

Adams County Legal Journal

Vol. 40

August 7, 1998

No.11, pp. 59-64

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-148 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of September, 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 that certain lot or piece of ground situate in Germany Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING for a point in Fish and Game Road (L.R. 01055) at other lands now or formerly of Donald E. Collins; thence in said road, North 58 degrees 59 minutes 44 seconds West 50.20 feet to a point; thence leaving said road and along lands now or formerly of John E. Matthews and Williamson E. Snyder, North 36 degrees 03 minutes 46 seconds East 379.43 feet to a point; thence continuing along lands now or formerly of Kenneth G. Helper, South 53 degrees 56 minutes 14 seconds East 320.38 feet to a point thence continuing along the same, North 36 degrees 03 minutes 46 seconds East 502.41 feet to a point at other lands of which this was formerly a part, Lot No. 2; thence along said Lot No. 2, South 53 degrees 56 minutes 14 seconds East 349.72 feet to a point; thence continuing

along same, South 36 degrees 03 minutes 46 seconds West 75.24 feet to a point at other lands of which this was formerly a part, Lot No. 3; thence along said Lot No. 3, South 53 degrees 56 minutes 14 seconds East 355.24 feet to a point at lands now or formerly of The Bethel Assembly of God, Inc.; thence along said lands, South 36 degrees 03 minutes 46 seconds West 451.84 feet to lands now or formerly of James S. Woodward, Jr.; thence along said lands North 57 degrees 26 minutes 14 seconds West 380.52 feet to a point; thence continuing along the same, South 36 degrees 03 minutes 46 seconds West 55.52 feet to a point at lands now or formerly of Mark E. Austin; thence along said lands North 53 degrees 56 minutes 14 seconds West 595.53 feet to a point; thence continuing along said lands now or formerly of Donald E. Collins, South 36 degrees 03 minutes 46 seconds West 271.58 feet to a point in Fish and Game Road (L.R. 01055), the point and place of BEGINNING. CONTAINING 9.680 acres and being known as Lot No. 1 on a plan of lots prepared by **Mort, Brown & Associates, dated May 13, 1991, and recorded in the office of Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 59 page 97.**

SUBJECT TO restrictions, reservations, easements, rights of way and covenants as appear in prior instruments of record.

The tract of land above described being the same which Robert E. Lawrence, by deed dated August 26, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 936 at page 260, conveyed to Raymond E. Bosley and Karen L. Bosley, husband and wife.

SEIZED and taken into execution as the property of **Raymond E. Bosley and Karen L. Bosley** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 18, 1998.

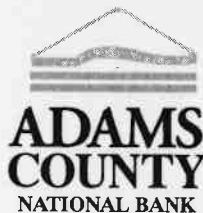
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 12, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser 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.

8/7, 14 & 21

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

Second-class postage paid at Gettysburg, PA 17325.

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-413 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of September, 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 that certain tract, lot and parcel of land lying and being in the Township of Franklin, County of Adams and State of Pennsylvania, being more particularly described as follows:

NOTE: Being known and designated as Map C-9 Parcel 71.

BEGINNING at a point on the southwestern corner of the lot, in the center of U.S. Route 30, also known as Chambersburg Road, north 12 degrees 49 minutes 50 seconds east 272.88 feet to a steel pin (set) at the corner of Lot 1A, and the corner of lands now or formerly of Marjean E. Hensdill and lands now or formerly of Ralph C. Brown and Lillian S. Brown; thence along the lands now or formerly of Ralph C. Brown and Lillian S. Brown south 86 degrees 58 minutes 35 seconds east, 38.53 feet to an existing iron pin; thence along said same lands south 77 degrees 03 minutes 33 seconds east, 222.42 feet to an existing steel pin at the corner of lands now or formerly owned by Ralph C. and Lillian S. Brown, and lands now or formerly owned by Nehemiah and Joan P. Silver, and Lot 3A; thence along Lot 3A, south 12 degrees 49 minutes 50 seconds west, 279.01 feet through an existing steel pin (set back 40 feet) to a point in the center of U.S. Route 30; thence along U.S. Route 30 north 77 degrees 10 minutes 10 seconds west, 260.39 feet to a point in the center of Route 30, the place of beginning. CONTAINING approximately 1.666 acres.

The above description was taken from a survey prepared by Boyer Surveys, dated May 19, 1983, which is recorded in the Adams County Office of the Recorder of Deeds in Plat Book 48, page 40, and which is known as Lot 2A on said plat.

Being the same real estate conveyed to Frank L. Singleton and Karena A. Singleton, husband and wife, by deed of Michael A. Kint, single, dated November 3, 1995 and recorded in Adams County Record Book 1106, page 127.

Improved with a DeRose Mobile Home and having a street address of 4585B Chambersburg Road, Biglerville, Pennsylvania 17307.

SEIZED and taken into execution as the property of **Frank L. and Karena A. Singleton** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 11, 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 September 28, 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.

8/7, 14 & 21

NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURG, PA VS. RICHARD WASHAM

1. Preliminary Objections, the end result of which would be dismissal of a cause of action, should be granted only in a case that is clear and free from doubt.

2. When presented with a petition to compel arbitration, the Court is to determine whether an agreement to arbitrate the controversy exists.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-811, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG, PA, VS. RICHARD WASHAM.

Christopher P. Seerveld, Esq., for Plaintiff

John D. Miller, Jr. Esq., for Defendant

OPINION ON DEFENDANT'S PRELIMINARY OBJECTIONS

Kuhn, J., October 2, 1997.

On September 5, 1995, Plaintiff, National Union Fire Insurance Company of Pittsburgh, Pennsylvania ("National Union"), filed a Declaratory Judgment Complaint against Defendant, Richard Washam. Defendant filed Preliminary Objections to the Complaint. For the reasons set forth below, the Preliminary Objections are denied.

STATEMENT OF FACTS

On September 23, 1992, Defendant was involved in a motor vehicle accident in Gettysburg, Pennsylvania. At that time, Defendant was employed by Dal-Tile, a Texas Corporation, and was driving a company vehicle. Dal-Tile's business vehicles were insured through National Union. The other car involved in the collision was uninsured. Defendant allegedly suffered personal injuries as a result of the accident and therefore made a claim to National Union for uninsured motorist benefits. Plaintiff rejected the claim on the premise that the vehicle was not covered under the policy.

LEGAL DISCUSSION

Defendant has argued that any determination concerning his entitlement to coverage is subject to arbitration and that this Court is without jurisdiction to decide the claim. Additionally, Defendant asks this Court to direct the parties to enter into arbitration.

Preliminary Objections, the end result of which would be dismissal of a cause of action, should be granted only in a case that is clear and free from doubt. *Bower v. Bower*, 531 Pa. 560, 563, 353 A.2d 833, 835 (1976). "When presented with a petition to compel arbitration the

Court is to determine whether an agreement to arbitrate the controversy exists.”¹ *Santiago v. State Farm Insurance Company*, 453 Pa. Super. 343, 346, 683 A.2d 1216, 1217 (1996). Therefore, this Court must first determine, and has jurisdiction to decide, whether the arbitration agreement exists and whether it is applicable in this instance.

The arbitration provision is found in an endorsement to the policy entitled Uninsured Motorist Coverage. The endorsement states it is intended to modify the conditions for uninsured motorist coverage issued under a Business Auto Coverage Form, which was the form used in the case at hand. The arbitration provision of the endorsement reads as follows:

4. The following Condition is added:

ARBITRATION

a. If we and an “insured” disagree whether the “insured” is legally entitled to recover damages from the owner or driver of an “uninsured motor vehicle” do not agree as to the amount of damages, either party may make written demand for arbitration. In this event, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses of the third arbitrator equally.

b. Unless both parties agree otherwise, arbitration will take place in the county in which the “insured” lives. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

(Plaintiff’s Memorandum of Law in Opposition to Defendant’s Preliminary Objections, Exhibit B).

The arbitration clause is limited to uninsured motorist claims and it is therefore imperative to first determine what vehicles are covered under the uninsured motorist policy between National Union and Dal-Tile.

The policy in question provided uninsured motorist coverage for only certain business vehicles. The covered autos were defined in the contract as follows:

¹ Defendant has properly raised the issue of arbitration in preliminary objections; however, it may also be asserted through a motion to compel arbitration. Therefore, we will consider the law pertaining to those motions as well. See Pa. R.C.P. 1028(6), 42 Pa. C.S.A. (note).

OWNED "AUTOS" SUBJECT TO A COMPULSORY UNINSURED MOTORISTS LAW.

Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.

(Plaintiff's Memorandum of Law in Opposition to Defendant's Preliminary Objections, Exhibit A).

The vehicle in question was licensed in Pennsylvania. (Plaintiff's Memorandum of Law in Opposition to Defendant's Preliminary Objections, Ex. E). Therefore, if Pennsylvania law does not require uninsured motorist coverage, or allows rejection of such coverage, the vehicle driven by Defendant at the time of the accident will not be covered under the policy and the arbitration provision will not apply.²

Pennsylvania vehicle insurance is regulated, in part, under the Motor Vehicle Financial Responsibility Act. 75 Pa. C.S.A. §1701-1799.7. Subchapter C deals with uninsured and underinsured motorist coverage and provides that the "[p]urchase of uninsured motorist and underinsured motorist coverage is optional." 75 Pa. C.S.A. §1731(a). Additionally, the statute provides that an insured may "reject uninsured motorist coverage." 75 Pa. C.S.A. §1731(b). Clearly, this is exactly what National Union meant by excluding coverage for vehicles that were licensed or garaged in a state where uninsured motorist coverage is not required or can be rejected. (Exhibit A, Plaintiff's Memorandum of Law).

Therefore, it is this Court's determination that the vehicle driven by Defendant was not covered under the insurance policy between National Union and Dal-Tile and that the arbitration clause provided in the endorsement for uninsured motorist coverage is inapplicable.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 2nd day of October, 1997, Defendant's Preliminary Objections are hereby denied.

² We recognize that Plaintiff has also argued a waiver of uninsured motorist coverage was signed; however, we need not discuss this issue as we have determined that the vehicle was not covered under the policy and therefore not subject to the arbitration clause.

**DEBOESER, ET AL. VS. BOARD OF SUPERVISORS OF
FREEDOM TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA**

1. For the Trial Court to properly rule on Appellee's Preliminary Objections to Appellant's Complaint alleging the Township did not follow procedure in adopting its zoning ordinance there must be of record all of the facts necessary to resolve the dispute.

2. The Trial Court may not reach a determination based upon review of the controverted facts, but must resolve the dispute by receiving evidence thereon through interrogatories, depositions, or an evidentiary hearing.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-654, EDWARD V. DEBOESER, JR., FAUSTO D. DELGROSSO, BETTY J. REDDING, RAYMOND REDDING, JR., KARENA. PATTERSON, THOMAS A. LASER, CARLL RICKER, ANNE. DENTRY, PHILIP O. NETH AND FRANCES F. LORENZO VS. BOARD OF SUPERVISORS OF FREEDOM TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA.

Walton V. Davis, Esq., for Plaintiffs

Linus E. Fenicle, Esq., for Defendant

OPINION ON DEFENDANTS' PRELIMINARY OBJECTIONS

Kuhn, J., October 9, 1997.

On July 26, 1996, Plaintiffs filed a Complaint against Defendant, Board of Supervisors of Freedom Township ("Board"), alleging that Defendant did not follow procedure in adopting a zoning ordinance. On August 12, 1996, Defendant filed Preliminary Objections arguing this Court did not have jurisdiction to hear the claim.

