from last issue (7/28/2006)

Helping families achieve
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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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NOTICE

PUBLIC NOTICE IS HEREBY GIVEN, that by virtue of a Writ of Execution, (Mortgage Foreclosure), issued out of the United States District Court for the Middle District of Pennsylvania, to me directed, I will expose and offer for sale at public vendue to the highest bidder, the real estate situated at 6431 York Rd., New Oxford, PA. Sale will be held at the Adams County Courthouse, Gettysburg, PA on August 24, 2006 at 11:00 A.M. all the right, title and interest of Silver Moon Restaurants, Inc. And George N. Halkias, defendant(s) and mortgagor(s) in and to the following described real estate and property including improvements thereof.

TERMS OF SALE: Ten percent of the bid due the day of the sale. Balance is due within 30 days. All stamps and transfer taxes shall be the responsibility of the purchaser.

EXHIBIT "A"

DESCRIPTION OF REAL ESTATE

ALL THE FOLLOWING described tracts of land situate in the Township of Berwick, Adams County, Pennsylvania, more particularly described as follows, to wit:

TRACT NO. 1:

BEGINNING at a point in the center line of the Lincoln Highway leading from Cross Keys to Abbottstown, said point being at the Northwest corner of land now or formerly of Edward Odenwald; thence along land now or formerly of Odenwald, South 23 degrees East 300 feet to an iron pin at a 40 foot right-of-way; thence along the Northern boundary of said right-of-way, South 67 degrees West 165 feet to an iron pin at a 35 foot right-of-way; thence along said right-of-way, North 23 degrees West 300 feet to a point in the corner of the aforesaid Lincoln Highway; thence along line in center of said highway, North 67 degrees East 165 feet to a point; the Place of BEGINNING.

TOGETHER with a right-of-way for ingress, egress and regress to and along the within described tract and to the aforesaid 40 foot right-of-way at the rear thereof, and to and along the 35 foot right-of-way strip on the Western side of

Tract No. 2 herein, said right-of-way being in and over the following described strip of land.

BEGINNING at a point in the center of the Lincoln Highway at the Northwest corner of the within described Tract No. 1; thence along same, South 23 degrees East 300 feet to a 40 foot right-of-way; thence along the Northern boundary of said right-of-way, South 67 degrees West 35 feet to an iron pin; thence along land now or formerly of Credon Shearer; North 23 degrees West 300 feet to a point in center of said State Highway; thence along line in center of said State Highway, North 67 degrees East 35 feet to a point at the Place of BEGINNING.

TRACT NO. 2:

BEGINNING at an iron pin at a 40 foot right-of-way said iron pin being 40 foot Southeast of the corner of Southern boundary of land now or formerly of Cross Keys Industries, Inc., and land now or formerly of Edward Odenwald and along the course South 23 degrees East from said iron pin; thence along land now or formerly of Cross Keys Industries, Inc., South 23 degrees East 300 feet to an iron pin; thence along the same, South 67 degrees West 165 feet to a point at a 35 foot right-of-way; thence along said right-of-way, North 23 degrees West 300 feet to a point at the aforesaid 40 foot right-of-way; thence along the Southern boundary of said right-of-way, North 67 degrees East 165 feet to the Place of BEGINNING.

TOGETHER with a right-of-way for ingress, egress and regress to and along the within described tract and to the aforesaid 40 foot right-of-way along the Northern side thereof, and to and along the 35 foot right-of-way strip on the Western side of Tract No. 1 herein, said right-of-way in and over the following described strip of land;

BEGINNING at a point on the Northwest corner of the within Tract No. 2; thence along the Western boundary of said tract, South 23 degrees East 300 feet to a point; thence South 67 degrees West 35 feet to an iron pin; thence along other lands now or formerly of Cross Keys Industries, Inc., North 23 degrees West 300 feet to an iron pin at the aforesaid 40 foot right-of-way between Tracts

Nos. 1 and 2; thence along said right-of-way, North 67 degrees East 35 feet to a point, the Place of BEGINNING.

BEING the same property which Hristos Kopanis and Maria Kopanis, husband and wife, legal owners, and Harilaos Koufomihalis and Terri M. Koufomihalis, husband and wife, equitable owners, by their Deed dated April 1, 2005 and recorded in the Office of the Recorder of Deeds in and for Adams County, simultaneously herewith, granted and conveyed unto George N. Halkias, married man, Mortgage herein.

NOTICE TO ALL PARTIES IN INTEREST AND CLAIMANTS: A Schedule of Distribution of Sale will be filed by the United States Marshal with the Clerk of Court, Scranton, PA on September 8, 2006. Any claims or exception to said distribution must be filed with the Clerk of Court within 10 days thereafter.

United States Marshal
Middle District of PA

7/28, 8/4 & 11

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about April 1, 2006 for the purposes of obtaining a Certificate of Incorporation of a proposed corporation organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is LAXMI, INC.

8/4

PA. BUILDERS ASSN. ET AL VS. CARROLL VALLEY

Continued from last issue (7/28/2006)

The Builders further argue that the Secretary committed an abuse of discretion in that the record lacks substantial evidence supporting the Secretary's findings. Substantial evidence has been defined as such "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Jordan v. Workmen's Comp. Appeal Bd. (Consolidated Electrical Distributors)*, 704 A.2d 1063, 1064 (Pa. 1997) (quoting *Bethenergy Mines, Inc. v. Workmen's Comp. Appeal Bd.*, 612 A.2d 434, 436 (Pa. 1992)). In addressing this issue, I am also mindful of our appellate direction that a reviewing court may not substitute its judgment for that of an agency since the fact finding agency is in a better position to determine the facts based upon its observation of the testimony and witnesses. *Moorehead v. Civil Service Comm'n of Allegheny Co.*, 769 A.2d 1233,1238 (Pa.Cmwlth. 2001).

Following a hearing held on January 11, 2005, the Secretary issued detailed findings of fact which included sixty-six different findings. Although the findings of fact are too numerous to specifically set forth, they may be summarized as follows:

Carroll Valley consists of two geological provinces, one part consisting of the lowland valley and the other part consisting of a rugged and mountainous terrain extending to an elevation of 2,200 feet, or approximately 90 feet higher than the lowland area. Over 53% of the topography of the Borough is situated on a 12-degree slope or greater with some sections of the Borough having a slope as great as 70 or 80 degrees. The geological formations of the Borough are not conducive to supporting a large number of onsite wells. The Borough covers an area of approximately 5 1/2 square miles with over 70 miles of roads. Approximately 90% of the Borough is residential and currently there are approximately 430 homes within its limits, only 1/3 of which are on the valley floor. However, only 1/3 of the land within the Borough is developed with residential construction.

The Borough does not have either a municipal or a volunteer fire department. Rather, the closest responding fire department is the volunteer fire department in Fairfield Borough, which is approximately 2 miles from that portion of Carroll Valley located on the valley floor.

There is no public water supply in Carroll Valley Borough and, consequently, no fire hydrants within the Borough. There are, however, 5 dry hydrants on the valley floor where 3 lakes provide water to fill or re-fill fire fighting tanker trucks' needs. Due to the difficult topography of Carroll Valley Borough, in some areas of the Borough, loaded tanker trucks can only reach top speeds of around 5 miles an hour. The difficulty in getting water to the fire scene is multiplied since water tankers, once they have exhausted their supply, must travel to the valley floor to re-fill before negotiating the difficult terrain and returning to the fire scene. There have been instances where the Fairfield Fire Company's drivers have had to divert off a route because of the terrain and attempt to find an alternative route because the terrain was too steep. One of the primary challenges that the Fairfield Fire Company faces in fighting fires in Carroll Valley is getting water to the scene.

Most building lots in Carroll Valley are approximately 100' x 200'. Because of the lot sizes in the Borough, there is less than a 50-foot separation between residences. This lack of "defensible space" coupled with the lack of sufficient water classifies the majority of Carroll Valley Borough as a "high hazard area" under the Urban Wildlife Interface Code.

The Ordinance at issue requires sprinkler systems installed on all new construction. Each home installed with a sprinkler system will require holding tanks to permit the continuous flow of water with pressure. For a 1,500 square foot home, the total cost for a sprinkler system will run less than \$3,000.

Adjudication and Order, January 11, 2005. Based upon this factual record, the Secretary concluded that clear and convincing evidence established that local topographic and public health and safety circumstances justify the enactment of Ordinance No. 02-2004. The Secretary further found that the Ordinance provided standards for the protection of life, health and property through the use of state-of-the-art devices without unreasonably or unnecessarily increasing construction costs.

Finally, the Secretary concluded that the Ordinance was consistent with the legislative findings and purpose as set forth in the Act.⁷

My review of the record reveals substantial evidence which amply supports the Secretary's findings. Additionally, I find no error with the Secretary's conclusion concerning the ramifications and risks which local topographic conditions present to public safety. As amply stated by the Secretary:

The Borough has real public health and safety concerns with its ability to protect the lives of its residents in the event of a fire. The majority of the Borough...is residential. Over 2/3 of the homes situate in the Borough are located in the mountainous areas, with less than 1/3 of the current residential development located on the valley floor. Add to a topography of hills, mountains and valleys many roads which are impassable, no public water supply, no fire hydrants, no municipal fire company and no volunteer fire company, and the risk of fire-related harm or death to residents in the Borough in the event of a residential fire is substantial.

There can be no question that in a majority of circumstances, smoke alarms as required by the [International Residential Code] are a sufficient measure to protect against fire damage, both in terms of life and property. But that presupposes that the fire, once detected, will be responded to quickly by local firefighters. In Carroll Valley, there are no local firefighters. There are no fire hydrants. There is no public water supply. The Borough has to rely on the services of fire departments in surrounding communities, the closest of which is approximately two miles from the valley floor at the base of the mountain, and all water from hydrants, also located on the valley floor, to fight its fires.

Adjudication and Order, January 11, 2005, pages 16-17.

⁷In a discussion accompanying the decision, the Secretary found the record to be devoid of evidence suggesting that the Ordinance is inconsistent with the legislative findings and purpose of the Act. January 11, 2005, Adjudication and Order, page 16. The Builders have not directed this Court's attention to anything in the record which would contradict this finding by the Secretary. Rather, it appears that the Builders' argument rises or falls entirely on principles of statutory construction.

The Builders suggest that the evidence relied upon by the Secretary establishes nothing more than “mere inconveniences and difficulties to be overcome in delivering fire response and protection that are not unlike those that exist in the municipalities throughout Pennsylvania.” Brief of Petitioners, page 13. I do not agree. Initially, I note there is nothing in the record to suggest such a conclusion. Regardless, whether a municipality or other municipalities have similar features or needs is immaterial. As noted above, the critical inquiry is whether the climatic, geological and topographical circumstances of Carroll Valley justify the additional regulations for the protection of the health, welfare and safety of the community.

Similarly, I reject the Builders’ argument that Ordinance No. 02-2004 is overly broad. In this regard, the Builders suggest that if a need for water sprinklers is present, it is present only in those areas of the Borough other than the valley floor. The Builders argue, therefore, that the Ordinance is overbroad in its application in that clear and convincing evidence has failed to justify universal requirement for sprinklers throughout the Borough. This argument ignores the Secretary’s findings.

The Secretary’s findings, which are supported by the record, indicate that over half of the topography in the Borough consists of mountainous areas. Moreover, less than 1/3 of the current residential development is located on the valley floor, opposed to on the mountain. There is nothing in the record to suggest that this trend will not continue in future building. Rather, this evidence is circumstantial evidence that the vast majority of future building will likely occur in areas other than the valley floor. See generally *Brown Transport Corp. v. Commonwealth of Pennsylvania, Pennsylvania Human Relations Commission*, 578 A.2d 555 (Pa.Cmwh. 1990) (a finding of substantial evidence may be supported by circumstantial or inferential evidence). Moreover, this evidence is more than adequate to support the Secretary’s conclusion.

In rejecting the Builders’ argument concerning the scope of Ordinance No. 02-2004, I note that it is neither the right nor obligation of the Secretary, or this Court, to act as a super-legislator. An ordinance adopted by a legislative body is presumably legal. *In re Annexation of Portion of South Pymatuning Twp.*, 186 A.2d 13, 15 (Pa. 1962). Rather, this Court has a duty to determine whether the

record contains substantial evidence supporting the Secretary's determinations. *City of Pittsburgh v. Kisner*, cited above. Having found such substantial evidence, I will not delve into house by house inquiry as to the need for sprinkler systems in each of the thousands of remaining potential future residences in Carroll Valley. The Act does not require such an assessment. In fact, the Builders' suggestion, to slice Carroll Valley into areas where different regulations apply, only frustrates the uniformity which the Act attempts to establish. Absent clear legislative direction, this Court will not usurp the Act's plain language permitting additional regulations on a municipal-wide basis. For the foregoing reasons, the decision of the Secretary is affirmed.

