

Adams County Legal Journal

Vol. 44

December 6, 2002

No. 28, pp. 147-152

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-983 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of January, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land, together with the improvements thereon erected, situate in Mt. Pleasant Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in Pennsylvania Legislative Route No. 01005 at corner of land now or formerly of Michael Livelsberger; thence by said land now or formerly of Michael Livelsberger and running through a steel pin located thirty (30) feet from the place of Beginning, North twenty-five (25) degrees fifteen (15) minutes East, two hundred thirty (230) feet to a steel pin; thence by the same South sixty-two (62) degrees twelve (12) minutes East, One hundred and ten hundredths (100.10) feet to a steel pin; thence by land now or formerly of Bender, North twenty-five (25) degrees twenty-two (22) minutes seven (07) seconds East four hundred forty-four and thirty-one hundredths (444.31) feet to a steel pin located at an original corner of the larger tract of land conveyed by the deed hereinafter recited; thence by the same and by other land of Lucinda B. Small, North fifty-five (55) degrees fifty-four (54) minutes six (06) seconds West three hundred sixty-eight and seventy-nine hundredths (368.79) feet to a steel pin; thence by other land of Lucinda B. Small and running through a steel pin located thirty (30) feet from the end of this line South twenty-seven (27) degrees forty-eight (48) minutes West, seven hundred fourteen and fourteen hundredths (714.14) feet to a point in the aforementioned Legislative Route; thence in said Legislative Route South sixty-two (62) degrees twelve (12) minutes East, two hundred ninety-five and fifty-five hundredths (295.55) feet to a point, the place of BEGINNING. CONTAINING 5.5338 acres, neat measure.

THE FOREGOING description was obtained from a draft of a survey made by J.H. Rife, Registered Engineer, on

November 25, 1970 and a deed of conveyance recorded in the Adams County Recorder of Deeds, Book 290 at page 319.

IT BEING THE SAME TRACT OF LAND which Gerald E. Gebhart and Pearl Gebhart, husband and wife, by their Deed dated June 25, 1999 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1866 at Page 0259, sold and conveyed unto Donald A. Bixler, a single adult individual.

BEING premises more commonly known as 2986 Centennial Road, Hanover, Pennsylvania 17331.

Map J14, Parcel 54C

SEIZED and taken into execution as the property of **Donald A. Bixler** and to be sold by me.

Raymond W. Newman-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 February 24, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/22, 27 & 12/6

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on November 8, 2002, for the purpose of obtaining a Certificate of Incorporation of a nonprofit corporation organized under the provisions of the Nonprofit Corporation Law of 1988. The name of the corporation is HOLIDAY FAMILY OUTREACH, INC.

Puhl, Eastman & Thrasher
Attorneys for the corporation

12/6

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

NO. 3: CV 02-1212

Judge Kosik

Complaint Filed 7/17/02

UNITED STATES OF AMERICA, Plaintiff
vs.

IGNACIO A. GUTIERREZ and MARIA R. GUTIERREZ, Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth, you must take action within twenty (20) days by entering a written appearance personally or by attorney and filing your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

LEGAL AID - LEGAL SERVICES
Mid-Penn Legal Services, Inc.
3540 North Progress Ave., Ste. 102
Harrisburg, PA 17110
Phone: (717) 232-0581

12/6

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on November 5, 2002, a certificate was filed under the Fictitious Name Act, Act of December 16, 1982, P.L. 1309, No. 295, 52, 54 Pa. C.S.A. §301, et seq., in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Steven L. Sheets and Cindy M. Sheets are the only persons owning or interested in a business known as ALL-STAR CLEANERS AND LAUNDERERS, and the location where the business is and will be located is 126 East King Street, Littlestown, PA 17340.

G. Steven McKonly, Esq.

12/6

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.
All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-990 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of January, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

Parcel No: (17) K-09; 8B

ALL that tract of land situate, lying and being in Hamilton Township, County of Adams, Pennsylvania, more particularly bounded and described as follows to wit:

BEGINNING for a point in the center of a public road leading to Brown's Dam; thence along lands of Criswell South eighty-three and one-half (83-1/2) degrees West, four hundred fifty-seven and five-tenths (457.5) feet to a point; thence along lands of J.I. Myers North twenty-one (21) degrees East, five hundred eighty-two (582) feet to an iron pin; thence along lands of Guy Haverstick North seventy-nine and three-fourth (79-3/4) degrees East, three hundred twenty-six and seven-tenths (326.7) feet to an iron bolt in the center of the aforementioned public road; thence along and through the center of said public road South seven and three-fourth (7-3/4) degrees West, five hundred fifty-one and six-tenths (551.6) feet to an iron bolt, place of BEGINNING. CONTAINING 4 acres, one hundred twelve and fifty-three hundredths (112.53) square perches as per survey of C.A. Wentz, Reg. Surveyor, dated May 7, 1966.

BEING the same premises which Melissa M. Wonder Sneringer a/k/a Melissa M. Sneringer, by Deed dated December 12, 2001, and recorded December 21, 2001, in Book 2505, Page 56, granted and conveyed unto Melissa M. Sneringer and Michael G. Freet, in fee.

SEIZED and taken into execution as the property of **Melissa M. Sneringer & Michael G. Freet** and to be sold by me.

Raymond W. Newman-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 February 24, 2003, and distribution will be made in

accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/22, 27 & 12/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-945 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of January, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground with the improvements thereon erected, situate, lying and being on the North side of South Street, formerly known as German Street, in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the North side of South Street at lands now or formerly of Richard S. Cratin and Evelyn J. Cratin; thence by said street, South 57 degrees 10 minutes West, 40 feet to a point at land now or formerly of Felix V. Topper; thence by the same, North 27 degrees 47 minutes West, 175.3 feet to a point at a 16 foot wide public alley; thence by the same, North 57 degrees 12 minutes East, 40 feet to a point at lands now or formerly of Richard S. Cratin and Evelyn J. Cratin aforesaid; thence by the same, South 27 degrees 47 minutes East, 175.3 feet to a point at South Street, the place of BEGINNING.

HAVING ERECTED THEREON a dwelling known as 525 South Street, McSherrystown, Pennsylvania.

BEING THE SAME PREMISES WHICH James R. Rebert a/k/a James Robert Rebert, by Bernard C. Brady, his Attorney in Fact; Donald R. Brady and Camille C. Brady; Bernard C. Brady and Mary L. Brady; William H. Brady and

Jean M. Brady, by Deed dated November 27, 1996 and recorded December 2, 1996 in Adams County Deed Book 1296, Page 165, granted and conveyed unto Thomas E. Miller and Pamela S. Miller.

SEIZED IN EXECUTION AS THE PROPERTY OF THOMAS E. MILLER AND PAMELA S. MILLER UNDER ADAMS COUNTY JUDGMENT NO. 02-S-945.

MAP & PARCEL # (28) 5-294

SEIZED and taken into execution as the property of **Thomas E. Miller & Pamela S. Miller** and to be sold by me.

Raymond W. Newman-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 February 14, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/22, 27 & 12/6

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 October 22, 2002 for the incorporation of **GLORY GYM OF GETTYSBURG, INC.** under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of management of a boxing gym, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 123 Baltimore Street, Gettysburg, Pennsylvania 17325.

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

12/6

COMMONWEALTH VS. LEE

1. In order to be granted PCRA relief, the Defendant must establish (1) his conviction resulted from one or more of the enumerated errors or defects, provided in Section 9543(a)(2) of the PCRA; (2) he has not waived or previously litigated the issues he raises; and (3) the failure to litigate the issue prior to or during trial, or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

2. Waiver can be excused if the petitioner can demonstrate that his counsel was ineffective. In order to establish ineffectiveness of counsel, a petitioner must prove beyond a preponderance of the evidence the following: (1) the underlying claim of arguable merit; (2) counsel's performance had no reasonable basis, and (3) counsel's ineffectiveness prejudiced the defendant.

3. Case law is clear that during a guilty plea colloquy, there are six mandatory areas the court must address with a defendant in order for the plea to be valid: (1) the nature of the charge; (2) the factual basis for the plea; (3) the right to a jury trial; (4) the presumption of innocence; (5) the permissible range of sentences; and (6) the court's right to refuse the terms of the plea agreement. Failure to cover any of these areas during the colloquy constitutes a basis to allow withdrawal of a guilty plea.

4. However, failing to advise a defendant of the collateral consequences of a guilty plea does not invalidate the plea.

5. A court is permitted to review the totality of the circumstances in determining whether a plea is voluntarily, knowingly and intelligently entered.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal, No. CC-119-00, COMMONWEALTH VS. JASON ADAM LEE.

Paul Dean, Esq., District Attorney, for Commonwealth

Kristin Rice, Esq., for Defendant

Kuhn, P. J., March 27, 2002

OPINION PURSUANT TO DEFENDANT'S PCRA PETITION

Defendant filed a Motion for Post Conviction Collateral Relief on October 2, 2001. Defendant claims that his guilty plea was unlawfully induced. For reasons set forth herein, Defendant's Motion is denied.

On December 8, 1999, a criminal complaint was filed, charging him with several offenses arising out of allegations that, while age 20, Defendant engaged in oral and vaginal intercourse with a 15 year old juvenile.

On January 22, 2001, Defendant, together with counsel, appeared before President Judge Oscar F. Spicer (now retired) and entered a plea of guilty to Count I, Involuntary Deviate Sexual Intercourse, 18 Pa. C.S.A. §3123(7), as a felony of the first degree, wherein he

admitted that the juvenile did have oral sexual intercourse with him. The Commonwealth agreed not to pursue mandatory sentencing, 42 Pa. C.S.A. §9718(a) (5 year minimum), in exchange for an agreed sentence of 2 years to 4 years, 364 days. He was advised that he would be subject to mandatory registration and would have to undergo an assessment to determine if he is a violent sexual predator.

On April 4, 2001, Defendant moved to withdraw his guilty plea. On May 10, 2001, he appeared before Judge Spicer and withdrew that request and agreed to proceed with sentencing in accordance with the plea agreement. The effective date of the sentence was May 27, 2000.

On May 23, 2001, Defendant filed another motion to withdraw his guilty plea. Defendant appeared before Judge Spicer and the effective date of the sentence was amended to March 27, 2000.

In his PCRA motion, Defendant alleges that his plea was unlawfully induced and he was denied effective assistance of counsel because he was not advised of the statutory requirement to provide a DNA sample before he could be released from prison.

The DNA Detection of Sexual and Violent Offenders Act, 35 P.S. §7651.101, et seq., (hereinafter “the DNA Detection Act”) provides that any person convicted of certain enumerated offenses must have a DNA sample drawn after conviction and before the offender can be released from incarceration for any reason. §7651.306(a). The offense for which Defendant was sentenced is one of the enumerated offenses. §7651.103.