STATEMENT OF THE FACTS

On June 27, 1996, the Board adopted a zoning ordinance to become effective on July 2, 1996. Plaintiffs have alleged the following defects in procedure:

- (1) A public hearing was correctly held but a transcript of comments was never prepared or made available to the public;
- (2) Comments were never addressed by the Board;
- (3) Written comments from the public were not responded to;
- (4) The Notice of Intent to adopt the ordinance stated that a copy of the proposed ordinance was available at the Gettysburg Times but the proposal did not include an integral copy of a zoning map;
- (5) The Notice of Intent to adopt the ordinance stated that a proposed copy was available at the County Law Library but it was not provided until approximately June 25, 1996 (2 days before adoption of the ordinance) and also did not include a zoning map;

- (6) Prior to the special public meeting, all Board members met in private and no announcement was made concerning the purpose of this meeting, in violation of the Sunshine Act, 65 P.S. §278(b);
- (7) After commencement of the public meeting but before a vote by the Board, the public asked for and was denied the right to comment in violation of the Sunshine Act, 65 P.S. §280.1;
- (8) Prior to adoption of the ordinance but after the submission of the proposed ordinance to the Adams County Office of Planning and Development, the following changes were made to the ordinance:
 - (i) reclassification of district from one zone to another;
 - (ii) allowable density bonuses increased;
 - (iii) acreage required to classify as Planned Community Development decreased;
- (9) Prior to the public meeting, the available map did not reflect the changes;
- (10) There was no legal advertisement published concerning the amendments;
- (11) The legal advertisement of the intent to adopt the ordinance did not contain references to provisions of the ordinance which affected density and quality of development in the township. (Plaintiffs' Complaint ¶14a-j.)

LEGAL DISCUSSION

Preliminary Objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. *League of Women Voters of PA v. Commonwealth*, ___ Pa. Commw. ___, 692 A.2d 267 (1997) (citations omitted).

Defendant argues that this Court is without jurisdiction to hear Plaintiffs' Complaint because the Board has exclusive jurisdiction pursuant to 53 P.S. §10909.1. That Section reads as follows:

(a) The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudication in the following matters:

(2) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality and a zoning board has not been previously established, the

appeal raising procedural questions shall be taken directly to court.

53 P.S. §10909.1.

Plaintiff argues that the zoning hearing board had not been “established.” Defendant counters that the Board had been created and equates creation of the board with “establishment.” In either instance, the record is not sufficient to allow a ruling on whether the board had been “established” or “created” because no facts have been presented to indicate what the board’s circumstances were at the time this suit was brought.

Therefore, a factual dispute has arisen in the pleadings and we will adopt the reasoning set forth by our Supreme Court in *American Housing Trust, III v. Jones*, ___ Pa. ___, 696 A.2d 1181, 1185 (1997), which was that for “the trial court to properly rule on Appellee’s preliminary objections to Appellant’s Complaint, there must be of record, all of the facts necessary . . .” to resolve the dispute. The trial court may not reach a determination based upon review of the controverted facts, but must resolve the dispute by receiving evidence thereon through interrogatories, depositions, or an evidentiary hearing. *Schmitt v. Seaspray-Sharkline, Inc.*, 366 Pa. Super. 528, 532, 531 A.2d 801, 803 (1987).

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 9th day of October, 1997, it is the Court’s determination that Defendants’ Preliminary Objections do not state sufficient facts of record to permit a ruling on the Objections. A hearing is scheduled for Monday, October 27, 1997, at 9:00 a.m., Courtroom No. 2, to permit the parties to present evidence.

LEGAL NOTICE

NOTICE IN THE COURT OF
COMMON PLEAS OF ADAMS
COUNTY IN AND FOR THE
COMMONWEALTH OF
PENNSYLVANIA

CIVIL

IN RE: Dismissal of Action for failure to Proceed Under Pa.R.J.A. 1901(c) and Local Rule of Court No. 10(e)

Pursuant to the provisions of Pa.R.J.A. 1901(c) and Local Rule of court No. 10(e) notice is given hereby that the following cases will be listed by the Adams County Prothonotary for general call before the Adams County Court on Monday, September 10, 1998 at 9:00 a.m. to request the Court to dismiss for failure to proceed unless good cause for continuing the proceedings shall be given on or before that date.

In Re: Appointment of Board of View to Assess Benefit of Sanitary Sewer Construction in Oxford Township, Adams County—85-S-78

Randy J. and Janis A. Miller, individually and as natural parents and guardians of Timothy Ryan Miller vs. Syntex Laboratories, Inc.—85-S-708

H & S Supply, Inc. vs. James D. Welshonce and Stephanie D. Welshonce—89-S-945

John R. Tanon and Sue Ann Tanon vs. Katharine E. Knouse—91-S-242

Kenneth and Patricia Young vs. Jacque and Sally Hoffman—92-S-227

Homer C. Spring, Administrator of the Estate of Ronald L. Spring, deceased vs. Albert J. Orth—92-S-938

In Re: Appeal of James D. and Patricia M. Frazee and Stanley A. Deitz from the decision of the Gettysburg Borough Zoning Hearing on the application of C.E. Williams Sons, Inc.—93-S-276

Mervin Z. Martin, t/a Martin's Harness Shop vs. Wendy Davis and David Eden—93-S-929

Michael P. Roksandish vs. Jeffrey S. Hemler—93-S-1003

William A. McIntyre & Sons, a Pennsylvania Partnership, Steve Mummert, Jeff Zartman and Charles Kieneffelter vs. Daniel Culbert, II and Angela S. Culbert.—93-S-1097

The Gettysburg Hospital vs. Stephen A. Hill and Patricia M. Hill—94-S-10

Sites Realty, Inc. vs. Albert P. McGarity and Catherine G. McGarity, husband and wife—94-S-84

Gregg Weaver t/d/b/a Weaver Plastering vs. Charles M. Shorb—94-S-128

Gary L. Smith and Jean Smith vs. Virgil R. Davidson and Sharon E. Davidson, husband and wife, and Ted E. Luckenbaugh and Stephanie L. Luckenbaugh, husband and wife, and Philip H. Brown, and Mark E. Miller and Josphelus S. Roland and Amanda Roland, husband and wife their heirs personal representatives and assigns — 94-S-206

Robert E. Varner vs. Debra K. Varner — 94-S-289

Thomas Boyd Shank and Patricia Shank, his wife, vs. **Brewery Products Company** vs. **Randall E. Rickrode and Knouse Foods Coop, Inc.** 94-S-351

Randall E. Rickrode and Knouse Foods Coop, Inc. vs. **Brewery Products Company** -94-S-355

Shawn W. Gilmore vs. Christine M. Gilmore—94-S-481

Michael and Rosemarie Browdy vs. Michele Pannell, David Pannell and The Hoffman Home for Youths—94-S-561

Lois Ann Kellison vs. William W. Kellison —94-S-616

Richard C. Price vs. Walter N. Heine, Marilyn Army, Walter N. Heine Associates, Inc.—94-S-621

Lee Anne Genix vs. Sharon E. Riley—94-S-676

Adams County National Bank vs. Adonis Designs Mfg., Inc.—94-S-712

Farmers First Bank vs. Steven M. Peters and Christina L. Peters—94-S-738

Strickland Enterprises, Inc. vs. Daniel Anthony McCall and Elizabeth McCall—94-S-791

Kevin S. Meeker vs. Anderson Real Estate, Inc., ERA Vernon E. Anderson Real Estate, Kevin Anderson, Larry Atland and Henry Hicks—94-S-828

Barbara J. Rankin vs. Marvin E. Rankin —94-S-919

Connie Appler vs. Wayne A. Lookenbill —94-S-1007

Ruth N. Malone vs. James E. Malone — 94-S-1078

John W. Springer and Ruth P. Springer vs. Donald R. Moul, II and Renny J. Moul — 94-S-1090

Hampton Plains Condominum Assoc. vs. Barry Rauhauser — 94-S-1117

Robert E. Anders vs. Alfred W. Hetlyn—95-S-12

Gettysburg Hospital vs. John Lance and Christina Lance—95-S-13

Whirl Wide Corp. vs. Larry & Kathy Reese —95-S-24

John Koscinski and Antoinette Koscinski vs. Margaret Runk—95-S-25

Dorothy Carolyn Knackstedt vs. Fred Bernard Knackstedt—95-S-54

H & S Supply, Inc. vs. Terry Bankert — 95-S-83

Wogan's Drug Store vs. Shelly Beyar—95-S-91

Jill Dehoff and Hugh Dehoff vs. Thomas Benton—95-S-116

Donna J. Wilt vs. Aetna Insurance Company and John D. Wolford, t/a Ridinger-Wolford Insurance Agency—95-S-149

Harold James Cool vs. Florence A. Cool —95-S-150

Hardee's Food Systems, Inc. and Leased Restaurant Partners vs. Board of Assessment Appeals of Adams County—95-S-169

Hardee's Food Systems, Inc. and Leased Restaurant Partners vs. Board of Assessment Appeals of Adams County - 96-S-170

Green Tree Consumer Discount Co. vs. Christopher Phillips and Jessica Wetzel —95-S-171

Edward F. Brewer, Jr. vs. Thomas Walls and Dorothy Walls t/a Walls Used Cars and Parts—95-S-221

Paul W. Stine vs. Donna L. Stine—95-S-283

Kuhn Brothers vs. Tom Kennedy—95-S-318

Charles Mummert vs. Joe Reilly—95-S-326

Denise R. Moser vs. Rodney A. Tusing—95-S-334

Mark Orndorf and Annette Orndorf vs. **Allstate Insurance Company, Connecticut Indemnity Company, United States Fire Insurance Company** and Santa Rosa Group, Inc., d/b/a Buffalo Fuel Corporation—95-S-343

Motorists Insurance Companies vs. M & W Caulking Applicators, Inc.—95-S-369

Robert G. Sprengle vs. Dale L. McCall—95-S-399

Scott D. Gilbert and Marla J. Gilbert vs. Robert Meredith, individually and doing business as Meredith Building Company, Acrocrete, Inc., R-Max Inc. and John H. Myers & Sons, Inc.—95-S-400

Rupa, Inc. vs. Michael Wolfgang—95-S-402

Noi T. Stollar vs. Ronald L. Stollar—95-S-439

Essex Group, Inc. vs. Mark Brown, i/t/a/d/b/a Brown's Wholesale Pump Supply, a/k/a Brown Wholesale Supply—95-S-456

Lisa J. Dawes, formerly known as Lisa J. Burks vs. John R. Burks—95-S-482

Lawrence H. Bullis and Judith T. Bullis vs. Jose R. Gonzalez—95-S-495

Motorists Mutual Insurance Co. vs. Lloyd L. Stevens—95-S-496

Shannon & Luchs Property Management Company vs. Steven Wallen and Lori Wallen—95-S-503

Gloria A. Thomas vs. Willie Lee Thomas, Jr.—95-S-512

Avco Financial Services Consumer Discount Company One vs. F. Landon Snively-Brown and Kay Snively-Brown—95-S-548

Misty Istre, a minor, by and through her natural mother, Connie Shank vs. Larry Peazzoni and the New Oxford Borough —95-S-550

Lewin Snyder and Carolyn Sprecher, parent and natural guardian of Robert Sprecher vs. Lauraine Hawkins—95-S-557

Kennie's Market, Inc. vs. Dwayne E. Allen, Sr.—95-S-577

Lester Lawyer and Carolee Lawyer vs. Tom Smith & T.J. Trucking & Exc.—95-S-578

T.J. Smith Trucking & Excavating vs. Lester Lawyer and Carolee Lawyer —95-S-579

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Vertical text on the right side of the page, appearing to be a list of items or a column of text.