ORDER OF COURT

AND NOW, this 14th day of October, 2005, the Appeal of the Petitioners is denied. The decision of the Pennsylvania Secretary of Labor and Industry is affirmed.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 00-S-897 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground, situated in Huntington Township, Adams County, Pennsylvania, bounded and described as follows, together with the dwelling erected thereon:

BEGINNING at a point where Leg. Route No. 01012 intersects with the Still House Road; thence in the center of the Still House Road South 38 degrees 25 minutes 40 seconds West, 244.0 feet to a point in the center line of such road at other land now or formerly of Frank Hamilton; thence along other land now or formerly of Frank Hamilton North 61 degrees 33 minutes 30 seconds West, 180.18 feet to a point; thence along land of same North 21 degrees 36 minutes 40 seconds East 200.00 feet to a point in the center of Leg. Route No. 01012 aforesaid; thence in said road South 68 degrees 23 minutes 20 seconds East, 105.46 feet to a spike in said road; thence in such road South 73 degrees 12 minutes 20 seconds East 144.54 feet to a point at the intersection of the aforesaid roads, the place of BEGINNING.

THE above description was taken from draft of survey prepared by Gettysburg Engineering Co., Inc., dated September 3, 4, 1969.

TITLE TO SAID PREMISES IS VESTED IN Fred J. Rogers and Melissa A. Rogers, his wife, by Deed from Vicki L. Ardnt, single woman, dated 5/29/1998, recorded 6/8/1998 in Record Book 1596 page 132.

Tax Parcel: H2-27A

Premises Being: 210 Goodyear Road, Gardners, PA 17324

SEIZED and taken into execution as the property of **Fred J. Rogers & Melissa A. Rogers** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/4, 11 & 18

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
CASE NO. 06-S-663
Action to Quiet Title

JEFFREY B. KELLER and MARY M. KELLER, husband and wife, Plaintiffs

vs.

THOMAS O. FEESER, a/k/a T. O. FEESER, and LYDIA C. FEESER, husband and wife, their respective heirs, executors, administrators, successors and assigns, Defendants

and

JAMES R. COLLINS, JR., Defendant

TO: Thomas O. Feeser, a/k/a T. O. Feeser, and Lydia C. Feeser, husband and wife, their respective heirs, executors, administrators, successors and assigns.

Date of Notice: July 28, 2006

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325

Telephone Number: 717-337-9846
Toll Free: 1-888-337-9846

Puhl, Eastman & Thrasher
Edward G. Puhl, Esq.
Atty. ID No. 55709
220 Baltimore Street
Gettysburg, PA 17325
Attorney for Plaintiffs
(717) 334-2159

8/4

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION
NO. RT-11-06(B)

NOTICE

TO: MELISSA ANN HOLTRY PAXTON

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for August 22, 2006 at 9:00 a.m., prevailing time, at the Adams County Courthouse, 111-117 Baltimore St., Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846

Chester G. Schultz, Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

8/4, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-579 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land, situate, lying and being in Straban Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a spike set in the centerline of Township Road T-484 leading from Hunterstown to Granite Hill Station; thence running by land of the Grantors of which this was formerly a part and through an iron pin set back 13 feet from the start of this course and a tree set on the line North 88 degrees 41 minutes 15 seconds West 132.98 feet to an iron pin; thence by land of the Grantors of which this was formerly a part South 3 degrees 34 minutes 57 seconds West 173.51 feet to a pin set on line of land now or formerly of Clyde J. Little; thence by land now or formerly of Clyde J. Little and through a pin set back 19.91 feet from the end of this course South 85 degrees 00 minutes East 104.45 feet from the end of this course South 85 degrees 00 minutes East 104.45 feet to a spike in the centerline of Township Road T-448; thence in the centerline of T-484 North 12 degrees 30 minutes East 183.58 feet to a spike set in the centerline of said road, the point and place of BEGINNING.

CONTAINING .483 Acres.

BEING THE SAME PREMISES conveyed by Glenn E. Millhimes and Virginia A. Millhimes to Warren R. Cook, Jr. and Rosita V. Cook, by Deed dated July 29, 1981 and recorded on July 29, 1981, in the Adams County Recorder of Deeds Office at Deed Book Volume 358, Page 374.

Commonly known as: 2436 Granite Station, Gettysburg, PA 17325

Tax Parcel No. 38-22-99

SEIZED and taken into execution as the property of **Warren R. Cook & Rosita V. Cook** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/4, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-499 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situated in Straban Township, Adams County, Pennsylvania, being more particularly described as (Lot No. 416) on a plan of lots of Lake Heritage Subdivision duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Miscellaneous Volume 4 at page 427, and subject to all legal highways, easements, rights of way and restrictions of record.

TITLE TO SAID PREMISES IS VESTED IN George H. Simeone and Jodi F. Simeone, husband and wife by Deed from Fred M. Fowler and Carolyn N. Fowler, husband and wife dated 9/30/1998 and recorded 10/8/1998 in Record Book 1677, Page 231.

Tax Parcel: 4-26

Premises Being: 416 Heritage Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **George H. Simeone & Jodi F. Simeone** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 September 22, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

7/21, 28 & 8/4

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately June 7, 2006, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of THE MAD COW, with its principal place of business at 248 Hunterstown Road, Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are Roma L. and Steven T. Moser, residing at 1305 Hilltown Road, Biglerville, Pennsylvania. The character or nature of the business is food services and microbrewery.

8/4

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about October 20, 2005 for the purposes of obtaining a Certificate of Incorporation of a proposed corporation organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is GILBERT TILE, INC.

8/4

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 June 7, 2006, for the incorporation of THE MAD COW, INC. under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of food services and microbrewery, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 248 Hunterstown Road, Gettysburg, PA.

8/4

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 EMMA J. BIRCH, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Emma Lee Ely, 195 Margate Rd., York, PA 17408

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF MARIE C. KLINE, DEC'D

Late of Union Township, Adams County, Pennsylvania

LeRoy D. Kline, Jr. and Ray E. Bange, c/o Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

Attorney: Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

ESTATE OF BERNARD V. LYLE, SR., DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrix: Madeline M. Wajda, 145 Tract Rd., Fairfield, PA 17320

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF HARVEY D. PITZER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administratrix: Barbara Hale, 90 Blooming Grove Rd., Hanover, PA 17331

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF PETER P. SHEVCHUK, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Paul Shevchuk, 730 Herr's Ridge Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF CHRISTINE F. WOLF, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Richard Lee Wolf, 930 Edgegrove Rd., Hanover, PA 17331

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF NAOMI L. DIVELEY, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executors: Gary V. Diveley, 1585 Potato Road, Biglerville, PA 17307; Eddie E. Diveley, 150 Brysonia School Road, Biglerville, PA 17307

Attorney: Robert E. Campbell, Campbell & White, P.C., 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF JACQUELINE A. FREUNDEL, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executors: Cathy F. Elkiss, 623 Chestnut Hill Rd., Hanover, PA 17331; Earl Stephen Freundel, 950 Baer Ave., Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF ALFRED NATHANIEL LAUGHMAN, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Stephen M. Hoffman, c/o Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

ESTATE OF JOSEPH L. MAZALESKI, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Sterling Financial Trust Company, 25 Carlisle Street, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF SCOTT A. MEHRING, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Daryl M. Mehring, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

ESTATE OF RUTHE B. PORAMBO, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Marianne Bushman, 67 Hunters Trill, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF GLADYS M. WERNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Evelyn M. Emminger, formerly Werner, 910-G Rhue Haus Lane, Hummelstown, PA 17036

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF FRANCIS H. GONOSKI, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executrix: Stephanie J. Banks, 19720 Olney Mill Road, Brookeville, MD 20833

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF BRANDON HATCHER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Administratrix: Sherry Jean Hatcher, 449 West Middle Street, Gettysburg, PA 17325

Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF SHIRLEY M. MILLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Juanita Strause, 44678 Willow Oak Court, California, MD 20619

Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

(continued on page 6)

THIRD PUBLICATION (continued)

ESTATE OF JOHN JOSEPH PLATTNER
a/k/a JOHN J. PLATTNER, DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Executrix: Trudy Plattner, 1052 Pickett
Drive, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq.,
Campbell & White, P.C., 112
Baltimore Street, Gettysburg, PA
17325

ESTATE OF GEORGE F. SHELEMAN,
DEC'D

Late of Straban Township, Adams
County, Pennsylvania

Executrix: Alice R. Shelleman, 3822
Old Harrisburg Road, Gettysburg,
PA 17325

Attorney: Teeter, Teeter & Teeter, 108
W. Middle St., Gettysburg, PA 17325

ESTATE OF MARTHA K. SHELLY, DEC'D

Late of Union Township, Adams
County, Pennsylvania

Co-Executrices: Rose Diller, 5663
Senft Road, Spring Grove, PA
17362; Debra Grove, 1267A
Littlestown Rd., Hanover, PA 17331

Attorney: Gary E. Hartman, Esq.,
Hartman & Yannetti, Attorneys at
Law, 126 Baltimore Street,
Gettysburg, PA 17325

Adams County Legal Journal

Vol. 48

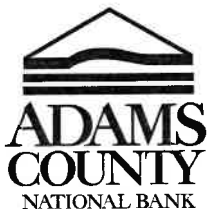
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COMMONWEALTH VS. NAYLOR

In times like these,
you and your clients need
the experience and expertise
provided by a trust professional.



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NOTICE

PUBLIC NOTICE IS HEREBY GIVEN, that by virtue of a Writ of Execution, (Mortgage Foreclosure), issued out of the United States District Court for the Middle District of Pennsylvania, to me directed, I will expose and offer for sale at public vendue to the highest bidder, the real estate situated at 6431 York Rd., New Oxford, PA. Sale will be held at the Adams County Courthouse, Gettysburg, PA on August 24, 2006 at 11:00 A.M. all the right, title and interest of Silver Moon Restaurants, Inc. And George N. Halkias, defendant(s) and mortgagor(s) in and to the following described real estate and property including improvements thereof.

TERMS OF SALE: Ten percent of the bid due the day of the sale. Balance is due within 30 days. All stamps and transfer taxes shall be the responsibility of the purchaser.

EXHIBIT "A"

DESCRIPTION OF REAL ESTATE

ALL THE FOLLOWING described tracts of land situate in the Township of Berwick, Adams County, Pennsylvania, more particularly described as follows, to wit:

TRACT NO. 1:

BEGINNING at a point in the center line of the Lincoln Highway leading from Cross Keys to Abbottstown, said point being at the Northwest corner of land now or formerly of Edward Odenwald; thence along land now or formerly of Odenwald, South 23 degrees East 300 feet to an iron pin at a 40 foot right-of-way; thence along the Northern boundary of said right-of-way, South 67 degrees West 165 feet to an iron pin at a 35 foot right-of-way; thence along said right-of-way, North 23 degrees West 300 feet to a point in the corner of the aforesaid Lincoln Highway; thence along line in center of said highway, North 67 degrees East 165 feet to a point; the Place of BEGINNING.

TOGETHER with a right-of-way for ingress, egress and regress to and along the within described tract and to the aforesaid 40 foot right-of-way at the rear thereof, and to and along the 35 foot right-of-way strip on the Western side of

Tract No. 2 herein, said right-of-way being in and over the following described strip of land.

BEGINNING at a point in the center of the Lincoln Highway at the Northwest corner of the within described Tract No. 1; thence along same, South 23 degrees East 300 feet to a 40 foot right-of-way; thence along the Northern boundary of said right-of-way, South 67 degrees West 35 feet to an iron pin; thence along land now or formerly of Credon Shearer; North 23 degrees West 300 feet to a point in center of said State Highway; thence along line in center of said State Highway, North 67 degrees East 35 feet to a point at the Place of BEGINNING.

TRACT NO. 2:

BEGINNING at an iron pin at a 40 foot right-of-way said iron pin being 40 foot Southeast of the corner of Southern boundary of land now or formerly of Cross Keys Industries, Inc., and land now or formerly of Edward Odenwald and along the course South 23 degrees East from said iron pin; thence along land now or formerly of Cross Keys Industries, Inc., South 23 degrees East 300 feet to an iron pin; thence along the same, South 67 degrees West 165 feet to a point at a 35 foot right-of-way; thence along said right-of-way, North 23 degrees West 300 feet to a point at the aforesaid 40 foot right-of-way; thence along the Southern boundary of said right-of-way, North 67 degrees East 165 feet to the Place of BEGINNING.

TOGETHER with a right-of-way for ingress, egress and regress to and along the within described tract and to the aforesaid 40 foot right-of-way along the Northern side thereof, and to and along the 35 foot right-of-way strip on the Western side of Tract No. 1 herein, said right-of-way in and over the following described strip of land;

BEGINNING at a point on the Northwest corner of the within Tract No. 2; thence along the Western boundary of said tract, South 23 degrees East 300 feet to a point; thence South 67 degrees West 35 feet to an iron pin; thence along other lands now or formerly of Cross Keys Industries, Inc., North 23 degrees West 300 feet to an iron pin at the aforesaid 40 foot right-of-way between Tracts

Nos. 1 and 2; thence along said right-of-way, North 67 degrees East 35 feet to a point, the Place of BEGINNING.

