

Adams County Legal Journal

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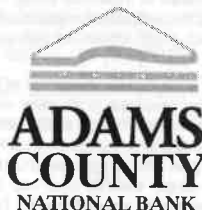
May 1, 1998

No. 49, pp. 287-292

IN THIS ISSUE

STILLWAGGON, ET UX.
VS.
GETTYSBURG HOSPITAL, ET AL.

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-92 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Reading Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Township Road 574 at a corner of lands now or formerly of Donald Linebaugh, thence along the lands of said Donald Linebaugh and through a reference pin set back ten and eight-tenths (10.8) feet from the center of said road, North fifty-eight (58) degrees East three hundred (300) feet to a point at lands now or formerly of Joseph L. Eshleman and wife, of which this was formerly a part; thence along same South, fifty-one (51) degrees thirty (30) minutes East one hundred fifty (150) feet to a point at lands now or formerly of Joseph L. Eshleman and wife; thence along same South fifty-eight (58) degrees West three hundred (300) feet to a point at the center line of Township Road 574; thence in and through the said center line of Township Road North fifty-one (51) degrees thirty (30) minutes West one hundred fifty (150) feet to a point and place of beginning.

BEING Tax Parcel #L-7-23-C.

TITLE TO SAID PREMISES IS VESTED IN James R. Cousler, Jr. and Margaret E. Cousler by Deed from Walter G. Sieling and Marian C. Sieling, husband and wife, dated 3/2/88 and recorded 3/11/88 in Record Book 482 page 271.

SEIZED and taken into execution as the property of **Barbara L. Kuhn, James R. Cousler, Jr. and Margaret E. Cousler** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
March 27 1998.

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 June 22, 1998, 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.

4/24, 5/1 & 8

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-55 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point in the middle of a public road identified as Township Road T-428 (Storms Store Road) and at lands now or formerly of James A. Seymore, Lot No. 1; thence through and across one-half (1/2) of said Township Road T-428 and along lands now or formerly of James A. Seymore, North fifty-three (53) degrees nine (9) minutes forty-two (42) seconds West, three hundred seven and ninety-seven hundredths (307.97) feet to a steel pin at lands now or formerly of Dacin, Inc., thence along said lands North thirty-five (35) degrees twenty-three (23) minutes fifty (50) seconds East, one hundred thirty and sixteen hundredths (130.16) feet to a steel pin at lands now or formerly of Thomas L. Myerg; thence along said lands and through a steel pin located twenty-three and eighty-five hundredths (23.85) feet from the center of Township Road T-428, South fifty-two (52) degrees forty-nine (49) minutes thirty (30) seconds East, three hundred eleven and twenty-five hundredths (311.25) feet to a point in the middle of the aforementioned Township Road T-428 (Storms Store Road); thence through and along Township Road T-428, South thirty-six (36) degrees fifty (50) minutes eighteen (18) seconds West, One Hundred twenty-eight and twenty-nine hundredths (128.29) feet to a point in the middle of Township Road T-428 (Storms Store Road), the place of BEGINNING. CONTAINING 40,000 square feet.

THE ABOVE described tract of land has been prepared in keeping with a survey and plan rendered by Mort, Brown & Associates and identified as Lot No. 2 on said plan. The subdivision of Lot No. 2 on a larger tract of land has been approved by the Mount Pleasant Township Planning Commission, the Mount Pleasant Township Supervisors and reviewed by Adams County Planning Commission, all in keeping with the Sub-

division ordinance of Mount Pleasant Township and said plan has been recorded in the Recorder of Deeds Office in and for Adams County, Pennsylvania, in Plan Book 32 at page 13.

Tax Parcel # J-13-35-E

SEIZED and taken into execution as the property of **Steven A. Epley and Pamela J. Epley** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 9, 1998.

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 June 22, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

4/24, 5/1 & 8

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, May 11, 1998, at 9:00 o'clock a.m.

WRIGHT—Orphans' Court Action Number OC-35-98. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Byron Wright, deceased, late of Arendtsville Borough, Adams County, Pennsylvania.

REDDING—Orphans' Court Action Number OC-29-97. The First and Final Account of Faith A. Redding, Executrix under the Last Will and Testament of Alice L. Redding, deceased, late of Lit-tiestown Borough, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

5/1, 8

STILLWAGGON, ET UX. VS. GETTYSBURG HOSPITAL, ET AL.

1. Delay damages are not intended to punish defendants but to reduce court congestion and to encourage settlement of meritorious claims.

2. Delay damages do not penalize a defendant that chooses to go to court; they simply do not permit a defendant to profit from holding money that belongs to the plaintiff by requiring the defendant to compensate the plaintiff for the loss of the use of that money during the time defendant held it.

3. Even when defendant is not at fault, and things beyond its control account for delay, delay damages are payable unless plaintiff is at fault.

4. Where plaintiff delayed pursuing the case to trial and defendant acquiesced, and defendant was not at fault for the delay or misled plaintiff, the issue becomes whether plaintiff should be allowed to profit by delay damages for a period in which nothing happened.

5. While the court should take pains to avoid speaking of balancing faults, it is not just to penalize a tolerant defendant and reward delay damages to a dilatory plaintiff.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 91-S-0967, KENNA DEE STILLWAGGON AND ROBERT STILLWAGGON, VS. GETTYSBURG HOSPITAL AND LEAH MAITLAND, M.D.

Neil Rovner, Esquire, for Plaintiff

Evan Black, Esquire, for Defendant Gettysburg Hospital

Peter Curry, Esquire, for Defendant Maitland

OPINION ON DELAY DAMAGES

Spicer, P.J., August 11, 1997.

For purposes of this opinion, when we refer to plaintiff, we mean Kenna Dee Stillwaggon. On March 21, 1997, a jury awarded plaintiff \$1,253,128.16 after finding Gettysburg Hospital negligent, while exonerating Dr. Leah Maitland. Post verdict motions have been filed and are still pending. Presently, we deal with plaintiff's motion for delay damages. She claims \$450,995.78, to cover the period between November 14, 1991, and the date of the verdict. Defendant argues that it should not be responsible for damages this entire period, because some of the delay is attributable to plaintiff. Both case law, *Costa v. Lauderdale Beach Hotel*, 534 Pa. 154, 626 A.2d 566 (1993), and Pa.R.C.P. 238 (2) support the principle advanced by defendant. However, its application to the case at bar is not easily determined.

The rule provides that delay damages shall be added in civil cases involving bodily injury, death or property damage, when the verdict exceeds 125 percent of the amount of any written offer made prior to trial. Although the rule requires a written offer, one made in open court

and made a part of the record will suffice. *Arthur v. Kuchar*, 546 Pa. 12, 682 A.2d 1250 (1996). It is said that delay damages are not intended to punish defendants, but to reduce court congestion and to encourage settlement of meritorious claims. *Id.*

Supreme Court has said the following with respect to the rule's interpretation:

When called upon to interpret a rule of procedure, we are guided by the Rules of Construction which are contained in the Pennsylvania Rules of Civil Procedure. In relevant part they provide that: "Words and phrases shall be construed according to rules of grammar and according to their common and approved usage...." Pa. R.C.P. 103; that "(T)he object of all interpretation and construction of rules is to ascertain and effectuate the intention of the Supreme Court" and that "(E)very rule shall be construed, if possible, to give effect to all its provisions. When the words of a rule are clear and free from all ambiguity, the letter is not to be disregarded under the pretext of pursuing its spirit." Pa. R.C.P. 127(a)(b). Moreover, a fundamental tenet of interpretation is that rules "shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable...." Pa.R.C.P. 126. *Woods v. Commonwealth of Pennsylvania, Department of Transportation*, 531 Pa. 295, 298, 612 A.2d 970, 971 (1992).

"Shall" generally imposes a mandatory duty, *Grove North America v. Arrow Lift*, 421 Pa. Super 12, 617 A.2d 369 (1992).

Some appellate decisions may emphasize "speedy," perhaps rather than "just." For example in *Woods*, supra., the Commonwealth was required to pay delay damages of \$622,387.00, based upon the verdict, despite its statutory cap of liability being \$250,000.00. In this vein, Superior Court held a defendant who was 11% percent negligent accountable for delay damages on an entire verdict, on the theory the defendant was jointly and severally liable for the total amount of damages awarded. *Trude v. Martin*, 442 Pa. Super. 614, 660 A.2d 626 (1995); *all. gr.* 543 Pa. 402, 672 A.2d 279 (1996).

Language indicates that the rule is intended to benefit a successful plaintiff: "Delay damages do not penalize a defendant that chooses to

go to court; they simply do not permit a defendant to profit from holding money that belongs to the plaintiff, by requiring the defendant to compensate the plaintiff for the loss of the use of that money during the time defendant held it.” (citations omitted). Even so, additional language from the same opinion returns to the question of court congestion: “Delay damages are incentive to settle and to avoid delay of trial not because defendant faces a penalty if it chooses not to settle, but because the defendant may limit the size of the compensation award by settling the case or by choosing not to engage in dilatory tactics.” *Costa v. Lauderdale Beach Hotel*, supra, 626 A.2d at 570.

It can be argued that settlements are the only means of truly affecting court congestion. It has been this writer’s experience that inactive cases, while having the effect of inflating statistics, are low maintenance. When cases heat up and trial occurs, a great deal of time and attention are required for in limine motions, the actual trial process, and post verdict motions of one kind or another. Speed of reaching that point makes little difference.

Still, Supreme Court language requires us to consider both approaches. Since defendant engaged in no dilatory tactics, our inquiry focuses on plaintiff’s inaction. As commentary to the rule points out, *infra*, the key is delay, not a balancing of equities.

It would be easier to base our order on reimbursement. Under this approach, any plaintiff deprived of his or her money should be entitled to the cash and a handsome return for the time defendant withheld it. One could argue that responsibility for delay is irrelevant. It can always be said that defendant should have acted to ensure that trial occurred speedily. We know, for example, even when defendant is not at fault, and things beyond its control account for delay, delay damages are payable unless plaintiff is at fault. *Schrock v. Albert Einstein Medical Center*, 527 Pa. 191, 589 A.2d 1103 (1991).

It is clear, in this context, that we must reject defendant’s argument that it was precluded from offering settlement by the absence of a demand. The rule refers to procedural fault, not that occasioned by an unrealistic, or no demand. *Costa*, supra.

Plaintiff argues that defendant has shown no fault ascribable to her. Even though she clearly pursued the case in lackadaisical fashion, she contends that defendant could have availed itself of other remedies. She calls to our attention the following explanatory comment to the rule:

With respect to delay of the trial, not every procedural delay is relevant to the issue of delay damages, but only such occurrences as actually cause delay of the trial. For example, failure by the plaintiff to answer interrogatories within thirty days should not affect the award of damages for delay unless the trial was delayed as a result.

The comment goes on to explain that other remedies exist for noncompliance with discovery rules.

The commentary might suggest that we focus on defendant's conduct, not on what plaintiff did or didn't do.

Interestingly, a mirror image and similar language appear in discussions concerning motions for non pros and dismissal under Pa. R.J.A 1901. There, the onus is placed on plaintiff to explain delay. Two years of inactivity may entitle a defendant to a dismissal. When such a motion is filed, plaintiff is required to prove compelling reasons beyond plaintiff's control to account for delay. Many times, delay attendant on discovery, settlement negotiations and/or financial considerations will not qualify. *Penn Piping, Inc. v. Insurance Company of North America*, 529 Pa. 350, 603 A.2d 1006 (1992); *Chase v. National Fuel Gas Corp.*, ___ Pa. Super ___, 692 A.2d 155 (1997).

We think that the two areas are sufficiently analogous that non pros cases are relevant in defining fault for purposes of rule 238. The goal in both is to alleviate court congestion.

Plaintiff, however, argues that we should not consider inactivity, because the question of a non pros has not been litigated. On the other hand, defendant stoutly maintains that plaintiff should not be allowed to profit from dilatory conduct obvious from the record.

Defendant's failure to request dismissal must be viewed in two respects. The first concerns waiver. A party may not take his chances on a verdict, remain silent and then later complain. *Takes v. Metropolitan Edison Co.*, 440 Pa. Super 101, 655 A.2d 138 (1995). The second is whether the record itself, in the absence of a hearing, justifies an adjustment in delay damages.

We begin by examining the record to determine if fault can be attributed to plaintiff and whether defendant has waived its right to complain.

The record indicates that plaintiff commenced this action by a writ of summons on November 13, 1991. Rule 238 (2) (ii) establishes this

as the focal date, although the date the complaint is filed governs actions prior to August 1, 1989. By the time the complaint was filed, June 8, 1992, the date from which delay damages were reckoned was rapidly approaching. We do not know what defendant could have done to speed the process, but note that plaintiff sought and obtained court approval for an extension of time in which to file a complaint. The reason given was necessity of discovery in aid of pleading.

Several depositions were taken thereafter, the last occurring January 15, 1993. At that time, plaintiff said she was in the midst of a divorce and wanted to finalize it before proceeding with her claim. The record indicates that this was the last deposition pursued by defendant.

On January 27, 1993, defense counsel requested expert witness reports.