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 VIRGINIA M. CORDELL, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Executor: Donald E. Cordell, 15 Regency Circle, Gettysburg, PA 17325
Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF THOMAS I. FULKS, III, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Administratrix: Jeanne H. Fulks, 3102 Will-Mill Terrace, Monrovia, MD 21770
Attorney: Puhl & Eastman, Esqs., Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF HELEN A. PALMER, DEC'D

Late of Union Township, Adams County, Pennsylvania
Administratrix: Henrietta A. Palmer, 55 Bittle Road, Littlestown, PA 17340
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF HARRY L. CHRONISTER, DEC'D

Late of the Borough of McSherrytown, Adams County, Pennsylvania
Executrix: Janet E. Smith, 352 North Street, McSherrystown, PA 17344
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOHN L. STORCH, DEC'D

Late of Latimore Township, Adams County, Pennsylvania
Executrix: Joanne C. Storch, 90 Sequoia Ct., York Springs, PA 17372

THIRD PUBLICATION

ESTATE OF ELIZABETH M. BURKEE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
Executors: Lena G. Lutter and Frederick T. Lutter
Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF RALPH M. SANGREY, DEC'D

Late of Orange County, Florida, and formerly of Franklin Township, Adams County, Pennsylvania
Executor: Joseph J. Sangrey
Attorney: Lacy Hayes, Jr., Esquire, 2216 Walnut Street, Harrisburg, PA 17103-2426

Fad, Inc. vs. Shane Construction Co.—95-S-592

FAD, Inc. vs. Shane Construction Co.—95-S-593

Gettysburg Hospital vs. Vianna Forsythe—95-S-646

Cory Lee Sites vs. Kelly Ann Sites—95-S-656

Alan Kim Patrono and Jane Kauser Patrono vs. Adams County Board of Assessment Appeals—95-S-681

Hans Koch vs. Barry A. Peterson—95-S-684

Chad E. Nelson vs. Heather Hufnagle—95-S-688

Eva Marie Bloom vs. Kenneth Rohrbaugh, t/a Dolly's Washhouse—95-S-706

Ethel M. Ritchie vs. Arthur T. Ritchie—95-S-734

Barbara S. Leatherman vs. Tammy Renee Sanders—95-S-735

First Fidelity Bank vs. Deborah A. Garrett and Mark D. Garrett—95-S-781

York Farm Credit, ACA vs. John D. Houck and Joanne M. Houck, husband and wife, and John B. Sterner and John M. Sterner and Eleanor R. Sterner, husband and wife—95-S-782

Mondial Distributing, Inc. vs. Kidzbiz Pizza, Inc. and David Lee Morris—95-S-808

David C. Meredith, III vs. Robert Yingling—95-S-815

David C. Meredith, III vs. Robert Yingling—95-S-816

Rupa Engineer vs. Warren E. Fickes and Yvonne K. Trostle—95-S-823

Russell J. Baughman, Amos B. Fisher, Steven B. Fisher, John Henry Stoltzfus, Moses S. Stoltzfus and Elizabeth A. Stoltzfus vs. Georgia L. Johnson and Michael S. Johnson—95-S-853

William A. McIntyre & Sons vs. Donald Bixler and Hilker Klauer & Dubs Real Estate—95-S-871

Ramonita Rivera and Miguel Rivera vs. Keystone Insurance Company—95-S-883

Lori Sanders vs. Nationwide Insurance—95-S-893

Pennsylvania Water Specialists Inc. vs. Tony J. and Deb Hippensteel, husband and wife—95-S-933

Paul W. Feeser vs. Elizabeth Feeser—95-S-971

Satish A. Shah, M.D., P.C. vs. Donald L. Millhimes, Jr.—95-S-988

Guy W. Heller, Jr. vs. Bernard V. Miller—95-S-999

Michael R. Group vs. Gabriel M. Aguilar—95-S-1010

Albert L. Hartlaub vs. Noah & Lori Cooper—95-S-1089

Carey Ehly vs. Annette Ehly—95-S-1141

8/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-871 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of August, 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 tracts of land situate, lying and being in Tyrone Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

Tract No. 1: BEGINNING at a point in the public road known locally as the Pine Grove Road; thence North 63 degrees 15 minutes West in said road, 56 feet to a stake; thence North 77 degrees 35 minutes West in said road, 470.25 feet to a stake; thence North 77 degrees 5 minutes West in said road, 132 feet to a stake in the junction of aforesaid road and Racoon Road; thence North 71 degrees 40 minutes East in said Racoon Road, 627 feet to a stake; thence diagonally across said Racoon Road, North 53 degrees 40 minutes East, 90.75 feet to a stake; thence South 36 degrees 35 minutes East, 18.15 feet to a spike in Racoon Road; thence North 61 degrees 55 minutes East in Racoon Road, 336.60 feet to a stake on line of land of Norman Sterner; thence South 37 degrees 35 minutes East along line of land of Norman Sterner 198.45 feet to a point; thence South 54 degrees 20 minutes West along land of Leroy E. Sterner et ux., 629 feet to a spike in the Pine Grove Road, to the place of BEGINNING.

This description was taken from a survey by T. A. Neff, Registered Surveyor.

BEING the same which John W. Sterner and Verna A. Sterner, husband and wife, by their deed dated June 12, 1975, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed book 318, at page 1148, sold and conveyed unto A. Linwood Sterner and Judith E. Sterner, husband and wife; said Judith E. Sterner having died March 28, 1991; so her surviving husband, A. Linwood Sterner, is the Defendant herein.

Tract No. 2: BEGINNING at a post, a corner common to land of A. H. Sterner, land of O. D. Wierman and land of Knouse Foods; thence by land of Knouse Foods, North 29 degrees 28 minutes West, 359 feet to an iron pin; thence by land being retained by A. H. Sterner, North 63 degrees 12 minutes East, 200 feet to an iron pin; thence by the same North 62 degrees 32 minutes East, 375 feet to a point in the Pine Grove Road; thence in said road, South 74 degrees 30 minutes East, 318 feet to a point; thence by land of Arthur W. Sterner and land of R. Ciine, South 45 degrees 40 minutes West, 356 feet to an iron pin; thence by land of O. D. Wierman, South 57 degrees 2 minutes West, 452 feet to the place of BEGINNING. CONTAINING 5 acres, more or less.

The above described tract of land was taken from a survey by Tom O. Bietsch,

Registered Surveyor, dated April 1969.

BEING the same tract of land which S. Leon Weidner and Mildred I. Weidner, husband and wife, by their deed dated November 12, 1975, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 321, at page 608, sold and conveyed unto A. Linwood Sterner and Judith E. Sterner, husband and wife; said Judith E. Sterner having died March 28, 1991, so her surviving husband, A. Linwood Sterner, is the Defendant herein.

LESS, HOWEVER, that tract of land which S. Leon Weidner and Mildred I. Weidner, husband and wife, by their deed dated July 16, 1970, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed book 286, at page 203, sold and conveyed unto Larry E. Whitney and K. Rochelle Whitney, husband and wife.

Improved with a two-story frame house, three out buildings and a spring house.

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 8, 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 September 21, 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.

8/7, 14 & 21

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN, that the petition of Amber Renee Landis and Tasha Lynn Landis, by their mother and natural guardian, Barbara A. Guise, was filed in the Court of Common Pleas of Adams County, Pennsylvania to No. 98-S-723 on July 17, 1998, requesting that a decree be entered to change their names to Amber Renee Guise and Tasha Lynn Guise. The Court has fixed September 10, 1998 at 9:00 A.M. in Courtroom No. 1 of the Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania, as the time and place for hearing and for any person opposed to the petition to show cause why such request should not be granted.

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

8/7

Adams County Legal Journal

Vol. 40

August 14, 1998

No.12, pp. 65-68

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-148 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of September, 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 that certain lot or piece of ground situate in Germany Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING for a point in Fish and Game Road (L.R. 01055) at other lands now or formerly of Donald E. Collins; thence in said road, North 58 degrees 59 minutes 44 seconds West 50.20 feet to a point; thence leaving said road and along lands now or formerly of John E. Matthews and Williamson E. Snyder, North 36 degrees 03 minutes 46 seconds East 379.43 feet to a point; thence continuing along lands now or formerly of Kenneth G. Helper, South 53 degrees 56 minutes 14 seconds East 320.38 feet to a point thence continuing along the same, North 36 degrees 03 minutes 46 seconds East 502.41 feet to a point at other lands of which this was formerly a part, Lot No. 2; thence along said Lot No. 2, South 53 degrees 56 minutes 14 seconds East 349.72 feet to a point; thence continuing

along same, South 36 degrees 03 minutes 46 seconds West 75.24 feet to a point at other lands of which this was formerly a part, Lot No. 3; thence along said Lot No. 3, South 53 degrees 56 minutes 14 seconds East 355.24 feet to a point at lands now or formerly of The Bethel Assembly of God, Inc.; thence along said lands, South 36 degrees 03 minutes 46 seconds West 451.84 feet to lands now or formerly of James S. Woodward, Jr.; thence along said lands North 57 degrees 26 minutes 14 seconds West 380.52 feet to a point; thence continuing along the same, South 36 degrees 03 minutes 46 seconds West 55.52 feet to a point at lands now or formerly of Mark E. Austin; thence along said lands North 53 degrees 56 minutes 14 seconds West 595.53 feet to a point; thence continuing along said lands now or formerly of Donald E. Collins, South 36 degrees 03 minutes 46 seconds West 271.58 feet to a point in Fish and Game Road (L.R. 01055), the point and place of BEGINNING. CONTAINING 9.680 acres and being known as Lot No. 1 on a plan of lots prepared by Mort, Brown & Associates, dated May 13, 1991, and recorded in the office of Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 59 page 97.

SUBJECT TO restrictions, reservations, easements, rights of way and covenants as appear in prior instruments of record.

The tract of land above described being the same which Robert E. Lawrence, by deed dated August 26, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 936 at page 260, conveyed to Raymond E. Bosley and Karen L. Bosley, husband and wife.

SEIZED and taken into execution as the property of **Raymond E. Bosley and Karen L. Bosley** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 18, 1998.

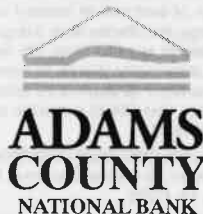
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 12, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser 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.

8/7, 14 & 21

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

Second-class postage paid at Gettysburg, PA 17325.

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-413 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of September, 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 that certain tract, lot and parcel of land lying and being in the Township of Franklin, County of Adams and State of Pennsylvania, being more particularly described as follows:

NOTE: Being known and designated as Map C-9 Parcel 71.

BEGINNING at a point on the south-western corner of the lot, in the center of U.S. Route 30, also known as Chambersburg Road, north 12 degrees 49 minutes 50 seconds east 272.88 feet to a steel pin (set) at the corner of Lot 1A, and the corner of lands now or formerly of Marjean E. Hensdill and lands now or formerly of Ralph C. Brown and Lillian S. Brown; thence along the lands now or formerly of Ralph C. Brown and Lillian S. Brown south 86 degrees 58 minutes 35 seconds east, 38.53 feet to an existing iron pin; thence along said same lands south 77 degrees 03 minutes 33 seconds east, 222.42 feet to an existing steel pin at the corner of lands now or formerly owned by Ralph C. and Lillian S. Brown, and lands now or formerly owned by Nehemiah and Joan P. Silver, and Lot 3A; thence along Lot 3A, south 12 degrees 49 minutes 50 seconds west, 279.01 feet through an existing steel pin (set back 40 feet) to a point in the center of U.S. Route 30; thence along U.S. Route 30 north 77 degrees 10 minutes 10 seconds west, 260.39 feet to a point in the center of Route 30, the place of beginning. CONTAINING approximately 1.666 acres.

The above description was taken from a survey prepared by Boyer Surveys, dated May 19, 1983, which is recorded in the Adams County Office of the Recorder of Deeds in Plat Book 48, page 40, and which is known as Lot 2A on said plat.

Being the same real estate conveyed to Frank L. Singleton and Karena A. Singleton, husband and wife, by deed of Michael A. Kint, single, dated November 3, 1995 and recorded in Adams County Record Book 1106, page 127.

Improved with a DeRose Mobile Home and having a street address of 4585B Chambersburg Road, Biglerville, Pennsylvania 17307.

SEIZED and taken into execution as the property of **Frank L. and Karena A. Singleton** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 11, 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 September 28, 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.

8/7, 14 & 21

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-70 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of September, 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 that tract of land situate, lying and being in Straban Township, Adams County, Pennsylvania, being Lot No. 416 on a plan of lots of Lake Heritage as recorded in Misc. Book 4 at page 427, more particularly bounded and described as follows:

BEGINNING at a point along Heritage Drive at the corner of Lot No. 417 and Lot No. 416; thence South 15 degrees 00 minutes 00 seconds West 129.64 feet to a point; thence by a curve to the right having a radius of 25 feet, a tangent of 18 feet and a chord bearing of 71 degrees 29 minutes 41 seconds to a point; thence along Longstreet Drive South 86 degrees 29 minutes 41 seconds 99.59 feet to a point at corner of land now or formerly of Lake Heritage, Inc.; thence North 3 degrees 30 minutes 19 seconds West, 140 feet to a point at the corner of lot no. 417 aforesaid; thence North 86 degrees 29 minutes 41 seconds East 164.45 feet to the place of BEGINNING.