BEING the same property which Hristos Kopanis and Maria Kopanis, husband and wife, legal owners, and Harilaos Koufomihalis and Terri M. Koufomihalis, husband and wife, equitable owners, by their Deed dated April 1, 2005 and recorded in the Office of the Recorder of Deeds in and for Adams County, simultaneously herewith, granted and conveyed unto George N. Halkias, married man, Mortgage herein.

NOTICE TO ALL PARTIES IN INTEREST AND CLAIMANTS: A Schedule of Distribution of Sale will be filed by the United States Marshal with the Clerk of Court, Scranton, PA on September 8, 2006. Any claims or exception to said distribution must be filed with the Clerk of Court within 10 days thereafter.

United States Marshal
Middle District of PA

7/28, 8/4 & 11

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 May 26, 2006 for the incorporation of NUTS, BOLTS AND MORE, INC. under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 830 W. King Street, Littlestown, PA 17340.

Bernard A. Yannetti, Jr., Esq.
Hartman & Yannetti
Solicitors

8/11

COMMONWEALTH VS. NAYLOR

1. In ruling upon a motion for judgment of acquittal, the sufficiency of the evidence must be evaluated upon the entire trial record. The trial court is required to view the evidence in a light most favorable to the Commonwealth as the verdict winner and may not alter the verdict based on a redetermination of credibility or a re-evaluation of evidence.

2. The defense of entrapment does not negate an element of the offense, it is an affirmative defense which the defendant must prove by preponderance of the evidence. Whether an entrapment has occurred is normally a question for the jury unless the evidence points to only one possible conclusion; in that case, it may be decided as a matter of law. Where there is conflicting testimony on the subject of inducement, the matter is properly left for the jury to resolve.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CRIMINAL ACTION NO. CP-01-263-2005.
COMMONWEALTH OF PENNSYLVANIA VS. STEPHEN G.
NAYLOR, III.

Brian Sinnett, Esq., Assistant District Attorney, for Commonwealth
Kristin L. Rice, Esq., Assistant Public Defender, for Defendant
George, J., October 17, 2005

OPINION PURSUANT TO Pa.R.A.P. 1925

Following a jury trial held on June 9, 2005, the Defendant, Stephen G. Naylor, III, (“Naylor”), was convicted of two counts of delivery of marijuana in violation of Section 113(a)30 of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act and two counts of simple possession in violation of Section 113(a)(16) of that same Act. Naylor was sentenced on August 22, 2005, at which time the Court ruled that the convictions on Counts 3 and 4 (simple possession) merged with the convictions on Counts 1 and 2 (delivery) for sentencing purposes. Following the imposition of the sentence, Naylor appealed his conviction to the Pennsylvania Superior Court. In his Concise Statement of Matters Complained of on Appeal, Naylor claims that the trial court erred in failing to find entrapment as a matter of law and set aside the verdicts. For the reasons set forth below, it is recommended that Naylor’s appeal be denied.

Trial testimony reflected that on August 12, 2004, Trooper Craig Ammons of the Pennsylvania State Police, working in an undercover capacity, met with Naylor and Jessica McGee (“McGee”) at a Hampton Inn parking lot located in Straban Township, Adams County, Pennsylvania. At that location, Trooper Ammons

approached a red Honda owned by Naylor. McGee was the driver of the vehicle while Naylor sat in the front passenger seat. Trooper Ammons approached the passenger side and, after small talk, gave Naylor \$210. In return, the Trooper received a Newport cigarette box containing a substance which subsequently tested positive for marijuana and weighed approximately one ounce.

Sometime thereafter, a second meeting was arranged for August 18, 2004, to occur in the parking lot of the Hampton Inn. On the same date, at approximately 6:05 P.M., Trooper Ammons went to the location where he once again met with Naylor who was driving the red Honda. This time, however, Naylor was alone. During their meeting, Naylor gave Trooper Ammons a blue shopping bag containing a substance which subsequently tested positive as marijuana and weighed approximately fifty grams. In exchange for the substance, Trooper Ammons paid Naylor \$490. During the exchange, Naylor stated “[h]ere’s your stuff, the same as last time.”

Once the Commonwealth rested, Naylor testified on his own behalf. He described being in a sexual relationship with McGee. During this relationship, McGee asked Naylor, on several occasions, if he would get marijuana for her friend. He claims to have refused her initial requests. Essentially, Naylor attempted to paint a picture whereby McGee withheld sexual intercourse with Naylor until he obtained marijuana for her friend. He claims that he finally gave into her requests, even though he had not been previously involved with transferring or selling drugs. On cross-examination, he testified that despite being a novice in the world of drugs, he went to a co-worker’s residence, unannounced, and purchased the marijuana that he subsequently sold to Trooper Ammons.¹

In ruling upon a motion for judgment of acquittal, “the sufficiency of the evidence must be evaluated upon the *entire trial record*.” *Commonwealth v. Meadows*, 369 A.2d 1266, 1268 (Pa. 1977) (quoting *Commonwealth v. Tabb*, 207 A.2d 884 (Pa. 1965)). The trial court is required to view the evidence in a light most favorable to the Commonwealth as the verdict winner and may not “alter the verdict based on a redetermination of credibility or a re-evaluation of

¹ At the time this Opinion was written, the transcript of the trial proceedings had not yet been completed. The Court, therefore, relies upon its notes in outlining the factual history.

evidence.” *Id.*; *Commonwealth v. Johnson*, 631 A.2d 639, 643 (Pa.Super. 1993). “It is well settled that only causes appearing on the face of the record or insufficiency of evidence will justify the grant of a motion [of acquittal].” *Commonwealth v. Stark*, 584 A.2d 289, 291 (Pa. 1990).

Naylor claims that judgment of acquittal is proper since trial testimony established the defense of entrapment as a matter of law. I disagree. Initially, I note that because the defense of entrapment does not negate an element of the offense, it is an affirmative defense which the defendant must prove by a preponderance of the evidence. *Commonwealth v. Lebo*, 795 A.2d 987, 993 (Pa.Super. 2002). “Whether an entrapment has occurred is normally a question for the jury unless the evidence points to only one possible conclusion; in that case, it may be decided as a matter of law.” *Id.* “Moreover, where there is conflicting testimony on the subject of inducement, the matter is properly left for the jury to resolve.” *Commonwealth v. Mance*, 619 A.2d 1378, 1380 (Pa.Super. 1993).

In evaluating Naylor’s claim, I note that the only evidence of entrapment arose from Naylor’s own self-serving testimony. The Commonwealth did not accept this testimony but rather rigorously cross-examined Naylor. After viewing Naylor’s testimony at trial, observing his reluctance in answering questions and his demeanor, it is this Court’s opinion that he was a less than credible witness. Since it is beyond dispute that the finder of fact may believe all, part or none of a witness’s testimony, *Commonwealth v. Tharp*, 830 A.2d 519, 527 (Pa. 2003), the flaw in Naylor’s argument is that it is based largely upon testimony which the jury was not obliged to accept.

I anticipate that Naylor’s appeal will cite the line of cases beginning with the Superior Court Opinion in *Commonwealth v. Mott*, 334 A.2d 771 (Pa.Super. 1975), which held that where the evidence points to only one conclusion, the Court must decide the issue of entrapment as a matter of law. *Id.* at 774-75; see also *Commonwealth v. Wright*, 578 A.2d 513, 519 (Pa.Super. 1990); *Commonwealth v. Phillips*, 654 A.2d 591, 594 (Pa.Super. 1995). That line of cases, however, is clearly distinguishable because in each case, the underlying facts were not in dispute. Instantly, the Commonwealth did not concede any factual circumstance concerning Naylor’s allegations of entrapment at trial. While it is true that the Commonwealth did not

contradict his claims by direct evidence, it is also true that the burden is on Naylor to present an entrapment defense through credible evidence. Unlike the *Mott* line of cases where there was no dispute of established fact, it is clear, in the present case, that the jury failed to find any credible evidence of entrapment. Having viewed the testimony during the course of this trial, the jury's rejection of Naylor's self-serving statements does not shock this Court's conscience.

For the foregoing reasons, it is suggested that the verdict of the jury should not be disturbed.²

²Naylor also challenges counsel's stewardship at trial in the event that trial counsel failed to properly preserve the issue discussed above. Since it is this Court's belief that the issue which Naylor claims trial counsel failed to properly preserve is meritless, the issue of counsel's competence is moot.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 00-S-897 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground, situated in Huntington Township, Adams County, Pennsylvania, bounded and described as follows, together with the dwelling erected thereon:

BEGINNING at a point where Leg. Route No. 01012 intersects with the Still House Road; thence in the center of the Still House Road South 38 degrees 25 minutes 40 seconds West, 244.0 feet to a point in the center line of such road at other land now or formerly of Frank Hamilton; thence along other land now or formerly of Frank Hamilton North 61 degrees 33 minutes 30 seconds West, 180.18 feet to a point; thence along land of same North 21 degrees 36 minutes 40 seconds East 200.00 feet to a point in the center of Leg. Route No. 01012 aforesaid; thence in said road South 68 degrees 23 minutes 20 seconds East, 105.46 feet to a spike in said road; thence in such road South 73 degrees 12 minutes 20 seconds East 144.54 feet to a point at the intersection of the aforesaid roads, the place of BEGINNING.

THE above description was taken from draft of survey prepared by Gettysburg Engineering Co., Inc., dated September 3, 4, 1969.

TITLE TO SAID PREMISES IS VESTED IN Fred J. Rogers and Melissa A. Rogers, his wife, by Deed from Vicki L. Ardent, single woman, dated 5/29/1998, recorded 6/8/1998 in Record Book 1596 page 132.

Tax Parcel: H2-27A

Premises Being: 210 Goodyear Road, Gardners, PA 17324

SEIZED and taken into execution as the property of **Fred J. Rogers & Melissa A. Rogers** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/4, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-579 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land, situate, lying and being in Straban Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a spike set in the centerline of Township Road T-484 leading from Hunterstown to Granite Hill Station; thence running by land of the Grantors of which this was formerly a part and through an iron pin set back 13 feet from the start of this course and a tree set on the line North 88 degrees 41 minutes 15 seconds West 132.98 feet to an iron pin; thence by land of the Grantors of which this was formerly a part South 3 degrees 34 minutes 57 seconds West 173.51 feet to a pin set on line of land now or formerly of Clyde J. Little; thence by land now or formerly of Clyde J. Little and through a pin set back 19.91 feet from the end of this course South 85 degrees 00 minutes East 104.45 feet from the end of this course South 85 degrees 00 minutes East 104.45 feet to a spike in the centerline of Township Road T-448; thence in the centerline of T-484 North 12 degrees 30 minutes East 183.58 feet to a spike set in the centerline of said road, the point and place of BEGINNING.

CONTAINING .483 Acres.

BEING THE SAME PREMISES conveyed by Glenn E. Millhimes and Virginia A. Millhimes to Warren R. Cook, Jr. and Rosita V. Cook, by Deed dated July 29, 1981 and recorded on July 29, 1981, in the Adams County Recorder of Deeds Office at Deed Book Volume 358, Page 374.

Commonly known as: 2436 Granite Station, Gettysburg, PA 17325

Tax Parcel No. 38-22-99

SEIZED and taken into execution as the property of **Warren R. Cook & Rosita V. Cook** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/4, 11 & 18

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION
NO. RT-11-06(B)

NOTICE

TO: MELISSA ANN HOLTRY PAXTON

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for August 22, 2006 at 9:00 a.m., prevailing time, at the Adams County Courthouse, 111-117 Baltimore St., Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846

Chester G. Schultz, Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

8/4, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-431 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel pin on the Southern right-of-way line of Starlite Drive at corner of Lot No. 20 on the plan of lots hereinabove identified; thence by said Lot No. 20, South forty-four (44) degrees twenty-two (22) minutes thirty-two (32) seconds East, one hundred (100.00) feet to a steel pin at corner of Lot No. 12 of Lakeview Village-Phase One; thence by said Lot No. 12, South forty-five (45) degrees thirty-seven (37) minutes twenty-eight (28) seconds West, thirty-six (36.00) feet to a steel pin at corner of Lot No. 18; thence by said Lot No. 18, North forty-four (44) degrees twenty-two (22) minutes thirty-two (32) seconds West, one hundred (100.00) feet to a steel pin on the Southern right-of-way line of Starlite Drive; thence by said Southern right-of-way line of Starlite Drive, North forty-five (45) degrees thirty-seven (37) minutes twenty-eight (28) seconds East, thirty-six (36.00) feet to the above described place of BEGINNING. CONTAINING 3,600 square feet.

The above description was prepared in Keeping with a subdivision plan for "Lakeview Village-Phase Two" prepared by Donald E. Worley, Registered Surveyor, of Worley Surveying, dated April 21, 1989, revised September 11, 1989, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 54, page 65 (2 pages) and being known thereon as Lot No. 19.