In order to be granted PCRA relief, Defendant must establish

- (1) his conviction resulted from one or more of the enumerated errors or defects, provided in Section 9543(a)(2) of the PCRA; (2) he has not waived or previously litigated the issues he raises; and (3) the failure to litigate the issue prior to or during trial, or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

Commonwealth v. Ragan, 743 A.2d 390, 394 (Pa. 1999). Defendant has satisfied the first prong of this test. It is clear, however, the Defendant could have raised the present issue on direct appeal after sentencing but failed to do so. Where an issue could have been raised but a petitioner failed to do so, that issue is waived. *Id.*

Waiver can be excused if the petitioner can demonstrate that his counsel was ineffective. *Commonwealth v. Allen*, 732 A.2d 582, 587 (Pa. 1999). Here, Defendant claims his counsel was ineffective for failing to advise him of the ramifications of the DNA Detection Act and/or for failing to appeal the trial court's omission. In order to establish ineffectiveness of counsel,

a petitioner must prove beyond a preponderance of the evidence the following: (1) the underlying claim of arguable merit; (2) counsel's performance had no reasonable basis, and (3) counsel's ineffectiveness prejudiced the defendant.

Commonwealth v. Regan, *supra.*, 743 A.2d at 395. Where ineffectiveness is raised in the context of a petitioner's request to withdraw a guilty plea, he must show that the ineffectiveness caused the petitioner to enter an involuntary or unknowing plea. *Commonwealth v. Allen*, *supra.*, 732 A.2d at 587.

Caselaw is clear that during a guilty plea colloquy, there are six mandatory areas the court must address with a defendant in order for the plea to be valid: (1) the nature of the charge; (2) the factual basis for the plea; (3) the right to a jury trial; (4) the presumption of innocence; (5) the permissible range of sentences; and (6) the court's right to refuse the terms of the plea agreement. *Commonwealth v. Williams*, 732 A.2d 1167, 1184 (Pa. 1999). Pa. R.Crim.P. 590 (formerly Rule 319). Failure to cover any of these areas during the colloquy constitutes a basis to allow withdrawal of a guilty plea. *Commonwealth v. Stark*, 698 A.2d 1327, 1330 (Pa. Super. 1997).

Defendant argues that failure to advise him of the requirement to submit a DNA sample before being eligible for release from incarceration implicates the permissible range of sentence and therefore must be addressed during the colloquy. Our research has revealed no case on point. A review of several significant cases suggests, however, that the requirements of the DNA Detection Act need not be discussed.

In *Commonwealth v. Persinger*, 615 A.2d 1305 (Pa. 1992), our Supreme Court held that a defendant must be advised that his sentence could be served consecutively in order for the plea to be valid. Aggregation impacts the maximum sentence range and, therefore, must be addressed. Interestingly, the Court seemed to adopt the

reasoning behind the ABA Standards for Criminal Justice (2nd Ed. 1980) relating to Pleas of Guilty in support of its holding. That standard provides, in part, that during a guilty plea the court should determine that the defendant understands

(2) the maximum possible sentence on the charge, including that possible from consecutive sentences, and the mandatory minimum sentence, if any, on the charge, or of any special circumstances affecting probation or release from incarceration.

Standard 14-1.4(a)(2).

However, failing to advise a defendant of the collateral consequences of a guilty plea does not invalidate the plea. *Commonwealth v. Williams, supra.*, 732 A.2d at 1184. Thus, failure to advise a defendant that a guilty plea could cause him to be deported, *Commonwealth v. Frometa*, 555 A.2d 92 (Pa. 1989), could cause loss of the right to vote, serve in the military, own a firearm, obtain fishing licenses, inherit property or practice certain professions, *Commonwealth v. Duffey*, 639 A.2d 1174 (Pa. 1994), could cause him to lose his driving privileges, *Department of Transportation v. Johnson*, 641 A.2d 1170 (Pa. Super. 1994)(plea to drug charges), or could subject him to probation revocation in a different case, *Commonwealth v. Brown*, 680 A.2d 884 (Pa. Super. 1996), does not invalidate a plea because the consequences are collateral.

The case most on point is *Commonwealth v. Stark*, 698 A.2d 1327 (Pa. Super. 1997). There the PCRA petitioner asked

“the court to expand the inquiry necessary to insure that an accused enters his guilty plea in a voluntary and understanding manner to include any special circumstances affecting probation or release from incarceration.”

698 A.2d at 1328. Thus, Stark was asking the court to adopt that portion of Standard 14-1.4 set forth in *Persinger* but not relevant to the decision in that case. Specifically, he argued that the colloquy should have addressed circumstances affecting his chance for parole because those special circumstances could increase his minimum sentence. Instead, the court

decline[d] to extend the court's duty to advise a defendant of the sentencing consequences of his plea further than that required by Pa. R.Crim.P. 319, and existing Pennsylvania case law which requires the court to inform the defendant of the permissible range of sentences and the maximum punishment that might be imposed . . . Herein, appellant was fully advised of his maximum and minimum sentence (which were a part of appellant's negotiated plea), and we will not require trial courts to advise defendants of the release rules of the Pennsylvania Board of Probation and Parole.
698 A.2d at 1331.

Likewise, in the matter sub judice, Defendant had been advised of the minimum and maximum sentences to which he was being exposed when he entered his guilty plea. The fact that he must provide a DNA sample to be released is no different than being denied parole due to special circumstances. If the petitioner's request in *Stark* was rejected, it is logical and reasonable to reject Defendant's request in the instant case.

Despite Defendant's assertion that he would not have entered a guilty plea if he knew of the need to provide a DNA sample, I have serious concerns about the sincerity of his protestation. A court is permitted to review the totality of the circumstances in determining whether a plea is voluntarily, knowingly and intelligently entered. *Commonwealth v. Allen, supra.*, 732 A.2d at 588-9. Here, Defendant has not stated that submitting DNA is contrary to his religious, moral or philosophical convictions or that the procedure causes him such fear that he would have withheld his plea. Instead, he suggests that he would have rejected a negotiated plea which avoided a mandatory sentence because it involves a minimally invasive procedure to obtain a DNA sample, but he is willing to stand on his plea where to do so subjects him to the registration requirements of Meagan's law and the implications and consequences which can arise therefrom.

If the Court did not err by not advising Defendant of the need to provide a DNA sample in order to be released, then counsel is not ineffective for failing to raise the issue with the court or on appeal.

Accordingly, the attached order is entered.

ORDER OF COURT

AND NOW, this 27th day of March, 2002, after consideration of Defendant's PCRA motion wherein he seeks permission to withdraw his guilty plea because the court did not advise him of the requirements of the DNA Detection of Sexual and Violent Offenders Act, his motion is denied.

A copy of this Order shall be sent to Defendant by certified mail, return receipt requested.

Defendant is advised of his right to file an appeal to the Superior Court within 30 days of the date of this Order. Defendant is entitled to appointed counsel to assist him with an appeal.

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 WILSON C. CLAPSADDLE, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Meda M. Clapsaddle, 1790 Baltimore Pike, Gettysburg, PA 17325

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF ELIZABETH B. RITTER a/k/a ELIZABETH P. RITTER a/k/a ELIZABETH BAUM RITTER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Robert Stoner, Sr., 1000 Wilds Ridge Road, Brevard, NC 28712; Barry L. Shearer, 7017 Toby Court, Charlotte, NC 28213

Attorney: John M. Garber, 40 South Duke St., York, PA 17401

ESTATE OF HOPE M. SHAFFER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Timothy J. Shaffer, c/o Joel O. Sechrist, Esq., 568 Old York Road, Eters, PA 17319

Attorney: Joel O. Sechrist, Esq., 568 Old York Road, Eters, PA 17319

SECOND PUBLICATION**ESTATE OF EDNA S. STEINOUR, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Philip J. Steinour, 4 Jessica Drive, Carlisle, PA 17013; Stephen D. Steinour, 101 Coopertown Road, Haverford, PA 19040

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MORRIS ALLEN WASTLER, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Alana Frances Stroh, 238 Eichelberger Street, Hanover, PA 17331

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

ESTATE OF DOROTHY M. YEALY, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Administrators: Wilma M. Noel, 30 Cheetah Drive, Hanover, PA 17331; Mark W. Yealy, 404 South Street, McSherrystown, PA 17344

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

THIRD PUBLICATION**ESTATE OF JOHN M. BIGHAM, DEC'D**

Late of Highland Township, Adams County, Pennsylvania

Executrix: Eva Trostle, 589 Knoxlyn Road, Gettysburg, PA 17325

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

ESTATE OF GEORGETTE IRENE KEEFER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administratrix: Mazie N. Keefer, 20 S. 4th Street, Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KATHRYN J. YINGLING, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Harold L. Yingling, 287 Cold Spring Road, Gettysburg, PA 17325; Betty J. Yingling, 287 Cold Spring Road, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-911 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of January, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two tracts of land, situate, lying and being in Tyrone Township, Adams County, Pennsylvania, more specifically described as follows:

TRACT NO. 1: BEGINNING at a point marked by an iron pipe in the Northwest corner of Lot No. 3 of the hereinafter recited subdivision plan; thence along Lot No. 2 of the same subdivision plan North fifty (50) degrees fifty-eight (58) minutes ten (10) seconds East a distance of two hundred seventy-five and eighty hundredths (275.80) feet to a point in the center line of T-564; thence along T-564 South thirty-nine (39) degrees one (01) minute fifty (50) seconds East a distance of one hundred eighty-two and fifty-three hundredths (182.53) feet to another point in the center line of T-564; thence along T-564 South thirty-four (34) degrees seven (07) minutes fifty-two (52) seconds East a distance of seventy and zero hundredths (70.00) feet to another point in the center line of T-564; thence along Lot No. 4 of the same subdivision plan South fifty-five (55) degrees fifty-two (52) minutes eight (08) seconds West a distance of three hundred seventy and sixty-nine hundredths (370.69) feet to a point marked by an iron pipe; thence along Lot No. 1 of the same subdivision plan North fourteen (14) degrees forty-five (45) minutes zero (00) seconds West a distance of two hundred forty-two and three hundredths (242.03) feet to the place of BEGINNING. (CONTAINING 1.783 acres.)