The case was placed on an annual list for dismissal under Pa. R.J.A. 1901 and scheduled for court consideration for September 18, 1995. On August 7, 1995, plaintiff's counsel wrote the court, said the case was still active and requested that it be removed from the purge list. Judge John D. Kuhn entered an order August 9, 1995, extending the case on active status. We might say that this was normal practice in this county. We try to avoid lengthy hearings oriented toward saving the court's time. At any rate, defendant was not given an opportunity to come forward and be heard.

On September 25, 1995, defendant moved to compel plaintiff to provide her experts' reports. Plaintiff praeciped the case for trial on June 20, 1996. By letter dated July 12, 1996, plaintiff's counsel advised defendant, "Mrs. Stillwaggon was involved in a domestic matter precipitated by her injuries and medical problems, but is now ready to pursue this matter."

This court scheduled a hearing on the issue of delay damages, but counsel appeared and represented that all issues could be resolved by the record.

Two things are quite clear. Plaintiff delayed pursuing this case to trial, and defendant acquiesced. However, there is no hint that defendant was at fault for the delay, or misled plaintiff. The issue really becomes whether plaintiff should be allowed to profit for a period in which nothing happened.

We believe that rule 238's determination of fault allows us to consider principles applicable to non pros and dismissal of inactive

cases, and which reflect the same policy considerations as rule 238. Although, as indicated earlier, we should take pains to avoid speaking of balancing faults, we do not think it just to penalize a tolerant defendant and reward a dilatory plaintiff.

We think the record clearly would have justified dismissal because of delay of over two years. Plaintiff did not describe a cognizable reason for such delay. This being true, we find procedural fault on her.

We also hold that defendant did not waive the issue by waiting until delay damages were actually litigated.

We focus on plaintiff's lack of response to request for disclosure of expert reports. Our approach is justified by technical application of the rule. Plaintiff's dereliction was procedural, it persisted well beyond thirty days and it certainly delayed trial.

Although there may be strong reasons for denying plaintiff of delay damages for a longer period, we confine our order to the period beginning February 27, 1993, which is thirty days after reports were requested, to June 20, 1996, when the last such report was provided.

Accordingly, the attached order is entered.

ORDER

AND NOW this 11th day of August, 1997, delay damages in the sum of \$169,953.61 are awarded plaintiff and the verdict is molded to \$1,423,081.77.

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 WILLIS A COSTELLA, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania
Co-Executors: Michael L. Costella, 875 700 Road, New Oxford, PA 17350; Timothy C. Costella, 1275 The Spangler Road, New Oxford, PA 17350

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

ESTATE OF NED L. MUMMERT, DEC'D

Late of Reading Township, Adams County, Pennsylvania
Executor: Kirby Mummert, R.D. #5, Box 5458J, Spring Grove, PA 17362

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

SECOND PUBLICATION

ESTATE OF GLENN R. SHIELDS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
Executrix: Ellen V. Shields, 151 Woodcrest Drive, Gettysburg, PA 17325

Attorney: Charles W. Wolf, Esquire, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HAZEL A. SMALL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
Executor: Glenn Hartzel, 2444 Chambersburg Road, Biglerville, PA 17307

Attorney: John R. White, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GRACE M. SURBEY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Executrix: Dorothy L. Rice, 1409 Rolling House Drive, Frederick, MD 21703

Attorney: Puhl & Eastman, Esquires, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF MARGARET B. WALMER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Co-Administrators: Samuel P. Walmer, 6598 Williamsburg Blvd., Arlington, VA 22213; Charles R. Walmer, 90 Fairmount Road, Aspers, PA 17304; Kathleen W. (Walmer) Marinucci, 7713 Newington Forest Avenue, Springfield, VA 22153; Edythe A. (Walmer) Sarnoff, 108 Moore Street, Princeton, NJ 08540

Attorney: John R. White, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROY M. WILLIAMS, SR., a/k/a ROY M. WILLIAMS, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania
Executrix: Neva E. Williams, 420 Main Street, York Springs, PA 17373

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF CARLE. ALTLAND, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania
Administratrix: Sandra R. Hartlaub, 20 N. Emigs Mill Road, York, PA 17404

Attorney: Sharon E. Myers, Esquire, 29 North Duke Street, York, PA 17401

ESTATE OF MICHAEL STUART BAKER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Executors: Brian M. Baker; Bradley T. Baker

Attorney: Douglas H. Gent, Esquire, Menges, Gent & McLaughlin, 1157 Eichelberger Street, Hanover, PA 17331

ESTATE OF MILLARD H. CHRONISTER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Darby Joan Shaffer, 34 Ditzler Avenue, P.O. Box 207, Biglerville, PA 17307

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17307

ESTATE OF MARY I. HARTMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Executrix: Ruth Jeanne Bream, 170 Bingaman Road, Orrtanna, PA 17353

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

ESTATE OF ALICE E. MITCHELL, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Linda Marie Householder, 15 Cedar Lane, Hanover, PA 17331
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-150 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, 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 CERTAIN pieces or parcels of land situated in the Township of Tyrone, County of Adams and Commonwealth of Pennsylvania, more particularly bounded and described as follows:

PARCEL NO. 1. BEGINNING at an iron pin on the South side of State Highway, Route 234, leading from Biglerville to York. Thence running by land now or formerly of Fannie Kemper, South 31 1/4 degrees West, 220 feet to an iron pin on the North side of a 20 feet wide alley; thence running along the north side of said alley, North 69 degrees West, 65 feet to an iron pin on the North side of said alley, and on the East side of a former 20 feet alley, being Parcel No. 2 herein below; thence running along the East side of the said former alley being Parcel No. 2 herein below; North 31 1/4 degrees East, 220 feet to an iron pin on the South side of said highway; thence running along the South side of said highway, South 69 degrees, East 65 feet to an iron pin on the South side of said highway, the place of beginning.

PARCEL NO. 2. BEGINNING at an iron pin on the South side of State Highway Route 234 leading from Biglerville to York, at corner of lands of Robert E. Volland and wife, Parcel No. 1 herein above; thence by said land of Robert E. Volland and wife, South 31 1/4 degrees West, 220 feet to an iron pin on the North side of a 20 feet alley; thence running along the North side of said alley, North 69 degrees West, 20 feet to an iron pin, at corner of lands of Wilbert R. Trump and wife; thence by said lands of Wilbert R. Trump and wife, North 31 1/4 degrees East, 220 feet to an iron pin; thence running along the South side of the aforementioned State Highway, South 69 degrees East, 20 feet to an iron pin, the place of beginning.

TRACT 2

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

BEGINNING at a telephone pole on the southern right-of-way line of Pennsylvania Route 234 (Heidlersburg Road) at the Northwest corner of Lot No. 1 on the draft of survey recited below (said Lot No. 1 being the remaining lands of Wilbert R. Trump); thence by said Lot No. 1 South twenty five (25) degrees fifty-five (55) minutes fifty three (53) seconds West, two hundred seventeen and twenty-nine hundredths (217.29) feet to a concrete monument set on the Northern side of an alley; thence along the northern side of said alley North sixty-nine (69) degrees zero (00) minutes zero (00) seconds West, forty-four and seventy-two hun-

dredths (44.72) feet to a point at the southeast corner of land of William B. Frankenfield, Grantee herein, thence by said land of William B. Frankenfield North thirty-one (31) degrees fifteen (15) minutes zero (00) seconds East, two hundred and twenty (220.00) feet to an iron pipe found on the southern right-of-way line of Pennsylvania Route 234, thence along said right-of-way line of Pennsylvania Route 234 South sixty-nine (69) degrees zero (00) Minutes zero (00) seconds East, twenty four and twenty-five hundredths (24.25) feet to a telephone pole on the Southern right-of-way line to said Pennsylvania Route 234, the point of BEGINNING. CONTAINING 7,466 square feet.

HAVING erected thereon a dwelling known as 2769 Heidlersburg Road, Gettysburg, PA 17325.

Parcel 1-28-1.00.

SEIZED and taken into execution as the property of **William B. Frankenfield and Susan M. Frankenfield** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 13, 1998.

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 June 22, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
5/1, 8 & 15

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

MISCELLANEOUS
NO. MC-58-98

COMMONWEALTH OF PENNSYLVANIA
vs.

1997 FORD TRUCK,
VIN # IFTEX18LGVN832499;
1993 CHEVROLET AUTOMOBILE,
VIN #161JF14T9P7201421; ONE
THOUSAND FIVE HUNDRED SIXTY-
ONE DOLLARS U.S. CURRENCY;
OHAUS SCALE, 410 SHOTGUN,
SERIAL # 1315434; BROWNING 9MM,
SERIAL #245N263164; SAVAGE 308
RIFLE, SERIAL #E973030; 22
CALIBER MARLIN RIFLE, SERIAL
#65518978; YAMAHA MOTO 4-
RUNNER; BUSHER CT LAWN
TRACTOR; BLACK IN COLOR EAGLE
CAP; SEARS CRAFTSMAN LAWN
TRACTOR; AR 15 RIFLE, SERIAL
#L046560 WITH TWO CLIPS.

RULE TO SHOW CAUSE

AND NOW, this 15th day of April, 1998,
a Rule is issued upon Ignacio Gutierrez,

owner and/or possessor of the above defendant property, to show cause why all claims of right, title or interest of Ignacio Gutierrez and any other claimants in the above-described property should not be declared to be terminated, revoked and rendered null and void, and said property, seized on June 21, 1997, at 986 Cashtown Road, Biglerville, Pennsylvania, be condemned and forfeited to the Commonwealth of Pennsylvania Office of the District Attorney, pursuant to the Judicial Code, Chapter 68, Controlled Substances Forfeiture, Sections 6801-6802, 42 Pa. C.S.A. Section 6801 et seq., for use or disposition in accordance with law.

RULE RETURNABLE, for the purpose of filing an Answer only, within thirty (30) days from the date of publication.

Failure to answer within thirty (30) days of publication hereof shall result in an Order of Forfeiture being entered against said property, any law or rule of Court to the contrary notwithstanding.

By The Court,
/s/ Oscar F. Spicer, P.J.

Attest: Peggy J. Breighner,
Clerk of Courts

NOTICE TO ANSWER PETITION
FOR FORFEITURE
AND CONDEMNATION

TO THE CLAIMANT OF WITHIN DESCRIBED PROPERTY: YOU ARE REQUIRED TO FILE AN ANSWER TO THIS PETITION, SETTING FORTH YOUR TITLE IN, AND RIGHT TO POSSESSION OF, SAID PROPERTY WITHIN THIRTY (30) DAYS FROM THE SERVICE HEREOF, AND YOU ARE ALSO NOTIFIED THAT, IF YOU FAIL TO FILE SAID ANSWER, A DECREE OF FORFEITURE AND CONDEMNATION WILL BE ENTERED AGAINST SAID PROPERTY.

/s/ Michael A. George, Esquire
District Attorney
Office of District Attorney
111-117 Baltimore Street
Gettysburg, PA 17325

NOTICE: You have the right to defend. If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the Court WITHIN 30 days of publication.

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.

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 GET LEGAL HELP.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone (717) 337-9846

Adams County Legal Journal

Vol. 39

May 8, 1998

No. 50, pp. 293-298

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-396 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described tract, piece or parcel of land, situate, lying and being in the Borough of McSherrystown, County of Adams, State of Pennsylvania, bounded and limited as follows, to wit:

BEGINNING at a point on the North side of North Street at corner of Oxford Avenue; THENCE along North Street, South 60 degrees, 40 minutes West, 161.5 feet to a 16 feet wide alley; THENCE along said alley North 30 degrees 45 minutes West, 68.5 feet to lands now or formerly of Bessie M. Spies; THENCE North 53 degrees, 35 minutes East, 162.05 feet to Oxford Avenue; THENCE along the said Oxford Avenue South 30

degrees, 22 minutes East 71.75 feet to the place of Beginning.

EXCEPTING THEREFROM and thereout, nevertheless, all that certain parcel of land which the Commonwealth of Pennsylvania acquired by its Declaration of Taking filed in the Court of Common Pleas of Adams County, Pennsylvania, to No. 326 August Term, 1966, as set forth on the Plan Exhibit 5 of the Notice of Condemnation which is recorded in the Recorder of Deeds Office of Adams County, Pennsylvania, in Misc. Book 5, Page 842.

BEING the same premises which William H. Brady, widower, granted and conveyed unto Dennis Charles Rishel and Denise M. Rishel by Deed dated July 27, 1992 and recorded in the Office of the Recorder of Deeds for ADAMS County on August 4, 1992 in Deed Book 636, Page 1001.

SEIZED and taken into execution as the property of **Dennis Charles Rishel**

and **Denise M. Rishel** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
February 28, 1998.

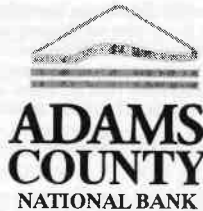
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 22, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser 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.