UNDER AND SUBJECT to the restrictions, reservations, conditions and protective covenants for "Lakeview Village-Phase Two" set forth in the Declaration of Restrictions, Reservations, Conditions and Protective Covenants dated June 8, 1990, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 559, at page 653, as well as the restrictions, comments and notations as set forth on the subdivision plan for "Lakeview Village-Phase Two" recorded in said office in Plat Book 54, page 62 (2 pages).

TOGETHER WITH AND SUBJECT to a fifty (50) foot right-of-way in, through and along the streets known as Crescent Lane and Starlite Drive to be used in

common with other owners of lots in "Lakeview Village-Phase Two" as shown on the subdivision plan above referenced.

SUBJECT to visible easements and restrictions of record.

Tax I.D. #: 27-12-72

Being known as 26 Starlite Drive, Littlestown, PA 17340.

To be sold as the property of: Michael G. Jackowski and Roberta A. Jackowski

SEIZED and taken into execution as the property of **Michael G. Jackowski & Roberta A. Jackowski** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-606 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT tract of land situate, lying and being in Conewago Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point at Thomas Drive and Lot No. 178; thence along Lot No. 178, South seventy-six (76) degrees forty-seven (47) minutes twenty (20) seconds West, one hundred twenty-four and ninety-nine hundredths (124.99) feet to a point at Lot No. 160; thence along Lot No. 160, North thirteen (13) degrees twelve (12) minutes forty (40) seconds West, eighty (80.00) feet to a point at Lot No. 176; thence along Lot No. 176, North seventy-six (76) degrees forty-seven (47) minutes twenty (20) seconds East, one hundred twenty-four and ninety-nine hundredths (124.99) feet to a point at Thomas Drive; thence along Thomas

Drive, South thirteen (13) degrees twelve (12) minutes forty (40) seconds East, eighty (80.00) feet to the point and place of BEGINNING.

CONTAINING 9.999 square feet and identified as Lot No. 177 on a Plan of Lots entitled Section Two, Phase "B", Sherry Village, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 60 Page 30.

Map 101, Parcel 50

Premises Being: 65 Thomas Drive, McSherrystown, PA 17344

SEIZED and taken into execution as the property of **Rhoda A. Harbaugh & Vanessa E. Birgensmith** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/11, 18 & 25

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the July 17, 2006, pursuant to the Fictitious Name Act, setting forth that Paul K. Hoover, Jr. and Sherry L. Hoover are the only individuals and that Nuts, Bolts and More, Inc. is the only entity interested in a business, the character of which is management of a hardware store, that the designation under which the business is and will be conducted is LITTLESTOWN ACE HARDWARE and that the principal place of business is 830 W. King Street, Littlestown, PA 17340.

Bernard A. Yannetti, Jr.
Solicitor

8/11

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 PATRICIA L. MERRICK, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Tricia Frazee, 309 Ridge Ave., Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore St., Gettysburg, PA 17325

ESTATE OF WILLIAM H. REINDOLLAR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Laurie Rohrer, 69 Abbotts Drive, Abbottstown, PA 17301

Attorney: Thomas E. Miller, Esq., Miller & Shuitis, P.C., 249 York Street, Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF EMMA J. BIRCH, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Emma Lee Ely, 195 Margate Rd., York, PA 17408

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF MARIE C. KLINE, DEC'D

Late of Union Township, Adams County, Pennsylvania

LeRoy D. Kline, Jr. and Ray E. Bange, c/o Richard W. Stevenson, Esq., McNeese Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

Attorney: Richard W. Stevenson, Esq., McNeese Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

ESTATE OF BERNARD V. LYLE, SR., DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrix: Madeline M. Wajda, 145 Tract Rd., Fairfield, PA 17320

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF HARVEY D. PITZER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administratrix: Barbara Hale, 90 Blooming Grove Rd., Hanover, PA 17331

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF PETER P. SHEVCHUK, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Paul Shevchuk, 730 Herr's Ridge Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF CHRISTINE F. WOLF, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Richard Lee Wolf, 930 Edgemoor Rd., Hanover, PA 17331

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF NAOMI L. DIVELEY, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executors: Gary V. Diveley, 1585 Potato Road, Biglerville, PA 17307; Eddie E. Diveley, 150 Brysonia School Road, Biglerville, PA 17307

Attorney: Robert E. Campbell, Campbell & White, P.C., 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF JACQUELINE A. FREUNDEL, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executors: Cathy F. Elkiss, 623 Chestnut Hill Rd., Hanover, PA 17331; Earl Stephen Freundel, 950 Baer Ave., Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF ALFRED NATHANIEL LAUGHMAN, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Stephen M. Hoffman, c/o Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

ESTATE OF JOSEPH L. MAZALESKI, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Sterling Financial Trust Company, 25 Carlisle Street, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF SCOTT A. MEHRING, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Daryl M. Mehring, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

ESTATE OF RUTHE B. PORAMBO, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Marianne Bushman, 67 Hunters Trail, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF GLADYS M. WERNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Evelyn M. Emminger, formerly Werner, 910-G Rhue Haus Lane, Hummelstown, PA 17036

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW
NO. 06-S-785
Change of Name Proceeding
NOTICE

NOTICE is hereby given that on July 18, 2006, the Petition of Kelly Jo Brown praying for a decree to change her name from Kelly Jo Brown to Kelly Jo Gavin was filed.

The Court has fixed August 22, 2006, at 8:30 a.m. in the Adams County Courthouse, Courtroom No. 2, Gettysburg, Adams County, Pennsylvania, as the time 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.

/s/David K. James, Esq.
Attorney for Petitioner
234 Baltimore Street
Gettysburg, PA 17325
(717) 334-6718
Supreme Court ID No. 23318

8/11

NOTICE

NOTICE IS HEREBY GIVEN of the filing of Certificate of Organization in the Department of State of the Commonwealth of Pennsylvania on June 5, 2006, for the purpose of organizing a domestic limited liability company to be organized under the Limited Liability Company Law of 1994, 15 Pa. C.S.A. 8901, *et seq.* The name of the limited liability company is LITTLESTOWN LAND HOLDINGS, LLC, and the purpose for which it is to be organized is to engage in any business permitted by law, with a focus on real estate.

Christopher E. Rice, Esq.
Martson Deardorff Williams & Otto
Ten East High Street
Carlisle, PA 17013
(717) 243-3341

8/11

CERTIFICATE OF AUTHORITY

This notice is to announce that PANCHANDLE PUMPING, INC., a Maryland corporation, located at 3634 Point of Rocks Road, Jefferson, Maryland has applied for a Certificate of Authority to do concrete pumping work in Pennsylvania on August 1, 2006. The corporation's registered office in the Commonwealth is Battersby & Sheffer located at 20 West Main Street in Fairfield, Pennsylvania.

8/11

Adams County Legal Journal

Vol. 48

August 18, 2006

No. 13, pp. 80-85

IN THIS ISSUE

SMITH VS. SMITH

This opinion continues to next issue (8/25/2006)

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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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-41 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of October, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Reading Township, Adams County, Pennsylvania, being designated as Lot No. 1 on the final subdivision plan prepared for Edward C. Wallen, Sr., dated December 29, 1998, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 76 at page 5, more particularly bounded and described as follows:

BEGINNING at a steel pin set in Miller Road (T-572) and corner of land now or formerly of Gene H. Shenberger; thence continuing along Miller Road North 40 degrees 19 minutes 42 seconds East 160.00 feet to a steel pin set; thence along land now or formerly of Edward Kopp and Edward C. Wallen and through an existing iron pipe set back 24.91 feet from the beginning of this course South 49 degrees 40 minutes 18 seconds East 281.50 feet to a steel pin set at corner of Lot No. 2; thence along Lot No. 2 South 40 degrees 19 minutes 42 seconds West 160.00 feet to a steel pin set; thence along land now or formerly of Gene H. Shenberger and through an existing iron pipe set back 24.65 feet from the terminus of this course North 49 degrees 40 minutes 18 seconds West 281.50 feet to a steel pin set in Miller Road, the point and place of BEGINNING. CONTAINING 1.034 acres.

Being part of the same tract of land which Home Bange, widower, by his deed dated the 12th day of October, 1993, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 791 at page 264, granted and conveyed unto Edward C. Wallen, Sr. and Darlene K. Wallen, husband and wife, grantors herein.

TOGETHER WITH the right to use the stone driveway as it is extended across

Lot No. 1 as shown on the aforesaid subdivision plan. The rights and responsibilities related to the use and maintenance of the driveway as between owners of Lots 1 and 2 are set forth in a Declaration of Right-of-Way and Responsibilities recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1784 at page 159.

This conveyance is realty transfer tax exempt as it is from parents to daughter and son-in-law.

And the said grantor does hereby specially warrant the property hereby conveyed.

IN WITNESS WHEREOF, said grantors have hereunto set their hand and seal the day and year first above written.

TITLE TO SAID PREMISES IS VESTED IN Ronald L. McDannell and Michelle L. McDannell, husband and wife, in deed from Edward C. Wallen, Sr. and Darlene K. Wallen, husband and wife, dated 9-28-00, recorded 9-29-00, in Book #2136, Page #056.

Tax Parcel: 36-J07-0053-000

Premises Being: 24 Miller Road, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Ronald L. McDannell & Michelle L. McDannell** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 November 3, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/18, 25 & 9/1

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CASE NO. 06-471
Action to Quiet Title

LESTER E. MYERS and FAIRY C. MYERS, Husband and Wife, and LESTER E. MYERS and FAIRY C. MYERS, TRUSTEES OF LESTER E. MYERS and FAIRY C. MYERS REVOCABLE LIVING TRUST, Plaintiffs

vs.

HOWE W. SHUTZ and MARIAM G. SHUTZ, Together with any and all of their predecessors, successors, and assigns, and all other parties of interest, Defendants

TO: Howe W. Shutz and Mariam G. Shutz, Together with any and all of their predecessors, successors, and assigns, and all other parties of interest

TAKE NOTICE that on July 31, 2006, the Honorable Michael A. George entered the following Order with regard to the above-captioned Action to Quiet Title:

ORDER

AND NOW, TO WIT, this 31st day of July, 2006, upon consideration of Plaintiff's Motion for Judgment, it is hereby

ORDERED that Defendants in the above-captioned matter be forever barred from asserting any right, lien, title or interest in the land, which is the subject matter of this action, inconsistent with the interests or claims of the Plaintiff as set forth in its Complaint, unless Defendants make an appearance or file an Answer to the Complaint within thirty (30) days of this Order.

BY THE COURT
/s/Michael A. George, J.

CGA Law Firm
Christian J. Dabb, Esq.
Attorneys for Plaintiff
135 North George Street
York, PA 17401
(717) 848-4900

8/18

SMITH VS. SMITH

1. Only property acquired prior to the date of final separation is marital property subject to equitable distribution. The date of final separation revolves around the definition of “separate and apart.”

2. The gravamen of the phrase “separate and apart” becomes the existence of separate lives not separate roofs. A common residence is not a bar to showing that the parties live separate and apart.

3. In the event a complaint in divorce is filed and served, it shall be presumed that the parties commenced to live separate and apart not later than the date the complaint was served.

4. It is common practice for courts to reserve jurisdiction over defined benefit plans until they mature or enter pay status.

5. The Pennsylvania Superior Court has identified two methods of distributing retirement benefits: 1) immediate offset method and 2) deferred distribution method.

6. The immediate offset method is properly used when the present value of the benefit is sufficient to make a present distribution. Conversely, a deferred distribution does not employ present value because many variables make it too difficult to determine. Instead, the court retains jurisdiction and allocates benefits when they mature or are paid.

7. Alimony is granted to a former spouse to ensure the reasonable needs of the person are met. The reasonable needs of a person are determined in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor’s ability to pay.

8. The purpose of an award of counsel fees is to enable a financially dependent spouse to maintain or defend an action for divorce without being at a financial disadvantage and to effectuate economic justice between the parties.

9. Counsel fees can be awarded in addition to an award for alimony pendente lite because both are necessary to maintain the divorce action.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL ACTION NO. 01-S-1295. CHARKI A.
SMITH VS. MICHAEL F. SMITH.

Henry O. Heiser, III, Esq., for Plaintiff

John Wolfe, Esq., for Defendant

Bigham, J., October 19, 2005

OPINION

STATEMENT OF FACTS

Charki A. Smith, Plaintiff, (hereinafter “Wife”) filed a Complaint on December 5, 2001 seeking divorce, equitable distribution of property, alimony, alimony pendente lite (“APL”), counsel fees, costs and expenses. Michael F. Smith, Defendant, (hereinafter “Husband”) filed an Acceptance of Service indicating service was made on January 4, 2002. This Court awarded Wife APL by Orders dated April 23, 2003

and June 25, 2004¹. A Master was appointed on March 22, 2004 to determine the remaining issues of equitable distribution of property, alimony, counsel fees, costs and expenses. In addition, the Master had to determine the date of legal separation that should be used for purposes of equitable distribution. Both parties have filed Exceptions to the Master's Reports and Recommendations and oral argument was heard on September 1, 2005.² For the reasons more fully set below, this Court accepts the findings and recommendations of the Master but will retain jurisdiction over the distribution of the parties' Retirement Plan, Defined Benefit Plan, (hereinafter "A Plan").