TRACT NO. 2: BEGINNING for a point at the intersection of Lot No. 5 on the hereinafter referenced plan of lots; thence along Lot No. 5, South three (03) degrees forty-four (44) minutes thirty-seven (37) seconds West, one hundred twenty and forty-nine hundredths (120.49) feet to a point at land now or formerly of Eugene E. Ness; thence along said land North fifty-nine (59) degrees fifty-seven (57) minutes twenty-three (23) seconds West, one hundred five and sixty-six hundredths (105.66) feet to a point at Lot No. 3 aforesaid; thence along said lot North fifty-five (55) degrees fifty-two (52) minutes eight (08) seconds East, one hundred twenty and zero hundredths (120.00) feet to the point and place of BEGINNING. Being Lot No. 5A on a plan of Lots prepared by Mort, Brown and Associates, dated December 22, 1987, and recorded in the

Office of the Recorder of Deeds of Adams County in Plan Book 49 at page 45.

HAVING ERECTED THEREON a dwelling known as 780 Company Farm Road, Aspers, Pennsylvania.

BEING THE SAME PREMISES WHICH Gregory A. Winand and Kathy M. Winand, by Deed dated September 5, 2000 and recorded September 6, 2000 in Adams County Deed Book 2121, Page 6, granted and conveyed unto Charles E. Guthrie.

SEIZED IN EXECUTION AS THE PROPERTY OF CHARLES E. GUTHRIE UNDER ADAMS COUNTY JUDGMENT NO. 02-S-911.

MAP & PARCEL # (40) H6-92

SEIZED and taken into execution as the property of Charles E. Guthrie and to be sold by me.

Raymond W. Newman-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 February 24, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/27, 12/6 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-542 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of January, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Western edge of the Pennsylvania State Highway which leads from Littlestown to the Gettysburg-Hanover State Highway, which point is South six (06) degrees thirty (30) minutes East, five (05) feet from the corner of Lot No. 2 from the plan of lots of Clayton E. and Annie E. Runk; thence along said Highway South six (06) degrees thirty (30) minutes East,

one hundred fifteen (115) feet to a stake at corner of Lot No. 5; thence along Lot No. 5, South eighty-three (83) degrees thirty (30) minutes West, one hundred fifty (150) feet to lands now or formerly of Clayton E. Runk and Annie E. Runk; thence along same North six (06) degrees thirty (30) minutes West, one hundred fifteen (115) feet to a point which is South six (06) degrees thirty (30) minutes East, five (05) feet from the Southwest corner of Lot No. 2, aforesaid; thence North eighty-three (83) degrees thirty (30) minutes East, one hundred fifty (150) feet to a point along the Pennsylvania State Highway which leads from Littlestown to Gettysburg-Hanover State Highway, the place of BEGINNING. Being known and numbered as 660 Littlestown Road.

BEING KNOWN AS 660 Littlestown Road, Littlestown, PA 17340

PROPERTY ID# 00-S-268

TITLE TO SAID PREMISES IS VESTED IN Marilyn R. Barrick by Deed from Steven D. Barrick and Marilyn R. Barrick, persons who are or have been married dated 2/23/95 and recorded 2/28/95 in Deed Book 1000 Page 39.

SEIZED and taken into execution as the property of Marilyn R. Barrick and to be sold by me.

Raymond W. Newman-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 February 24, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/27, 12/6 & 13

Adams County Legal Journal

Vol. 44

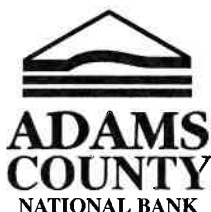
December 13, 2002

No. 29, pp. 153-159

IN THIS ISSUE

KERN VS. CUMBERLAND TWP.

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

LEGAL NOTICE

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 11th, 2003 to elect directors and to transact any other business properly presented.

Attest
Marilyn Q. Butt

Secretary-Treasurer, Director

12/13, 20, 27 & 1/3

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 May 15, 2002. The name of the corporation is M.C.K.BOB, INC. The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

Teeter, Teeter & Teeter
108 West Middle Street
Gettysburg, PA 17325

12/13

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN that the Shareholder and Directors of FAIRFIELD PEST CONTROL, INC., a Pennsylvania corporation, most recently conducting business at Water Street, Fairfield, Pennsylvania, have approved a proposal that the Corporation voluntarily dissolve, and that the Board of Directors engage in winding up and settling the affairs of the Corporation. This Notice of the dissolution proceedings is given pursuant to Section 1975 of the Pennsylvania Business Corporation Law of 1988, as amended.

Robert E. Campbell, Esq.
Campbell & White
112 Baltimore Street
Gettysburg, PA 17325
Attorneys for the Corporation

12/13

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Thursday, December 26, 2002, at 9:00 o'clock a.m.

GILBERT—Orphans' Court Action Number OC-127-02. The First and Final Account of Thomas M. Gilbert, Executor of the Estate of Alfred L. Gilbert, deceased, late of Oxford Township, Adams County, Pennsylvania.

SMITH—Orphans' Court Action Number OC-134-02. The First and Final Account of Suzanne A. Kaiser, Executrix of the Last Will and Testament of Doris N. Smith, deceased, late of McSherrystown Borough, Adams County, Pennsylvania.

WAYBRIGHT—Orphans' Court Action Number OC-136-02. The First and Final Account of M. Blanche Yingling and Catherine B. Hall, Co-Administrators of the Estate of John F. Waybright, deceased, late of Cumberland Township, Adams County, Pennsylvania.

HUGHES—Orphans' Court Action Number OC-139-02. The First and Final Account of A. James Mayer and Paul F. Miller, Jr., Co-Executors of the Estate of Janet K. Hughes a/k/a Janet Ruth Hughes, deceased, late of Germany Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

12/13 & 20

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act 1982-295, approved December 16, 1982, of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, PA, July 9, 2002, of a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of THE PIKE RESTAURANT & LOUNGE with its principal place of business at 985 Baltimore Pike, Gettysburg, Pennsylvania 17325. The name and address of the person owning or interested in said business is M.C.K.BOB, INC. with its principal place of business at the same address.

Teeter, Teeter & Teeter
Solicitors

12/13

KERN VS. CUMBERLAND TWP.

1. It is well settled that where the trial court takes no additional evidence, the Court's review is limited to whether the (Township) Board (of Supervisors) committed a manifest abuse of discretion or an error of law.

2. Generally, if a term is not defined in a Zoning Ordinance, it must be given a standard, ordinary and general usage meaning.

3. In making this determination, the Zoning Ordinance should be read as a whole with the letter of the Ordinance not to be disregarded in the pretext of pursuing its spirit.

4. Within forty-five (45) days of the last hearing on an application before a zoning board, the board must make a decision on the matter and that decision must be communicated to the applicant in writing.

5. It is not necessary that the decision be accompanied by the usual written appurtenances of an opinion. The decision need not contain signatures of the board members and **may be communicated by an agent of the board in place of the members themselves.**

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 01-S-390, LINWOOD P. KERN AND LOIS M. KERN VS. CUMBERLAND TOWNSHIP BOARD OF SUPERVISORS.

Michael D. Reed, Esq., for Appellants

Frank J. Lavery, Jr., Esq., for Appellee

George, J., April 1, 2002

OPINION

In this appeal, the Court is asked to review the decision of the Cumberland Township Board of Supervisors (hereinafter referred to as "Township") which denied the conditional use application of Linwood P. and Lois M. Kern (hereinafter referred to as "Kerns"). The Kerns claim that the Cumberland Township Board of Supervisors committed an error of law or otherwise abused their discretion in denying the conditional use. The Court is also asked to consider whether a written decision signed by the Township's solicitor satisfies the requirements of the Municipalities Planning Code which requires a written decision to be issued by the governing body. *See, 53 P.S. §10913.2(b)(1).*

The Kerns are the owners of certain property located along Emmitsburg Road in Cumberland Township, Adams County, Pennsylvania. The property is located in an agricultural residential district (hereinafter referred to as "AR District") pursuant to the Cumberland Township Zoning Ordinance (hereinafter referred to as "Zoning Ordinance"). On November 30, 2000, the Kerns submitted

an application for a conditional use to allow the creation of a recreational vehicle camp on the subject property. Under the Zoning Ordinance, a recreational vehicle camp is permitted as conditional use subject to seven (7) criteria. Among the criteria is the requirement that “(t)here shall be a minimum of two points of ingress and egress”. *Cumberland Township Zoning Ordinance Section 3.1.b.2(c)*.

On January 16, 2001, the Township held a hearing on the conditional use application. Thereafter, on February 13, 2001, the Township voted to deny the Kerns their conditional use. At the request of the Kerns, the Board reconsidered its earlier decision in a public hearing held on February 27, 2001. Once again, however, the Township voted to deny the application. On March 13, 2001, a written decision was issued which was signed only by the Township’s solicitor. A timely appeal was thereafter filed raising the issue set forth above.¹

The property which is the subject of this appeal initially consisted of approximately 135 acres fronting Emmitsburg Road in Cumberland Township, Pennsylvania. In 1996, the United States Government condemned approximately 51.68 acres of this property. Significantly, the portion which was condemned included the property’s entire frontage along Emmitsburg Road. As part of the condemnation proceedings, however, the Kerns reserved a 35-foot right-of-way accessing Emmitsburg Road but containing the following restriction:

“This right-of-way easement for access to the KERNs’ remainder land shall be limited to: 1) the use for farming equipment and emergency vehicle access to the subject tract and to the KERNs’ remainder land and 2) the use as a driveway for not more than two (2) single-family residences located on the remainder land acquired by the KERNs as described in Deed Book 461, Page 120. The KERNs shall have the right at their option to improve the driveway with suitable paving materials such as asphalt,

¹The notice of appeal raised additional issues which have been neither briefed nor argued by the Appellants. As such, they are deemed waived. *Hempfield Township v. Hapchuk*, 153 Pa. Cmwlth. 173, 620 A.2d 668 (1993), appeal denied, 537 Pa. 643, 644 A.2d 165 (1993).

crushed stone or concrete. Under no circumstances shall the driveway depicted in Sections "A" and "B" on the plat attached as Exhibit "B" hereto, exceed ten (10) feet in width, whether in an approved paved or unapproved condition."

Exhibit 2, pp. 3-4, Transcript of Zoning Hearing dated January 16, 2001.

Subsequent to the condemnation, the Kerns presented a plan which represented to provide two (2) points of access to their remaining property. The first point of access is apparently satisfactory to the Township and is not in dispute. The second point of access, however, is within the above-mentioned right-of-way granted by the United States Government. The Township denied the Kerns' conditional use application based upon the Township's Zoning Ordinance requirement that there be a minimum of two (2) points of ingress and egress. Essentially, the Township has concluded that the limitations placed upon the right-of-way preclude the same as being considered a means of ingress and egress as contemplated by the Cumberland Township Zoning Ordinance.