HAVING ERECTED THEREON a dwelling known as 416 Heritage Drive, Gettysburg, PA 17325.

BEING the same premises which Robin Leishear, by his/her Deed dated December 3, 1992 and recorded in the Recorder's

Office of Adams County, Pennsylvania on December 8, 1992 in Deed Book Volume 663, Page 150 granted and conveyed under Fred M. Fowler and Carolyn N. Fowler, his wife.

Parcel No: 4/26/40

SEIZED and taken into execution as the property of **Fred M. Fowler and Carolyn N. Fowler** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 18, 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 October 12, 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.

8/7, 14 & 21

DEARDORFF-LANDIS, ET AL. VS. LANDIS

1. Under the Domestic Relations Act, grandparents have standing to petition for physical and legal custody when "it is in the best interest of the child not to be in the custody of either parent and if it is in the best interest of the child to be in the custody of the grandparent.

2. Clearly, 23 Pa. C.S.A. §5313 (b) was meant to expand a grandparent's ability to sue for custody of a grandchild since previously, no section of the statute provided a means for grandparents to petition for full custody of a grandchild.

3. The Pennsylvania Supreme Court did away with the presumption that gave parents a prima facie right to custody of their children and made parenthood simply one of the factors in the custody analysis.

4. Where Plaintiff Grandparents have not assumed parental duties as intended by the legislature, they do not meet all of the requirements for standing in a custody action as set forth in 23 Pa. C.S.A. §5313 (b).

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-978, DONNA J. DEARDORFF-LANDIS, BY HER COURT APPOINTED GUARDIANS, CHARLES DEARDORFF AND SYLVIA J. DEARDORFF, AND CHARLES DEARDORFF AND SYLVIA J. DEARDORFF, VS. DAVID HARMON LANDIS.

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

Patrick W. Quinn, Esq., for Defendant

Wendy Weikal-Beauchat, Esq., for Child

OPINION ON DEFENDANT'S PRELIMINARY OBJECTIONS

Kuhn, J., October 10, 1997.

On November 12, 1996, Plaintiffs, Charles Deardorff and Sylvia J. Deardorff, filed a Complaint to obtain custody of their grandchild. They later amended the Complaint to include their daughter, Donna J. Deardorff-Landis, as a Plaintiff. A custody conference was held on December 18, 1996. On May 20, 1997, Defendant, David Harmon Landis, filed Preliminary Objections to the Amended Complaint and a hearing was held in June. For the following reasons, the Objections are sustained.

STATEMENT OF FACTS

The record from the custody conference as well as the hearing established the following facts. On November 5, 1991, the child in issue, Vanessa Jean Landis, was born to David Landis and Donna Deardorff-Landis. Plaintiffs, Charles and Sylvia Deardorff ("Plaintiff Grandparents"), are the child's maternal grandparents. On September 11, 1995, Donna Deardorff-Landis was severely injured in an accident

causing head trauma injury which has left her incapacitated. She currently resides at Deaton Specialty Hospital in Baltimore, Maryland.

Before Vanessa's mother was injured in the accident, the Plaintiff Grandparents watched the child every day when she was not in day care and on many weekends. However, there was never any indication that the parents wanted to give up any of their parental duties. After the accident, Vanessa lived with Defendant and the time she spent with the Plaintiff Grandparents was decreased, although they still watched her on days she was not in school and on many weekends. Relations between the parties severely deteriorated when in early 1996, Defendant made it known that he was divorcing his wife, Donna, and intending to sell the marital home. Plaintiffs successfully petitioned to become Donna's guardian.

Plaintiffs have alleged that Defendant has subordinated the child's interests to his own and has wrongly subjected the child to his paramour. Plaintiffs also claim the Defendant has tried to estrange the child from her mother. For these reasons, Plaintiff Grandparents have brought this action seeking custody of Vanessa.

LEGAL DISCUSSION

Preliminary Objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. *League of Women Voters of PA vs. Commonwealth*, ___ Pa. Commw. ___, 692 A.2d 263, 267 (1997) (citations omitted).

Under the Domestic Relations Act, grandparents have standing to petition for physical and legal custody when "it is in the best interest of the child not to be in the custody of either parent and if it is in the best interest of the child to be in the custody of the grandparent."¹ 23 Pa. C.S.A. §5313(b). This Section of the statute applies to a grandparent:

- (1) who has genuine care and concern for the child;
- (2) whose relationship with the child began with the consent of a parent of the child or pursuant to an order of court; and
- (3) who for 12 months has *assumed the role and responsibilities of the child's parent*, providing for the physical, emotional and social needs of the child, or who assumes the responsibility for a child who has been determined to be a

¹ We recognize that standing requirements differ in primary custody cases as opposed to partial custody or visitation proceedings; however, we are dealing with a petition for full custody and therefore must consider the standing issue as it applies to this type of action. See 23 Pa. C.S.A. §§5311-5313.

dependent child pursuant to 42 Pa. C.S. Ch. 63 (relating to juvenile matters) or who assumes or deems it necessary to assume responsibility for a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or mental illness. This court may issue a temporary order pursuant to this section.

23 Pa. C.S.A. §5313(b) (emphasis added). All three requirements set out in subsection (b) must be satisfied, as indicated from the use of the word "and."

Parts 1 and 2 of subsection (b) have clearly been met in the case at hand. The record indicates that the Plaintiff Grandparents have genuine care and concern for the child and have been involved with her since birth. After the accident they have been involved in maintaining her relationship with her mother. There is a strong bond between Vanessa and the Plaintiff Grandparents, particularly the Grandfather. Both Grandparents have clearly been a positive influence in Vanessa's life and have given her much love and attention. Additionally, the relationship between Vanessa and the Plaintiff Grandparents was with Defendant's consent. Plaintiff Grandparents have helped Defendant in many ways and Defendant did not discourage their involvement in Vanessa's life. Therefore, we need only discuss subsection (b)(3).

Subsection (b) was added to Section 5313 of the Domestic Relations Act in 1996, leaving little time for case law to be established, particularly as to subsection (b)(3). Exactly what the General Assembly meant by a grandparent who has "assumed the role and responsibilities of the child's parent, providing for the physical, emotional and social needs of the child," is not clear.²

Therefore, we begin the analysis by looking to the rules of statutory construction. 1 Pa. C.S.A. §§1901-1991. The basic tenant of statutory construction requires the court to construe words of a statute according to their plain meaning. *Grom v. Burgoon*, 448 Pa. Super. 616, 619-20, 672 A.2d 823, 825 (1996) (citations omitted). *Black's Law Dictionary* defines assume as "[t]o take on, become bound as another is bound, or put oneself in place of another as to an obligation or liability." *Black's Law Dictionary*, 81 (6th Ed. 1991). This definition implies a total assumption of another's duty as it is "to put oneself in place of another."

Additionally, "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa. C.S.A. §1921(a). Clearly, 23 Pa. C.S.A. §5313(b)

² We address only this portion of subsection (b)(3) because Vanessa has not been deemed a dependent child nor was there anything in the record to indicate an abuse or drug problem on behalf of the Defendant.

was meant to expand a grandparent's ability to sue for custody.³ Previously, no section of the statute provided a means for grandparents to petition for full custody of a grandchild. With the addition of subsection (b), the General Assembly has codified this right. Furthermore, the Pennsylvania Courts have been moving toward a broadening of the rights of third parties in custody disputes. For example, in *Rowles v. Rowles*, 542 Pa. 443, 668 A.2d 126 (1995), the Pennsylvania Supreme Court did away with the presumption that gave parents a prima facie right to custody of their children and made parenthood simply one of the factors in the custody analysis.

Keeping these observations in mind, we will address the case at hand. Although it is clear the Plaintiff Grandparents had a lot of involvement with the child and that Defendant depended on their help, we do not believe they "assumed" the parental role. Plaintiff Grandparents were very involved with the child, provided transportation to day care, kept her at their home on different occasions, and generally gave her love and support. However, Vanessa has lived with Defendant all her life and has primarily been in his care and custody. We do not believe that Defendant has discharged his parental duties or that he intended to do so. It is this Court's determination that Plaintiff Grandparents have not assumed parental duties as intended by the legislature and, therefore, do not meet all of the requirements for standing in a custody action as set forth in 23 Pa. C.S.A. §5313(b).⁴

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 10th day of October, 1997, Defendant's Preliminary Objections are hereby sustained.

³ Little information was found in researching the legislative history of this section; however, comments made by Senator Heckler showed a concern over the bill's broadening of grandparents' rights to sue for custody over the parents' rights. Pennsylvania Senate Legislative Journal, No. 33, S.B. 434, Session of May 23, 1995.

⁴ Plaintiffs will be allowed to maintain this action for partial physical custody on their own behalf and for custody as guardian on behalf of their daughter, Donna.

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 KARL GABEL, DEC'D
Late of Oxford Township, Adams County, Pennsylvania

Executor: Lawrence L. Gamber, II,
218 DeGuy Avenue, Hanover, PA
17331

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

ESTATE OF JOHN M. STAUFFER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Joan C. Kump, 1897
Heidlersburg Road, Aspers, PA
17304

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

ESTATE OF ROLAND S. STEPHAN, DEC'D

Late of 304 Benning Avenue, Gettysburg, Adams County, Pennsylvania

Executrix: Claudia J. Stephens, 5691
Bossler Road, Elizabethtown, PA
17022

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

ESTATE OF LESTELLA M. THIERET, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Irene T. Shutts

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

ESTATE OF EILEEN G. WILT, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Edward Wilt

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

SECOND PUBLICATION

ESTATE OF VIRGINIA M. CORDELL, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Donald E. Cordell, 15 Regency Circle, Gettysburg, PA 17325
Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF THOMAS I. FULKS, III, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Jeanne H. Fulks, 3102 Will-Mill Terrace, Monrovia, MD 21770

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

ESTATE OF HELEN A. PALMER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administratrix: Henrietta A. Palmer, 55 Bittle Road, Littlestown, PA 17340

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

THIRD PUBLICATION

ESTATE OF HARRY L. CHRONISTER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Janet E. Smith, 352 North Street, McSherrystown, PA 17344
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOHN L. STORCH, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executrix: Joanne C. Storch, 90 Sequoia Ct., York Springs, PA 17372

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-871 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th 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 those two tracts of land situate, lying and being in Tyrone Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

Tract No. 1: BEGINNING at a point in the public road known locally as the Pine Grove Road; thence North 63 degrees 15 minutes West in said road, 56 feet to a stake; thence North 77 degrees 35 minutes West in said road, 470.25 feet to a stake; thence North 77 degrees 5 minutes West in said road, 132 feet to a stake in the junction of aforesaid road and Racoon Road; thence North 71 degrees 40 minutes East in said Racoon Road, 627 feet to a stake; thence diagonally across said Racoon Road, North 53 degrees 40 minutes East, 90.75 feet to a stake; thence South 36 degrees 35 minutes East, 18.15 feet to a spike in Racoon Road; thence North 61 degrees 55 minutes East in Racoon Road, 336.60 feet to a stake on line of land of Norman Starner; thence South 37 degrees 35 minutes East along line of land of Norman Starner 198.45 feet to a point; thence South 54 degrees 20 minutes West along land of Leroy E. Starner et ux., 629 feet to a spike in the Pine Grove Road, to the place of BEGINNING.

This description was taken from a survey by T. A. Neff, Registered Surveyor.

BEING the same which John W. Starner and Verna A. Starner, husband and wife, by their deed dated June 12, 1975, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed book 318, at page 1148, sold and conveyed unto A. Linwood Starner and Judith E. Starner, husband and wife; said Judith E. Starner having died March 28, 1991; so her surviving husband, A. Linwood Starner, is the Defendant herein.

Tract No. 2: BEGINNING at a post, a corner common to land of A. H. Starner, land of O. D. Wierman and land of Knouse Foods; thence by land of Knouse Foods, North 29 degrees 28 minutes West, 359 feet to an iron pin; thence by land being retained by A. H. Starner, North 63 degrees 12 minutes East, 200 feet to an iron pin; thence by the same North 62 degrees 32 minutes East, 375 feet to a point in the Pine Grove Road; thence in said road, South 74 degrees 30 minutes East, 318 feet to a point; thence by land of Arthur W. Starner and land of R. Cline, South 45 degrees 40 minutes West, 356 feet to an iron pin; thence by land of O. D. Wierman, South 57 degrees 2 minutes West, 452 feet to the place of BEGINNING. CONTAINING 5 acres, more or less.