The parties were married on September 30, 1991 and had one child together born on May 16, 1994. Both parties are employed by United Airlines, with respective positions of Wife as a stewardess and Husband as a pilot. During their marriage, husband testified that ["it didn't seem like a real marriage since year 2000 (R.436-438); the parties were spending time apart from one another and taking separate vacations (R.440); defendant was away without his wife eight weeks in 2001(R.440); the parties were not communicating; in the fall of 2000 defendant was under the impression that the marriage was over; the parties barely talked from the time plaintiff filed support proceedings in October 2001 and long before (R.266); the parties avoided each other in the house; and that after the divorce was filed 'things were merely a continuation of what was going on' (R.269)."] *Plaintiff's Post-Hearing Memorandum, at 2*. Wife agrees with the testimony presented by her husband but believes nothing changed on December 5, 2001, the date she filed the divorce Complaint. Wife believes their lives continued on exactly as they had before but points out that during their marriage they remained in the same household together, ate meals together, and slept in the same bedroom (R. 101). *Id.* Additionally, wife stated after the Complaint was filed ["they shopped together, exchanged gifts, traveled together, took a vacation together in Orlando, Florida, in early 2002 (Px. 35), and according to plaintiff, attended social functions together."] *Id.* 2-3. Based on the testimony taken from both parties, the Master concluded they both desired to be separated at the time

¹Wife was awarded APL in the amount \$1,300 month, which increased to \$1,474 a month because of husband's earning capacity.

²The initial Master's Report and Recommendation was filed on March 23, 2005. A Supplemental Report and Recommendation was filed on June 24, 2005.

the divorce Complaint was filed, despite the fact that they continued to reside in the same household.

The Master used December 5, 2001 as the date of legal separation for purposes of equitable distribution. The Master proposed the net marital estate amounting to \$84,517.28 be distributed according to percentages by awarding Husband fifty-six percent (\$47,329.68) and Wife forty-four percent (\$37,187.61). In addition, both parties participated in United Airline's Retirement Benefit Plans: "A Plan", a Defined Benefit Plan, and "B Plan", a Defined Contribution Plan. The Master valued the marital portion of their retirement benefit plans at:

Husband's A Plan	\$ 182,882.89 ³
Husband's B Plan	\$ 199,297.83 ⁴
TOTAL	\$ 382,180.72

Wife's A Plan	\$ 27,609.96 ⁵
Wife's B Plan	\$ 465.21 ⁶
TOTAL	\$ 28,075.17

The Master recommended distributing their retirement benefit plans according to percentages by awarding Husband thirty percent of his plans (\$114,654.22) and Wife would be allowed to retain all of her plans (\$28,075.17) and seventy percent of her Husband's plans (\$267,526.51). Overall, the Master proposed awarding Husband \$161,983.90 and Wife \$304,714.12 of the marital estate assets, including retirement plans. Also, the Master awarded Wife alimony in the amount of \$1200/month for three years and directed Husband to pay her counsel fees, costs and expenses.

LEGAL DISCUSSION

I. Date of Legal Separation

The Master recommended and this Court agrees the date of legal separation is the date the divorce Complaint was filed on December

³The value of Husband's A Plan was based upon the evaluation performed by the certified public accountant, Mike Noel, using a date of separation of December 5, 2001 with the coverture fraction.

⁴The value of Husband's B Plan was based upon a share price calculation.

⁵The value of Wife's A Plan was based upon the evaluation performed by the certified public accountant, Mike Noel, using a date of separation of December 5, 2001 with the coverture fraction.

⁶The value of Wife's B Plan was based upon a stipulation of the parties.

5, 2001. Plaintiff argues, for purposes of equitable distribution, the date of legal separation should not be until January of 2003 because they were not living “separate and apart” until the husband physically removed himself from the marital residence. Consequently, Plaintiff believes the later date of separation would require an adjustment to the marital estate to include as a marital asset a Ford Camper that had been purchased in February or March of 2002 and \$24,660.94 in credit card charges as marital debt.

Only property acquired “prior to the date of final separation” is marital property subject to equitable distribution. The date of final separation revolves around the definition of “separate and apart”. The Divorce Code defines “separate and apart” as follows: “Complete cessation of any and all cohabitation, whether living in the same residence or not.” 23 Pa.C.S.A. § 3013. In *Thomas v. Thomas*, 335 Pa. Super. 41, 483 A.2d 945 (1984), the Superior Court held “cohabitation” means “the mutual assumption of those rights and duties attendant to the relationship of husband and wife”. *Id.*, at 47, 483 A.2d at 948. Thus, the graveman of the phrase “separate and apart” becomes the existence of separate lives not separate roofs. *Id.* A common residence is not a bar to showing that the parties live separate and apart. *Flynn v. Flynn*, 341 Pa. Super. 76, 81, 491 A.2d 156, 159 (1985).

Recently, the definition of separate and apart was amended to provide: “In the event a complaint in divorce is filed and served, it shall be presumed that the parties commenced to live separate and apart not later than the date the complaint was served.” 23 Pa.C.S.A. § 3103. The amendment applies to complaints served before, on or after the effective date of this paragraph. 2004 Pa. Legis. Serv. Act 2004-175 (S.B. 95). The amendment creates a rebuttable presumption designed to address the difficulty in proving a separation date, especially when the parties have not established different residences. The burden of proof required to rebut the presumption has not yet been addressed by our legislature or courts.

Wife argues she should be allowed to rebut the presumption by a preponderance of the evidence standard. She believes the date her husband physically removed himself from their residence is the true indicator of their separation for two main reasons. First, she argues nothing changed between the parties after she filed the divorce Complaint. Second, she argues her husband’s failure to argue they

were separated before the Complaint was filed proves they were not acting as if they were separated. In addition, Wife argues the fact that her husband did not file for an Appointment of Master until March 18, 2004 supports her later date of separation.⁷

Even if our courts or legislature would require a higher standard of proof to rebut the presumption, Wife has failed to establish by a preponderance of the evidence that the date of legal separation should be later than the filing date of the Complaint. Wife failed to carry her burden of proof at the Master's hearing which was by a preponderance of the evidence standard. The Master had conducted four hearings with considerable testimony taken by each party regarding the date of legal separation. The testimony of the parties indicated they both desired to be divorced at the time of the filing. Wife, who is attempting to assert the later date of January of 2003, was the party who initiated this divorce proceeding and had served the complaint. Pennsylvania courts have made it clear the key to finding a date of separation is when the parties lead "separate lives not separate roofs". Here, these parties were leading separate lives at the time the Divorce Complaint was filed, even though they continued to live in the same residence. Thus, this Court agrees with the Master's recommendation that the date of legal separation was December 5, 2001. Since the date of legal separation is December 5, 2001, the Ford Camper and \$24,660.94 in credit card debt have been properly excluded from calculating the marital estate.

II. Equitable Distribution

Both parties have filed numerous Exceptions to the Equitable Distribution scheme recommended by the Master because each party believes that adjustments need to be made to the calculation and distribution of their retirement benefit plans.

a. A Plan

Both parties have requested this Court to retain jurisdiction over the distribution of the parties' respective A Plans because the amount

⁷This Court notes Husband filed a Petition for Subsequent Relief on March 14, 2003 requesting this Court to enter a divorce decree based on Section 3301(c) of the Divorce Code and enter an order of equitable distribution. In addition, Husband, through his attorney, was requesting discovery from his wife as early as January 2, 2004. As evidenced by husband's Petition for Sanctions filed on March 10, 2004 against wife's attorney for failing to answer interrogatories that had been served on January 2, 2004.

to be funded by the Government's Pension Benefit Guarantee Corporation has not yet been determined. It is anticipated only about fifty-percent of the plans will be refunded. It is common practice for courts to reserve jurisdiction over defined benefit plans until they mature or enter pay status. *See Brown v. Brown*, 447 Pa. Super. 424, 430-31, 669 A.2d 969, 972 (1995)(citations omitted). In this case, the Court will retain jurisdiction over the parties' defined benefit plan because value has yet been established.

In addition, Wife requests this Court to award her one-hundred percent of her Husband's B Plan to compensate for the unidentified loss which will result from the elimination of their respective A Plans. Each party's respective A Plan has been eliminated by the Bankruptcy Court and the amount that will be refunded is unknown and speculative at this time. Since this Court is retaining jurisdiction over the distribution of the parties' A Plans, we will determine at a later date the amounts to be distribution for their respective A Plans. However, this Court does not believe Wife should be entitled to her Husband's entire B Plan because the value of their A Plans will be reduced. This Court does not believe adjustments need to be made to the distribution of the B Plans to compensate for the loss of value in the A Plans because both parties will be affected by the loss of value.

Wife will be receiving seventy percent of her Husband's B Plan amounting to \$139,508.49. Wife is requesting to be awarded the entire value of her Husband's B Plan which is \$199,297.83, for a difference of \$59,789.34. For purposes of illustration, if the Pension Guarantee Corporation would award fifty percent of their A Plans then the Wife would receive \$13,804.98 from her own A Plan and \$64,009.02 representing seventy percent of her Husband's A Plan, for a total of \$77,814.00 out of the original recommended award when A Plan was at full value of \$150,527.72. Wife will be losing \$77,813.72 with only fifty percent of their A Plans being funded. Husband would be losing \$27,432.44 of his recommended award of \$54,864.87. Overall, both parties will lose money as a result of United eliminating their retirement A Plans.

Continued to next issue (8/25/2006)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 00-S-897 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground, situated in Huntington Township, Adams County, Pennsylvania, bounded and described as follows, together with the dwelling erected thereon:

BEGINNING at a point where Leg. Route No. 01012 intersects with the Still House Road; thence in the center of the Still House Road South 38 degrees 25 minutes 40 seconds West, 244.0 feet to a point in the center line of such road at other land now or formerly of Frank Hamilton; thence along other land now or formerly of Frank Hamilton North 61 degrees 33 minutes 30 seconds West, 180.18 feet to a point; thence along land of same North 21 degrees 36 minutes 40 seconds East 200.00 feet to a point in the center of Leg. Route No. 01012 aforesaid; thence in said road South 68 degrees 23 minutes 20 seconds East, 105.46 feet to a spike in said road; thence in such road South 73 degrees 12 minutes 20 seconds East 144.54 feet to a point at the intersection of the aforesaid roads, the place of BEGINNING.

THE above description was taken from draft of survey prepared by Gettysburg Engineering Co., Inc., dated September 3, 4, 1969.

TITLE TO SAID PREMISES IS VESTED IN Fred J. Rogers and Melissa A. Rogers, his wife, by Deed from Vicki L. Arndt, single woman, dated 5/29/1998, recorded 6/8/1998 in Record Book 1596 page 132.

Tax Parcel: H2-27A

Premises Being: 210 Goodyear Road, Gardners, PA 17324

SEIZED and taken into execution as the property of **Fred J. Rogers & Melissa A. Rogers** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/4, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-562 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of October, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Hamiltonban Township, (previously cited as Orrtanna) Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the Fairfield Road, running thence in center of said road, North sixty-three and one-half (63-1/2) degrees East, two and four-tenths (2.4) perches; thence by Lot No. 4, South twenty-six (26) degrees East, six and five-tenths (6.5) perches to a stake; thence by lands now or formerly of Peter Kready, South fifty-four (54) degrees West, two and five-tenths (2.5) perches to center of Mill Race; thence by Lot No. 2, North twenty-five and one-quarter (25-1/4) degrees West, seven (7) perches to the place of BEGINNING. CONTAINING sixteen (16) perches of land neat measure.

TITLE TO SAID PREMISES IS VESTED IN John A. Hendrickson, single and Glenn A. Hendrickson, single, as joint tenants with the right of survivorship and not as tenants in common, by Deed from Alvah L. Stonesifer, Jr., Executor of the Last Will and Testament of Edith B. Stonesifer, late, dated 04/17/1991, recorded 04/18/1991, in Deed Book 584, page 913.

Premises being: 1855 Carroll Tract Road, Orrtanna, PA 17353

Tax Parcel No. 18-C12-0042-000

By virtue of the death of John A. Hendrickson on 02/10/2001, Defendant Glenn A. Hendrickson a/k/a Glenn Alan Hendrickson, became sole owner of the mortgaged premises as surviving joint tenant with right of survivorship.