5/8, 15 & 22

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-92 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Reading Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Township Road 574 at a corner of lands now or formerly of Donald Linebaugh, thence along the lands of said Donald Linebaugh and through a reference pin set back ten and eight-tenths (10.8) feet from the center of said road, North fifty-eight (58) degrees East three hundred (300) feet to a point at lands now or formerly of Joseph L. Eshleman and wife, of which this was formerly a part; thence along same South, fifty-one (51) degrees thirty (30) minutes East one hundred fifty (150) feet to a point at lands now or formerly of Joseph L. Eshleman and wife; thence along same South fifty-eight (58) degrees West three hundred (300) feet to a point at the center line of Township Road 574; thence in and through the said center line of Township Road North fifty-one (51) degrees thirty (30) minutes West one hundred fifty (150) feet to a point and place of beginning.

BEING Tax Parcel #L-7-23-C.

TITLE TO SAID PREMISES IS VESTED IN James R. Cousler, Jr. and Margaret E. Cousler by Deed from Walter G. Sieling and Marian C. Sieling, husband and wife, dated 3/2/88 and recorded 3/11/88 in Record Book 482 page 271.

SEIZED and taken into execution as the property of **Barbara L. Kuhn, James R. Cousler, Jr. and Margaret E. Cousler** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
March 27 1998.

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 June 22, 1998, 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.

4/24, 5/1 & 8

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-55 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point in the middle of a public road identified as Township Road T-428 (Storms Store Road) and at lands now or formerly of James A. Seymore, Lot No. 1; thence through and across one-half (1/2) of said Township Road T-428 and along lands now or formerly of James A. Seymore, North fifty-three (53) degrees nine (9) minutes forty-two (42) seconds West, three hundred seven and ninety-seven hundredths (307.97) feet to a steel pin at lands now or formerly of Dacin, Inc., thence along said lands North thirty-five (35) degrees twenty-three (23) minutes fifty (50) seconds East, one hundred thirty and sixteen hundredths (130.16) feet to a steel pin at lands now or formerly of Thomas L. Myerg; thence along said lands and through a steel pin located twenty-three and eighty-five hundredths (23.85) feet from the center of Township Road T-428, South fifty-two (52) degrees forty-nine (49) minutes thirty (30) seconds East, three hundred eleven and twenty-five hundredths (311.25) feet to a point in the middle of the aforementioned Township Road T-428 (Storms Store Road); thence through and along Township Road T-428, South thirty-six (36) degrees fifty (50) minutes eighteen (18) seconds West, One Hundred twenty-eight and twenty-nine hundredths (128.29) feet to a point in the middle of Township Road T-428 (Storms Store Road), the place of BEGINNING. CONTAINING 40,000 square feet.

THE ABOVE described tract of land has been prepared in keeping with a survey and plan rendered by Mort, Brown & Associates and identified as Lot No. 2 on said plan. The subdivision of Lot No. 2 from a larger tract of land has been approved by the Mount Pleasant Township Planning Commission, the Mount Pleasant Township Supervisors and reviewed by Adams County Planning

Commission, all in keeping with the Subdivision ordinance of Mount Pleasant Township and said plan has been recorded in the Recorder of Deeds Office in and for Adams County, Pennsylvania, in Plan Book 32 at page 13.

Tax Parcel # J-13-35-E

SEIZED and taken into execution as the property of **Steven A. Epley and Pamela J. Epley** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 9, 1998.

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 June 22, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

4/24, 5/1 & 8

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, May 11, 1998, at 9:00 o'clock a.m.

WRIGHT—Orphans' Court Action Number OC-35-98. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Byron Wright, deceased, late of Arendtsville Borough, Adams County, Pennsylvania.

REDDING—Orphans' Court Action Number OC-29-97. The First and Final Account of Faith A. Redding, Executrix under the Last Will and Testament of Alice L. Redding, deceased, late of Littlestown Borough, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

5/1, 8

LAWSON VS. LAWSON

1. A party seeking to modify a child's support order has the burden of proving that a material and substantial change of circumstances has occurred from the entry of the most recent support order.

2. If one takes steps to reduce income for the purpose of decreasing one's support obligation, a modification will not be allowed.

3. A voluntary quit is not an automatic basis for denying a modification request even though that is generally the rule.

4. To modify a support obligation based upon reduced income, petitioner must present evidence as to why he or she voluntarily left the prior employment and also as to why the acceptance of a lower paying job was necessary, otherwise, for calculation of a support obligation, the petitioner will be considered to have an income equal to his or her earning capacity as defined in the support guidelines.

In the Court of Common Pleas, Adams County, Pennsylvania, Domestic Relations DR-101-93, JULIE ANN LAWSON, VS. RANDALL SCOTT LAWSON.

Bernard A. Yannetti, Jr. Asst. D.A. for Complainant
Richard E. Thrasher, Esq., for Defendant

MEMORANDUM OPINION

Kuhn, J., July 24, 1997.

Defendant lost his employment with Schindler on October 12, 1995, and on October 16, 1995, filed for modification of his support obligation based on reduced income. A recommended Order was entered on February 13, 1996 denying that request based upon Pa. R.C.P. 1910.16-5(c) finding that Defendant voluntarily quit his employment or lost it for cause. That order was not appealed.

On September 11, 1996, Defendant filed another Petition For Modification because of reduced earnings. At hearing before the undersigned, testimony revealed that on October 12, 1995, Defendant was given the option of resigning or being fired from Schindler where he was earning approximately \$48,000 per year. He chose to voluntarily quit and began to immediately seek employment commensurate with his skills. That effort proved unsuccessful so Defendant opened his own engineering business out of his home. In April, 1996, Defendant took the first part of a two part test to become a professional engineer. During 1996, he grossed \$16,600 after business expenses. He expected his 1997 income to be higher.

Subsequent to the hearing the Court was advised that Defendant had secured salaried employment at \$35,000 per year effective April 14, 1997. In addition, Defendant expected to earn approximately \$5,000 per year from his private engineering business. Family medical

insurance will be available to Defendant effective August 1, 1997 at a cost of \$209 per month.

The first issue is whether Pa. R.C.P. 1910.16-5(c) precludes any modification of Defendant's existing support obligation where he admits to having voluntarily quit his employment. That rule provides:

(c) Reduced or Fluctuating Income

1. Voluntary reduction of income. Where a party voluntarily assumes a lower paying job, there generally will be no recomputation of the support payment. A party ordinarily will not be relieved of a support obligation by voluntarily quitting work or being fired for misconduct. (emphasis added)

A party seeking to modify a child support order has the burden of proving that a material and substantial change of circumstances has occurred since the entry of the most recent support order. *Grimes v. Grimes*, 408 Pa. Super. 158, 161, 596 A.2d 240, 241 (1991). Here the original child support order of \$650 per month was entered by agreement on February 11, 1993 when Defendant was employed by Schindler. There has been a substantial change in circumstances based upon Defendant's actual income.

However, child support is based upon earning capacity, less reasonable expenses, not necessarily cash flow. Therefore, if one takes steps to reduce income for the purpose of decreasing one's support obligation a modification will not be allowed. *Grimes v. Grimes*, supra., 408 Pa. Super. at 161, 596 A.2d at 241-2. This rule is not without exceptions. *Id.* A clear reading of Rule 1910.16-5(c) reveals that a voluntary quit is not an automatic basis for denying modification request even though that is generally the rule.

It has been held that,

To modify a support obligation based upon reduced income, a petitioner must first establish that the voluntary change in employment which resulted in a reduction of income was not made for the purpose of avoiding a child support obligation and secondly, that a reduction in support is warranted based on petitioner's efforts to mitigate any income loss. In effect, petitioner must present evidence as to why he or she voluntarily left the prior employment and also as to why the acceptance of a lower paying job was necessary. Otherwise, for calculation of a support obligation, the petitioner will be considered to have an income equal to his or her earning capacity as defined in the support guidelines."

Grimes v. Grimes, supra., 408 Pa. Super. at 163, 596 A.2d at 242.

Grimes has been cited with approval in Klahold v. Kroh, 437 Pa. Super. 150, 649 A.2d 701 (1994).

Here, Defendant explained that he left his employment at Schindler when faced with the prospect of being fired after having challenged some information he discovered in his personnel file. There is no indication that Defendant effectuated the change in employment to reduce his support obligation. In addition, Defendant attempted to mitigate his income loss by opening his own engineering business while at the same time seeking a salaried position. Under the circumstances presented, Defendant's request for reduction will be granted.

ORDER OF COURT

AND NOW, this 24th day of July, 1997, the following findings and orders are entered:

1. The Petition For Attachment For Contempt filed January 9, 1997, is dismissed with costs to be paid by the County of Adams.

2. The Petition For Modification filed by Defendant on September 11, 1996, is granted. See attached Memorandum Opinion. Effective September 11, 1996, Defendant's child support obligation is \$75 per week; then effective April 14, 1997, it is \$146 per week. All other provisions of the Order of December 30, 1996, not inconsistent herewith shall remain in full force and effect.

3. The Petition For Modification filed by Complainant on September 25, 1996, is dismissed with costs to be paid by Complainant. The Court finds that Defendant's income does not justify an increase in support.

CLINE VS. STATLER, ET AL.

1. The duties of various defendants in this case are the same, and do not extend to making the sidewalk perfectly level or to remedy trivial defects.
2. Slight variations in grades of a sidewalk will not, as a matter of law, sustain an action in negligence.
3. Landowners are not subject to liability for conditions that are obvious, however, conditions that pose no basis for liability during daylight, may become otherwise if covered or obscured.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-970, ANNIE M. CLINE VS. JERRY STATLER T/D/B/A STATLER'S AUTO & FURNITURE UPHOLSTERY, MELVIN AND KATHRYN STATLER, H/W, AND THE BOROUGH OF GETTYSBURG.

Thomas Campbell, Esq., for Plaintiff
Paul W. Minnich, Esq., for Defendant Statler, et al.
Gregory S. Hirtzel, Esq., for Defendant Borough of Gettysburg

OPINION ON MOTION FOR SUMMARY JUDGMENT

Spicer, P.J., August 12, 1997.

According to the record, plaintiff tripped and fell on a sidewalk in front of premises at 310 East Water Street in Gettysburg. At the time, April 22, 1995, Ms. Cline was a seventy-eight year old widow who was walking with a friend, Helen McKenrick. In answers to interrogatories, plaintiff described her accident thusly:

The defect in the sidewalk on the Statlers' property caused me to trip and fall face first on top the concrete sidewalk. I landed on my left arm and face. My face contacted with the concrete sidewalk first. My left arm also made contact with the sidewalk. In addition, my knee scraped on the sidewalk.

Page 10

She described the defect as follows:

The sidewalk located at 308-310 Water Street. The pictures represent or portray blood onto sidewalk, differences in the sidewalk level, particularly the fact that the portion of the sidewalk causing the fall was raised at least two to three inches from adjoining surfaces.

Pages 6, 7

Apparently, nobody actually witnessed the fall:

Mrs. McKenrick was walking just ahead of Mrs. Cline and turned around immediately after Mrs. Cline fell. Mrs. Margaret Gray was at the scene shortly after Mrs. Cline's fall and assisted in getting Mrs. Cline into Mrs. McKenrick's car. The remainder of those individuals identified acquired knowledge of the conditions after the happening of the incident.

Page 2

Defendants move for summary judgment under Pa. R.C.P. 1035.2, which provides:

After the relevant pleadings are closed, but within such time as not to delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

See also, *Ertel v. Patriot-News Co.*, 544 Pa. 92, 674 A.2d 1038 (1996)

We learned at argument that plaintiff is incapacitated because of a stroke and probably will be unable to testify. Defendants included photographs of the sidewalk with their motions. The pictures were provided by plaintiff, who will rely upon them to establish the defect. Thus, there is no Nanty-Glo¹ problem. *Porterfield v. Trustees of the Hospital of the University of Pennsylvania*, 441 Pa. Super. 529, 657 A.2d 1292 (1995). The sidewalk was subsequently repaired and is not available for view.² This issue becomes whether the evidence we have discussed would require submission to a jury.

¹ *Nanty-Glo v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932)

² Plaintiff argues that repairs may be considered by a jury as evidence of negligence. Although repairs may be considered in certain types of cases, such as products liability, the general rule in negligence cases forbids introduction of such evidence. *Leaphart v. Whiting Corporation*, 387 Pa. Super. 253, 564 A.2d 165 (1989), *all. den.* 525 Pa. 619, 577 A.2d 890 (1990).

It is clear that the duties of various defendants in this case are the same, and do not extend to making the sidewalk perfectly level or to remedy trivial defects. *Bosack v. Pittsburgh Railways Co.*, 410 Pa. 558, 189 A.2d 877 (1963). *German v. City of McKeesport*, 137 Pa. Super. 41, 8 A.2d 437 (1939). Cases collected in those opinions reflect holdings that slight variations in grades will not, as a matter of law, sustain an action in negligence.

More recent cases discuss duty as defined in *Carrender v. Fitterer*, 503 Pa. 178, 469 A.2d 120 (1983). Landowners are not subject to liability for conditions that are obvious. However, conditions that pose no basis for liability during daylight, may become otherwise if covered or obscured. *Landy v. Romeo*, 274 Pa. Super 175, 417 A.2d 1260 (1979); cf. *Weckslar v. City of Philadelphia*, 178 Pa. Super 496, 115 A.2d 898 (1955). See also, *Burns v. City of Philadelphia*, 350 Pa. Super 615, 504 A.2d 1321 (1986).