It is well settled that where the trial court takes no additional evidence, the Court's review is limited to whether the Board committed a manifest abuse of discretion or an error of law. *Board of Supervisors of Upper Southampton Tp. v. Zoning Hearing Bd. of Upper Southampton Tp.*, 124 Pa. Cmwlth. 103, 555 A.2d 256 (1989). Since the Zoning Ordinance does not define the words "ingress and egress", the Court is confronted with the issue of whether the Township committed an error of law in its interpretation of those words as used in the Zoning Ordinance.

Generally, if a term is not defined in a Zoning Ordinance, it must be given a standard, ordinary and general usage meaning. In citing *Tobin v. Radnor Township Board of Commissioners*, 142 Pa. Cmwlth. 567, 597 A.2d 1258 (1991), the Commonwealth Court recently annunciated the rules applicable to the interpretation of undefined language in a zoning ordinance as follows:

Although the Statutory Construction Act, 1 Pa. C.S. §§1501-1991, does not apply expressly to zoning and subdivision ordinances, the principles contained in that act are followed in construing a local ordinance. *Patricca*

v. *Zoning Board of Adjustment*, [527 Pa. 267, 274], 590 A.2d 744, 747 (1991); *Council of Middletown Township v. Benham*, 514 Pa. 176, 523 A.2d 311 (1987). Words and phrases of local ordinances shall be construed according to the rules of grammar and according to their common and approved usage. 1 Pa. C.S. §1903(a); *Patricca*, [527 Pa. at 274-75], 590 A.2d at 747-48. Zoning ordinances should be construed in a sensible manner. *Council of Middletown Township*, 514 Pa. at 187, 523 A.2d at 317. In interpreting provisions of a zoning ordinance, undefined terms must be given their plain, ordinary meaning. 1 Pa. C.S. §1903(a), and any doubt must be resolved in favor of the landowner and the least restrictive use of the land. *Appeal of Mt. Laurel Racing Association*, 73 Pa. Commonwealth Ct. 531, 534-35, 458 A.2d 1043, 1044-45 (1983).

Kissell v. Ferguson Tp. Zoning Bd., 729 A.2d 194 (Pa. Cmwlth. 1999). Additionally, in construing the relevant provisions of a zoning ordinance, dictionaries are a proper source to assist in the determination of the common and approved usage of a term. *Fogle v. Malvern Courts, Inc.*, 554 Pa. 633, 722 A.2d 680 (1999). In making this determination, the Zoning Ordinance should be read as a whole with the letter of the Ordinance not to be disregarded in the pretext of pursuing its spirit. *Tobin v. Radnor Township Board of Commissioners*, supra. With this guidance, I will now turn to the ordinance in question.

There is no question that the Cumberland Township Zoning Ordinance does not define the words “ingress” and “egress”. Accordingly, the dictionary will provide a useful tool in determining the common and approved usage of these terms. The term “egress” is defined as “the action or right of going or coming out...a place or means of going out”. *Merriam-Webster’s Collegiate Dictionary, 10th Edition (2000)*² The word “ingress” is defined by that same source as “the act of entering...the power or liberty of entrance or access”. *Merriam-Webster’s Collegiate Dictionary, 10th Edition*

² Black’s Law Dictionary, 5th Edition, notes that this word is often used interchangeably with the word “access”.

(2000). Both definitions include the common denominator of having the right or liberty to enter or leave a particular location.

While this Court is mindful that doubtful language in a Zoning Ordinance should be construed in favor of the property owner, a common sense reading of the relevant portions of the Ordinance as a whole leaves no doubt as to the meaning of the words in question. In plain language, the Ordinance requires two separate points of access for campground uses.

The Kerns claim that the Township improperly added conditions to their Ordinance by requiring that the ingress and egress be “public or commercial”. They argue that by extending the definition of ingress and egress in such a manner, the Township committed an abuse of discretion and error of law. The Court, however, is not persuaded by this argument. As mentioned above, a fair reading of the Ordinance indicates that the ingress and egress required by the Ordinance is for campground purposes. The reference by the Township to “public or commercial” ingress and egress appears to be nothing more than their expression that the access, as intended in the Ordinance, not be encumbered by limitations which would deny the campground the unlimited “right” or “liberty” to enter or leave the property.

In reaching this decision, I rely upon the guidance of our appellate courts to construe zoning ordinances in a sensible manner so as to avoid an absurd or unreasonable result. *See, Tobin v. Radnor Township Board of Commissioners*, supra. Carried to its logical conclusion, the Kerns’ argument implies that regardless of how restrictive the limitations placed on the right-of-way may be, compliance with the Ordinance is accomplished if there is **any** access.³ Such an interpretation would make the restriction in the Ordinance meaningless. Thus, I find that the Township did not place requirements on the Kerns which were not previously present in the Ordinance but, rather, the Kerns’ narrow interpretation of the language of the Ordinance places artificial limitations on the meaning of words contrary to their common usage. Because of the restrictions on the right-of-way granted to the Kerns by the United States Government, users

³The Kerns’ argument would equally apply to a right-of-way limiting access to the campground property to farming purposes. While on paper an access route may appear, in reality there would not be an access to the campground.

of the campground do not have the right or ability to enter or leave the property at two locations. Accordingly, the Township did not commit an error of law or abuse of discretion in denying the application for conditional use.

The Kerns next argue that the conditional use application is deemed approved⁴ due to the Board's failure to issue a written decision as required by the Municipalities Planning Code. This argument lacks merit.

Although the Kerns concede that a written decision was issued within forty-five (45) days of the date of the last hearing, they argue that the written notice was insufficient in that it was signed by the Board's Solicitor rather than the Board. This argument, however, is contrary to a number of Pennsylvania cases which have refused to read this requirement into the current language of the Municipalities Planning Code. For instance, in *Mullen v. Zoning Hearing Board of Collingdale Borough*, 691 A.2d 998 (Pa. Cmwlth. 1997), the Commonwealth Court concluded that a letter written by the Zoning Board's Solicitor informing the applicants of the Board's decision was sufficient. Interestingly, the correspondence contained neither findings of fact nor an opinion. In reaching their decision, the *Mullen* Court enunciated the following rule:

“Within forty-five (45) days of the last hearing on an application before a zoning board, the board must make a decision on the matter and that decision must be communicated to the applicant in writing. Otherwise, assuming the applicant has not agreed to an extension of time, and even if the applicant was informed orally of a decision, there is deemed approval due to untimeliness. It is not necessary that the decision be accompanied by the usual written appurtenances of an opinion. The decision need not contain signatures of the board members and **may be communicated by an agent of the board in place of the members themselves.**”

⁴A Board is required to render a decision on a particular matter and communicate that decision to the applicant in writing within forty-five (45) days after the last hearing. Where the Board fails to comply with this time requirement, there is a deemed approval of the application due to untimeliness. *Roomesburg v. Fayette County Zoning Hearing Board*, 727 A.2 150 (Pa. Cmwlth. Ct. 1999).

Mullen v. Zoning Hearing Board of Collingdale Borough, supra, A.2d at 1001. See, also, *Piecknick v. South Strabane Township*, 607 A.2d 829 (Pa. Cmwlth. 1992) (decision signed only by Board Chairman is sufficient); *Hill v. Lower Saucon Township Hearing Board*, 456 A.2d 667 (Pa. Cmwlth. 1983) (decision signed only by Solicitor is valid); *Packard v. Commonwealth*, 426 A.2d 1220 (Pa. Cmwlth. 1981). (A letter from the Board's Solicitor containing neither findings of fact nor an opinion is sufficient.)

Recognizing this wealth of authority, the Kerns argue that the current issue is distinguishable because the referenced cases apply to interpretations of 53 P.S. §10908(9) while the issue before the Court deals with an interpretation of 53 P.S. §10913.2. The Kerns continue to argue that the distinction between the two sections is that the former applies to a zoning hearing board which is appointed and may delegate responsibilities to a hearing officer while the latter applies to an elected "governing body". I find this distinction insignificant. Both sections are aimed at requiring the board to render a decision which provides for meaningful judicial review and allows an aggrieved party sufficient basis to form and articulate an appeal. *Borough of Youngsville v. Southern Hearing Board of Borough of Youngsville*, 450 A.2d 1086 (1982); see, also, *Humble Oil and Refining Co. v. Borough of Landsdowne*, 227 A.2d 664 (1967). In the instant case, it is clear that the Board publicly voted on the decision and, as mentioned, a written decision was provided to the Kerns within forty-five (45) days of the hearing date. Under these circumstances, we find a written notice of the decision containing findings of fact and an opinion as to the reason for the decision to be sufficient regardless of whether that notice was signed only by the Solicitor. There is nothing to suggest that the Solicitor usurped the decision-making power of the Board or substituted his own judgment for theirs.

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 1st day of April, 2002, the decision of the Cumberland Township Board of Supervisors is affirmed. The appeal is dismissed. Costs are to be paid by the Appellants.

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 CURTIS D. GLADFELTER, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Administratrix CTA: Karen L. Russell, 35 Glen Avenue, Glen Rock, PA 17327

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

ESTATE OF ALMA R. ORNDORFF, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: L. Irene Crouse, 269 Chestnut Hill Road, Aspers, PA 17304

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

ESTATE OF LAUREN H. SCHOTT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Lauren Scott, 15 Winebrenner Woods, Hanover, PA 17331; Scott L. Kelley, Esq., 209 Broadway, Hanover, PA 17331

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

SECOND PUBLICATION**ESTATE OF WILSON C. CLAPSADDLE, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Meda M. Clapsaddle, 1790 Baltimore Pike, Gettysburg, PA 17325

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF ELIZABETH B. RITTER a/k/a ELIZABETH P. RITTER a/k/a ELIZABETH BAUM RITTER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Robert Stoner, Sr., 1000 Wilds Ridge Road, Brevard, NC 28712; Barry L. Shearer, 7017 Toby Court, Charlotte, NC 28213

Attorney: John M. Garber, 40 South Duke St., York, PA 17401

ESTATE OF HOPE M. SHAFFER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Timothy J. Shaffer, c/o Joel O. Sechrist, Esq., 568 Old York Road, Etners, PA 17319

Attorney: Joel O. Sechrist, Esq., 568 Old York Road, Etners, PA 17319

THIRD PUBLICATION**ESTATE OF EDNA S. STEINOUR, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Philip J. Steinour, 4 Jessica Drive, Carlisle, PA 17013; Stephen D. Steinour, 101 Coopertown Road, Haverford, PA 19040

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MORRIS ALLEN WASTLER, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Alana Frances Stroh, 238 Eichelberger Street, Hanover, PA 17331

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

ESTATE OF DOROTHY M. YEALY, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Administrators: Wilma M. Noel, 30 Cheetah Drive, Hanover, PA 17331; Mark W. Yealy, 404 South Street, McSherrystown, PA 17344

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-911 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of January, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two tracts of land, situate, lying and being in Tyrone Township, Adams County, Pennsylvania, more specifically described as follows:

TRACT NO. 1: BEGINNING at a point marked by an iron pipe in the Northwest corner of Lot No. 3 of the hereinafter recited subdivision plan; thence along Lot No. 2 of the same subdivision plan North fifty (50) degrees fifty-eight (58) minutes ten (10) seconds East a distance of two hundred seventy-five and eighty hundredths (275.80) feet to a point in the center line of T-564; thence along T-564 South thirty-nine (39) degrees one (01) minute fifty (50) seconds East a distance of one hundred eighty-two and fifty-three hundredths (182.53) feet to another point in the center line of T-564; thence along T-564 South thirty-four (34) degrees seven (07) minutes fifty-two (52) seconds East a distance of seventy and zero hundredths (70.00) feet to another point in the center line of T-564; thence along Lot No. 4 of the same subdivision plan South fifty-five (55) degrees fifty-two (52) minutes eight (08) seconds West a distance of three hundred seventy and sixty-nine hundredths (370.69) feet to a point marked by an iron pipe; thence along Lot No. 1 of the same subdivision plan North fourteen (14) degrees forty-five (45) minutes zero (00) seconds West a distance of two hundred forty-two and three hundredths (242.03) feet to the place of BEGINNING. (CONTAINING 1.783 acres.)