SEIZED and taken into execution as the property of **Glenn A. Hendrickson a/k/a Glenn Alan Hendrickson** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 November 3, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/18, 25 & 9/1

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION
NO. RT-11-06(B)

NOTICE

TO: MELISSA ANN HOLTRY PAXTON

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for August 22, 2006 at 9:00 a.m., prevailing time, at the Adams County Courthouse, 111-117 Baltimore St., Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846
Chester G. Schultz, Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

8/4, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-431 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel pin on the Southern right-of-way line of Starlite Drive at corner of Lot No. 20 on the plan of lots hereinabove identified; thence by said Lot No. 20, South forty-four (44) degrees twenty-two (22) minutes thirty-two (32) seconds East, one hundred (100.00) feet to a steel pin at corner of Lot No. 12 of Lakeview Village-Phase One; thence by said Lot No. 12, South forty-five (45) degrees thirty-seven (37) minutes thirty-eight (28) seconds West, thirty-six (36.00) feet to a steel pin at corner of Lot No. 18; thence by said Lot No. 18, North forty-four (44) degrees twenty-two (22) minutes thirty-two (32) seconds West, one hundred (100.00) feet to a steel pin on the Southern right-of-way line of Starlite Drive; thence by said Southern right-of-way line of Starlite Drive, North forty-five (45) degrees thirty-seven (37) minutes twenty-eight (28) seconds East, thirty-six (36.00) feet to the above described place of BEGINNING. CONTAINING 3,600 square feet.

The above description was prepared in Keeping with a subdivision plan for "Lakeview Village-Phase Two" prepared by Donald E. Worley, Registered Surveyor, of Worley Surveying, dated April 21, 1989, revised September 11, 1989, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 54, page 65 (2 pages) and being known thereon as Lot No. 19.

UNDER AND SUBJECT to the restrictions, reservations, conditions and protective covenants for "Lakeview Village-Phase Two" set forth in the Declaration of Restrictions, Reservations, Conditions and Protective Covenants dated June 8, 1990, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 559, at page 653, as well as the restrictions, comments and notations as set forth on the subdivision plan for "Lakeview Village-Phase Two" recorded in said office in Plat Book 54, page 62 (2 pages).

TOGETHER WITH AND SUBJECT TO a fifty (50) foot right-of-way in, through and along the streets known as Crescent Lane and Starlite Drive to be used in

common with other owners of lots in "Lakeview Village-Phase Two" as shown on the subdivision plan above referenced.

SUBJECT TO visible easements and restrictions of record.

Tax I.D. #: 27-12-72

Being known as 26 Starlite Drive, Littlestown, PA 17340.

To be sold as the property of: Michael G. Jackowski and Roberta A. Jackowski

SEIZED and taken into execution as the property of **Michael G. Jackowski & Roberta A. Jackowski** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-606 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT tract of land situate, lying and being in Conewago Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point at Thomas Drive and Lot No. 178; thence along Lot No. 178, South seventy-six (76) degrees forty-seven (47) minutes twenty (20) seconds West, one hundred twenty-four and ninety-nine hundredths (124.99) feet to a point at Lot No. 160; thence along Lot No. 160, North thirteen (13) degrees twelve (12) minutes forty (40) seconds West, eighty (80.00) feet to a point at Lot No. 176; thence along Lot No. 176, North seventy-six (76) degrees forty-seven (47) minutes twenty (20) seconds East, one hundred twenty-four and ninety-nine hundredths (124.99) feet to a point at Thomas Drive; thence along Thomas

Drive, South thirteen (13) degrees twelve (12) minutes forty (40) seconds East, eighty (80.00) feet to the point and place of BEGINNING.

CONTAINING 9,999 square feet and identified as Lot No. 177 on a Plan of Lots entitled Section Two, Phase "B", Sherry Village, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 60 Page 30.

Map 101, Parcel 50

Premises Being: 65 Thomas Drive, McSherrystown, PA 17344

SEIZED and taken into execution as the property of **Rhoda A. Harbaugh & Vanessa E. Birgensmith** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/11, 18 & 25

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 WILLIAM BROUGH, JR., DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Administrator: Andrew Y. Brough, 6895 East Moulstow Road, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY M. SHARRAH, DEC'D

Late of Straban Township, Adams County, Pennsylvania

J. Richard Sharrah, P.O. Box 81, Cashtown, PA 17310; Joseph Sharrah, P.O. Box 81, Cashtown, PA 17310

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF PATRICIA L. MERRICK, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Tricia Frazee, 309 Ridge Ave., Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore St., Gettysburg, PA 17325

ESTATE OF WILLIAM H. REINDOLLAR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Laurie Rohrer, 69 Abbotts Drive, Abbottstown, PA 17301

Attorney: Thomas E. Miller, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

THIRD PUBLICATION**ESTATE OF EMMA J. BIRCH, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Emma Lee Ely, 195 Margate Rd., York, PA 17408

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF MARIE C. KLINE, DEC'D

Late of Union Township, Adams County, Pennsylvania

LeRoy D. Kline, Jr. and Ray E. Bange, c/o Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

Attorney: Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

ESTATE OF BERNARD V. LYLE, SR., DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrix: Madeline M. Wajda, 145 Tract Rd., Fairfield, PA 17320

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF HARVEY D. PITZER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administratrix: Barbara Hale, 90 Blooming Grove Rd., Hanover, PA 17331

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF PETER P. SHEVCHUK, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Paul Shevchuk, 730 Herr's Ridge Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF CHRISTINE F. WOLF, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Richard Lee Wolf, 930 Edgegrove Rd., Hanover, PA 17331

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-517 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of October, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in Menallen Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a corner of lands now or formerly of Ella Powley and known as Lot No. 3; thence along Lot No. 3, South 80 degrees East, 79.9 perches to stones; thence along land now or formerly of Zachariah Oyler, South 25 degrees West, 8 perches; thence along Lot No. 5, North 83 degrees West, 79.35 perches to land now or formerly of Ella Powley; thence along the same North 18.5 degrees East, 12.5 perches to the place of BEGINNING.

CONTAINING 4 acres and 96 perches of land, more or less.

Tax Map F-4, Parcel 47-A

TITLE TO SAID PREMISES IS VESTED IN Timothy L. Wilkinson and Christine M. Wilkinson, his wife by Deed from James R. Haymaker and Donna M. Haymaker, his wife, by their Power of Attorney, Christine M. Wildinson, dated 10/29/1998 and recorded 11/2/1998 in Record Book 1693, Page 181.

Premises Being: 757 Gablers Road, Gardners, PA 17324

SEIZED and taken into execution as the property of **Timothy L. Wilkinson & Christine M. Wilkinson** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 November 3, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/18, 25 & 9/1

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1128 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of October, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in Mount Pleasant Township, Adams County, Pennsylvania, being more particularly bounded and limited as follows, to wit:

Lot No. 553 on a Plan of Lots of Lake Heritage Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Miscellaneous Book 4, at Page 665 and subject to all legal highways, easements, rights of way and restrictions of record.

Map 5, Parcel 81

TITLE TO SAID PREMISES IS VESTED IN Harold L. Doty and Charlotte A. Doty, his wife by Deed from Journey E. Henderson and Patricia S. Henderson, his wife, dated 4/26/1994 and recorded 5/2/1994 in Record Book 879 Page 157.

Premises being: 553 Hooker Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Harold L. Doty & Charlotte A. Doty** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 November 3, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/18, 25 & 9/1

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August 25, 2006

No. 14, pp. 86-93

IN THIS ISSUE

SMITH VS. SMITH

This opinion continued from last issue (8/18/2006)

Our Trust Department
makes a business of caring
for other people's property.



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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. 04-S-1128 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of October, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in Mount Pleasant Township, Adams County, Pennsylvania, being more particularly bounded and limited as follows, to wit:

Lot No. 553 on a Plan of Lots of Lake Heritage Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Miscellaneous Book 4, at Page 665 and subject to all legal highways, easements, rights of way and restrictions of record.

Map 5, Parcel 81

TITLE TO SAID PREMISES IS VESTED IN Harold L. Doty and Charlotte A. Doty, his wife by Deed from Journey E. Henderson and Patricia S. Henderson, his wife, dated 4/26/1994 and recorded 5/2/1994 in Record Book 879 Page 157.

Premises being: 553 Hooker Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Harold L. Doty & Charlotte A. Doty** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 November 3, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/18, 25 & 9/1

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-41 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of October, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Reading Township, Adams County, Pennsylvania, being designated as Lot No. 1 on the final subdivision plan prepared for Edward C. Wallen, Sr., dated December 29, 1998, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 76 at page 5, more particularly bounded and described as follows:

BEGINNING at a steel pin set in Miller Road (T-572) and corner of land now or formerly of Gene H. Shenberger; thence continuing along Miller Road North 40 degrees 19 minutes 42 seconds East 160.00 feet to a steel pin set; thence along land now or formerly of Edward Kopp and Edward C. Wallen and through an existing iron pipe set back 24.91 feet from the beginning of this course South 49 degrees 40 minutes 18 seconds East 281.50 feet to a steel pin set at corner of Lot No. 2; thence along Lot No. 2 South 40 degrees 19 minutes 42 seconds West 160.00 feet to a steel pin set; thence along land now or formerly of Gene H. Shenberger and through an existing iron pipe set back 24.65 feet from the terminus of this course North 49 degrees 40 minutes 18 seconds West 281.50 feet to a steel pin set in Miller Road, the point and place of BEGINNING. CONTAINING 1.034 acres.

Being part of the same tract of land which Home Bange, widower, by his deed dated the 12th day of October, 1993, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 791 at page 264, granted and conveyed unto Edward C. Wallen, Sr. and Darlene K. Wallen, husband and wife, grantors herein.

TOGETHER WITH the right to use the stone driveway as it is extended across Lot No. 1 as shown on the aforesaid subdivision plan. The rights and responsibilities related to the use and

maintenance of the driveway as between owners of Lots 1 and 2 are set forth in a Declaration of Right-of-Way and Responsibilities recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1784 at page 159.

This conveyance is really transfer tax exempt as it is from parents to daughter and son-in-law.

And the said grantor does hereby specially warrant the property hereby conveyed.

IN WITNESS WHEREOF, said grantors have hereunto set their hand and seal the day and year first above written.

TITLE TO SAID PREMISES IS VESTED IN Ronald L. McDannell and Michelle L. McDannell, husband and wife, in deed from Edward C. Wallen, Sr. and Darlene K. Wallen, husband and wife, dated 9-28-00, recorded 9-29-00, in Book #2136, Page #056.

Tax Parcel: 36-J07-0053-000

Premises Being: 24 Miller Road, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Ronald L. McDannell & Michelle L. McDannell** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 November 3, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/18, 25 & 9/1

SMITH VS. SMITH

Continued from last issue (8/18/2006)

b. B Plan

i. Valuation Method

First, Wife argues the share price analysis utilized by the Master for valuing Husband's B Plan at \$199,297.83 was incorrect. Wife proposes Husband's B Plan should be valued by determining the marital value of the plan at the time of the hearing, less contributions made subsequent to the date of separation.⁸

The Pennsylvania Superior Court has identified two methods of distributing retirement benefits: 1) immediate offset method and 2) deferred distribution method. *Braderman v. Braderman*, 329 Pa. Super. 185, 197-98 488 A.2d 613, 619 (1985); *See also, DeMasi v. DeMasi*, 366 Pa. Super. 19, 49-50, 530 A.2d 871, 866 (1987). The immediate offset method requires a present value to be determined as of the date of the hearing to be multiplied by the "coverture" fraction, an amount representing the value of benefits attributable to the marriage. *Braderman*, 530 A.2d at 619. The deferred distribution method, also known as the reserved jurisdiction method, requires the Court to retain jurisdiction and apportion benefits when they enter pay status or mature. *Id.* The *DeMasi* Court explained when each distribution method should be used:

The immediate offset method is properly used when the present value of the benefit is sufficient to make a present distribution. Conversely, a deferred distribution does not employ present value because many variables make it too difficult to determine. Instead, the court retains jurisdiction and allocates benefits when they mature or are paid. Deferred distribution is also the preferred method when the parties' other assets are insufficient to offset a pension award. *DeMasi*, 366 Pa. Super. at 49-50, 530 A.2d at 866.

Neither valuation method used by the Master and suggested by the Wife appears to fit precisely within the definition of either distribution scheme recognized by Pennsylvania courts. However, the Master determined calculating Husband's B Plan using a share price analysis was appropriate in this case. The Master pointed out that it was difficult to value the plans pursuant to a true discounted present value because the future income stream of the plans is volatile and subject

⁸The valuation of the Wife's Plan B was based upon a stipulation of the parties.

to change because the airline industry and its financial status has been precarious at best since September 2001 attacks. Michael Noel, a certified public accountant, presented expert testimony as to the value of the retirement plans based upon the separate date of December 5, 2001 and also made varying calculations using varying assumptions as to the date of retirement.