The record indicates this accident occurred during the day. Photographs clearly show well marked divisions or joints between sidewalk sections. They also show only a small deviation in levels. Other than the fact that the two sections do not meet on precisely the same plane, the sidewalk is in good condition. There are no holes or breaks in the concrete. The division line is much darker than concrete, probably because of plant life growing therein.

Plaintiff has shown nothing more than a trivial defect. We hold that plaintiff has not established a prima facie cause of action based on negligence. Accordingly, judgment will be entered in favor of defendants.

ORDER

AND NOW, this 12th day of August, 1997, summary judgment is entered in favor of defendants and against plaintiff.

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, 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 ANTON FREUND, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Co-Executors: Robert J. Freund, 131 Commodore Circle, Port Jackson, NY 11776; Tony Freund, 34-05 80th Street, Jefferson Heights, NY 11372
Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

ESTATE OF ELIZABETH CROUSE HARBAUGH a/k/a ELIZABETH R. HARBAUGH, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania
Executors: Allen J. Crouse, 19 E. Main Street, P.O. Box 194, Fairfield, PA 17320; E. Jane Ohler, 300 Oak Lane, Gettysburg, PA 17325
Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARTHA C. SHEETS, DEC'D

Late of 506 Glynwyn Drive, Littlestown, Adams County, Pennsylvania
Executrix: Lisa Nicklow, 1000 Plunkert Road, Littlestown, PA 17340
Attorney: Mette, Evans & Woodside, Elyse E. Rogers, Esquire, 3401 North Front Street, P.O. Box 5950, Harrisburg, PA 17110-0950

ESTATE OF DAVID E. SMITH, DEC'D
Late of Tyrone Township, Adams County, Pennsylvania

Administrators: Wayne D. Smith; Galen J. Smith; Martha J. Seville
Attorney: Donald T. Puckett, Esq., 817 South George Street, York, PA 17403

ESTATE OF JOHN D. THRUSH, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Gary E. Hartman, 104 Artillery Drive, Gettysburg, PA 17325
Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DONALD C. WEST SR., DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
Executors: Mildred L. Coshun, 900 Old Waynesboro Road, Fairfield, PA 17320; Margaret E. Pryor, P.O. Box 536, Blue Ridge Summit, PA 17214
Attorney: Leroy S. Maxwell, Jr., Esq., Maxwell Law Offices, Wayne Bldg., 92 West Main Street, Waynesboro, PA 17268

SECOND PUBLICATION

ESTATE OF WILLIS A. COSTELLA, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania
Co-Executors: Michael L. Costella, 875 700 Road, New Oxford, PA 17350; Timothy C. Costella, 1275 The Spangler Road, New Oxford, PA 17350
Attorney: Judith Koper Morris, Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF NED L. MUMMERT, DEC'D
Late of Reading Township, Adams County, Pennsylvania

Executor: Kirby Mummert, R.D. #5, Box 5458J, Spring Grove, PA 17362
Attorney: Keith R. Nonemaker, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF GLENN R. SHIELDS, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Ellen V. Shields, 151 Woodcrest Drive, Gettysburg, PA 17325
Attorney: Charles W. Wolf, Esquire, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HAZEL A. SMALL, DEC'D
Late of Franklin Township, Adams County, Pennsylvania

Executor: Glenn Hartzel, 2444 Chambersburg Road, Biglerville, PA 17307
Attorney: John R. White, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GRACE M. SURBEY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Executrix: Dorothy L. Rice, 1409 Rolling House Drive, Frederick, MD 21703
Attorney: Puhl & Eastman, Esquires, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF MARGARET B. WALMER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania
Co-Administrators: Samuel P. Walmer, 6598 Williamsburg Blvd., Arlington, VA 22213; Charles R. Walmer, 90 Fairmount Road, Aspers, PA 17304; Kathleen W. (Walmer) Marinucci, 7713 Newington Forest Avenue, Springfield, VA 22153; Edythe A. (Walmer) Sarnoff, 108 Moore Street, Princeton, NJ 08540
Attorney: John R. White, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROY M. WILLIAMS, SR., a/k/a ROY M. WILLIAMS, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania
Executrix: Neva E. Williams, 420 Main Street, York Springs, PA 17373
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, that on April 9, 1998, an application was filed under the Fictitious Name Act, No. 1982-295 (54 Pa. C.S. Section 311) in the Office of the Secretary of the Commonwealth of Pennsylvania setting forth that: Douglas W. Jones is the only person or entity owning or interested in a business, the character of which is construction of underground utilities, and that the name, style and designation under which said business is and will be conducted is SOUTH MOUNTAIN UTILITIES and the location where said business is and will be located is 256 Boyd's Schoolhouse Road, Biglerville, Pennsylvania.

Stonesifer and Kelley
Attorneys at Law
209 Broadway
Hanover, PA 17331

5/8

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on April 21, 1998, a certificate was filed under the Fictitious Name Act, approved December 16, 1982, as amended, in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that BESSIE D. HAYS, 124 Pearl Street, Arendtsville, Pennsylvania 17303 is the only person owning or interested in a business, the character of which is operation of a restaurant and that the main style and designation under which said business is and will be conducted is POSSUM HOLLOW INN and the location of where said business is or will be located is 1280 Carlisle Road, Aspers, Pennsylvania 17304.

Catherine J. Gault, Esquire
Solicitor

5/8

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-150 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE TWO CERTAIN pieces or parcels of land situated in the Township of Tyrone, County of Adams and Commonwealth of Pennsylvania, more particularly bounded and described as follows:

PARCEL NO. 1. BEGINNING at an iron pin on the South side of State Highway, Route 234, leading from Biglerville to York. Thence running by land now or formerly of Fannie Kemper, South 31 1/4 degrees West, 220 feet to an iron pin on the North side of a 20 feet wide alley; thence running along the north side of said alley, North 69 degrees West, 65 feet to an iron pin on the North side of said alley, and on the East side of a former 20 feet alley, being Parcel No. 2 herein below; thence running along the East side of the said former alley being Parcel No. 2 herein below; North 31 1/4 degrees East, 220 feet to an iron pin on the South side of said highway; thence running along the South side of said highway, South 69 degrees, East 65 feet to an iron pin on the South side of said highway, the place of beginning.

PARCEL NO. 2. BEGINNING at an iron pin on the South side of State Highway Route 234 leading from Biglerville to York, at corner of lands of Robert E. Volland and wife, Parcel No. 1 herein above; thence by said land of Robert E. Volland and wife, South 31 1/4 degrees West, 220 feet to an iron pin on the North side of a 20 feet alley; thence running along the North side of said alley, North 69 degrees West, 20 feet to an iron pin, at corner of lands of Wilbert R. Trump and wife; thence by said lands of Wilbert R. Trump and wife, North 31 1/4 degrees East, 220 feet to an iron pin; thence running along the South side of the aforementioned State Highway, South 69 degrees East, 20 feet to an iron pin, the place of beginning.

TRACT 2

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

BEGINNING at a telephone pole on the southern right-of-way line of Pennsylvania Route 234 (Heidlersburg Road) at the Northwest corner of Lot No. 1 on the draft of survey recited below (said Lot No. 1 being the remaining lands of Wilbert R. Trump); thence by said Lot No. 1 South twenty five (25) degrees fifty-five (55) minutes fifty three (53) seconds West, two hundred seventeen and twenty-nine hundredths (217.29) feet to a concrete monument set on the Northern side of an alley; thence along the northern side of

said alley North sixty-nine (69) degrees zero (00) minutes zero (00) seconds West, forty-four and seventy-two hundredths (44.72) feet to a point at the southeast corner of land of William B. Frankenfield, Grantee herein, thence by said land of William B. Frankenfield North thirty-one (31) degrees fifteen (15) minutes zero (00) seconds East, two hundred and twenty (220.00) feet to an iron pipe found on the southern right-of-way line of Pennsylvania Route 234, thence along said right-of-way line of Pennsylvania Route 234 South sixty-nine (69) degrees zero (00) Minutes zero (00) seconds East, twenty four and twenty-five hundredths (24.25) feet to a telephone pole on the Southern right-of-way line to said Pennsylvania Route 234, the point of BEGINNING. CONTAINING 7,466 square feet.

HAVING erected thereon a dwelling known as 2769 Heidlersburg Road, Gettysburg, PA 17325.

Parcel 1-28-1.00.

SEIZED and taken into execution as the property of **William B. Frankenfield and Susan M. Frankenfield** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 13, 1998.

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 June 22, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
5/1, 8 & 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-906 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 August, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land.

SITUATE in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 965 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at Page 6, and subject to all legal highways, easements, rights of way and restrictions of record.

TAX PARCEL NUMBER: 12-57

TITLE TO SAID PREMISES IS VESTED IN **Mark D. Garrett and Deborah A. Garrett,**

husband and wife by Deed from Eric W. Wallen and Deborah M. Wallen, h/w, and Wallen Construction, Inc., a Pa. Corp. dated 11/24/93 recorded 11/29/93 in Record Book 812 Page 272.

SEIZED and taken into execution as the property of **Deborah A. Garrett & Mark D. Garrett** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
February 26, 1998.

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 August 31, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

5/8, 15 & 22

Adams County Legal Journal

Vol. 39

May 15, 1998

No. 51, pp. 299-304

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-396 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described tract, piece or parcel of land, situate, lying and being in the Borough of McSherrystown, County of Adams, State of Pennsylvania, bounded and limited as follows, to wit:

BEGINNING at a point on the North side of North Street at corner of Oxford Avenue; THENCE along North Street, South 60 degrees, 40 minutes West, 161.5 feet to a 16 feet wide alley; THENCE along said alley North 30 degrees 45 minutes West, 68.5 feet to lands now or formerly of Bessie M. Spies; THENCE North 53 degrees, 35 minutes East, 162.05 feet to Oxford Avenue; THENCE along the said Oxford Avenue South 30

degrees, 22 minutes East 71.75 feet to the place of Beginning.

EXCEPTING THEREFROM and thereout, nevertheless, all that certain parcel of land which the Commonwealth of Pennsylvania acquired by its Declaration of Taking filed in the Court of Common Pleas of Adams County, Pennsylvania, to No. 326 August Term, 1966, as set forth on the Plan Exhibit 5 of the Notice of Condemnation which is recorded in the Recorder of Deeds Office of Adams County, Pennsylvania, in Misc. Book 5, Page 842.

BEING the same premises which William H. Brady, widower, granted and conveyed unto Dennis Charles Rishel and Denise M. Rishel by Deed dated July 27, 1992 and recorded in the Office of the Recorder of Deeds for ADAMS County on August 4, 1992 in Deed Book 636, Page 1001.

SEIZED and taken into execution as the property of **Dennis Charles Rishel**

and **Denise M. Rishel** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
February 28, 1998.

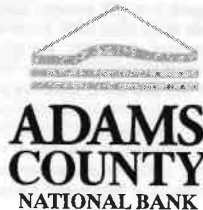
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 22, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser 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.

5/8, 15 & 22

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-184 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of July, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

DESCRIPTION

ALL that improved tract of land, situate on the North side of South Street in the Borough of McSherrystown, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING for a corner on the North side of South Street aforesaid and line of lot now or formerly of Mary A. Slagle; thence in a northerly direction, 166 feet, more or less, to South Alley; thence Westerly along said South Alley, 30 feet, more or less, to line of lot now or formerly of John W. Spangler and Gladys J. Spangler; thence Southerly along said lot now or formerly of John W. Spangler and Gladys J. Spangler, 174 feet, more or less, to the North side of South Street aforesaid; thence East along the North side of said South Street, 30 feet, more or less, to line of lot now or formerly of Mary A. Slagle aforesaid, the point and place of beginning.

Map 5 Parcel 302

SEIZED and taken into execution as the property of **Richard S. Hagerman and Shelby R. Hagerman** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 23, 1998.

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 August 3, 1998, 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.

5/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-82 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of July, 1998, at 10:00 o'clock in the forenoon at the Court-house 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, bounded and limited as follows, to wit:

BEGINNING for a point along the southerly right-of-way line of Basehoar School Road and Lot No. 243 of the hereinafter referred to subdivision plan; thence along said southerly right-of-way line of Basehoar School Road, South sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds East, seventy-seven and eighty-one hundredths (77.81) feet to a point at the intersection of Basehoar School Road and Parkway Drive; thence along the intersection of Basehoar School Road and Parkway Drive by a curve to the right which has a radius of twenty-three and zero hundredths (23.00) feet, an arc distance of thirty-six and thirteen hundredths (36.13) feet, the long chord of which is South sixteen (16) degrees thirty-four (34) minutes thirty-eight (38) seconds East, thirty-two and fifty-three hundredths (32.53) feet to a point along the westerly right-of-way line of Parkway Drive, South twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds West, one hundred seventeen and zero hundredths (117.00) feet to a point at other lands now or formerly of Lynn Lee Construction Co., Inc.; thence along said other lands now or formerly of Lynn Lee Construction Co., Inc., North sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds West, one hundred and eighty-one hundredths (100.81) feet to a point at Lot No. 243; thence along said Lot No. 243, North twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds East one hundred forty and zero hundredths (140.00) feet to a point, the place of BEGINNING. CONTAINING 14,000 square feet and being identified as Lot No. 242 on the final Subdivision plan of Phase 1, Meadowview Estates, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 54, page 75.