The above described tract of land was taken from a survey by Tom O. Bietsch, Registered Surveyor, dated April 1969.

BEING the same tract of land which S. Leon Weidner and Mildred I. Weidner, husband and wife, by their deed dated November 12, 1975, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 321, at page 608, sold and conveyed unto A. Linwood Starner and Judith E. Starner, husband and wife; said Judith E. Starner having died March 28, 1991, so her surviving husband, A. Linwood Starner, is the Defendant herein.

LESS, HOWEVER, that tract of land which S. Leon Weidner and Mildred I. Weidner, husband and wife, by their deed dated July 16, 1970, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed book 286, at page 203, sold and conveyed unto Larry E. Whitney and K. Rochelle Whitney, husband and wife.

Improved with a two-story frame house, three out buildings and a spring house.

SEIZED and taken into execution as the property of A. Linwood Starner and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 8, 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 September 21, 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.

8/7, 14 & 21

FICTITIOUS NAME

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity announces it has filed in the Office of the Secretary of the Commonwealth of Pennsylvania, on June 29, 1998, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name of GETTYSBURG'S GROWING PLACE, with its principal place of business at Campus Box 2459, Gettysburg College, Gettysburg, PA 17325. The name and address of the persons owning or interested in said business is the GETTYSBURG CHILD CARE CORPORATION, residing at Campus Box 410, Gettysburg College, Gettysburg, PA 17325. The character or nature of the business is a child care center.

Mary Dolheimer
Secretary

Gettysburg Child Care Corporation

Adams County Legal Journal

Vol. 40

August 21, 1998

No.13, pp. 69-74

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-148 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of September, 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 that certain lot or piece of ground situate in Germany Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING for a point in Fish and Game Road (L.R. 01055) at other lands now or formerly of Donald E. Collins; thence in said road, North 58 degrees 59 minutes 44 seconds West 50.20 feet to a point; thence leaving said road and along lands now or formerly of John E. Matthews and Williamson E. Snyder, North 36 degrees 03 minutes 46 seconds East 379.43 feet to a point; thence continuing along lands now or formerly of Kenneth G. Helper, South 53 degrees 56 minutes 14 seconds East 320.38 feet to a point thence continuing along the same, North 36 degrees 03 minutes 46 seconds East 502.41 feet to a point at other lands of which this was formerly a part, Lot No. 2; thence along said Lot No. 2, South 53 degrees 56 minutes 14 seconds East 349.72 feet to a point; thence continuing

along same, South 36 degrees 03 minutes 46 seconds West 75.24 feet to a point at other lands of which this was formerly a part, Lot No. 3; thence along said Lot No. 3, South 53 degrees 56 minutes 14 seconds East 355.24 feet to a point at lands now or formerly of The Bethel Assembly of God, Inc.; thence along said lands, South 36 degrees 03 minutes 46 seconds West 451.84 feet to lands now or formerly of James S. Woodward, Jr.; thence along said lands North 57 degrees 26 minutes 14 seconds West 380.52 feet to a point; thence continuing along the same, South 36 degrees 03 minutes 46 seconds West 55.52 feet to a point at lands now or formerly of Mark E. Austin; thence along said lands North 53 degrees 56 minutes 14 seconds West 595.53 feet to a point; thence continuing along said lands now or formerly of Donald E. Collins, South 36 degrees 03 minutes 46 seconds West 271.58 feet to a point in Fish and Game Road (L.R. 01055), the point and place of BEGINNING. CONTAINING 9.680 acres and being known as Lot No. 1 on a plan of lots prepared by Mort, Brown & Associates, dated May 13, 1991, and recorded in the office of Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 59 page 97.

SUBJECT TO restrictions, reservations, easements, rights of way and covenants as appear in prior instruments of record.

The tract of land above described being the same which Robert E. Lawrence, by deed dated August 26, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 936 at page 260, conveyed to Raymond E. Bosley and Karen L. Bosley, husband and wife.

SEIZED and taken into execution as the property of **Raymond E. Bosley and Karen L. Bosley** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 18, 1998.

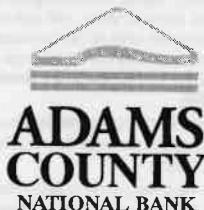
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 12, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser 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.

8/7, 14 & 21

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-413 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of September, 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 that certain tract, lot and parcel of land lying and being in the Township of Franklin, County of Adams and State of Pennsylvania, being more particularly described as follows:

NOTE: Being known and designated as Map C-9 Parcel 71.

BEGINNING at a point on the south-western corner of the lot, in the center of U.S. Route 30, also known as Chambersburg Road, north 12 degrees 49 minutes 50 seconds east 272.88 feet to a steel pin (set) at the corner of Lot I A, and the corner of lands now or formerly of Marjean E. Hensdill and lands now or formerly of Ralph C. Brown and Lillian S. Brown; thence along the lands now or formerly of Ralph C. Brown and Lillian S. Brown south 86 degrees 58 minutes 35 seconds east, 38.53 feet to an existing iron pin; thence along said same lands south 77 degrees 03 minutes 33 seconds east, 222.42 feet to an existing steel pin at the corner of lands now or formerly owned by Ralph C. and Lillian S. Brown, and lands now or formerly owned by Nehemiah and Joan P. Silver, and Lot 3A; thence along Lot 3A, south 12 degrees 49 minutes 50 seconds west, 279.01 feet through an existing steel pin (set back 40 feet) to a point in the center of U.S. Route 30; thence along U.S. Route 30 north 77 degrees 10 minutes 10 seconds west, 260.39 feet to a point in the center of Route 30, the place of beginning. CONTAINING approximately 1.666 acres.

The above description was taken from a survey prepared by Boyer Surveys, dated May 19, 1983, which is recorded in the Adams County Office of the Recorder of Deeds in Plat Book 48, page 40, and which is known as Lot 2A on said plat.

Being the same real estate conveyed to Frank L. Singleton and Karena A. Singleton, husband and wife, by deed of Michael A. Kint, single, dated November 3, 1995 and recorded in Adams County Record Book 1106, page 27.

Improved with a DeRose Mobile Home and having a street address of 4585B Chambersburg Road, Biglerville, Pennsylvania 17307.

SEIZED and taken into execution as the property of **Frank L. and Karena A. Singleton** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 11, 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 September 28, 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.

8/7, 14 & 21

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-70 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of September, 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 that tract of land situate, lying and being in Straban Township, Adams County, Pennsylvania, being Lot No. 416 on a plan of lots of Lake Heritage as recorded in Misc. Book 4 at page 427, more particularly bounded and described as follows:

BEGINNING at a point along Heritage Drive at the corner of Lot No. 417 and Lot No. 416: thence South 15 degrees 00 minutes 00 seconds West 129.64 feet to a point; thence by a curve to the right having a radius of 25 feet, a tangent of 18 feet and a chord bearing of 71 degrees 29 minutes 41 seconds to a point; thence along Longstreet Drive South 86 degrees 29 minutes 41 seconds 99.59 feet to a point at corner of land now or formerly of Lake Heritage, Inc.; thence North 3 degrees 30 minutes 19 seconds West, 140 feet to a point at the corner of lot no. 417 aforesaid; thence North 86 degrees 29 minutes 41 seconds East 164.45 feet to the place of BEGINNING.

HAVING ERECTED THEREON a dwelling known as 416 Heritage Drive, Gettysburg, PA 17325.

BEING the same premises which Robin Leishear, by his/her Deed dated December 3, 1992 and recorded in the Recorder's

Office of Adams County, Pennsylvania on December 8, 1992 in Deed Book Volume 663, Page 150 granted and conveyed unto Fred M. Fowler and Carolyn N. Fowler, his wife.

Parcel No: 4/26/40

SEIZED and taken into execution as the property of **Fred M. Fowler and Carolyn N. Fowler** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 18, 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 October 12, 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.

8/7, 14 & 21

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

In re: Estate of Lillian E. Carr, late of York County, Pennsylvania, an incompetent No. OC-73-90 First and Final Account of Adams County National Bank, guardian.

NOTICE

NOTICE IS HEREBY GIVEN that Adams County National Bank, Guardian of the Estate of Lillian E. Carr, an incompetent, has filed its First and Final Account and Proposed Schedule of Distribution in the Office of the Clerk of Courts of Common Pleas of Adams County, Pennsylvania, Orphans' Court Division, and that the same will be presented to said Court for confirmation of the Account September 10, 1998, at 9:00 o'clock a.m., at the Adams County Courthouse, Gettysburg, Pennsylvania.

Peggy J. Breighner
Clerk of said Court
Bulleit, Schultz & Thrasher
Attorneys

8/21 & 28

COMMONWEALTH VS. PLACIDE

1. A PCRA proceeding involves the question of whether an innocent individual has been convicted.
2. Mere failure of trial counsel to appeal does not involve the truth determining process and, without more, does not entitle defendant to PCRA relief.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-567-94; CC-568-94; and CC-798-94 COMMONWEALTH OF PENNSYLVANIA VS. SEGUERRE PLACIDE.

Shawn Wagner, Esq., Deputy Attorney General
Thomas R. Campbell, Esq., for Defendant

OPINION ON PCRA PETITION

Spicer, P.J., October 14, 1997.

Charges in the above captioned cases were for jury trial that occurred April 27 and 28, 1995. Defendant was found guilty of two counts of possession with intent to deliver cocaine and a charge of conspiracy to deliver cocaine. Trial counsel took, but did not pursue a direct appeal that was based on a contention that evidence presented at trial was insufficient to convict defendant. Superior Court remanded for computation and allowance of credit for time served previous to sentence, but otherwise dismissed the appeal.

Defendant presently seeks relief through his first PCRA petition. Counsel was appointed counsel and a hearing was conducted on July 22, 1997. At that time, this court ruled that defendant's assertions that he was deprived of effective assistance of counsel could not be proven by mere failure to pursue an appeal. A PCRA proceeding involves a question of whether an innocent individual has been convicted. Mere failure of trial counsel to appeal does not involve the truth determining process and, without more, does not entitle defendant to relief. *Commonwealth v. Petroski*, ___ Pa. Super. ___, 695 A.2d 844 (1997).

Defendant also claimed that trial counsel's cross-examination of prosecution witnesses was so inadequate that he was denied effective assistance of counsel.

One contention concerned possible inconsistent statements given by trial witnesses at the preliminary hearing. We directed the preparation and filing of transcripts of the PCRA and the preliminary hearings, and ruled that the matter would then be determined on brief.

Defendant does not presently argue that evidence was insufficient. Rather, he contends that evidence would not have been sufficient had proper cross-examination been pursued.

At trial, Commonwealth relied on testimony of John Laughman, a cooperating individual who had pled guilty to drug charges in York County. Those charges and benefits accruing to Laughman by reason of his cooperation were described for the jury. Laughman described two controlled purchases that he made, after being searched by an agent with the Attorney General's office. The first transaction occurred August 3, 1993, in the Wal-Mart parking lot near Gettysburg. Agent Jeffrey Mohn, an undercover agent with the Attorney General's office, provided money and monitored the transaction. The actual physical exchange of cocaine for \$300.00 occurred between Laughman and Laura Barrett, but sufficient evidence was produced to show that defendant actively participated in the transaction. After Laughman approached a silver BMW that Placide had driven to the scene, defendant told Laughman to get into the back seat. When Laughman was unable to comply, defendant instructed Barrett to "do it", and she handed the cocaine over to Laughman and took the money.

The second transaction occurred September 1, 1993, in the rear of 240 South Washington Street, Gettysburg. After meeting Agent Mohn, Laughman met with defendant and established a price. Laughman then left, obtained money from Agent Mohn, and returned. Defendant pointed to a rock, indicated the cocaine was under it, and told the agent to place money there. The agent procured cocaine from under the stone and left the money.

Discussion during the PCRA hearing indicated that defendant thought he could not be found guilty unless he directly transferred cocaine and directly received money. This belief periodically surfaces in drug prosecutions and helps explain why people charged with deliveries sometimes think they are conviction-proof.