The Master determined the value of Husband's B Plan by using the present value reported as of December 5, 2001, less any pre-marital contributions made by either party. No specific dollar amount was assigned to the value of the retirement plans, because the Master recommended an award based on percentages. The Master filed a Supplemental Report explaining in detail how the valuations of the parties' retirement plans were reached. Husband's B Plan was based upon the following calculation:

Value as of 12/31/01	\$ 199,247.48
Less Premarital Portion	\$ 17,589.42
Master's Marital Value as of 12/5/01	\$ 181,658.06
Determination of Share Price	\$ 181,658.06 Total
	÷ 5
	<hr/>
	\$ 36,331.612 Fund
	Allocation

Fund Allocation ÷ 12/31/01 Share Price = Number of Shares

1. $\$36,331.612 \div 54.43 = \667.492
2. $\$36,331.612 \div 62.92 = \577.425
3. $\$36,331.612 \div 75.17 = \483.325
4. $\$36,331.612 \div 33.21 = \$1,093.996$
5. $\$36,331.612 \div 63.09 = \575.869

Number of Shares x 06/30/04 Share Price = Fund Value

1. $667.492 \times 62.670 = \$41,831.723$
2. $577.425 \times 58.060 = \$33,525.295$
3. $483.325 \times 90.730 = \$43,852.077$
4. $1,093.996 \times 39.240 = \$42,928.403$
5. $575.869 \times 64.890 = \$37,368.139$

\$199,505.637

This Court believes the valuation method utilized by the Master is acceptable in light of the difficulty involved in valuing a retirement plan set up by United Airlines who has already filed for bankruptcy.

ii. Off-setting Plan B Amounts

Husband argues a loan balance in the amount of \$23,507.97 that existed at the time of the parties' separation and subsequently paid off by the husband should have been subtracted from the actual cash value of the husband's B Plan. The Master addressed this issue in his Supplemental Report explaining the loan was excluded from calculating the marital estate because it was an outstanding loan from husband's business.

Husband contends the business, an investment corporation, made substantial profits during the marriage and its profits were used to pay off marital debts, including tax liabilities that occurred during the marriage. It appears Husband is claiming his payment of \$23,507.97 should be deemed "marital property" subject to equitable distribution and it should be accounted for by off-setting the value of his Plan B. Husband has failed to cite any legal authority to support his view. Wife disagrees that this loan would have been considered marital debt, or that the balance should be treated as an offset against the total value of his Plan B.

Husband admits the loan was paid off after the parties separated but believes the balance should have been considered "marital debt". The Master addressed this issue in his Supplemental Report where he explained the amount was money used by Husband in a business for which he retained all of the assets. Also, the Master believed by not including the loan as marital debt, it promotes equity in the overall recommendation for equitable distribution. We agree with the Master's conclusion to exclude the loan taken out in connection with Husband's business from the marital estate.

In addition, Husband contends the Master should have offset the value of Wife's B Plan valued at \$465.21 from the value of her Husband's B Plan because Wife would be receiving greater than 70% distribution. Husband believes distributing the pension plans by percentages (70/30) was incorrect because it fails to offset the value of Wife's plan benefits.

This Court believes Husband is incorrectly interpreting the Master's recommendation regarding the distribution based on percentages. The Master awarded Wife the entire value of her plans, in addition, to seventy percent of her Husband's Plans. Wife's B Plan valued at \$465.21 is significantly lower than Husband's B Plan

valued at \$199,297.83. The Master and this Court agree that Wife should be allowed to retain the full value of her B Plan and seventy percent of Husband's B Plan. Therefore, this Court will not offset the value of Wife's B Plan from the distribution of seventy percent of Husband's B Plan. Also, the Master's recommendation to distribute the pension plans according to percentages is correct because this Court does not believe Wife's plan benefits should be offset from Husband's plan benefits before distribution.

III. Alimony

The Master awarded wife \$1,200 a month in alimony for three years in light of the statutory factors considered in *23 Pa.C.S.A. § 3701(b)*. The Master was convinced the amount and duration of this alimony award would allow her to reduce expenses and live within her means. The Master's award was based on a thorough evaluation of the statutory factors used for assessing whether or not to grant an alimony award.

Husband claims she has no demonstrated need for alimony because her income is sufficient to support her needs listed in the Income & Expense Report filed with Domestic Relations. Wife claims her original filing with Domestic Relations fails to include all of her current expenses, for instance no provision was made for food, clothing and an \$800/month credit card debt. Husband believes wife's additional expenses are voluntary payments for an adult child not of their marriage. Wife admitted during testimony taken from a Master's hearing that her monthly expenses include payment for an adult child's loans in the amount of \$583.00/month, payment of the adult child's car insurance, and most of the expenses such as food, clothing, haircuts, and utilities are for the benefit of four people, two of whom are adults living at the residence voluntarily.

Alimony is granted to a former spouse to ensure the reasonable needs of the person are met. The reasonable needs of a person are determined in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor's ability to pay. *Tedorski v. Tedorski*, 857 A.2d 194, 201, 2004 Pa. Super. 313 (2004), *citing Moran v. Moran*, 839 A.2d 1091, 1096-97 (Pa. Super. 2003). Various statutory factors should be examined when determining whether or not to award alimony, which include but are not limited to, relative earning and earning capacities of the par-

ties; ages, physical, mental and emotional conditions of the parties; duration of the marriage; earning power, expenses and obligations by virtue of being custodian of a minor child; standard of living; relative assets and liabilities of the parties; contribution of a spouse as homemaker; relative needs of parties; sufficiency of property for a party's reasonable needs; and whether a party is incapable of self-support through employment. 23 Pa.C.S.A. § 3701. The Master considered the ten statutory factors listed above to weigh in favor of granting wife alimony.

In this case, husband at 45 years of age earns \$106,507.80 a year as a pilot for United Airlines. Wife at age 53 earns \$33,101.00 a year in income from her employment as a stewardess for United Airlines and support payments. Even though the wife may be supporting an adult child not born of their marriage, she is the primary caretaker of their eleven year old daughter. During the marriage, wife worked fewer hours to take care of their minor child and contributed as a homemaker. Taking into account wife's expenses and income, the Master believes she will not have the same standard of living enjoyed during the marriage. The Master determined that wife is not self-sufficient in income and is incapable of meeting her needs through employment at this time. This Court believes in light of the parties' current economic circumstances, an award of \$1200 a month for three years in alimony is not unreasonable.

IV. Counsel Fees and Expenses

The Master concluded wife should be entitled to an award of \$10,000 for counsel fees payable within ninety days of the final divorce decree pursuant to 23 Pa.C.S.A. § 3702. The Master recommended counsel fees should be awarded in light of the fact that Husband had on a number of occasions failed to produce required documents that might have protracted the hearing. There were a number of discovery requests that were not complied with and in fact the hearing on the issues had to be continued in order to allow Husband to comply with previous legitimate discovery requests. The Master believed Wife had met her burden showing an award of counsel fees is appropriate in this case. In addition, all of the statutory factors reviewed by the Master pursuant to 23 Pa.C.S.A. § 3701 weighed in favor of awarding Wife alimony and counsel fees.

A court may direct a spouse to pay reasonable counsel fees and expenses for their spouse. 23 Pa.C.S.A. § 3702. The purpose of an award of counsel fees is to enable a financially dependent spouse to maintain or defend an action for divorce without being at a financial disadvantage and to effectuate economic justice between the parties. *Butler v. Butler*, 423 Pa. Super. 530, 545, 621 A.2d 659, 667 (1993), *appeal granted*, 535 Pa. 629, 631 A.2d 1002 (1993) and **aff'd in part, rev'd in part on other grounds**, 541 Pa. 364, 663 A.2d 148 (1995), *Citing Schubert v. Schubert*, 398 Pa. Super. 284, 580 A.2d 1351 (1990). Counsel fees in a divorce proceeding are only awarded when the petitioning spouse shows actual need. *Id. Citing Kohl v. Kohl*, 387 Pa. Super. 367, 564 A.2d 222 (1989). Counsel fees can be awarded in addition to an award for alimony pendente lite because both are necessary to maintain the divorce action. *Id. Citing DeMasi v. DeMasi*, 366 Pa. Super. 19, 530 A.2d 871, 880 (1987). Certain factors should be considered when awarding counsel fees, which include: "payor's ability to pay, the requesting party's financial resources, the value of services rendered, and the property received in equitable distribution." *Perlberger v. Perlberger*, 426 Pa. Super. 245, 284, 626 A.2d 1186, 1207 (Pa. Super. 1993)(citations omitted).

Husband does not believe he should be responsible for her counsel fees because she has received APL payments and will receive funds from the sale of their residence to cover the costs of litigation. Wife argues an award of counsel fees would be "fair and reasonable" because husband's income is three times the amount of his wife's. Wife has been awarded \$1,474/month in APL, which was an increase from the original APL award of \$1,300/month because the Domestic Relations Office made an adjustment based on Wife's complaints that her Husband had intentionally reduced the number of hours he was flying in order to reduce his obligations of child support and APL.⁹ Husband working as an airline pilot earns \$146.50/hour and Wife earns only \$41.50/hour. Wife's income is based on her earnings from United and income derived from APL and child support

⁹Husband is allowed to fly 100 hours per month. At the Domestic Relations hearing, Husband's attorney prepared a report noting that on average, Husband works 71 hours per month. Wife was arguing he could be working 81 hours per month. The Domestic Relations Office calculated his income based on working 77 hours per month.

payments, which is barely enough to meet her monthly expenses.¹⁰ Wife will receive proceeds from the sale of their marital residence valued at \$44,043.03 as part of the equitable distribution award. However, wife claims the recommended award would leave her with little cash to pay off her attorney's fees because she needs to reduce the principal balance of the mortgage and credit card debt.

The Master had indicated on the fourth day of the hearing, September 10, 2004, Wife had incurred \$17,187.05 in attorney's fees. At oral argument, Wife's attorney indicated wife has an outstanding balance for attorney's fees in the amount of \$15,000. The Master had taken into consideration Wife's equitable distribution award of \$304,714.12 from the marital estate with the bulk of this amount calculated from the parties' retirement plans. This Court believes the wife should be awarded \$10,000 in counsel fees because by weighing all of the relevant factors such as Husband's ability to pay and the respective financial positions of the parties.

V. Conclusion

For the reasons explained above, the Master was correct in deciding the date of separation was December 5, 2001 and as a result properly excluded from the marital estate a 1992 Ford Camper and accrual of \$24,660.94 credit card charges. This Court adopts the equitable distribution scheme proposed by the Master, including the valuation method and decision to exclude a business loan paid off by husband, but will retain jurisdiction over the parties' retirement A Plans. Additionally, wife will be awarded alimony and counsel fees.

ORDER

AND NOW, this 19th day of October 2005, in consideration of Plaintiff's and Defendant's Exceptions to the Master's Report and Supplemental Master's Report, their request for this Court to retain jurisdiction over the parties' retirement A Plans is granted. This Court denies all remaining Exceptions filed by both parties because

¹⁰ As outlined in Plaintiff's Memorandum of Law in Opposition to Defendant's Exceptions filed on August 25, 2005, which indicated on page six that she has a net monthly income from United of \$2,758.48, child support from a prior marriage of \$700/month, and APL and child support from her husband in the combined amount of \$2,910, which totals \$6,368.48. Wife's total monthly expenses are listed at \$6,169.41, which leaves her \$199.07 in disposable income a month.

the Master was correct in deciding the date of separation was December 5, 2001 and as a result properly excluded from the marital estate a 1992 Ford Camper and accrual of credit card charges in the amount of \$24,660.94. This Court adopts the equitable distribution scheme proposed by the Master, including the valuation method, awards based on percentages, and decision to exclude a business loan paid off by the husband from distribution, and award of alimony and counsel fees to Wife.

ERRATA SHEET

AND NOW, this 31st day of October, 2005, the Opinion filed on October 19th, 2005 is amended as follows:

Beginning on Page 8, Line 4 - \$64,009.02 representing seventy percent of her Husband's A Plan, for a total of \$77,814.00. Thus, if fifty percent of the A Plan would be funded then Wife would receive \$77,814.00 out of the original recommended award when A Plan was at full value of \$155,627.72. Wife will be losing \$77,813.72 with only fifty percent of their A Plans being funded. (The Court notes the first reference to the word "only" found in the preceding sentence between "losing" and "\$77,813.72" has been eliminated).

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-431 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel pin on the Southern right-of-way line of Starlite Drive at corner of Lot No. 20 on the plan of lots hereinabove identified; thence by said Lot No. 20, South forty-four (44) degrees twenty-two (22) minutes thirty-two (32) seconds East, one hundred (100.00) feet to a steel pin at corner of Lot No. 12 of Lakeview Village-Phase One; thence by said Lot No. 12, South forty-five (45) degrees thirty-seven (37) minutes twenty-eight (28) seconds West, thirty-six (36.00) feet to a steel pin at corner of Lot No. 18; thence by said Lot No. 18, North forty-four (44) degrees twenty-two (22) minutes thirty-two (32) seconds West, one hundred (100.00) feet to a steel pin on the Southern right-of-way line of Starlite Drive; thence by said Southern right-of-way line of Starlite Drive, North forty-five (45) degrees thirty-seven (37) minutes twenty-eight (28) seconds East, thirty-six (36.00) feet to the above described place of BEGINNING. CONTAINING 3,600 square feet.

The above description was prepared in keeping with a subdivision plan for "Lakeview Village-Phase Two" prepared by Donald E. Worley, Registered Surveyor, of Worley Surveying, dated April 21, 1989, revised September 11, 1989, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 54, page 65 (2 pages) and being known thereon as Lot No. 19.