UNDER AND SUBJECT to the Declaration of Restrictions of Lynn Lee Construction Co., Inc., recorded February 22, 1990, in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 547, page 198.

Tax Parcel #3-9

SEIZED and taken into execution as the property of **Lawrence D. Roy and Patricia A. Roy** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 24, 1998.

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 August 3, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
5/15, 22 & 29

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of a fictitious name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on March 2, 1998, pursuant to the Fictitious Name Act, Act No. 1982-295, setting forth that Susan E. Davies and Brian P. Berkheimer, are the only persons owning or interested in a business, the character of which is involved is a pizza restaurant, the name, style and designation under which said business is and will be conducted is PIZZA 2 U, and the location where said business is and will be located at 8 West King Street, Littlestown, Pennsylvania 17340.

Stonesifer and Keller
Attorneys at Law
209 Broadway
Hanover, PA 17331

5/15

COMMONWEALTH VS. HARTMAN

1. A guilty plea can be withdrawn if the Defendant shows a fair and just reason for the withdrawal and the Commonwealth will not be substantially prejudiced by re-scheduling the case for trial.

2. There is no absolute right to withdraw a guilty plea and the decision to do so is committed to the discretion of the Court, however, requests to withdraw a guilty plea should be liberally granted.

3. Pennsylvania has constructed its guilty plea procedures in a way designed to guarantee assurance that guilty pleas are voluntarily and understandingly tendered.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-573-96, COMMONWEALTH VS. STANLEY TRACEY HARTMAN.

Michael A. George, Esq, for Commonwealth

Roy A. Keefer, Esq., for Defendant

ORDER

Kuhn, J., August 26, 1997

And now, on this 26th day of August, 1997, in consideration of Defendant's request to withdraw his guilty plea, the Court enters the following:

FINDINGS OF FACT

1. On June 4, 1996, a Criminal Complaint was filed charging Defendant with two counts of rape, incest and aggravated indecent assault on his 17 year old daughter during April, 1996, while he was on state parole.

2. On November 8, 1996, Defendant was advised that he was exposed to the sentencing provisions of 42 Pa. C.S.A. Section 9714 (Third Strike Law) and trial was continued to the week of January 13, 1997.

3. On January 13, 1997, Defendant's request for substitute court appointed counsel was denied and trial was continued through the week of March 10, 1997.

4. On January 23, 1997, Defendant's counsel moved to withdraw, citing irreconcilable differences with herself and Defendant, however, that request was also denied.

5. By March 10, 1997, Defendant's former counsel had been replaced by Roy A. Keefer, Esquire, and trial was continued through the week of April 21, 1997.

6. On April 21, 1997, a jury was selected but not sworn.

7. On April 23, 1997, trial was continued through the week of May 19, 1997, to allow for disposition of Defendant's Motion in Limine.

8. On May 19, 1997, a jury was selected but not sworn.

9. On May 22, 1997, the date set for trial, Defendant appeared with counsel and entered a plea of guilty to Count III, Incest, in violation of 18 Pa. C.S.A. Section 4302, as a felony of the second degree, for a sentence not to exceed 28-56 months effective May 9, 1997.

10. During the plea colloquy Defendant admitted having sexual intercourse with the minor victim one time while they were living at the Home Sweet Home Motel.

11. On that date the purported victim had been transferred to court from Pittsburgh at the Commonwealth's expense.

12. The alleged victim noted her consent to the plea agreement.

13. After the plea Defendant made an open apology directly to the minor victim.

14. The Commonwealth had subpoenaed four other persons to testify who were obviously released from their subpoenas as a result of Defendant's plea.

15. Defendant had been incarcerated at the State Correctional Institution at Smithfield and it cost nearly \$100 to transport Defendant one way for court purposes.

16. Sentencing was deferred to June 30, 1997, to allow for preparation of a pre-sentence report.

17. By letters dated June 21, 1997 and June 24, 1997, Defendant, acting pro se, requested permission to withdraw his guilty plea and to have his court appointed counsel removed, claiming that his lawyer had misled him.

18. In the letter of June 21, 1997, Defendant alleged that his attorney a) forced him into a guilty plea, b) lied to him, and c) misrepresented the potential sentence.

19. In the letter of June 24, 1997, Defendant alleged that his attorney a) forced him into a guilty plea, and b) was misleading him.

20. On June 30, 1997, when Defendant appeared in Court he indicated for the first time that he wished to assert his innocence to the charges. Defendant's attorney asked to withdraw as counsel. The District Attorney claimed substantial prejudice in that victim's whereabouts were unknown.

21. Disposition of the request to withdraw the guilty pleas was deferred to July 7, 1997, to allow the District Attorney additional time to locate the alleged victim.

22. On July 7, 1997, the Court was advised by the District Attorney that his office had been informed that the alleged victim was out of the Job Corp program for medical reasons, had gone to her mother's home in Tennessee, that he was unaware of a telephone number for that person, and that it was expected that the alleged victim would return to the Job Corps program when the medical problem was resolved.

23. The District Attorney was given additional time to follow up those leads and has advised the Court that the alleged victim is in Tennessee and available to testify but she will have to be transported at substantial cost.

CONCLUSIONS OF LAW

1. This Court has jurisdiction.
2. Defendant has not shown a fair and just reason to withdraw his guilty plea.
3. Commonwealth will be substantially prejudiced by Defendant's change of plea.

DISCUSSION

The applicable law on the withdrawal of a guilty plea before sentencing was set forth in *Commonwealth v. Forbes*, 450 Pa. 185, 299 A.2d 268 (1973). Our Supreme Court held that a guilty plea can be withdrawn if the defendant shows a fair and just reason for the withdrawal and the Commonwealth will not be substantially prejudiced by re-scheduling the case for trial. In *Forbes* the assertion of innocence was sufficient to constitute a fair and just reason to allow the withdrawal.

There is no absolute right to withdraw a guilty plea and the decision to do so is committed to the discretion of the court, *Commonwealth v. Hutchins*, 453 Pa. Super. 209, 212, 683 A.2d 674, 675 (1996), however, requests to withdraw a guilty plea should be liberally granted. *Commonwealth v. Miller*, 432 Pa. Super. 619, 622, 639 A.2d 815, 816 (1994).

A review of the relevant case law suggests that Defendant's request should be denied. In *Commonwealth v. Ross*, 498 Pa. 512, 447 A.2d 943 (1982) the trial court's denial of defendant's pre-sentence request to withdraw his guilty plea was upheld where the request had been made after the dismissal of numerous key Commonwealth witnesses in reliance on the plea. Here, the Commonwealth had subpoenaed five persons to appear for trial including an emergency room physician.

The victim was transported to and from Pittsburgh at a cost of \$384.00. All persons were discharged from their subpoena because of Defendant's plea.

In *Commonwealth v. Cole*, 387 Pa. Super. 328, 564 A.2d 203 (1989) the defendant entered a guilty plea after he learned that a key prosecution witness had been transferred from Georgia. After the witness returned to Georgia the defendant requested leave to withdraw his guilty plea claiming his innocence. The trial court's denial of the request to withdraw the plea was upheld on appeal. That Court noted,

... where a defendant has asserted his innocence and the Commonwealth has been unable to show substantial prejudice, it has been held to be an abuse of discretion for a trial court to deny a pre-sentence petition for withdrawal of a guilty plea. 387 Pa. Super. at 333-4, 564 A.2d at 205.

Nevertheless, the Court went on to indicate its frustration with the defendant's change of plea.

Under the circumstances of this case, the bald assertion of innocence appearing in appellant's petition did not constitute a fair and just reason for allowing appellant to withdraw his plea of guilty. Not only would the Commonwealth have been prejudiced by allowing such withdrawal but appellant would have been permitted to make a mockery of the guilty plea hearing process in which appellant, after a full and complete colloquy, admitted his guilt and his role in the robbery and conspiracy.

"A guilty plea is not a ceremony of innocence, it is an occasion when one offers a confession of guilt . . . The defendant is before the court to acknowledge facts that he is instructed constitute a crime . . ." . . . A defendant will not be permitted to postpone the final disposition of his case by lying to the court concerning his culpability and thereafter withdraw his plea of guilty by contradicting his prior testimony and asserting innocence . . .

Pennsylvania has constructed its guilty plea procedures in a way designed to guarantee assurance that guilty pleas are voluntarily and understandingly tendered . . . So many safeguards have been imposed by law to ensure that a guilty plea is voluntarily and knowingly made, that a defendant

should not be permitted to withdraw his guilty plea, even before sentencing, merely by intoning the allegation that "I am not guilty," where, as here, his plea of guilty was supported by an extensive colloquy in which the defendant expressly admitted guilt.

387 Pa. Super. 335-6, 564 A.2d at 206-7 (citations omitted).

In the matter sub judice, Defendant made no assertion of innocence in his pro se petitions to the Court but did make a "bald assertion of innocence" through counsel on June 30, 1997, which was contrary to the plea he entered on May 22, 1997. Although the statement does not appear on the record because it was inaudible to the stenographer, Defendant did apologize to his daughter in open court.

THE COURT: All right, Mr. Hartman, you understand that you're not required to enter this plea . . . If you enter this plea, you will be admitting the factual background that will be related here in a moment . . .

THE DEFENDANT: Yes, sir

. . . (factual background recited)

THE COURT: Okay. This would be an offense if you have sexual intercourse with a descendant meaning your daughter knowing that you are having that sexual intercourse and knowing that she is your natural child. Sexual intercourse for purposes of this scenario that we're talking about here is what is commonly viewed as sexual intercourse. It would require some penetration no matter how slight by your penis into the vagina of your daughter. It does not require emission and that's what you would be admitting if you entered this plea. Do you understand?

THE DEFENDANT: Yes, sir.

MR KEEFER: Your Honor, I believe Mr. Hartman wants to make one very brief statement.

THE COURT: Very well.

THE DEFENDANT: To my daughter . . . (inaudible)

Furthermore, as in Cole the victim is now out of state and would have to be transported here for a re-trial.

The Court finds that Defendant's assertion of innocence is a hollow gesture in this matter. He clearly acknowledged committing a criminal act. He waited until the victim was unavailable and then in his pro se petition asserted pressure and misrepresentation by his attorney, not his innocence. Those assertions appear to be meritless. The potential sentence was placed on the record, and Defendant expressly stated he was satisfied with the advice and services of counsel and that he was not pressured into pleading guilty. It is the undersigned's opinion that the Commonwealth will be substantially prejudiced if it has to bring the victim back from Tennessee for a re-trial under the circumstances.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 26th day of August, 1997, Defendant's request to withdraw the guilty plea he entered on May 22, 1997, is denied. Sentencing is set for September 25, 1997, at 9:00 a.m., Courtroom No. 2. Transportation shall be provided for Defendant.

The request by Roy A. Keefer, Esquire, to withdraw as Defendant's counsel is denied until 30 days after sentencing.

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. 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 CORA M. ALWINE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: George R. Alwine, 145 Sutton Road, Abbottstown, PA 17301

Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF MARY E. HOLLABAUGH, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Robert Eugene Hollabaugh, 502 Celebration Hill Road, Biglerville, PA 17307

Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LEAH A. KRUG, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donald D. Krug, 70 Sumac Drive, Hanover, PA 17331; Alliene G. Mummert, 127 W. King Street, East Berlin, PA 17316

Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF JEAN C. SMITH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Herbert L. Smith, 1343 West Baltimore Pike, Apt. E301 Wawa, PA 19063; Harvey B. Smith, 69 Hellam Drive, Mechanicsburg, PA 17055

Attorney: Henry O. Heiser, III, Esquire, Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GERTRUDE E. TOPPER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Co-Executors: Mr. Donald I. Topper, 2746 Pumping Station Road, Fairfield, PA 17320; Ms. Patricia A. Hewitt, 440 Tract Road, Fairfield, PA 17320

Attorney: David K. James, III, Esquire, 234 Baltimore Street, Get-

tsburg, PA 17325

ESTATE OF KATHLEEN G. TROSTLE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Stacey A. Wieder, c/o Henry O. Heiser, III, Esquire, 104 Baltimore Street, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esquire, Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF ANTON FREUND, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Robert J. Freund, 131 Commodore Circle, Port Jackson, NY 11776; Tony Freund, 34-05 80th Street, Jefferson Heights, NY 11372

Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

ESTATE OF ELIZABETH CROUSE HARBAUGH a/k/a ELIZABETH R. HARBAUGH, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executors: Allen J. Crouse, 19 E. Main Street, P.O. Box 194, Fairfield, PA 17320; E. Jane Ohler, 300 Oak Lane, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARTHA C. SHEETS, DEC'D

Late of 506 Glynwyn Drive, Littlestown, Adams County, Pennsylvania

Executrix: Lisa Nicklow, 1000 Plunkert Road, Littlestown, PA 17340

Attorney: Mette, Evans & Woodside, Elyse E. Rogers, Esquire, 3401 North Front Street, P.O. Box 5950, Harrisburg, PA 17110-0950