Commonwealth also presented recorded telephone conversations, and testimony by Agent Brian Westmoreland, Laura Barrett, Steven Ollinger and Howard Kellison. Barrett was, as previously indicated, an accomplice in the first delivery. Ollinger and Kellison, who were also charged, testified as to numerous sales of considerable quantities of cocaine in which they and defendant were involved.

Eddie Fontaine, a narcotics officer with the New York State police who was familiar with the patois version of Creole, was qualified as an expert in narcotics investigations. He provided translations of conversations between defendant and Stephen Alcee, a coconspirator, and explained cryptic phrases used during those conversations. Such testimony is readily admissible in drug prosecutions. *Commonwealth v. Vitale*, 445 Pa. Super. 43, 664 A.2d 999 (1995), alloc. dn 544 Pa.

598?, 664 A.2d 1071 (1996).

During the PCRA hearing, defendant complained that Fontaine's interpretation of certain patois dialect words used in telephone conversations was wrong and that trial counsel should have brought this out. Defendant said patois for flour does not translate into English as cocaine. Cocaine, he said, is cocaine the world over. Defendant obviously missed the point of Fontaine's explanation of cryptic phrases.

We have considered defendant's arguments and find they do not present issues of arguable merit. Most stem from his misunderstanding of the law. Complaints about cross examination relating to interest, prejudice, bias or corruption of Commonwealth witnesses lack substance. Criminal involvement by each Commonwealth witness was revealed to the jury. Copies of written plea agreements were entered into evidence.

Commonwealth presented Laughman and Agents Westmoreland and Mohn at defendant's preliminary hearing. Defendant was represented by Mark Beauchat, Esq. Trial counsel was James Reed, Esq. Mr. Reed apparently did not have a transcript of the preliminary hearing at his disposal during trial. However, we have not been apprised of inconsistencies between trial and preliminary testimony, so as to make this fact relevant.

Trial evidence against defendant was overwhelming. Commonwealth submits, and we agree, that cross-examination by Clarence Darrow would not have made any difference in the verdicts.

The defendant's contention is lacking in arguable merit and his PCRA petition is dismissed.

ORDER

AND NOW, this 14th day of October, 1997, the court denies relief sought under defendant's first PCRA petition. The petition is dismissed.

The Clerk of Courts is directed to provide copies of this order and opinion to counsel, and to defendant. She shall mail copies to defendant at the state correctional institution where he is housed. Mail will be certified, return receipt requested.

Defendant is notified that he has the right to appeal to Superior Court within thirty days of this order. He has the right to proceed with assigned counsel. Should he desire that an appeal be taken, he should promptly notify Thomas Campbell, Esq. that he wants this done.

HARMON, ET AL. VS. SMITH

1. A nonsuit can be entered only if the factfinder, viewing all the evidence and all reasonable inferences from the evidence in the light most favorable to the Plaintiff, could not reasonably conclude that the elements of a cause of action have been established.

2. Where the licensee was aware of the risk of harm on the land of the possessor, it can be concluded as a matter of law that a compulsory nonsuit may be granted.

3. Pennsylvania Courts have held that children much younger than 11 are able to understand and appreciate the risk involved in falling situations.

In the Court of Common Pleas, Adams County, Pennsylvania, No. 95-S-306, GREGORY G. HARMON AND KAREN M. HARMON, HUSBAND AND WIFE, AND GREGORY G. HARMON AND KAREN M. HARMON AS PARENTS AND NATURAL GUARDIANS OF RYAN P. HARMON.

Leah B. Graff, Esq. for Plaintiffs

William C. Gierasch, Jr., Esq. for Defendants

OPINION ON PLAINTIFFS' MOTION FOR POST-TRIAL RELIEF

Kuhn, J., October 21, 1997.

On March 27, 1995, Plaintiffs, Gregory G. and Karen M. Harmon, individually and as guardians to their son Ryan P. Harmon, filed suit against Defendants, Barry and Karen Smith. At the time of trial, this Court granted Defendants' Motion for Compulsory Nonsuit. On May 9, 1997, Plaintiff filed a Motion for Post-Trial Relief. For the following reasons, the Motion is denied.

STATEMENT OF THE FACTS

Plaintiffs and Defendants were neighbors on East Locust Lane, New Oxford, Pennsylvania. On December 18, 1993, Ryan Harmon, then 11 years old, was on Defendants' property when he fell down an open stairwell. Ryan allegedly sustained personal injuries as a result of the fall.

At trial before this Court, it was established that Ryan was aware of the presence of the stairway and had been for seven years. Ryan's testimony revealed that he was viewing geese flying overhead as he was walking backwards and fell into the stairwell. Ryan testified that he knew the stairwell had no railing and that he needed to be careful because it was dangerous. Ryan's testimony disclosed that his parents had warned him not to play around the stairwell.

LEGAL DISCUSSION

Plaintiff has argued that when viewing the facts in the light most favorable to Plaintiff, sustaining the motion for compulsory nonsuit was in error. A nonsuit can be entered only if the factfinder, viewing all the evidence and all reasonable inferences from the evidence in the light most favorable to the plaintiff, could not **reasonably conclude that the elements of a cause of action have been established**. *Long v. Manzo*, 452 Pa. Super. 451, 456, 682 A.2d 370, 373 (1996).

Section 342 of the Restatement of Torts is applicable to the case at hand and reads as follows:

A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, (a) the possessor knows or has reason to know the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and risk involved, and (c) the licensees do not know or have reason to know the condition and the risk involved.

Restatement (Second) of Torts, §342 (adopted in *Sharp v. Luska*, 440 Pa. 125, 269 A.2d 659 (1970)).

The issue in this case centers on Subsection C. Plaintiff has argued that it cannot be concluded as a matter of law that Ryan was aware of the risk of harm. However, Ryan's testimony clearly indicates his awareness. He stated that he was warned not to play around the stairwell and that he knew it was a dangerous area. (Transcript at 9.)

Additionally, testimony suggests that Ryan was a responsible 11 year old. He had his own paper route and did well in school. (Transcript at 12.) Ryan was even capable enough to stay home alone in the summer after his accident. (Transcript at 12.) Clearly, he had the ability to know and understand the risk involved in being careless around an unguarded stairwell.

Pennsylvania Courts have held that children much younger than 11 were able to understand and appreciate the risk involved in falling situations. See, e.g., *McHugh v. Reading Company*, 346 Pa. 266, 269, 30 A.2d 122, 123 (1943) (seven year old appreciated risk of fall; "no danger is more commonly realized or risk appreciated even by children than that of falling."); *Himes v. New Enterprise Stone & Lime Co.*, 399 Pa. Super. 301, 582 A.2d 353 (1990), *Alloc dn* 590 A.2d 758 (six year old held to be aware of risk associated with fall off a bridge); *Goll et*

al. v. Muscara, 211 Pa. Super. 93, 235 A.2d 443 (1967) (four year old appreciated risk of fall).

Although questions as to whether the danger arising from a condition on a possessor's land, and the risk attendant thereto, were known are usually questions for the jury, this question may be decided by the court where reasonable minds could not differ as to the conclusion. Himes v. New Enterprise Stone & Lime Co., 582 A.2d at 358 (citations omitted). It was clear to this Court that reasonable minds could not differ on the conclusion that Ryan was able to appreciate and understand the risk involved with the stairwell in question based upon his own testimony. Thus, the attached Order is issued.

ORDER

AND NOW, this 21st day of October, 1997, Plaintiffs' Motion for Post-Trial Relief is hereby denied.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF JOAN L. BAILEY, DEC'D
Late of Franklin Township, Adams County, Pennsylvania

Executrix: Nancy B. Seetoo, c/o Donald L. Kornfield, 17 North Church Street, Waynesboro, PA 17268

Attorney: Donald L. Kornfield, 17 North Church Street, Waynesboro, PA 17268

ESTATE OF GENEVIEVE SUSAN MECKLEY, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executor: Carl O. Meckley, c/o Peter J. Mangan, Esq., 39 E. King Street, York, PA 17401

Attorney: Peter J. Mangan, 39 E. King Street, York, PA 17401

SECOND PUBLICATION

ESTATE OF KARL GABEL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Lawrence L. Gamber, II, 218 DeGuy Avenue, Hanover, PA 17331

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

ESTATE OF JOHN M. STAUFFER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Joan C. Kump, 1897 Heidlrsburg Road, Aspers, PA 17304

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

ESTATE OF ROLAND S. STEPHAN, DEC'D

Late of 304 Benning Avenue, Gettysburg, Adams County, Pennsylvania

Executrix: Claudia J. Stephens, 5691 Bossler Road, Elizabethtown, PA 17022

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

ESTATE OF LESTELLA M. THERET, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Irene T. Shutts

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

ESTATE OF EILEEN G. WILT, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Edward Wilt

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

THIRD PUBLICATION

ESTATE OF VIRGINIA M. CORDELL, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Donald E. Cordell, 15 Regency Circle, Gettysburg, PA 17325
Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF THOMAS I. FULKS, III, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Jeanne H. Fulks, 3102 Will-Mill Terrace, Monrovia, MD 21770

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

ESTATE OF HELEN A. PALMER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administratrix: Henrietta A. Palmer, 55 Bittle Road, Littlestown, PA 17340

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-871 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th 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 those two tracts of land situate, lying and being in Tyrone Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

Tract No. 1: BEGINNING at a point in the public road known locally as the Pine Grove Road; thence North 63 degrees 15 minutes West in said road, 56 feet to a stake; thence North 77 degrees 35 minutes West in said road, 470.25 feet to a stake; thence North 77 degrees 5 minutes West in said road, 132 feet to a stake in the junction of aforesaid road and Racoon Road; thence North 71 degrees 40 minutes East in said Racoon Road, 627 feet to a stake; thence diagonally across said Racoon Road, North 53 degrees 40 minutes East, 90.75 feet to a stake; thence South 36 degrees 35 minutes East, 18.15 feet to a spike in Racoon Road; thence North 61 degrees 55 minutes East in Racoon Road, 336.60 feet to a stake on line of land of Norman Starner; thence South 37 degrees 35 minutes East along line of land of Norman Starner 198.45 feet to a point; thence South 54 degrees 20 minutes West along land of Leroy E. Starner et ux., 629 feet to a spike in the Pine Grove Road, to the place of BEGINNING.

This description was taken from a survey by T. A. Neff, Registered Surveyor.

BEING the same which John W. Starner and Verna A. Starner, husband and wife, by their deed dated June 12, 1975, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed book 318, at page 1148, sold and conveyed unto A. Linwood Starner and Judith E. Starner, husband and wife; said Judith E. Starner having died March 28, 1991; so her surviving husband, A. Linwood Starner, is the Defendant herein.

Tract No. 2: BEGINNING at a post, a corner common to land of A. H. Starner, land of O. D. Wierman and land of Knouse Foods; thence by land of Knouse Foods, North 29 degrees 28 minutes West, 359 feet to an iron pin; thence by land being retained by A. H. Starner, North 63 degrees 12 minutes East, 200 feet to an iron pin; thence by the same North 62 degrees 32 minutes East, 375 feet to a point in the Pine Grove Road; thence in said road, South 74 degrees 30 minutes East, 318 feet to a point; thence by land of Arthur W. Starner and land of R. Cline, South 45 degrees 40 minutes West, 356 feet to an iron pin; thence by land of O. D. Wierman, South 57 degrees 2 minutes West, 452 feet to the place of BEGINNING. CONTAINING 5 acres, more or less.

The above described tract of land was taken from a survey by Tom O. Bietsch, Registered Surveyor, dated April 1969.

BEING the same tract of land which S. Leon Weidner and Mildred I. Weidner, husband and wife, by their deed dated November 12, 1975, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 321, at page 608, sold and conveyed unto A. Linwood Starner and Judith E. Starner, husband and wife; said Judith E. Starner having died March 28, 1991, so her surviving husband, A. Linwood Starner, is the Defendant herein.

LESS, HOWEVER, that tract of land which S. Leon Weidner and Mildred I. Weidner, husband and wife, by their deed dated July 16, 1970, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed book 286, at page 203, sold and conveyed unto Larry E. Whitney and K. Rochelle Whitney, husband and wife.

Improved with a two-story frame house, three out buildings and a spring house.