TRACT NO. 2: BEGINNING for a point at the intersection of Lot No. 5 on the hereinafter referenced plan of lots; thence along Lot No. 5, South three (03) degrees forty-four (44) minutes thirty-seven (37) seconds West, one hundred twenty and forty-nine hundredths (120.49) feet to a point at land now or formerly of Eugene E. Ness; thence along said land North fifty-nine (59) degrees fifty-seven (57) minutes twenty-three (23) seconds West, one hundred five and sixty-six hundredths (105.66) feet to a point at Lot No. 3 aforesaid; thence along said lot North fifty-five (55) degrees fifty-two (52) minutes eight (08) seconds East, one hundred twenty and zero hundredths (120.00) feet to the point and place of BEGINNING. Being Lot No. 5A on a plan of Lots prepared by Mort, Brown and Associates, dated December 22, 1987, and recorded in the

Office of the Recorder of Deeds of Adams County in Plan Book 49 at page 45.

HAVING ERECTED THEREON a dwelling known as 780 Company Farm Road, Aspers, Pennsylvania.

BEING THE SAME PREMISES WHICH Gregory A. Winand and Kathy M. Winand, by Deed dated September 5, 2000 and recorded September 6, 2000 in Adams County Deed Book 2121, Page 6, granted and conveyed unto Charles E. Guthrie.

SEIZED IN EXECUTION AS THE PROPERTY OF CHARLES E. GUTHRIE UNDER ADAMS COUNTY JUDGMENT NO. 02-S-911.

MAP & PARCEL # (40) H6-92

SEIZED and taken into execution as the property of **Charles E. Guthrie** and to be sold by me.

Raymond W. Newman-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 February 24, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/27, 12/6 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-542 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of January, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Western edge of the Pennsylvania State Highway which leads from Littlestown to the Gettysburg-Hanover State Highway, which point is South six (06) degrees thirty (30) minutes East, five (05) feet from the corner of Lot No. 2 from the plan of lots of Clayton E. and Annie E. Runk; thence along said Highway South six (06) degrees thirty (30) minutes East,

one hundred fifteen (115) feet to a stake at corner of Lot No. 5; thence along Lot No. 5, South eighty-three (83) degrees thirty (30) minutes West, one hundred fifty (150) feet to lands now or formerly of Clayton E. Runk and Annie E. Runk; thence along same North six (06) degrees thirty (30) minutes West, one hundred fifteen (115) feet to a point which is South six (06) degrees thirty (30) minutes East, five (05) feet from the Southwest corner of Lot No. 2, aforesaid; thence North eighty-three (83) degrees thirty (30) minutes East, one hundred fifty (150) feet to a point along the Pennsylvania State Highway which leads from Littlestown to Gettysburg-Hanover State Highway, the place of BEGINNING. Being known and numbered as 660 Littlestown Road.

BEING KNOWN AS 660 Littlestown Road, Littlestown, PA 17340

PROPERTY ID# 00-S-268

TITLE TO SAID PREMISES IS VESTED IN Marilyn R. Barrick by Deed from Steven D. Barrick and Marilyn R. Barrick, persons who are or have been married dated 2/23/95 and recorded 2/28/95 in Deed Book 1000 Page 39.

SEIZED and taken into execution as the property of **Marilyn R. Barrick** and to be sold by me.

Raymond W. Newman-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 February 24, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/27, 12/6 & 13

Adams County Legal Journal

Vol. 44

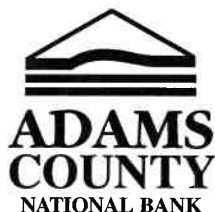
December 20, 2002

No. 30, pp. 160-163

IN THIS ISSUE

HEIGES VS. BECKER

Helping families achieve
their long-range financial goals
is our business.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-788 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of February, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Western edge of a fifty (50.00) foot right-of-way known as Bonnie Field Circle at corner of Lot No. 73 on the draft of survey hereinafter referred to; thence along Lot No. 73 South sixty (60) degrees forty-one (41) minutes forty-one (41) seconds West, one hundred sixteen and thirty-six hundredths (116.36) feet to a point at Lot No. 67; thence along a portion of Lot Nos. 67 and 66 North thirty-five (35) degrees forty-one (41) minutes twenty-one (21) seconds West, seventy-four and forty-eight hundredths (74.48) feet to a point at corner of Lot No. 75; thence along Lot No. 75 North sixty (60) degrees forty-one (41) minutes forty-one (41) seconds East, one hundred thirty-six and forty-one hundredths (136.41) feet to a point on the Western edge of a fifty (50.00) foot right-of-way known as Bonnie Field Circle; thence along the Western edge of such fifty (50.00) foot right-of-way by a curve to the left, the radius of which is two hundred forty and nineteen hundredths (240.19) feet an arc distance of seventy-five and twenty-three hundredths (75.23) feet and having a long chord bearing and distance of South twenty (20) degrees nineteen (19) minutes fifty-seven (57) seconds East, seventy-four and ninety-two hundredths (74.92) feet to a point; the place of BEGINNING. CONTAINING 9,205.8 square feet.

The above description was taken from a draft of survey dated February 26, 1976, prepared by Edward H. Richardson Associates, Inc., labeled "Final Plat Bonnie Field", revised April 14, 1976, and designated thereon as Lot No. 74 and recorded in the Office of the

Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 9 at Page 24.

UNDER AND SUBJECT, NEVERTHELESS, to restrictive covenants as contained in Misc. Book 27 at Page 302.

BEING KNOWN AND NUMBERED AS 40 BONNIEFIELD CIRCLE, GETTYSBURG, PA 17325

TAX PARCEL NUMBER: 10619-88.

BEING the same property William Walls, Jr. a/k/a William Frank Walls, Jr. and Sherrie Lynn Walls, husband and wife, granted and conveyed to William Walls, Jr. a/k/a William Frank Walls, Jr., by Deed dated June 12, 2001 and recorded July 18, 2001, in the Recorder of Deeds Office, Adams County, Pennsylvania in Deed Book Volume 2346, Page 235.

Grenen & Birsic, P.C.

By /s/Kristine M. Anthon, Esq.

Pa. I.D. #77991

Attorneys for Plaintiff

One Gateway Center, Nine West

Pittsburgh, PA 15222

(412) 281-7650

DBV 2346

Page 235

Tax Parcel No. 10619-88

SEIZED and taken into execution as the property of **William Walls, Jr. a/k/a William Frank Walls, Jr.** and to be sold by me.

Raymond W. Newman-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 March 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/20, 27 & 1/3

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Thursday, December 26, 2002, at 9:00 o'clock a.m.

GILBERT—Orphans' Court Action Number OC-127-02. The First and Final Account of Thomas M. Gilbert, Executor of the Estate of Alfred L. Gilbert, deceased, late of Oxford Township, Adams County, Pennsylvania.

SMITH—Orphans' Court Action Number OC-134-02. The First and Final Account of Suzanne A. Kaiser, Executrix of the Last Will and Testament of Doris N. Smith, deceased, late of McSherrytown Borough, Adams County, Pennsylvania.

WAYBRIGHT—Orphans' Court Action Number OC-136-02. The First and Final Account of M. Blanche Yingling and Catherine B. Hall, Co-Administrators of the Estate of John F. Waybright, deceased, late of Cumberland Township, Adams County, Pennsylvania.

HUGHES—Orphans' Court Action Number OC-139-02. The First and Final Account of A. James Mayer and Paul F. Miller, Jr., Co-Executors of the Estate of Janet K. Hughes a/k/a Janet Ruth Hughes, deceased, late of Germany Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

12/13 & 20

HEIGES VS. BECKER

1. It is clear that every pleading which contains an averment of fact not otherwise appearing in the record or containing a denial of fact must be verified. A pleading which fails to comply with this requirement may be stricken.

2. In order to recover for the negligent infliction of emotional distress the Plaintiff must establish, as in any other negligence case, the Defendant's breach of a duty and damages proximately caused thereby.

3. The allegations in the complaint are insufficient where they are vague and fail to include reference as to time, place or the nature of the event in order to allow the responding party a legitimate opportunity to provide a purposeful answer.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 01-S-1343, DOUGLAS H. S. HEIGES VS. MARIA
LYNN BECKER.

Walton V. Davis, Esq., for Plaintiff

Kurt A. Blake, Esq., for Defendant

George, J., April 3, 2002

MEMORANDUM OPINION

This matter comes before the Court on Plaintiff's Preliminary Objections to Defendant's Answer with New Matter. For the reasons set forth below, the Preliminary Objections are sustained.

Douglas H.S. Heiges (hereinafter referred to as "Plaintiff") and Maria Lynn Becker (hereinafter referred to as "Defendant") maintained a friendship for approximately four (4) years.¹ On or about June 27, 2001, the friendship ended. Unfortunately, the parties were unable to amicably reach a division of the personal property held by the parties and an assignment of responsibility for financial obligations incurred during the course of their relationship. Ultimately, dissolution of this friendship resulted in the filing of Plaintiff's complaint on January 11, 2002. Thereafter, on January 28, 2002, the Defendant filed an unverified Answer with New Matter. In response thereto, Plaintiff filed Preliminary Objections on February 13, 2002, as follows:

- 1) a motion to strike for failure of the Answer with New Matter to contain a verification;

¹ Factual background is derived from allegations in Plaintiff's complaint and admissions in the Defendant's answer.