ESTATE OF DAVID E. SMITH, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Administrators: Wayne D. Smith; Galen J. Smith; Martha J. Seville
Attorney: Donald T. Puckett, Esq., 817 South George Street, York, PA 17403

ESTATE OF JOHN D. THRUSH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Gary E. Hartman, 104 Artillery Drive, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DONALD C. WEST SR., DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executors: Mildred L. Coshun, 900 Old Waynesboro Road, Fairfield, PA 17320; Margaret E. Pryor, P.O. Box 536, Blue Ridge Summit, PA 17214

Attorney: Leroy S. Maxwell, Jr., Esq., Maxwell Law Offices, Wayne Bldg., 92 West Main Street, Waynesboro, PA 17268

THIRD PUBLICATION

ESTATE OF WILLIS A. COSTELLA, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Co-Executors: Michael L. Costella, 875 700 Road, New Oxford, PA 17350; Timothy C. Costella, 1275 The Spangler Road, New Oxford, PA 17350

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

ESTATE OF NED L. MUMMERT, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Kirby Mummert, R.D. #5, Box 5458J, Spring Grove, PA 17362

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-150 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE TWO CERTAIN pieces or parcels of land situated in the Township of Tyrone, County of Adams and Commonwealth of Pennsylvania, more particularly bounded and described as follows:

PARCEL NO. 1. BEGINNING at an iron pin on the South side of State Highway, Route 234, leading from Biglerville to York. Thence running by land now or formerly of Fannie Kemper, South 31 1/4 degrees West, 220 feet to an iron pin on the North side of a 20 feet wide alley; thence running along the north side of said alley, North 69 degrees West, 65 feet to an iron pin on the North side of said alley, and on the East side of a former 20 feet alley, being Parcel No. 2 herein below; thence running along the East side of the said former alley being Parcel No. 2 herein below; North 31 1/4 degrees East, 220 feet to an iron pin on the South side of said highway; thence running along the South side of said highway, South 69 degrees, East 65 feet to an iron pin on the South side of said highway, the place of beginning.

PARCEL NO. 2. BEGINNING at an iron pin on the South side of State Highway Route 234 leading from Biglerville to York, at corner of lands of Robert E. Volland and wife, Parcel No. 1 herein above; thence by said land of Robert E. Volland and wife, South 31 1/4 degrees West, 220 feet to an iron pin on the North side of a 20 feet alley; thence running along the North side of said alley, North 69 degrees West, 20 feet to an iron pin, at corner of lands of Wilbert R. Trump and wife; thence by said lands of Wilbert R. Trump and wife, North 31 1/4 degrees East, 220 feet to an iron pin; thence running along the South side of the aforementioned State Highway, South 69 degrees East, 20 feet to an iron pin, the place of beginning.

TRACT 2

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

BEGINNING at a telephone pole on the southern right-of-way line of Pennsylvania Route 234 (Heidlersburg Road) at the Northwest corner of Lot No. 1 on the draft of survey recited below (said Lot No. 1 being the remaining lands of Wilbert R. Trump); thence by said Lot No. 1 South twenty five (25) degrees fifty-five (55) minutes fifty three (53) seconds West, two hundred seventeen and twenty-nine hundredths (217.29) feet to a concrete monument set on the Northern side of an alley; thence along the northern side of

said alley North sixty-nine (69) degrees zero (00) minutes zero (00) seconds West, forty-four and seventy-two hundredths (44.72) feet to a point at the southeast corner of land of William B. Frankenfield, Grantee herein, thence by said land of William B. Frankenfield North thirty-one (31) degrees fifteen (15) minutes zero (00) seconds East, two hundred and twenty (220.00) feet to an iron pipe found on the southern right-of-way line of Pennsylvania Route 234, thence along said right-of-way line of Pennsylvania Route 234 South sixty-nine (69) degrees zero (00) Minutes zero (00) seconds East, twenty four and twenty-five hundredths (24.25) feet to a telephone pole on the Southern right-of-way line to said Pennsylvania Route 234, the point of BEGINNING. CONTAINING 7,466 square feet.

HAVING erected thereon a dwelling known as 2769 Heidlersburg Road, Gettysburg, PA 17325.

Parcel 1-28-1.00.

SEIZED and taken into execution as the property of **William B. Frankenfield and Susan M. Frankenfield** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 13, 1998.

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 June 22, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
5/1, 8 & 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-906 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 August, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land.

SITUATE in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 965 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at Page 6, and subject to all legal highways, easements, rights of way and restrictions of record.

TAX PARCEL NUMBER: 12-57

TITLE TO SAID PREMISES IS VESTED IN Mark D. Garrett and Deborah A. Garrett,

husband and wife by Deed from Eric W. Wallen and Deborah M. Wallen, h/w, and Wallen Construction, Inc., a Pa. Corp. dated 11/24/93 recorded 11/29/93 in Record Book 812 Page 272.

SEIZED and taken into execution as the property of **Deborah A. Garrett & Mark D. Garrett** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
February 26, 1998.

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 August 31, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

5/8, 15 & 22

Adams County Legal Journal

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May 22, 1998

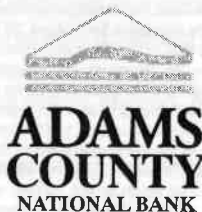
No. 52, pp. 305-308

CONTINUING LEGAL EDUCATION PROGRAMS

1. *Legal Malpractice Seminar*. Thursday, May 28, 1998—1:30 p.m.
Gettysburg Hotel
Credits: Substantive Law—0, Ethics—1.5
No walk-in registration.
Malpractice insurance premium reduction for PBA-sponsored plan.
Call 800-932-0311 ext. 218 to register
2. *Representing Residential Landlords and Tenants*.
Thursday, June 11, 1998—9:00 a.m.
Room 307, Adams County Courthouse
Credits: Substantive Law—4, Ethics—0
3. *Pennsylvania Workers Compensation Practice and Procedure*
Monday, June 15, 1998—9:00 a.m. Room 307, Adams County
Courthouse
Credits: Substantive Law—5, Ethics—0.

Registration through P.B.I. 800-932-4637.

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-82 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of July, 1998, at 10:00 o'clock in the forenoon at the Court-house 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, bounded and limited as follows, to wit:

BEGINNING for a point along the southerly right-of-way line of Basehoar School Road and Lot No. 243 of the hereinafter referred to subdivision plan; thence along said southerly right-of-way line of Basehoar School Road, South sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds East, seventy-seven and eighty-one hundredths (77.81) feet to a point at the intersection of Basehoar School Road and Parkway Drive; thence along the intersection of Basehoar School Road and Parkway Drive by a curve to the right which has a radius of twenty-three and zero hundredths (23.00) feet, an arc distance of thirty-six and thirteen hundredths (36.13) feet, the long chord of which is South sixteen (16) degrees thirty-four (34) minutes thirty-eight (38) seconds East, thirty-two and fifty-three hundredths (32.53) feet to a point along the westerly right-of-way line of Parkway Drive, South twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds West, one hundred seventeen and zero hundredths (117.00) feet to a point at other lands now or formerly of Lynn Lee Construction Co., Inc.; thence along said other lands now or formerly of Lynn Lee Construction Co., Inc., North sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds West, one hundred and eighty-one hundredths (100.81) feet to a point at Lot No. 243; thence along said Lot No. 243, North twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds East one hundred forty and zero hundredths (140.00) feet to a point, the place of BEGINNING. CONTAINING 14,000 square feet and being identified as Lot No. 242 on the final Subdivision plan of Phase 1, Meadowview Estates, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 54, page 75.

UNDER AND SUBJECT to the Declaration of Restrictions of Lynn Lee Con-

struction Co., Inc., recorded February 22, 1990, in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 547, page 198.

Tax Parcel #3-9

SEIZED and taken into execution as the property of **Lawrence D. Roy and Patricia A. Roy** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 24, 1998.

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 August 3, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

5/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-184 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of July, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

DESCRIPTION

ALL that improved tract of land, situate on the North side of South Street in the Borough of McSherrystown, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING for a corner on the North side of South Street aforesaid and line of lot now or formerly of Mary A. Slagle; thence in a northerly direction, 166 feet, more or less, to South Alley; thence Westerly along said South Alley, 30 feet, more or less, to line of lot now or formerly of John W. Spangler and Gladys J. Spangler; thence Southerly along said lot now or formerly of John W. Spangler and Gladys J. Spangler, 174 feet, more or less, to the North side of South Street aforesaid; thence East along the North side of said South Street, 30 feet, more or less, to line of lot now or formerly of Mary A. Slagle aforesaid, the point and place of beginning.

Map 5 Parcel 302

SEIZED and taken into execution as the property of **Richard S. Hagerman and Shelby R. Hagerman** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 23, 1998.

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 August 3, 1998, 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.

5/15, 22 & 29

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on April 7, 1998, a certificate was filed under the Fictitious Names Act in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that James R. Matthews and Peggy Sue Matthews, 70 Brysonia School Road, Biglerville, PA 17307 are the only persons owning a business, which will be conducted under the name STORM'S AUTO PARTS and the location where said business is and will be located is 615 Carlisle Road, Biglerville, PA 17307.

Donald W. Dorr
Buchen, Wise & Dorr
126 Carlisle Street
Hanover, PA 17331
Solicitor

5/22

HERRING VS. WAYNE ANDREW D/B/A
ANDREW & SONS EXCAVATING

1. While Plaintiffs are required to summarize essential facts upon which their causes of action are based, there is no precise measurement by which pleadings may be judged, and a great deal of discretion is reposed in the Court.

2. In determining whether the complaint sufficiently pleads essential facts, the Court may consider all paragraphs dealing with the same subject matter.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-483, DONALD AND MARY HERRING VS. WAYNE ANDREW D/B/A ANDREW & SONS EXCAVATING.

Scott L. Kelley, Esq., for Plaintiff
Arthur Boyce, Esq., for Defendants

MEMORANDUM OPINION ON PRELIMINARY
OBJECTIONS

Spicer, P.J., June 2, 1997.

On August 16, 1996, plaintiffs filed an amended complaint alleging that defendant constructed a foundation for a newly built residence. The foundation was completed March 25, 1992, and the home was finished May 24, 1992. Plaintiffs allege that they experienced water problems in the basement of the home, beginning June 15, 1992, and that on January 19, 1996 "one whole wall of the foundation collapsed into the basement."

Plaintiffs sue on theories of implied warranty and negligence.

Defendant has filed preliminary objections, citing lack of conformity with Rules of Civil Procedure, specifically rule 1019. He contends that ¶14, which states that the home proved to be "unsound, unfit" and "of no use to Plaintiffs" fails to plead essential facts. He also objects to ¶18 through 20 for the same reason.

Paragraph 18 alleges that "Defendant built the agreed upon foundation in a poor, substandard manner." Nineteen alleges that "The foundation was improperly water proofed and parged." Paragraph 20 avers "The backfilling and final grading of the foundation was poorly executed."

Defendant also objects to the manner in which damages are demanded. Plaintiffs seek damages in excess of \$10,000.00. Defendant states that he is a resident of Maryland and is entitled to know if the case can be removed to federal court.

Objections have been orally argued, but neither counsel has provided a brief.

We address the damage argument first.

Rule 1021 specifically prohibits a demand for a specific sum when damages are unliquidated. Actually, the 1993 amendment to that rule discontinued the requirement of pleading over or under \$10,000.00, since that amount was no longer determinative of appellate jurisdiction. The only requirement is that plaintiff state whether the amount claimed does or does not exceed the jurisdictional amount for compulsory arbitration in this county. Although plaintiffs have failed to include such a statement, their failure is not an issue before us at the present time. Defendant has no right to demand more than the rule requires, and that objection is dismissed.

Plaintiffs are required to summarize essential facts upon which their causes of action are based. *Krajsa vs. Key Punch, Inc.* 424 Pa. Super 230, 622 A.2d 355 (1993). However, there is no precise measurement by which pleadings may be judged, and a great deal of discretion is reposed in the court. *In re Barnes Foundation*, 443 Pa. Super 369, 661 A.2d 889 (1995), alloc. den. 542 Pa. 654, 668 A.2d 1119, 544 Pa. 598, 674 A.2d 1064 (1995). In determining whether the complaint sufficiently pleads essential facts, the court may consider all paragraphs dealing with the same subject matter. 2 *Goodrich Amram* 2d §1019:4.

Viewed in the specific context of this case, we find the averments sufficient. Taken as a whole, the complaint states that defendant constructed the foundation, failed to parge it to make it watertight, failed to backfill so that the foundation would be watertight, and that as a result of leaking and flooding, a wall collapsed. In many situations, we would require plaintiff to plead more specifically, but we fail to see any benefit to defendant by imposing this requirement. About all that plaintiff could say, for example, about parging was that it was intended to waterproof the foundation wall and failed to do so.

We believe that additional information may be more efficiently gleaned through discovery.

ORDER

AND NOW, this 2nd day of June, 1997, preliminary objections are dismissed. Defendants may file an answer within the next twenty days.