SEIZED and taken into execution as the property of A. Linwood Starner and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 8, 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 September 21, 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.

8/7, 14 & 21

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988, approved December 21, 1988, P.L. 144, No. 177, as amended. The name of the corporation is GETTYSBURG ELEMENTARY WRESTLING BOOSTERS CLUB, INC.

8/21

Adams County Legal Journal

Vol. 40

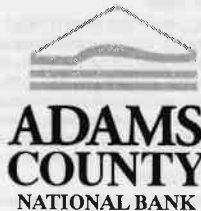
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COMMONWEALTH VS. REESE
and
STERNER, ET UX. VS. INLAND CONTAINER
CORPORATION, ET AL.

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-757 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of September, 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 that certain lot of ground situate in Reading Township, Adams County, Pennsylvania, designated as LOT NUMBER 39 on subdivision plat of Hampton Plains, Inc., which plat is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 19 at Page 30.

UNDER AND SUBJECT, HOWEVER, to Declaration of Restrictions recorded in Miscellaneous Book 31 at Page 605, as amended on November 14, 1983, by instrument recorded in Miscellaneous Book 44 at Page 854, and again amended on June 24, 1985, by instrument recorded in Adams County Record Book 403 at Page 184.

BEING the same premises which Hampton Plains, Inc., a Pennsylvania Corporation, by Deed dated September 9, 1990 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book Volume 569, Page 948, sold and conveyed unto Michael L. Scott and Brenda S. Scott, his wife, as tenants of an estate by entirety.

SEIZED and taken into execution as the property of **Michael L. & Brenda S. Scott** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 11, 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 October 19, 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.

8/28, 9/4 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-70 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of September, 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 that tract of land situate, lying and being in Straban Township, Adams County, Pennsylvania, being Lot No. 416 on a plan of lots of Lake Heritage as recorded in Misc. Book 4 at page 427, more particularly bounded and described as follows:

BEGINNING at a point along Heritage Drive at the corner of Lot No. 417 and Lot No. 416: thence South 15 degrees 00 minutes 00 seconds West 129.64 feet to a point; thence by a curve to the right having a radius of 25 feet, a tangent of 18 feet and a chord bearing of 71 degrees 29 minutes 41 seconds to a point; thence along Longstreet Drive South 86 degrees 29 minutes 41 seconds 99.59 feet to a point at corner of land now or formerly of Lake Heritage, Inc.; thence North 3 degrees 30 minutes 19 seconds West, 140 feet to a point at the corner of lot no. 417 aforesaid; thence North 86 degrees 29 minutes 41 seconds East 164.45 feet to the place of **BEGINNING**.

HAVING ERECTED THEREON a dwelling known as 416 Heritage Drive, Gettysburg, PA 17325.

BEING the same premises which Robin Leishear, by his/her Deed dated December 3, 1992 and recorded in the Recorder's Office of Adams County, Pennsylvania on December 8, 1992 in Deed Book Volume 663, Page 150 granted and conveyed unto Fred M. Fowler and Carolyn N. Fowler, his wife.

Parcel No: 4/26/40

SEIZED and taken into execution as the property of **Fred M. Fowler and Carolyn N. Fowler** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 18, 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 October 12, 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.

8/14, 21 & 28

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Thursday, September 10, 1998, at 9:00 o'clock a.m.

IAEA—Orphans' Court Action Number OC-53-98. The First and Final Account of Naida Iaea, Executrix for the Estate of John N. Iaea, Jr., deceased, late of Hamiltonban Township, Adams County, Pennsylvania.

KETTERMAN—Orphans' Court Action Number OC-61-98. The First and Final Account of Richard Lee Ketterman, Executor of the Last Will and Testament of Clara M. Ketterman, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

SINGLEY—Orphans' Court Action Number OC-75-98. The First and Final Account of Sterling Calvin Singley, Executor of the Last Will and Testament of Fleeta Fay Singley, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

LOSMAN—Orphans' Court Action Number OC-77-98. The First and Final Account of Bernard C. Brady, Executor of the Last Will and Testament of Christine N. Losman a/k/a Christine Naomi Losman, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

8/28 & 9/4

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the County of Adams, Pennsylvania, by its duly elected and incumbent Board of County Commissioners, adopted the following Resolution at the Commissioners' regularly-scheduled, duly advertised and convened public meeting on Wednesday, August 19, 1998, in the Commissioners' Meeting Room (Second Floor), Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Adams County, Pennsylvania 17325. Further, NOTICE is hereby given that on Tuesday, September 8, 1998, the Articles of Incorporation of the "Adams County Industrial Development Authority", together with proof of publication of the present Notice, will be filed with the Secretary of the Commonwealth of Pennsylvania. The text of the subject Resolution, as adopted, is as follows:

A RESOLUTION SIGNIFYING THE INTENTION OF THE COUNTY OF ADAMS, PENNSYLVANIA, BY ITS BOARD OF COUNTY COMMISSIONERS, TO ORGANIZE THE ADAMS COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY. PURSUANT TO AND IN ACCORDANCE WITH THE "ECONOMIC DEVELOPMENT FINANCING LAW", AS AMENDED.

WHEREAS, the County of Adams, Pennsylvania (the "County"), by its duly elected and incumbent Board of County Commissioners, Thomas J. Weaver, Chairman, Harry Stokes and Thomas L. Collins (the "Commissioners"), has determined that it is necessary and desirable to promote the health, safety, morals, employment, business opportunities, economic development and general welfare of the residents of the County by providing for the creation of the "Adams County Industrial Development Authority", pursuant to and in accordance with the "Economic Development Financing Law", as amended, (73 P.S. §371, et seq.) (the "Act"); in addition, the County, by its Commissioners has, and does hereby, adopt and incorporate herein the legislative findings set forth in Sections 2. and 2.1. of the Act (73 P.S. §§372. and 372.1.); and

WHEREAS, the County, by its Commissioners, desires to adopt the present Resolution signifying the County's and Commissioners' intention to organize the Authority pursuant to the Act, and otherwise initiate and take all necessary or appropriate actions to incorporate and establish the Authority.

NOW, THEREFORE, BE IT RESOLVED AND IT IS HEREBY RESOLVED, by the County, by its Commissioners, as follows:

1. The County, by its Commissioners, shall undertake and do all necessary or appropriate things to effect the incorporation and establishment of the Authority, as a public instrumentality of the Commonwealth of Pennsylvania and a public body corporate and politic, pursuant to and in accordance with the provisions

of the Act; therefore, the Commissioners shall be, and they are hereby, authorized and directed to execute and deliver on behalf of the County, all necessary or appropriate instruments, documents and papers, and to otherwise undertake any and all other necessary or appropriate actions to effect the incorporation and establishment of the Authority.

2. Pursuant to and in accordance with the pertinent provisions of the Act, the Authority's Articles of Incorporation shall be stated as follows:

ARTICLES OF INCORPORATION
OF THE
ADAMS COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY

1. The name of the authority shall be the "Adams County Industrial Development Authority" (the "Authority"), a public instrumentality of the Commonwealth of Pennsylvania and a public body corporate and politic, with its initial registered office and address at 261 South Franklin Street, Gettysburg, Adams County, Pennsylvania 17325.

2. The Authority is organized, established and incorporated pursuant to and in accordance with the provisions of the "Economic Development Financing Law", Act of August 23, 1967, P.L. 251, §1., as amended (and as specifically amended by the Act of December 17, 1993, P.L. 490, No. 74, §1.) [73 P.S. §371, et seq.] (the "Act"), and shall be for the purpose of acquiring, holding, constructing, improving, maintaining, owning, financing and leasing, either in the capacity of Lessor or Lessee, projects.

3. The name of the incorporating municipality is the County of Adams, Pennsylvania, a duly incorporated municipality, political subdivision and Sixth Class County of the Commonwealth of Pennsylvania (the "County"). The governmental body of the County are the Adams County Commissioners (the "Commissioners"). The names and addresses of the members of the County's said governmental body are as follows:

Thomas J. Weaver, Chairman
106 North Street
McSherrystown, Pennsylvania 17344
Harry Stokes, Commissioner
22 Mummasburg Street
Gettysburg, Pennsylvania 17325
Thomas L. Collins, Commissioner
1324 Hilltown Road
Biglerville, Pennsylvania 17307

4. The names, addresses and term of office of the first members of the Board of Directors of the Authority are as follows:

Names and Address:	Initial Term of Office:
Gerald Richardson Hanover Building Sys. P. O. Box 330 Abbottstown, PA 17301	1/1/ 1999 -12/31/ 03 [Five (5) year initial term]*
Ken Farabaugh Prudential Insurance 68 East Middle Street Gettysburg, PA 17325	1/ 1/ 99 -12/31/ 00 [Two (2) year initial term]*

Lex McMillan Gettysburg College 300 N. Washington St. Gettysburg, PA 17325	1/1/99 -12/31/99 [One (1) year initial term]*
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Leigh McIntosh Manager, Eco.Dev. Columbia Gas P. O. Box 1032 York, PA 17401-1032	1/1/ 99 -12/31/00 [Two (2) year initial term]*
--	--

Geoff Sturgill Sturgill & Associates 139 Baltimore Street Gettysburg, PA 17325	1/1/99 - 12/31/99 [One (1) year initial term]*
---	--

Al Barnes HB&H Contractors 1655 Herr's Ridge Rd. Gettysburg, PA 17325	1/1/99 -12/ 31/02 [Four (4) year initial term]*
--	---

Catherine Crosswell Adams County Eco. Development Corp. 261 South Franklin Street Gettysburg, PA 17325	1/1/99 - 12/31/01 [Three (3) year initial term]*
--	--

* Commencing, however, on the date of appointment, August 19, 1998 [73 P.S. §379.(a)].

5. The term of existence of the Authority shall be fifty (50) years.

6. The Authority is hereby granted, and shall have and may exercise, all powers necessary or convenient for the carrying out of its aforesaid purposes, including but without limiting the generality of the foregoing, the following rights and powers:

A. To have existence for a term of fifty (50) years and for such further period or period(s) as may be provided in articles of amendment approved under Section 5 of the Act [73 P.S. §375].

B. To sue and be sued, implead, and be impleaded, complain and defend in all courts.

C. To adopt, use and alter at will, a corporate seal.

D. To acquire, purchase, own, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or convenient for carrying out the purposes of the Authority, and to sell, option, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

E. To acquire by gift, purchase, lease or otherwise, and to construct, improve, maintain and repair projects.

F. To make bylaws for the management and regulation of its affairs.

G. To appoint officers, agents and employees, to prescribe their duties and to fix their compensation.

H. To enter into agreements providing for (i) the acquisition of projects by either the Authority, the project applicant or the project user; (ii) the financing of projects where acquisition is by a project applicant or a project user; (iii) the

financing of improvements to existing projects; and (iv) the leasing or sale of projects to or the loan financing of projects for the project users or project applicants as provided in the Act.

I. To enter into agreements of lease, sale or loan financing with project users or project applicants providing, inter alia, (i) for the leasing or sale of projects to, or the loan financing of projects for, the project users or project applicants for a term of years not to extend beyond the term of existence of the Authority; (ii) for a rental, purchase price, loan or other payments sufficient to amortize the principal, interest and premium, if any, of all bonds and other obligations of the Authority incurred to provide funds to pay the costs of the project to be leased, sold or otherwise financed; (iii) for the project user or project applicant to pay to the Authority or to otherwise assume and pay all other costs of acquiring, constructing, maintaining and operating the project; (iv) provisions, if deemed desirable, that the project user or project applicant of a project pursuant to a lease shall have the options to renew such lease or to purchase any or all of such project; (v) for conveyance with or without consideration of any part or all of a project to the project user or project applicant on or before payment of all bonds and other obligations of the Authority incurred with respect to such project; and (vi) such other provisions as are customary in such leases, agreements of sale or loan agreements or as may be deemed necessary or convenient by the Authority.

J. To borrow money, make and issue bonds of the Authority, Provided, That, no bonds shall have a maturity date later than the life of the Authority, and to secure the payment of such bonds or any part thereof by pledge, mortgage or deed of trust of all or any part of its property and of its revenues and receipts, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds, whether issued or to be issued, as the Authority shall deem advisable, and in general to provide for the security for said bonds by mortgage, pledge or otherwise and for the rights of the holders thereof.