- 2) a motion to strike two (2) paragraphs of the Defendant's New Matter as being impertinent;
- 3) a motion to strike three (3) paragraphs of the Defendant's pleading as containing scandalous and impertinent matters; and
- 4) a motion to strike the pleading due to lack of specificity.

It is clear that every pleading which contains an averment of fact not otherwise appearing in the record or containing a denial of fact must be verified. *Pa. R.C.P. 1024(a)*. A pleading which fails to comply with this requirement may be stricken. *Berger v. City of Williamsport*, 12 Pa. D.&C. IVth 397 (1990). A review of the Defendant's Answer to Plaintiff's Complaint with New Matter indicates that it clearly contains averments of fact which are not otherwise apparent in the record. In fact, although the pleading is not properly titled as such, the body of the pleading contains counterclaims. Since the purpose of a verification is to defend a party against frivolous allegations, it is clear that the Plaintiff's Preliminary Objection to strike the pleading for its failure to contain a verification must be granted. However, the Defendant will be given the opportunity to amend. *See, Lewis v. Erie Insurance Exchange*, 421 A.2d 1214 (Pa. Super. 1980).

In light of the foregoing, resolution of the remaining issues is essentially moot. However, they will briefly be addressed to avoid repetitious litigation.

The Plaintiff asks the Court to strike paragraph 17 and 18 of Defendant's New Matter. Those paragraphs refer to allegations that the Defendant has offered to return certain items of property to the Plaintiff which were met with no response. In examining this issue, it is important to keep in mind that the Plaintiff's causes of action sounds in conversion and replevin. In support of those causes of action, the Plaintiff has alleged that the Defendant "has refused and failed to unconditionally return and refund the properties and monies". *See, Plaintiff's Complaint, paragraph 9*. Plaintiff later alleges that "[d]espite repeated requests for the return of all Plaintiff's property, including the gun, Defendant has refused and failed to return any of it and has only offered to return some of it in exchange for Plaintiff's abandonment of the balance of it". *Paragraph 15, Plaintiff's Complaint*. It is too early to tell whether or

not these allegations are immaterial. However, at first glance, they appear to be appropriate response to the Plaintiff's pleadings. Accordingly, the Plaintiff's motion to strike paragraphs 17 and 18 is denied.

Plaintiff next moves to strike references to "Plaintiff's adulterous affairs" found in paragraphs 5 and 27 of the Defendant's pleading. Plaintiff also requests that Defendant's allegation in paragraph 36 that the Plaintiff forced the Defendant to "look at video tape of Plaintiff with a paramour and another woman" be stricken.

I agree with the Plaintiff that the language in paragraphs 5 and 27 of Defendant's pleading are legally and factually unsustainable. There is no allegation that these parties were ever married and in fact, Defendant admits that the parties were "social friends". See, *Defendant's Answer to Plaintiff's Complaint with New Matter, paragraph 3*. These allegations are scandalous and add nothing to the material issues of the case. As such, Plaintiff's motion to strike these allegations in paragraph 5 and paragraph 27 are granted.

The language in paragraph 36 of Defendant's pleading deserves further analysis. That paragraph arises in the context of a counterclaim for the intentional infliction of emotional distress. Although the allegations may contain offensive material, they are not scandalous if they are pertinent to the cause of action. See, *Universal Film Exchanges, Inc. v. Bootco, Inc.*, 44 D.&C. 2d 695 (1968).

Analyzing Plaintiff's preliminary objection to paragraph 36 of the Defendant's counterclaim requires a review of the elements of cause of action for negligent infliction of emotional distress. In order to recover for the negligent infliction of emotional distress the Plaintiff must establish, as in any other negligence case, the Defendant's breach of a duty and damages proximately caused thereby. *Shumosky v. Lutheran Welfare Services*, 784 A.2d 196 (Pa. Super. 2001). The Defendant, in her counterclaim, alleges that she was forced "to look at a videotape of Plaintiff with a paramour and another woman". Thus, the cause of action is not founded in a breach of duty but rather based upon the intentional act of the Plaintiff. Had this paragraph been included as a basis for a cause of action for the intentional infliction of emotional distress, it may very well be relevant. However, in the context in which it is raised in the

Defendant's counterclaim, I find the language to be scandalous and immaterial to the cause of action.²

Finally, Plaintiff alleges that the Defendant's pleading lacks sufficient specificity. I agree. The function of the complaint is to apprise the Defendant of the issues he faces and to enable him to prepare an intelligent response. Because there is no precise standard to determine the actual amount of detail that must be included, the Court is vested with a great deal of discretion. *In re Barnes Foundation*, 661 A.2d 889 (Pa. Super. 1995); alloc. dn., 668 A.2d 1119 (Pa. 1995). The allegations in the complaint are insufficient where they are vague and fail to include reference as to time, place or the nature of the event in order to allow the responding party a legitimate opportunity to provide a purposeful answer. *See, Framlau Corporation v. County of Delaware*, 299 A.2d 335 (Pa. Super. 1972). I agree with the Plaintiff that paragraphs 32, 36 and 42 state broad generalities which do not adequately inform the Defendant of the issues to be addressed. At a minimum, the Defendant should specify the events which are considered to be "repeated actions of harassment" or "altercations". Additionally, as to each of those paragraphs, the Defendant should specify when and where the event occurred.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 3rd day of April, 2002, Plaintiff's Preliminary Objections are granted and the Defendant's Answer to Plaintiff's Complaint with New Matter is stricken. The Defendant shall have twenty (20) days within which to file an amended pleading in compliance with this opinion.

² Although the Pennsylvania Supreme Court has never expressly recognized a cause of action for intentional infliction of emotional distress, they have recognized the minimum elements necessary to sustain such a cause of action. *Taylor v. Albert Einstein Medical Center*, 754 A.2d 650 (Pa. 2000). Thus, damages may be available to one who suffers severe emotional distress as a result of the intentional or reckless extremely outrageous conduct of another. Additionally, damages are recoverable for the negligent infliction of emotional distress for injuries resulting from mental distress where they are accompanied by physical injury, physical impact or were within the "zone of danger" of injury or impact. *Shomusky v. Lutheran Welfare Services*, supra. Although titled as a negligent infliction of emotional distress claim, Defendant's counterclaim specifically alleges malicious and willful conduct on behalf of the Plaintiff. As currently filed, this portion of Defendant's counterclaim appears to allege a mixture of these causes of action and is insufficient to support either cause of action independently.

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 LAWRENCE P. BARNEY, DEC'D**

Late of the Borough of Fairfield, Adams County, Pennsylvania

Administrator: Gary S. Barney, 390 Spangler School Road, Gettysburg, PA 17325

Attorney: John R. White, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF RICHARD A. BRADY, 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 MARGARET A. PEARCE a/k/a MARGARET ADELE PEARCE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Vicky Wagaman a/k/a Vicki Wagaman, 1310 Gun Club Rd., York Springs, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF RAPHAEL F. STAUB, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Carlen L. Staub, 353 North Street, McSherrystown, PA 17344

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

ESTATE OF WILBUR H. WINEMILLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Karen S. Strong a/k/a Bathgate, 25 Marie Drive, Hanover, PA 17331

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

SECOND PUBLICATION**ESTATE OF CURTIS D. GLADFELTER, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Administratrix CTA: Karen L. Russell, 35 Glen Avenue, Glen Rock, PA 17327

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

ESTATE OF ALMA R. ORNDORFF, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: L. Irene Crouse, 269 Chestnut Hill Road, Aspers, PA 17304

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

ESTATE OF LAUREN H. SCHOTT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Lauren Scott, 15 Winebrenner Woods, Hanover, PA 17331; Scott L. Kelley, Esq., 209 Broadway, Hanover, PA 17331

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

THIRD PUBLICATION**ESTATE OF WILSON C. CLAPSADDLE, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Meda M. Clapsaddle, 1790 Baltimore Pike, Gettysburg, PA 17325

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF ELIZABETH B. RITTER a/k/a ELIZABETH P. RITTER a/k/a ELIZABETH BAUM RITTER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Robert Stoner, Sr., 1000 Wilds Ridge Road, Brevard, NC 28712; Barry L. Shearer, 7017 Toby Court, Charlotte, NC 28213

Attorney: John M. Garber, 40 South Duke St., York, PA 17401

ESTATE OF HOPE M. SHAFFER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Timothy J. Shaffer, c/o Joel O. Sechrist, Esq., 568 Old York Road, Etters, PA 17319

Attorney: Joel O. Sechrist, Esq., 568 Old York Road, Etters, PA 17319

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-560 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of February, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

184 Christ Church Road, Littlestown, PA

ALL the following tract of land situate, lying and being in Union Township, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a point in the centerline of Christ Church Road (S.R. 2023) at Lot No. 3 on the hereinafter referenced subdivision plan; thence along and with said Lot No. 3, North seventy-nine (79) degrees zero (00) minutes five (5) seconds West, three hundred twenty-five (325.00) feet to a point at lands now or formerly of Wilbert J.H. Messinger; thence along and with said last mentioned lands North ten (10) degrees fifty-nine (59) minutes fifty-five (55) seconds East, one hundred forty (140.00) feet to a steel pin (set) at lands now or formerly of Wilbert J.H. Messinger; thence along and with said last mentioned lands South seventy-nine (79) degrees zero (00) minutes five (5) seconds East, two hundred seventy-three and eighty-four hundredths (273.84) feet to a steel pin set; thence continuing South thirty-four (34) degrees zero (00) minutes five (5) seconds East, thirty-five and thirty-six hundredths (35.36) feet to a steel pin (set); thence continuing South seventy-nine (79) degrees zero (00) minutes five (5) seconds East, twenty-six and sixteen hundredths (26.16) feet to a point in the centerline of Christ Church Road (S.R. 2023); thence along and with said Christ Church Road, South ten (10) degrees fifty-nine (59) minutes fifty-five (55) seconds West, one hundred fifteen (115.00) feet to a point in the centerline of Christ Church Road, the point and place of BEGINNING. CONTAINING 1.022 acres and known as Lot No. 4 on a Final Subdivision Plan prepared for Wilbert J.H. Messinger, by Mort, Brown and Associates, bearing date of March 17, 1988, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 50, at page 37.

IT BEING THE SAME tract of land which LaRay Enterprises, Inc., a Maryland corporation, by its deed dated June 28, 1991 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 592, page 1107, granted and conveyed unto Jesse R. Bible and Edith A. Bible, his wife, MORTGAGORS HEREIN.

PARCEL NUMBER: 41-J16-60

SEIZED IN EXECUTION as the property of JESSE R. BIBLE and EDITH A. BIBLE on Judgment No. 2002-SU-0000560.