COMMONWEALTH. VS. GUMM

Where Defendant seeks to withdraw a plea of guilty after sentence has been imposed, he must demonstrate that a manifest injustice will result if he is not allowed to withdraw his plea.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal CC-771-96, COMMONWEALTH VS. JAMES KEVIN GUMM.

Michael A. George, Esq., for Commonwealth

Robert J. Chester, Esq., for Defendant

OPINION PURSUANT TO PA. R.APP.P. 1925(A)

Kuhn, J., September 8, 1997

On April 24, 1997, Appellant and his counsel appeared before the undersigned and entered a plea of guilty to Count I, Criminal Mischief, 18 Pa.C.S.A. §3304(a)(1), as a misdemeanor of the third degree. Sentencing was entered on May 16, 1997, which included restitution of \$829.00.

On June 6, 1997, Appellant filed a Motion for Withdrawal of Guilty Plea Nunc Pro Tunc and Vacate Sentence, claiming that the restitution figure was in error and as a result the gradation of the conviction should have been a summary offense. A hearing on the Motion was held on June 26, 1997, after which Appellant's motion was denied. Appellant subsequently filed this appeal.

The law is clear that,

... where a defendant seeks to withdraw a plea of guilty after sentence has been imposed, he must demonstrate that a manifest injustice will result if he is not allowed to withdraw his plea. *Commonwealth v. Myers*, 434 Pa. Super. 221, 223, 642 A.2d 1103, 1104 (1994).

During the plea colloquy on April 24, 1997, the factual background was set forth (T. 6-8). On September 23, 1996, Appellant was arrested, handcuffed and placed in the rear of a Gettysburg Police Department car.

Appellant became disruptive and according to the prosecutor's recitation,

Ms. Duvall: ... he kicked out the rear window. There were actually two windows, a stationary window and one that goes up and down ...

On the issue of restitution the prosecutor stated,

Ms. Duvall: Yes, 805 is Snyder's Body Shop . . . and there was a \$24 bill for labor for the borough mechanic. Total is 829.

Appellant contends that he should be allowed to withdraw his plea because he believed he was acknowledging damaging only one window instead of two. The record noted above is clear that the plea addressed two windows.

Appellant failed to prove that manifest injustice would result if he is not allowed to withdraw his plea.¹

¹ This is the only issue which the Court believes Appellant is raising. If Appellant is challenging the discretionary nature of the sentence of 12 months intermediate punishment with 45 days of partial confinement it should be noted that Appellant had 28 prior adult convictions.

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 CALVIN E. HEINTZELMAN, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Raymond E. Heintzelman, 2724 Table Rock Road, Biglerville, PA 17307

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

ESTATE OF ELENORA M. MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Barbara A. Fissel, P.O. Box 96, McKnightstown, PA 17343

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

ESTATE OF MARGARET B. TAYLOR, DEC'D

Late of Bendersville Borough, Adams County, Pennsylvania

Executrix: Wanda T. Foreman, 9207 Volunteer Drive, Alexandria, VA 22309

Attorney: Puhl & Eastman, 16 Lincoln Square, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF CORA M. ALWINE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: George R. Alwine, 145 Sutton Road, Abbottstown, PA 17301

Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF MARY E. HOLLABAUGH, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Robert Eugene Hollabaugh, 502 Celebration Hill Road, Biglerville, PA 17307

Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LEAH A. KRUG, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donald D. Krug, 70 Sumac Drive, Hanover, PA 17331; Aliene G. Mummert, 127 W. King Street, East Berlin, PA 17316

Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF JEAN C. SMITH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Herbert L. Smith, 1343 West Baltimore Pike, Apt. E301 Wawa, PA 19063; Harvey B. Smith, 69 Hellam Drive, Mechanicsburg, PA 17055

Attorney: Henry O. Heiser, III, Esquire, Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GERTRUDE E. TOPPER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Co-Executors: Mr. Donald I. Topper, 2746 Pumping Station Road, Fairfield, PA 17320; Ms. Patricia A. Hewitt, 440 Tract Road, Fairfield, PA 17320

Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KATHLEEN G. TROSTLE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Stacey A. Wieder, c/o Henry O. Heiser, III, Esquire, 104 Baltimore Street, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esquire, Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF ANTON FREUND, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Robert J. Freund, 131 Commodore Circle, Port Jackson, NY 11776; Tony Freund, 34-05 80th Street, Jefferson Heights, NY 11372

Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

ESTATE OF ELIZABETH CROUSE HARBAUGH a/k/a ELIZABETH R. HARBAUGH, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executors: Allen J. Crouse, 19 E. Main Street, P.O. Box 194, Fairfield, PA 17320; E. Jane Ohler, 300 Oak Lane, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARTHA C. SHEETS, DEC'D

Late of 506 Glynwyn Drive, Littlestown, Adams County, Pennsylvania

Executrix: Lisa Nicklow, 1000 Plunkert Road, Littlestown, PA 17340

Attorney: Mette, Evans & Woodside, Elyse E. Rogers, Esquire, 3401 North Front Street, P.O. Box 5950, Harrisburg, PA 17110-0950

ESTATE OF DAVID E. SMITH, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Administrators: Wayne D. Smith; Galen J. Smith; Martha J. Seville
Attorney: Donald T. Puckett, Esq., 817 South George Street, York, PA 17403

ESTATE OF JOHN D. THRUSH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Gary E. Hartman, 104 Artillery Drive, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DONALD C. WEST SR., DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executors: Mildred L. Coshun, 900 Old Waynesboro Road, Fairfield, PA 17320; Margaret E. Pryor, P.O. Box 536, Blue Ridge Summit, PA 17214

Attorney: Leroy S. Maxwell, Jr., Esq., Maxwell Law Offices, Wayne Bldg., 92 West Main Street, Waynesboro, PA 17268

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-906 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 August, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land.

SITUATE in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 965 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at Page 6, and subject to all legal highways, easements, rights of way and restrictions of record.

TAX PARCEL NUMBER: 12-57

TITLE TO SAID PREMISES IS VESTED IN Mark D. Garrett and Deborah A. Garrett, husband and wife by Deed from Eric W. Wallen and Deborah M. Wallen, h/w, and Wallen Construction, Inc., a Pa. Corp. dated 11/24/93 recorded 11/29/93 in Record Book 812 Page 272.

SEIZED and taken into execution as the property of **Deborah A. Garrett & Mark D. Garrett** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
February 26, 1998.

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 August 31, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
5/8, 15 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-396 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described tract, piece or parcel of land, situate, lying and being in the Borough of McSherrystown, County of Adams, State of Pennsylvania, bounded and limited as follows, to wit:

BEGINNING at a point on the North side of North Street at corner of Oxford Avenue; THENCE along North Street, South 60 degrees, 40 minutes West, 161.5 feet to a 16 feet wide alley; THENCE along said alley North 30 degrees 45

minutes West, 68.5 feet to lands now or formerly of Bessie M. Spies; THENCE North 53 degrees, 35 minutes East, 162.05 feet to Oxford Avenue; THENCE along the said Oxford Avenue South 30 degrees, 22 minutes East 71.75 feet to the place of Beginning.

EXCEPTING THEREFROM and there-out, nevertheless, all that certain parcel of land which the Commonwealth of Pennsylvania acquired by its Declaration of Taking filed in the Court of Common Pleas of Adams County, Pennsylvania, to No. 326 August Term, 1966, as set forth on the Plan Exhibit 5 of the Notice of Condemnation which is recorded in the Recorder of Deeds Office of Adams County, Pennsylvania, in Misc. Book 5, Page 842.

BEING the same premises which William H. Brady, widower, granted and conveyed unto Dennis Charles Rishel and Denise M. Rishel by Deed dated July 27, 1992 and recorded in the Office of the Recorder of Deeds for ADAMS County on August 4, 1992 in Deed Book 636, Page 1001.

SEIZED and taken into execution as the property of **Dennis Charles Rishel and Denise M. Rishel** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
February 28, 1998.

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 June 22, 1998, 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.
5/8, 15 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-951 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of June, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in Carroll Valley Borough, formerly Liberty Township, Adams County, Pennsylvania, being Lot No. 164 in Section R1, bounded and described as follows:

BEGINNING at a point in the center of McGlaughlin Trail at Lot No. 163; thence by said lot North two (2) degrees thirty-seven (37) minutes twenty (20) seconds East two hundred twenty-five (225) feet to Lot No. 149; thence by said lot and by Lot No. 148 South eighty-seven (87) degrees twenty-two (22) minutes forty (40) seconds East, one hundred (100)

feet to Lot No. 165; thence by said lot South two (2) degrees thirty-seven (37) minutes twenty (20) seconds West two hundred twenty-five (225) feet to a point in the center of said McGlaughlin Trail; thence in said McGlaughlin Trail North eight-seven (87) degrees twenty-two (22) minutes forty (40) seconds West, one hundred (100) feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section R1 of Charrita, Inc." dated May 29, 1970, prepared by Gordon L. Brown, R.S. recorded in Adams County Plat Book No. 1 at page 83.

HAVING THEREON ERECTED A DWELLING KNOWN AS 66 FRUITWOOD TRAIL, FAIRFIELD, PA.

BEING THE SAME PREMISES WHICH A. K. Johnston by deed dated 9/13/95 and recorded 9/22/95 in Adams County Deed Book 1086 Page 105 granted and conveyed unto A. K. Johnston, having an 80% interest and Mary V. Hoilman having a 20% interest.

TO BE SOLD AS THE PROPERTY OF A. K. JOHNSTON A/K/A ALVA K. JOHNSTON AND MARY V. HOILMAN A/K/A MARY VIRGINIA HOILMAN UNDER ADAMS COUNTY JUDGMENT NO. 96-S-951.

SEIZED and taken into execution as the property of **A. K. Johnson and Mary V. Hoilman** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
March 12, 1998.

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 July 6, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
5/22, 29 & 6/5

Adams County Legal Journal

Vol. 40

May 29, 1998

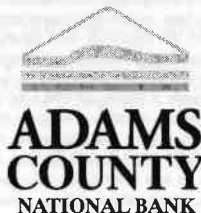
No.1, pp. 1-4

CONTINUING LEGAL EDUCATION PROGRAMS

1. *Legal Malpractice Seminar*. Thursday, May 28, 1998—1:30 p.m.
Gettysburg Hotel
Credits: Substantive Law—0, Ethics—1.5
No walk-in registration.
Malpractice insurance premium reduction for PBA-sponsored plan.
Call 800-932-0311 ext. 218 to register
2. *Representing Residential Landlords and Tenants*.
Thursday, June 11, 1998—9:00 a.m.
Room 307, Adams County Courthouse
Credits: Substantive Law—4, Ethics—0
3. *Pennsylvania Workers Compensation Practice and Procedure*
Monday, June 15, 1998—9:00 a.m. Room 307, Adams County
Courthouse
Credits: Substantive Law—5, Ethics—0.

Registration through P.B.I. 800-932-4637.

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



Member FDIC

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-82 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of July, 1998, at 10:00 o'clock in the forenoon at the Court-house 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, bounded and limited as follows, to wit:

BEGINNING for a point along the southerly right-of-way line of Basehoar School Road and Lot No. 243 of the hereinafter referred to subdivision plan; thence along said southerly right-of-way line of Basehoar School Road, South sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds East, seventy-seven and eighty-one hundredths (77.81) feet to a point at the intersection of Basehoar School Road and Parkway Drive; thence along the intersection of Basehoar School Road and Parkway Drive by a curve to the right which has a radius of twenty-three and zero hundredths (23.00) feet, an arc distance of thirty-six and thirteen hundredths (36.13) feet, the long chord of which is South sixteen (16) degrees thirty-four (34) minutes thirty-eight (38) seconds East, thirty-two and fifty-three hundredths (32.53) feet to a point along the westerly right-of-way line of Parkway Drive, South twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds West, one hundred seventeen and zero hundredths (117.00) feet to a point at other lands now or formerly of Lynn Lee Construction Co., Inc.; thence along said other lands now or formerly of Lynn Lee Construction Co., Inc., North sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds West, one hundred and eighty-one hundredths (100.81) feet to a point at Lot No. 243; thence along said Lot No. 243, North twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds East one hundred forty and zero hundredths (140.00) feet to a point, the place of BEGINNING. CONTAINING 14,000 square feet and being identified as Lot No. 242 on the final Subdivision plan of Phase 1, Meadowview Estates, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 54, page 75.

UNDER AND SUBJECT to the Declaration of Restrictions of Lynn Lee Con-

struction Co., Inc., recorded February 22, 1990, in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 547, page 198.

Tax Parcel #3-9

SEIZED and taken into execution as the property of **Lawrence D. Roy and Patricia A. Roy** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 24, 1998.

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 August 3, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
5/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-184 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of July, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

DESCRIPTION

ALL that improved tract of land, situate on the North side of South Street in the Borough of McSherrystown, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING for a corner on the North side of South Street aforesaid and line of lot now or formerly of Mary A. Slagle; thence in a northerly direction, 166 feet, more or less, to South Alley; thence Westerly along said South Alley, 30 feet, more or less, to line of lot now or formerly of John W. Spangler and Gladys J. Spangler; thence Southerly along said lot now or formerly of John W. Spangler and Gladys J. Spangler, 174 feet, more or less, to the North side of South Street aforesaid; thence East along the North side of said South Street, 30 feet, more or less, to line of lot now or formerly of Mary A. Slagle aforesaid, the point and place of beginning.