UNDER AND SUBJECT to the restrictions, reservations, conditions and protective covenants for "Lakeview Village-Phase Two" set forth in the Declaration of Restrictions, Reservations, Conditions and Protective Covenants dated June 8, 1990, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 559, at page 653, as well as the restrictions, comments and notations as set forth on the subdivision plan for "Lakeview Village-Phase Two" recorded in said office in Plat Book 54, page 62 (2 pages).

TOGETHER WITH AND SUBJECT to a fifty (50) foot right-of-way in, through and along the streets known as Crescent

Lane and Starlite Drive to be used in common with other owners of lots in "Lakeview Village-Phase Two" as shown on the subdivision plan above referenced.

SUBJECT TO visible easements and restrictions of record.

Tax I.D. #: 27-12-72

Being known as 26 Starlite Drive, Littlestown, PA 17340.

To be sold as the property of: Michael G. Jackowski and Roberta A. Jackowski

SEIZED and taken into execution as the property of **Michael G. Jackowski & Roberta A. Jackowski** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-606 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of September, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT tract of land situate, lying and being in Conewago Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point at Thomas Drive and Lot No. 178; thence along Lot No. 178, South seventy-six (76) degrees forty-seven (47) minutes twenty (20) seconds West, one hundred twenty-four and ninety-nine hundredths (124.99) feet to a point at Lot No. 160; thence along Lot No. 160, North thirteen (13) degrees twelve (12) minutes forty (40) seconds West, eighty (80.00) feet to a point at Lot No. 176; thence along Lot No. 176, North seventy-six (76) degrees forty-seven (47) minutes twenty (20) seconds East, one hundred twenty-four and ninety-nine hundredths (124.99) feet to a point at Thomas Drive; thence along Thomas

Drive, South thirteen (13) degrees twelve (12) minutes forty (40) seconds East, eighty (80.00) feet to the point and place of BEGINNING.

CONTAINING 9,999 square feet and identified as Lot No. 177 on a Plan of Lots entitled Section Two, Phase "B", Sherry Village, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 60 Page 30.

Map 101, Parcel 50

Premises Being: 65 Thomas Drive, McSherrystown, PA 17344

SEIZED and taken into execution as the property of **Rhoda A. Harbaugh & Vanessa E. Birgensmith** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 October 6, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/11, 18 & 25

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Corporation Bureau of the Pennsylvania Department of State, at Harrisburg, Pennsylvania, for the purpose of forming a domestic business corporation under the Pennsylvania Business Corporation Law of 1988 (P.L. 1444, No. 177), 15 Pa.C.S.A. 1301 *et seq.*, as amended, having unlimited power to engage in and do any lawful act permitted thereunder.

The name of the corporation is HOOF TECH, INC.

Wendy Weikal-Beauchat, Esq.
Beauchat & Beauchat, LLC
63 W. High St.
Gettysburg, PA 17325

8/25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-562 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of October, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Hamiltonban Township, (previously cited as Orrtanna) Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the Fairfield Road, running thence in center of said road, North sixty-three and one-half (63-1/2) degrees East, two and four-tenths (2.4) perches; thence by Lot No. 4, South twenty-six (26) degrees East, six and five-tenths (6.5) perches to a stake; thence by lands now or formerly of Peter Keady, South fifty-four (54) degrees West, two and five-tenths (2.5) perches to center of Mill Race; thence by Lot No. 2, North twenty-five and one-quarter (25-1/4) degrees West, seven (7) perches to the place of BEGINNING. CONTAINING sixteen (16) perches of land neat measure.

TITLE TO SAID PREMISES IS VESTED IN John A. Hendrickson, single and Glenn A. Hendrickson, single, as joint tenants with the right of survivorship and not as tenants in common, by Deed from Alvah L. Stonesifer, Jr., Executor of the Last Will and Testament of Edith B. Stonesifer, late, dated 04/17/1991, recorded 04/18/1991, in Deed Book 584, page 913.

Premises being: 1855 Carroll Tract Road, Orrtanna, PA 17353

Tax Parcel No. 18-C12-0042-000

By virtue of the death of John A. Hendrickson on 02/10/2001, Defendant Glenn A. Hendrickson a/k/a Glenn Alan Hendrickson, became sole owner of the mortgaged premises as surviving joint tenant with right of survivorship.

SEIZED and taken into execution as the property of **Glenn A. Hendrickson a/k/a Glenn Alan Hendrickson** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 November 3, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/18, 25 & 9/1

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-617 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of October, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece or parcel of land situate in the Township of Latimore, County of Adams and Commonwealth of Pennsylvania, more particular bounded and described as follows, to wit:

BEGINNING at a stone adjoining lands now or formerly of Glen Sowers; thence by said lands now or formerly of Glen Sowers, North thirty-seven and one-half (37-1/2) degrees East, fifty-three and two tenths (53.2) perches to a stone in a public road; thence along the same South sixty-two and three quarters (62-3/4) degrees East, one hundred twenty-one (121) feet to a point; thence along other lands now or formerly of John M. Grissinger and Myrtle M. Grissinger, his wife, South thirty-seven and one-half (37-1/2) degrees West, fifty-four and two tenths (54.2) perches to a point at line of lands now or formerly of the George Johnson Estate; thence by the same lands now or formerly of the George Johnson Estate, North fifty-four and one-half (54-1/2) degrees West, one hundred twenty (120) feet to a stone and the place of BEGINNING.

CONTAINING 1.00 acre

IT BEING the same premises which Oscar F. Spicer, President Judge of the Court of Common Pleas of Adams County, Orphans' Court Division by his Order And Decree Awarding Real Estate dated May 30, 1990 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Record Book 557, Page 233, granted and conveyed unto Mary H. Fortney, Grantor herein.

Premises: 2204 County Line Road, York Springs, PA 17372, Latimore, Adams County, Pennsylvania

PARCEL IDENTIFICATION NO.: 23-101-0007-000

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN William L. Hoffman, III, single man, by Deed from Mary H. Fortney, single woman, dated 07/31/2002, recorded

08/01/2002, in Deed Book 2751, page 157.

PRIOR DEED INFORMATION

TITLE TO SAID PREMISES IS VESTED IN Mary H. Fortney, by Deed from Jane M. Alexander, Esq., Attorney for Mary H. Fortney, Administratrix of the Estate of Paul Fortney, dated 05/30/1990, recorded 06/01/1990, in Deed Book 557, page 233.

SEIZED and taken into execution as the property of **William L. Hoffman, III** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 November 3, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/25, 9/1 & 8

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania on May 10, 2006, pursuant to the Fictitious Name Act, setting forth that Mary Ann Ryan of 3901 Fairfield Road, Gettysburg, PA 17325 is the only person owning or interested in a business, the character of which is an agricultural nursery and the designation under which said business is and will be conducted is SUGARLOAF VALLEY GARDENS and the location where said business is and will be conducted is 3901 Fairfield Road, Gettysburg, PA 17325.

Christina M. Simpson, Esq.
Gates & Gates, P.C.
Solicitor

8/25

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 LOUIS F. BARAL, DEC'D
Late of Tyrone Township, Adams County, Pennsylvania
Executor: Fred E. Baral, c/o Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331
Attorney: Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

ESTATE OF ROSEMARIE H. BOWMAN a/k/a ROSEMARIE J. BOWMAN a/k/a ROSE MARIE BOWMAN, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executor: Adams County National Bank, Trust Office, P.O. Box 4566, Gettysburg, PA 17325
Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JAMES W. BRACEY, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executrix: Margaret B. LeGay, 33 South Street, Gettysburg, PA 17325
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CARMELITA M. CRUTCHFIELD, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executors: Richard C. Crutchfield, Jr., 202 Longstreet Drive, Gettysburg, PA 17325; Dennis M. Crutchfield, 16087 Parque Lane, Naples, FL 34110
Attorney: John W. Phillips, Esq., 101 W. Middle St, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF CHARLES WILLIAM BROUGH, JR., DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Administrator: Andrew Y. Brough, 6895 East Moulstown Road, Hanover, PA 17331
Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY M. SHARRAH, DEC'D
Late of Straban Township, Adams County, Pennsylvania
J. Richard Sharrah, P.O. Box 81, Cashtown, PA 17310; Joseph Sharrah, P.O. Box 81, Cashtown, PA 17310
Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF PATRICIA L. MERRICK, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Executrix: Tricia Frazee, 309 Ridge Ave., Gettysburg, PA 17325
Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore St., Gettysburg, PA 17325

ESTATE OF WILLIAM H. REINDOLLAR, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Administratrix: Laurie Rohrer, 69 Abbots Drive, Abbottstown, PA 17301
Attorney: Thomas E. Miller, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-578 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of October, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described two (2) tracts of land, situate, lying and being in Conewago Township, Adams County, Pennsylvania, more specifically bounded, limited and described as follows, to-wit:

TRACT NO. 1 - BEGINNING for a point on a macadam road leading to McSherrystown, Adams County, Pennsylvania, at an iron pin at lands now or formerly of the John L. Jenkins Estate; thence along said macadam road South forty-one (41) degrees fifteen (15) minutes East, one hundred twenty-five and six-tenths (125.6) feet to an iron pin at Lot No. 4, said plot being lands now or formerly of Herbert P. Helmer et ux.; thence by said last mentioned lands North thirty-one (31) degrees forty-five (45) minutes East, two hundred sixty-six (266) feet to an iron pin at lands now or formerly of the John L. Jenkins Estate; thence by said last mentioned lands North fifty-seven (57) degrees West one hundred twenty (120) feet to an iron pin; thence by same South thirty-one (31) degrees forty-five minutes West, two hundred thirty (230) feet to an iron pin at the macadam road first above mentioned, and the place of BEGINNING; being Lots Nos. 5 and 6 on a plot laid out by Herbert Helmer, as surveyed by J.H. Rife, Surveyor, on February 1, 1947.

TRACT NO. 2 - BEGINNING for a point on a macadam road leading to McSherrystown, Adams County, Pennsylvania, at an iron pin at other lands of Joseph Herbert Helmer et ux.; thence along said macadam road South forty-eight (48) degrees East, sixty-one (61) feet to an iron pin at Lot No. 3, being now or formerly of Raymond and Pauline Todd; thence by said last mentioned lands North thirty-one (31) degrees forty-five (45) minutes East, two hundred seventy-six and four tenths (276.4) feet to an iron pin at lands now or formerly of the John L. Jenkins Estate; thence by said last mentioned lands North fifty-seven (57) degrees West, sixty (60) feet to an iron pin at other lands of Joseph Herbert Helmer et ux.; thence by said lands South thirty-one (31) degrees forty-five (45) minutes West, two hundred sixty-six (266) feet to an iron pin at the aforesaid macadam road, the place of BEGINNING; being known as Lot No. 4 on a plan of lots laid out by Herbert Helmer, as surveyed by J.H. Rife, Surveyor, February 1, 1947.

IT BEING the same tracts of land which Joseph Herbert Helmer and Beverly Ann Hemler, husband and wife, by their deed dated February 5, 1963, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 243, page 814, granted and conveyed unto Henry E. Larkin and Geraldine E. Larkin. The said Geraldine E. Larkin having died on January 6, 2004, title in and to the said premises vested in said Henry E. Larkin during his lifetime by operation of law.

AND IT BEING the same tracts of land of which the said Dana M. Sauers and Alan J. Larkin, Grantors herein and Executors as aforesaid, executes and delivers this Deed under the authority of Section 3351 of the Probate, Estates and Fiduciaries Code.

TITLE TO SAID PREMISES IS VESTED IN Charles L. Ricketts and Mary E. Ricketts, husband and wife, as Tenants in Common or by the Entireties, by Deed from Alan J. Larkin and Dana M. Sauers, Executors under the Last Will and Testament of Henry E. Larkin, Deceased, dated 06-16-05, recorded 06-23-05 in Deed Book 4016, page 106.

Premises being: 520 Edgemoor Road, Hanover, PA 17331

Tax Parcel No. 8-K13-27

SEIZED and taken into execution as the property of **Charles L. Ricketts & Mary E. Ricketts** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 November 3, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

8/25, 9/1 & 8

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 July 21, 2006 for the incorporation of NICCOLO D. DELLA PENNA, M.D., P.C., under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 21 Lawrence Place, New Oxford, PA 17350.

Kathleen M. Kotula, Esq.
Hartman & Yannetti
Solicitors

8/25

NOTICE

NOTICE IS HEREBY GIVEN of the filing of Certificate of Organization in the Department of State of the Commonwealth of Pennsylvania on June 16, 2006 for the purpose of organizing a domestic limited liability company to be organized under the Limited Liability Company Law of 1994, 15 Pa. C.S.A. 8901 *et seq.* The name of the limited liability company is SPARKY'S ELECTRICAL SERVICE, LLC and the purpose for which it is to be organized is to engage in an electrical service business and any other lawful business purpose.

Christina M. Simpson, Esq.
Gates & Gates, P.C.
Solicitor

8/25