SEIZED and taken into execution as the property of **Jesse R. Bible & Edith A. Bible** and to be sold by me.

Raymond W. Newman-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 March 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/20, 27 & 1/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-22 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of February, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate in Tyrone Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located in Schoolhouse Road (Township Route T-566) at corner of Tract #1 set forth on the subdivision plan referred to below: thence by said Tract #1, and running through a reference iron pin located 94.41 feet from the beginning of this line, North 12 degrees 56 minutes 50 seconds West, 404.26 feet to an iron pin; thence by same, North 83 degrees 12 minutes 10 seconds East, 464.17 feet to a railroad spike located in the aforementioned Schoolhouse Road; thence in said Schoolhouse Road, and by land now or formerly of Philip H. Tarpley, South 09 degrees 37 minutes 20 seconds East, 223.73 feet to an existing post on the East side of the aforementioned road; thence continuing by same, and in the aforementioned Schoolhouse Road, South 60 degrees 45 minutes 00 seconds West 467.31 feet to an iron pin in road, the place of BEGINNING. CONTAINING 3.272 acres, and being designated as Tract No. 3 on the Subdivision

Plan prepared by Marian Anne Jones by Boyer-Price Surveys Inc. dated August 21, 1974, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 7 at page 22.

BEING known as 310 Rock Valley Road, Aspers, PA 17304

Property ID: H6-24C

TITLE TO SAID PREMISES IS VESTED IN James Craig Johnson and Sandra R. Johnson, husband and wife, by deed from Samuel B. Stoner and Alana M. Stoner, husband and wife, dated 10/31/97, recorded 11/06/97, Book 1470, Page 131.

SEIZED and taken into execution as the property of **James Craig Johnson & Sandra Lee Johnson a/k/a Sandra R. Johnson** and to be sold by me.

Raymond W. Newman-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 March 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/20, 27 & 1/3

LEGAL NOTICE

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 11th, 2003 to elect directors and to transact any other business properly presented.

Attest

Marilyn Q. Butt

Secretary-Treasurer, Director

12/13, 20, 27 & 1/3

Adams County Legal Journal

Vol. 44

December 27, 2002

No. 31, pp. 164-167

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-375 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of February, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

TRACT NO. 1

ALL THAT CERTAIN piece or parcel of real estate situate in the Township of Reading, County of Adams, and Commonwealth of Pennsylvania, being known and described as Lot No. 432 on a Plan of Lots known as "Lake Meade Subdivision," said plan being recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 1, Page 4.

TRACT NO. 2

ALL THAT CERTAIN piece or parcel of real estate situated in the Township of Reading, County of Adams, and Commonwealth of Pennsylvania, being known and described as Lot No. 433 on a Plan of Lots known as "Lake Meade Subdivision," said Plan being recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 1, Page 4.

Tax Parcel 2-43

SUBJECT TO PRIOR MORTGAGE

SEIZED and taken into execution as the property of **Brian E. Kinard & Michelle R. Kinard** and to be sold by me.

Raymond W. Newman-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 March 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/27, 1/3 & 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-788 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of February, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Western edge of a fifty (50.00) foot right-of-way known as Bonnie Field Circle at corner of Lot No. 73 on the draft of survey hereinafter referred to; thence along Lot No. 73 South sixty (60) degrees forty-one (41) minutes forty-one (41) seconds West, one hundred sixteen and thirty-six hundredths (116.36) feet to a point at Lot No. 67; thence along a portion of Lot Nos. 67 and 66 North thirty-five (35) degrees forty-one (41) minutes twenty-one (21) seconds West, seventy-four and forty-eight hundredths (74.48) feet to a point at corner of Lot No. 75; thence along Lot No. 75 North sixty (60) degrees forty-one (41) minutes forty-one (41) seconds East, one hundred thirty-six and forty-one hundredths (136.41) feet to a point on the Western edge of a fifty (50.00) foot right-of-way known as Bonnie Field Circle; thence along the Western edge of such fifty (50.00) foot right-of-way by a curve to the left, the radius of which is two hundred forty and nineteen hundredths (240.19) feet an arc distance of seventy-five and twenty-three hundredths (75.23) feet and having a long chord bearing and distance of South twenty (20) degrees nineteen (19) minutes fifty-seven (57) seconds East, seventy-four and ninety-two hundredths (74.92) feet to a point; the place of BEGINNING. CONTAINING 9,205.8 square feet.

The above description was taken from a draft of survey dated February 26, 1976, prepared by Edward H. Richardson Associates, Inc., labeled "Final Plat Bonnie Field", revised April 14, 1976, and designated thereon as Lot No. 74 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 9 at Page 24.

UNDER AND SUBJECT, NEVERTHELESS, to restrictive covenants as contained in Misc. Book 27 at Page 302.

BEING KNOWN AND NUMBERED AS 40 BONNIEFIELD CIRCLE, GETTYSBURG, PA 17325

TAX PARCEL NUMBER: 10619-88.

BEING the same property William Walls, Jr. a/k/a William Frank Walls, Jr. and Sherrie Lynn Walls, husband and wife, granted and conveyed to William Walls, Jr. a/k/a William Frank Walls, Jr., by Deed dated June 12, 2001 and recorded July 18, 2001, in the Recorder of Deeds Office, Adams County, Pennsylvania in Deed Book Volume 2346, Page 235.

Grenen & Birsic, P.C.

By /s/Kristine M. Anthon, Esq.

Pa. I.D. #77991

Attorneys for Plaintiff

One Gateway Center, Nine West

Pittsburgh, PA 15222

(412) 281-7650

DBV 2346

Page 235

Tax Parcel No. 10619-88

SEIZED and taken into execution as the property of **William Walls, Jr. a/k/a William Frank Walls, Jr.** and to be sold by me.

Raymond W. Newman-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 March 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/20, 27 & 1/3

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-972 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of February, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the South property line of Park Street where the same is intersected by the West property line of Sunset Avenue; thence running along said property line of Sunset Avenue, South 34 degrees 15 minutes West, 101.6 feet to an iron pin at corner of lot now or formerly of Fred J. Kane; thence along same, North 55 degrees 45 minutes West, 138 feet to an iron pin; thence North 34 degrees 15 minutes East, 101.6 feet to an iron pin on the South property line of Park Street; thence running along the property line of said Park Street, South 55 degrees 45 minutes East, 138 feet to a point at the intersection of Park Street and Sunset Avenue, the place of BEGINNING. (Gettysburg Borough Tax Map 12, Parcel 12)

BEING known as 358 Park Street, Gettysburg, PA 17325

Property ID: 12-12

TITLE TO SAID PREMISES IS VESTED IN Michael H. Flowers and Susan A. Flowers, husband and wife, by deed from Dale E. Deardorff and William K. Grover, Executors of the Will of Mildred D. Shover, deceased, dated 12/28/96, recorded 1/3/97, in Deed Book 1312, Page 313.

SEIZED and taken into execution as the property of **Michael Harrison Flowers & Susan Ann Flowers** and to be sold by me.

Raymond W. Newman-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 March 3, 2003, and distribution will be made in accordance

with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/27, 1/3 & 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-930 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of February, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in the Borough of Carroll Valley, (formerly Hamiltonban Township), Adams County, Pennsylvania, being Lot No. J-42, more particularly bounded and described as follows:

BEGINNING at a point in the center of White Oak Trail at Lot No. 41; thence by said lot, North 03 degrees 11 minutes 40 seconds West, 200 feet to Lot No. 45; thence by said lot, South 86 degrees 37 minutes East, 100 feet to Lot No. 43; thence by said lot, South 03 degrees 11 minutes 40 seconds East, 200 feet to a point in the center of said White Oak Trail; thence in said White Oak Trail North 86 degrees 37 minutes West, 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section J, Charnita Ski Area, Inc." dated March 20, 1968, prepared by Gordon L. Brown, R. S., recorded in Adams County Plat Book 1 at page 24.

TOGETHER WITH a right-of-way and easement over the private roads indicated on said lot plan recorded in Adams County Plat Book 1 at page 24, for means of ingress, egress and regress.

TAX PARCEL #2-128

BEING DESIGNATED Lot No. J-42 Section J, Charnita Ski Area, Inc." dated 3/20/68 per Adams County Surveyors

and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 1 at page 24.

SEIZED and taken into execution as the property of **Gary L. Whipp & Mary C. Smith** and to be sold by me.

Raymond W. Newman-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 March 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/27, 1/3 & 10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by Gettysburg Endodontics P.C. with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania. The corporation is incorporated under the Pennsylvania Business Corporation Law of 1988.

Teeter, Teeter & Teeter
108 West Middle Street
Gettysburg, PA 17325

12/27

COMMONWEALTH VS. ALDRIDGE

1. The standard for evaluating whether probable cause exists for the issuance of a search warrant is the "totality of the circumstances" test. A magistrate is to make a "practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."

2. The affidavit must also put the events into a time frame for the magistrate to evaluate whether the information is stale. The determination whether probable cause exists must appear within the four corners of the affidavit.

3. Where the basis for the search warrant comes from an anonymous tip police corroboration is important in determining the informant's veracity....the reliability of an informant should be established by some objective facts which allows a magistrate to determine that the information is reliable.

In the Court of Common Pleas of Adams County, Pennsylvania,
Criminal, No. CC-527-01, COMMONWEALTH VS. PEGGY ANN
ALDRIDGE.

Matthew D. Fogal, Esq., Assistant District Attorney, for
Commonwealth

Jeffery M. Cook, Esq., for Defendant

Kuhn, P.J., April 4, 2002

MEMORANDUM OPINION

Before this Court is Defendant's Motion for Suppression of Evidence filed November 16, 2001. Defendant seeks to suppress a "marijuana pipe" found in her residence as a result of a search conducted pursuant to a search warrant applied for, issued and served on March 15, 2001. The sole issue is whether the information contained within the four corners of the Affidavit of Probable Cause was sufficient for the issuance of the search warrant. Each party has been given the opportunity to research the issue. The Court concludes that the information set forth in the Affidavit is sufficient to establish probable cause.