Map 5 Parcel 302

SEIZED and taken into execution as the property of **Richard S. Hagerman and Shelby R. Hagerman** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 23, 1998.

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 August 3, 1998, 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.

5/15, 22 & 29

CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on May 1, 1998, by U-STORE-IT MINI WAREHOUSE CO., a foreign corporation formed under the laws of the State of Ohio, where its principal office is located at 6745 Engle Road, Middleburg Heights, Ohio 44130, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Adams County.

5/29

INCORPORATION NOTICE

SAMADELE INC. has been incorporated under the provisions of the Business Corporation Law of 1988.

CSC-Harrisburg
319 Market Street
Harrisburg, PA 17101

5/29

YOUNGBLOOD VS. POWELL ESTATE, ET AL.

1. Title to woodland may be obtained by adverse possession, depending upon the character of the possession.
2. One co-tenant may not acquire title through adverse possession against a fellow co-tenant, unless there has been an ouster.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-323, DORIS M. YOUNGBLOOD VS. THE ESTATE OF MARY S. POWELL A/K/A MARY S. POUL, AND THE HEIRS OF MARY S. POWELL A/K/A MARY S. POUL.

Gary E. Hartman, Esq., for Plaintiff
John J. Mooney, III, Esq., for Defendant

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., September 3, 1997.

Plaintiff commenced this action to quiet title by filing a complaint April 13, 1994. The action involves two tracts in Franklin Township, Adams County, Pennsylvania. One contains 1 acre, 120 perch, and is improved. The second is described as timberland, consisting of 6 acres and 46 perch. Plaintiff describes herself as an heir and great granddaughter of Mary S. Powell, also known as Mary S. Poul (Mary). It is through that relationship that she claims title. The complaint, in ¶ 10, alleges that record title to both tracts remains in Mary's name. Plaintiff has brought this action against other heirs of Mary.

Preliminary objections were filed by some heirs on October 31, 1994. However, those objections were not praeciped for argument until July 26, 1997.

Plaintiff alleges that she has exercised open, notorious and hostile possession of the tracts for a period in excess of twenty-one years. As examples, she states she razed certain structures at her own expense in 1991, after township officials declared them unsafe. She has paid taxes, assumed responsibility for protecting the premises against trespassers and covered an abandoned well.

Defendants propose two bases for dismissing the action. They contend, first, that the statutory prohibition against establishing easements through unenclosed woodland. 68 C.S.A. § 4011 also applies to adverse possession. Two flaws appear in this argument. The complaint says nothing about whether the timberland is enclosed or unenclosed. Title to woodland may be obtained by adverse possession, depending upon the character of the possession. *Beck v. Beck*, 436 Pa. Super 516, 648 A.2d 341 (1994), alloc. den. 540 Pa. 591, 655 A.2d 981 (1995).

The second string to defendants' bow carries more impact. We are mindful that we must view all well pleaded facts in the complaint in a light most favorable to plaintiff, give her the benefit of all reasonable inferences deducible from those facts, and sustain the demurrer only if it appears with certainty that she cannot recover as a matter of law. Commonwealth v. Pennsylvania Labor Relations Board, 545 Pa. 288, 681 A.2d 157 (1996).

Unfortunately for plaintiff, the law is clear in this area. One co-tenant may not acquire title through adverse possession against a fellow co-tenant, unless there has been an ouster. Ladner on Conveyancing in Pennsylvania § 4.04; Nevling v. Natoli, 290 Pa. Super 174, 434 A.2d 187 (1981), citing Conneaut Lake Park, Inc. v. Klingensmith, 362 Pa. 592, 66 A.2d 828 (1949).

We have no idea where this case stands with respect to defendants who have not filed objections, but it is clear that the complaint is fatally flawed and must be dismissed. Counsel indicated during oral argument that no ouster can be asserted. Therefore, we do not grant the right to amend.

ORDER

AND NOW, this 3rd day of September 1997, preliminary objections filed by the heirs of Berdetta Speelman are sustained and the complaint is dismissed as to them.

SMITH VS. NICHOLAS

1. Not only will a judgment n.o.v. be entered only in a clear case where the facts are such that no two reasonable minds could fail to agree that the verdict was improper but also the Court must consider the evidence in a light most favorable to a non-moving party and conclude that the verdict would be changed if another trial were granted.

2. The proper measure of damages where there was incomplete performance was the cost to the non-breaching party of completing the project less the unpaid part of the contract price.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 93-S-837, PETER J. C. SMITH VS. GEORGE W. NICHOLAS T/ A GEORGE W. NICHOLAS AND SON.

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

Larry W. Wolf, Esq., for Defendant

OPINION ON PLAINTIFF'S MOTION FOR POST-TRIAL RELIEF

Kuhn, J., September 10, 1997

This is a breach of contract case in which Plaintiff contracted with Defendant to install a septic system for a fixed price contract of \$7,500.00. Plaintiff paid Defendant \$4,000.00 and before the system was completed, terminated Defendant's services. Subsequently Plaintiff hired Robert Frazer, Jr. to complete the project. A jury determined that Defendant breached the contract and awarded Plaintiff \$3,429.12 in damages.

Plaintiff filed a post-trial motion seeking a judgment notwithstanding the verdict and/or a new trial. Plaintiff contends that he is owed a sum consistent with what he paid to complete the project less what he contracted with Defendant to complete the project. During the trial Plaintiff submitted invoices he paid for or on behalf of Mr. Frazer to complete the project in the amount of \$10,537.92. ¹He had paid previously Defendant \$4,000.00 for a combined outlay of \$14,537.92. This sum less the contract price of \$7,500.00 equals \$7,037.92 and is the amount Plaintiff claims he is due.

A judgment n.o.v. will be entered only in a clear case where the facts are such that no two reasonable minds could fail to agree that the verdict was improper. In addition, the court must consider the evidence in a light most favorable to the non-moving party and conclude that the verdict would be changed if another trial were granted. Somerset

¹ This figure is arrived at by adding PX 3 consisting of three invoices in the amounts of \$2,174.25, \$1,293.50; PX 4 in the amount of \$3,841.44; PX 5 in the amount of \$153.80; PX 6 in the amount of \$386.40 and PX7 in the amount of \$765.00.

Community Hospital v. Mitchell & Associates, Inc., 454 Pa. Super. 188, 197, 685.A.2d 141, 146 (1996).

The general rule for determining the measure of damages in a contract action against a breaching party is to determine the reasonable cost of having another perform the work less the original contract price. Metz Contracting, Inc. v. Boxer Heights, Inc., 261 Pa. Super. 177, 395 A.2d 1373 (1978); Gaylord Builders, Inc. v. Richard Metal Manufacturing Corp., 186 Pa. Super. 101, 140 A.2d 358 (1958). More recently in Oelschlegel v. Mutual Real Estate Investment Trust, 492 Pa. Super. 594, 633 A.2d 181 (1993), Alloc. den. 651 A.2d 540 (1993), the proper measure of damages where there was incomplete performance was described as the cost to the non-breaching party of completing the project less the unpaid part of the contract price. See Restatement (Second) Contracts §348 illustration 3.

Although a jury is entitled to believe none, some, or all of the evidence presented and is entitled to compromise a verdict, the verdict entered in this matter cannot be supported by any reasonable theory. Working backwards, if one adds the verdict (\$3,429.12) to the unpaid part of the contract (\$3,500.00) the result (\$6,929.12) bears no relationship to the cost incurred (\$10,537.92) to complete the project. The verdict (\$3,429.12) does, however, bear a very close relationship to an error in calculation that would result if the contract price (\$7,500.00) rather than the balance owing on the contract was subtracted from the cost of repair (\$10,537.92). That result \$3,037.92 is within \$391.20 of the verdict entered. The Court concedes that the latter figure likewise does not correspond to any invoice submitted by Plaintiff for completion of the project.

Nevertheless, this Court believes that no two reasonable minds

ORDER

AND NOW, this 10th day of September, 1997, in consideration of Plaintiff's Post-Trial Motions, that portion of the jury's verdict awarding Plaintiff damages from Defendant is set aside and a new trial is granted on the issue of damages owed by Defendant to Plaintiff. Trial will be set at the call of either party.

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 ELLEN VIRGINIA GREENE FACCHINA, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Rebecca F. Powell, 175 South Mill Road, Hummelstown, PA 17306

Attorney: Walton V. Davis, 116 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF CALVIN E. HEINTZELMAN, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Raymond E. Heintzelman, 2724 Table Rock Road, Biglerville, PA 17307

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

ESTATE OF ELENORA M. MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Barbara A. Fissel, P.O. Box 96, McKnightstown, PA 17343

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

ESTATE OF MARGARET B. TAYLOR, DEC'D

Late of Bendersville Borough, Adams County, Pennsylvania

Executrix: Wanda T. Foreman, 9207 Volunteer Drive, Alexandria, VA 22309

Attorney: Puhl & Eastman, 16 Lincoln Square, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF CORA M. ALWINE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: George R. Alwine, 145 Sutton Road, Abbottstown, PA 17301

Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF MARY E. HOLLABAUGH, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Robert Eugene Hollabaugh, 502 Celebration Hill Road, Biglerville, PA 17307

Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LEAH A. KRUG, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donald D. Krug, 70 Sumac Drive, Hanover, PA 17331; Alliene G. Mummert, 127 W. King Street, East Berlin, PA 17316

Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF JEAN C. SMITH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Herbert L. Smith, 1343 West Baltimore Pike, Apt. E301 Wawa, PA 19063; Harvey B. Smith, 69 Hellam Drive, Mechanicsburg, PA 17055

Attorney: Henry O. Heiser, III, Esquire, Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GERTRUDE E. TOPPER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Co-Executors: Mr. Donald I. Topper, 2746 Pumping Station Road, Fairfield, PA 17320; Ms. Patricia A. Hewitt, 440 Tract Road, Fairfield, PA 17320

Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KATHLEEN G. TROSTLE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Stacey A. Wieder, c/o Henry O. Heiser, III, Esquire, 104 Baltimore Street, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esquire, Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for SWAN LAKE STABLES, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on May 6, 1998, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Rudisill, Guthrie, Nonemaker,
Guthrie & Yingst
Solicitor

5/29

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, on April 23, 1998, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is HICKEY IMPORTS, INC.

The purpose for which the corporation has been organized is: The corporation shall have unlimited power to engage in and do any law act concerning any or all lawful business for which corporations may be organized under the Pennsylvania Business Corporation Law.

Hickey Imports, Inc.
716 Rock Creek Ford Road
Gettysburg, PA 17325

5/29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-951 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of June, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in Carroll Valley Borough, formerly Liberty Township, Adams County, Pennsylvania, being Lot No. 164 in Section RI, bounded and described as follows:

BEGINNING at a point in the center of McGlaughlin Trail at Lot No. 163; thence by said lot North two (2) degrees thirty-seven (37) minutes twenty (20) seconds East two hundred twenty-five (225) feet to Lot No. 149; thence by said lot and by Lot No. 148 South eighty-seven (87) degrees twenty-two (22) minutes forty (40) seconds East, one hundred (100) feet to Lot No. 165; thence by said lot South two (2) degrees thirty-seven (37) minutes twenty (20) seconds West two hundred twenty-five (225) feet to a point

in the center of said McGlaughlin Trail; thence in said McGlaughlin Trail North eight-seven (87) degrees twenty-two (22) minutes forty (40) seconds West, one hundred (100) feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section RI of Charnita, Inc." dated May 29, 1970, prepared by Gordan L. Brown, R.S. recorded in Adams County Plat Book No. 1 at page 83.

HAVING THEREON ERECTED A DWELLING KNOWN AS 66 FRUITWOOD TRAIL, FAIRFIELD, PA.

BEING THE SAME PREMISES WHICH A. K. Johnston by deed dated 9/13/95 and recorded 9/22/95 in Adams County Deed Book 1086 Page 105 granted and conveyed unto A. K. Johnston, having an 80% interest and Mary V. Hoilman having a 20% interest.

TO BE SOLD AS THE PROPERTY OF A. K. JOHNSTON A/K/A ALVA K. JOHNSTON AND MARY V. HOILMAN A/K/A MARY VIRGINIA HOILMAN UN-

DER ADAMS COUNTY JUDGMENT NO. 96-S-951.

SEIZED and taken into execution as the property of **A. K. Johnson and Mary V. Hoilman** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
March 12, 1998.

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 July 6, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

5/22 , 29 & 6/5

Legal Malpractice...

IT DOES HAPPEN

For some attorneys, legal malpractice is not an area of practice.

I have been doing legal malpractice on a referral basis for Pennsylvania and Delaware attorneys for a number of years.

If a case comes up and you wish to avoid involvement, I will be glad to assist. Referrals paid as allowed by law.



Kevin William Gibson, Esquire
214 North Jackson Street
Media, Pennsylvania 19063
(800) 648-8597
(610) 565-3800