The Affidavit sets forth the following information:

ON 03/15/01, THE AFFIANT INTERVIEWED MICHAEL BRASHEARS, A 16 YEAR OLD, CAU/M VIA TELEPHONE. BRASHEARS RELAYED THE FOLLOWING. HE IS CURRENTLY LIVING AT 147 SUTTON ROAD, ABBOTTSTOWN BOROUGH, ADAMS COUNTY, PA. ALSO LIVING AT THE RESIDENCE IS ALTON

ALDRIDGE, PEGGY ALDRIDGE, TIMOTHY ALDRIDGE AND CRYSTAL ALDRIDGE. PEGGY IS THE NATURAL MOTHER TO MICHAEL. OVER THE PAST SEVERAL YEARS MICHAEL HAS WITNESSED HIS MOTHER PEGGY ENGAGING IN THE USE AND SALE OF MARIJUANA, A SCHEDULE I CONTROLLED SUBSTANCE. MICHAEL DESCRIBES AT LEAST TWO PLASTIC BAGS IN A NIGHT STAND IN THE MASTER BEDROOM. THESE BAGS ARE IN A RED ADIDAS BAG. THE ONE BAG APPEARED TO BE COMPRESSED. MICHAEL ADVISED THAT HE LAST SAW HIS MOTHER SMOKING THE SUBSTANCE DURING THE EVENING HOURS OF 03/14/01. SHE SMOKES THE MARIJUANA FROM A SMALL BOWL. MICHAEL ALSO RELAYED THAT HE HAS SEEN HIS MOTHER SELL MARIJUANA TO OTHER PEOPLE IN THE PAST. MICHAEL SAW THE BAGS OF MARIJUANA ON 03/15/01 IN THE MORNING HOURS.

AS STATED MICHAEL IS A 16 YEAR OLD JUVENILE ATTENDING NEW OXFORD HIGH SCHOOL. HIS KNOWLEDGE OF MARIJUANA, REGARDING ITS APPEARANCE, THE SHAPE OF ITS LEAVES, AS WELL AS ITS DISTINCTIVE SMELL, WAS TAUGHT TO HIM BY TEACHERS/INSTRUCTORS AT (sic) THE NEW OXFORD SCHOOL DURING INTERVENTION (sic) AND INTERDICTION (sic) CLASSES. MICHAEL HAS ALSO HERD (sic) CONVERSATIONS BETWEEN HIS MOTHER AND OTHERS ABOUT THE USE AND SALE OF MARIJUANA.

THE AFFIANT IS A POLICE OFFICER WITH THE CUMBERLAND TOWNSHIP POLICE DEPARTMENT, AND A MEMBER OF THE ADAMS COUNTY DRUG TASK FORCE. THROUGH MY TRAINING AND EXPERIENCE, IT IS COMMON KNOWLEDGE THAT THOSE USING AND MANUFACTURING CONTROLLED SUBSTANCES STORE THE CONTROLLED SUBSTANCES AT VARIOUS LOCATIONS BOTH INSIDE AND OUTSIDE THE RESIDENCE. ADDITIONALLY, IT IS COMMON FOR DRUG USERS TO STORE, AND TRANSPORT, CONTROLLED SUBSTANCES IN THEIR VEHICLES. ACCORDINGLY

THE AFFIANT IS SEEKING THE SCOPE OF THE SEARCH WARRANT TO INCLUDE ALL PERSONS, OUTBUILDINGS, CURTILAGE, AND ALL VEHICLES FOUND ON THE RESIDENCE.

The search uncovered a homemade device, allegedly used for smoking marijuana, in the master bedroom nightstand.

In *Commonwealth v. Jones*, 668 A.2d 114 (Pa. 1995) our Supreme Court stated that,

The standard for evaluating whether probable cause exists for the issuance of a search warrant is the “totality of the circumstances” test as set forth in *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983), and adopted by this Court in *Commonwealth v. Gray*, 509 Pa. 476, 484, 503 A.2d 921, 925 (1985). A magistrate is to make a “practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.”

. . . quoting *Gates* . . .

668 A.2d at 116-7.

The affidavit must also put the events into a time frame for the magistrate to evaluate whether the information is stale. *Commonwealth v. Sharp*, 683 A.2d 1219, 1223 (Pa. Super. 1996). The determination whether probable cause exists must appear within the four corners of the affidavit. *Commonwealth v. Wilkinson*, 647 A.2d 583, 586 (Pa. Super. 1994).

Here, the sole basis for issuance of the search warrant was the information provided by M.B. A fair reading of the affidavit indicates that M.B. had seen his mother with marijuana on other occasions but specifically during the evening of March 14, he observed her smoking marijuana from a “bowl” and that the bags containing marijuana were seen by him the morning of March 15. Thus, to the extent probable cause exists, it must be based solely on M.B.’s veracity and reliability.

Where the basis for the search warrant comes from an anonymous tip police corroboration is important in determining the informant’s

veracity. Veracity can also be established by an assertion that the informant has given reliable information in the past. *Commonwealth v. Jones, Id.* Recently, Superior Court suggested that the reliability of an informant should be established by some objective facts which allows a magistrate to determine that the informant is reliable. *Commonwealth v. Smith*, 784 A.2d 182, 187 (Pa. Super. 2000). Reliability can also be bolstered if it demonstrates inside information or a special familiarity with an accused's affairs other than that which is easily obtained by anyone. *In the Interest of O.A.*, 717 A.2d 490, 498 (Pa. 1998).

Here the information was not stale. In fact, M.B.'s personal observation of marijuana was made earlier in the day. There was no corroboration of the informant's information nor was there a history of his reliability. However, the information came from a named source who also happened to be the son of Defendant and a resident of the premises where the search was to be conducted. Reliability is based solely upon M.B.'s special relationship with Defendant and his familiarity with her affairs. We cannot ignore the fact that as a juvenile M.B. was exposing himself to significant familial risk by providing information against his mother. This relationship and risk is given significant weight in our determination of probable cause. Furthermore, M.B.'s information was particular as to how the marijuana was packaged, where it was kept and how his mother used it. His information was based upon personal observations and his knowledge of marijuana was based upon educational programs at school. Therefore, we find M.B.'s veracity sufficient for the establishment of probable cause to issue the warrant.

We caution that carte blanche authority for the issuance of search warrants on the basis of uncorroborated information from a named informant is not being sanctioned by this ruling. Instead, the result is limited to the unique facts of this case.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 4th day of April, 2002, Defendant's Motion for Suppression filed November 16, 2001, is denied.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF CLEDA FLORENCE BENNETT, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Personal Representative: Catherine Sanders, 5001 Old Forge Road, Fayetteville, PA 17222

Attorney: William S. Dick, Esq., Dick, Stein & Schemel, LLP, 13 W. Main Street, Suite 210, Waynesboro, PA 17268

ESTATE OF DOROTHY R. DEATRICK a/k/a DOROTHY M. DEATRICK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EARL K. FROCK, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Richard L. Frock, 2060 Grandview Rd., Hanover, PA 17331

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF ANNE W. LUCKENBILL, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: Adams County National Bank, Trust Office, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF MARY CATHERINE McMASTER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Co-Executors: Charles J. McMaster, 310 North 3rd Street, McSherrystown, PA 17344; Lawrence R. McMaster, 3111 Equinox Road, Dover, PA 17315

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

ESTATE OF ZELDA J. WAGAMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Mary E. Elledge, 110 Stone Jug Road, Gettysburg, PA 17325

Attorney: John R. White, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARY E. WOLF, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Jeffrey W. Wolf, 225-1/2 Lincolnway East, New Oxford, PA 17350

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

SECOND PUBLICATION

ESTATE OF LAWRENCE P. BARNEY, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Administrator: Gary S. Barney, 390 Spangler School Road, Gettysburg, PA 17325

Attorney: John R. White, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF RICHARD A. BRADY, 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 MARGARET A. PEARCE a/k/a MARGARET ADELE PEARCE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Vicky Wagaman a/k/a Vicki Wagaman, 1310 Gun Club Rd., York Springs, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF RAPHAEL F. STAUB, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Carlen L. Staub, 353 North Street, McSherrystown, PA 17344

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

ESTATE OF WILBUR H. WINEMILLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Karen S. Strong a/k/a Bathgate, 25 Marie Drive, Hanover, PA 17331

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

THIRD PUBLICATION

ESTATE OF CURTIS D. GLADFELTER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Administratrix CTA: Karen L. Russell, 35 Glen Avenue, Glen Rock, PA 17327

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

ESTATE OF ALMA R. ORNDORFF, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: L. Irene Crouse, 269 Chestnut Hill Road, Aspers, PA 17304

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

ESTATE OF LAUREN H. SCHOTT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Lauren Scott, 15 Winebrenner Woods, Hanover, PA 17331; Scott L. Kelley, Esq., 209 Broadway, Hanover, PA 17331

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-560 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of February, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

184 Christ Church Road, Littlestown, PA

ALL the following tract of land situate, lying and being in Union Township, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a point in the centerline of Christ Church Road (S.R. 2023) at Lot No. 3 on the hereinafter referenced subdivision plan; thence along and with said Lot No. 3, North seventy-nine (79) degrees zero (00) minutes five (5) seconds West, three hundred twenty-five (325.00) feet to a point at lands now or formerly of Wilbert J.H. Messinger; thence along and with said last mentioned lands North ten (10) degrees fifty-nine (59) minutes fifty-five (55) seconds East, one hundred forty (140.00) feet to a steel pin (set) at lands now or formerly of Wilbert J.H. Messinger; thence along and with said last mentioned lands South seventy-nine (79) degrees zero (00) minutes five (5) seconds East, two hundred seventy-three and eighty-four hundredths (273.84) feet to a steel pin set; thence continuing South thirty-four (34) degrees zero (00) minutes five (5) seconds East, thirty-five and thirty-six hundredths (35.36) feet to a steel pin (set); thence continuing South seventy-nine (79) degrees zero (00) minutes five (5) seconds East, twenty-six and sixteen hundredths (26.16) feet to a point in the centerline of Christ Church Road (S.R. 2023); thence along and with said Christ Church Road, South ten (10) degrees fifty-nine (59) minutes fifty-five (55) seconds West, one hundred fifteen (115.00) feet to a point in the centerline of Christ Church Road, the point and place of BEGINNING. CONTAINING 1.022 acres and known as Lot No. 4 on a Final Subdivision Plan prepared for Wilbert J.H. Messinger, by Mort, Brown and Associates, bearing date of March 17, 1988, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 50, at page 37.

IT BEING THE SAME tract of land which LaRay Enterprises, Inc., a Maryland corporation, by its deed dated June 28, 1991 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 592, page 1107, granted and conveyed unto Jesse R. Bible and Edith A. Bible, his wife, MORTGAGORS HEREIN.

PARCEL NUMBER: 41-J16-60

SEIZED IN EXECUTION as the property of JESSE R. BIBLE and EDITH A. BIBLE on Judgment No. 2002-SU-0000560.

SEIZED and taken into execution as the property of **Jesse R. Bible & Edith A. Bible** and to be sold by me.

Raymond W. Newman-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 March 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/20, 27 & 1/3

LEGAL NOTICE

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 11th, 2003 to elect directors and to transact any other business properly presented.

Attest
Marilyn Q. Butt

Secretary-Treasurer; Director

12/13, 20, 27 & 1/3