R. To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

L. Without limitation of the foregoing, to borrow money and ac-

cept grants and other funds from and to enter into contracts, leases or other transactions with any Federal agency, the Commonwealth of Pennsylvania or its agencies or instrumentalities, or with any municipality, school district, bank or other financial institution, corporation or other authority.

M. To pledge, mortgage, hypothecate or otherwise encumber all or any part of the property, real or personal, including but not limited to the revenues or receipts of the Authority as security for all or any of the obligations of the Authority.

N. To make loans to project applicants or project users and to provide or issue alternative types of financing, including, but not limited to, standby loan commitments, guarantees, letters of credit and grants.

O. To do all acts and things necessary or convenient for the promotion of its business and the general welfare of the Authority, to carry out and exercise the purpose of and the powers granted by the Act or any other acts.

P. The Authority shall, and does hereby, agree to be bound by the rules and regulations of the "Pennsylvania Economic Development Financing Authority" relating to assisted projects and the operations of industrial and commercial development authorities or, as may be applicable, industrial development agencies and shall submit to examination of its books of accounts and corporate records by the said financing authority at such times as the said financing authority may require during the term of any loan made to the Authority by the said financing authority.

Q. The Authority shall have the power to issue bonds for any of its corporate purposes, provided, however, the principal, interest and other charges thereon are payable solely and exclusively (i) from revenues received from the project applicant or project user or from the income, revenues and property of the project financed, in whole or in part, with the proceeds of such bonds; (ii) from the income and revenues of certain designated projects whether or not they were financed, in whole or in part, with the proceeds of such bonds; or (iii) from its revenues generally.

R. The bonds of the Authority shall be authorized by resolution of the board thereof, shall be of such series, bear such date or dates, mature at such time or times, bear interest at such rate

or rates, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeability privileges, be payable in any medium of payment and at such place or places and at such time or times, be subject to such terms of redemption, with or without premium, and be entitled to such priorities in the revenues or receipts of the Authority as such resolution or resolutions may provide. The bonds shall be signed by or shall bear the facsimile signature of such officers as the Authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the Authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered, notwithstanding that one or more of the officers signing such bonds or the treasurer whose facsimile signature shall be upon the coupon, shall have ceased to be such officer or officers at the time when such bonds shall actually be delivered. Said bonds may be sold at public or private sale for such price or prices as the Authority shall determine. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of such bonds, and may contain such terms and conditions as the Authority may determine. Any bond reciting in substance that it has been issued by the Authority to aid in the financing of a project to accomplish the public purposes of the Act shall be conclusively deemed in proceedings involving the validity or enforceability of such bond or security therefor, to have been issued for such purpose.

S. Any resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof, as to (i) pledging the full faith and credit of the Authority (but not of the Commonwealth of Pennsylvania or any political subdivision thereof) for such obligations, or restricting the same to all or any of the assets or to all or any of the revenues or receipts of the Authority from all or any projects or properties; (ii) the acquisition of the project and the duties of the Authority and the project applicant or project user with reference thereto; (iii) the terms and provisions of the bonds; (iv) limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued, or of any loan or grant by a Federal agency may be applied; (v) the rentals and other

COMMONWEALTH VS. REESE

Where the jury found Defendant guilty of indecent assault, a misdemeanor, and deadlocked on the offenses of rape and sexual assault, the misdemeanor being a lesser included offense, the jury did not impliedly acquit defendant of the felonies and he can be retried on those charges.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-313-96, COMMONWEALTH OF PENNSYLVANIA VS. FRANCIS ORDEAN REESE.

Michael George, District Attorney for the Commonwealth
Terry Blynn, Esq., for Defendant

STATEMENT PURSUANT TO PA. R.APP.P. 1925

Spicer, P.J., October 24, 1997.

Defendant seeks appellate review of orders denying his motion for dismissal of rape and sexual assault charges, following a judicial declaration of mistrial. On August 22, 1997, a jury returned with a verdict of guilty to indecent assault, but was hopelessly deadlocked on more serious charges. This judge accepted the verdict and discharged the jury as to unresolved counts.

During discussion following the action, defense counsel asked for and was granted a delay of retrial until the term beginning in December. Commonwealth was opposed. The complaining witness has been forced to delay her entry into the United States armed services because of numerous delays in this case. Although it is not the purpose of the undersigned to catalogue continuances and delays, it is obvious that the pace of this prosecution has inconvenienced the alleged victim.

Defendant's motion for dismissal of felony charges was based entirely on merger principles. However, the brief accompanying the motion contended that further prosecution should also be barred because of prosecutorial misconduct.

The undersigned expresses no opinion concerning defendant's right to an immediate appeal from the order denying his motion for dismissal. Nor is it the purpose of this Statement to discuss the appealability of that order. Rather, we limit consideration and discussion to requests made by defense counsel and actions taken by the undersigned with respect thereto.

Motion for dismissal on Double Jeopardy grounds:

(a) Merger principles.

Although the jury could not agree as to felony charges, it found defendant guilty of indecent assault. In the context of the factual

circumstances of this case, this misdemeanor was a lesser included offense to rape and sexual assault. Had the jury found the defendant not guilty, retrial would have been barred. By finding the elements of the misdemeanor to have been established beyond a reasonable doubt, the jury did not impliedly acquit defendant of felonies. The opposite is true.

P.R.Crim.P 1120 specifically authorizes the action taken by this court, including continuing the case for retrial. *Commonwealth v. Harris*, 400 Pa. Super. 12, 582 A.2d 1319 (1990), alloc. dn. 528 Pa. 621, 597 A.2d 1151 (1990).

Defendant cites *Commonwealth v. Kline*, 405 Pa. Super. 412, 592 A.2d 730 (1991), to support his argument that retrial is barred. However, that case involved separate prosecutions for summary and court offenses, where Double Jeopardy has often been applied. It has no application to mistrials declared because of deadlocked juries.

b) Prosecutorial Misconduct:

Unlike practice in federal courts, Pennsylvania does not limit Double Jeopardy application to conduct that provokes a defendant into moving for a mistrial. *Commonwealth v. Daidone*, 453 Pa. Super. 550, 684 A.2d 179 (1996). Egregious conduct will suffice to bar retrial.

No such conduct occurred in this case.

All of defendant's allegations involve matters with which this court dealt prior to trial. Some matters were handled by Judge John D. Kuhn and some by the undersigned. When the case was transferred to this judge, Anthony Miley, Esq., the public defender then representing defendant, was attempting to withdraw from the case. He cited several reasons, including differences of opinion about trial strategy and the fact that defendant no longer qualified for public defender services. After a month's continuance, Mr. Miley was allowed to withdraw after it was determined that a former member of the Public Defender's office represented Daniel Thompson, a prosecution witness, in parole revocation proceedings. As the order of May 13, 1997, indicates, the witness was given a break in return for agreeing to testify against defendant. Defendant was clearly aware of this fact. However, by the time trial occurred, a parole violation by the witness landed him back in jail and he lost all benefits of his earlier agreement. The District Attorney was careful to accurately argue what had occurred, that the deal had gone sour and Mr. Thompson lost that particular incentive to testify favorably for the prosecution.

Another area of disagreement between Mr. Miley and defendant related to a rape kit. It was revealed that a local physician, Dr. Dufendach, thought he detected the presence of spermatozoa, but later examination by the Pennsylvania State Police laboratory failed to

confirm this. Mr. Miley sought and was granted full discovery concerning this matter. Defendant refused to accept the laboratory results, arguing that Dr. Dufendach's gross examination showed evidence destruction or tampering. No such inference may be drawn. Mr. Miley represented to the court, when his request to withdraw came before us, that he had done all he could and could not, in good conscience, accede to defendant's requests to pursue the matter further.

All of defendant's requests for discovery were allowed, except for material statutorily protected. The District Attorney did not and does not control records maintained by Adams County Children and Youth. The agency was represented by its solicitor, Chester G. Schultz, Esq., when defense counsel's request for those records was litigated. We were made to understand that defendant was ultimately given liberal access to those records. Nothing indicates that relevant information was withheld.

In short, defendant's Double Jeopardy brief recited only matters that had previously been considered and found lacking in merit.

Strangely, defendant cited *Commonwealth v. Russell*, 445 Pa. Super 510, 665 A.2d 1239 (1995), alloc. dn. 544 Pa. 628, 675 A.2d 1246 (1996),¹ for a holding that withholding information concerning a witness's plea arrangement prevented retrial. In point of fact, the Russell court affirmed a conviction and refused to characterize conduct as having been intentionally undertaken to deprive Mr. Russell of a fair trial.

The record makes it clear that no conduct in which Commonwealth engaged sank to the level of triggering Double Jeopardy provisions.

The undersigned again emphasizes that he expresses no opinion about defendant's right to appeal. Even so, he thinks it abundantly clear that certifying this case for appeal will not materially aid in its ultimate disposition. In fact, all that will be accomplished will be further delay.

¹ Since our citation differs from that recited in defendant's brief, there is a slim possibility that defense counsel meant to name a different decision. A more likely explanation is that counsel's citation came from Shepard's, which actually referred to *Commonwealth v. Cleveland*, consolidated with *Russell* in the Superior Court opinion. Allocatur was denied in each of the two cases, but on different dates.

STERNER, ET UX. VS. INLAND CONTAINER CORPORATION, ET AL.

1. In order to gain protection under 42 Pa.C.S.A. §5536 (a) a party must prove: (1) an improvement to real property; (2) more than 12 years have elapsed between the completion of the improvement to the real property and the injury; and (3) the activity of the moving party is within the class protected by the Statute of Repose.

2. Pennsylvania Courts have traditionally held that 42 Pa.C.S.A. §5536 is a statute of repose.

3. A statute of repose differs from a statute of limitations in that it does not merely bar Plaintiff's right to remedy but instead completely abolishes the cause of action.

4. Statutes of limitation are procedural devices which bar recovery on a viable cause of action whereas statutes of repose are substantive in nature because they extinguish a cause of action and preclude its revival.

5. A clear reading of the language in 42 Pa.C.S.A. §5536 demonstrates that no claim for indemnification or contribution may be raised against a party protected under the statute.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-692, JOHN M. STERNER AND ELEANOR R. STERNER VS. INLAND CONTAINER CORPORATION, ANDERSON BOX COMPANY, A. R. BARNES, INC. T/D/B/A H.B. & H. CONTRACTORS AND ALFRED R. BARNES, TIMOTHY F. CROSBY AND HERSHEY EQUIPMENT COMPANY.

Joseph M. Melillo, Esq., for Plaintiffs

Henry O. Heiser, III, Esq., for Defendants Inland Container and Anderson Box Co., Inc.

Jeffrey B. Rettig, Esq., for Defendants A. R. Barnes, Inc. t/d/b/a H.B. & H. Contractors and Alfred R. Barnes

Michael B. Scheib, Esq., for Defendant Hershey Equipment Company

OPINION ON HERSHEY EQUIPMENT COMPANY'S MOTION FOR SUMMARY JUDGMENT

Kuhn, J., October 28, 1997

On August 3, 1994, Plaintiffs John and Eleanor Sterner initiated this lawsuit by Writ of Summons against Defendants, Inland Container Corporation, Anderson Box Company, Inc., A.R. Barnes, Inc. t/d/b/a H.B. & H. Contractors, Alfred R. Barnes, Timothy F. Crosby, and Hershey Equipment Company. Plaintiffs filed their Complaint on December 1, 1994. Hershey Equipment Company ("Hershey") has filed a Motion for Summary Judgment.

STATEMENT OF FACTS

It has been alleged that Anderson Box Company, Inc. ("Anderson") leased a warehouse from Plaintiffs on September 29, 1989 that was

originally constructed by Hershey in 1979. Anderson assigned its rights under the lease to Inland Container Corporation ("Inland"). On August 6, 1992, Plaintiffs were notified that a portion of the warehouse wall had collapsed. Within the same month Inland notified Plaintiff that it was terminating the lease.

LEGAL DISCUSSION

Hershey argues that it is immune from suit under 42 Pa.C.S.A. §5536. Section 5536 reads, in pertinent part, as follows:

(a) General Rule. - Except as provided in subsection (b), a civil action or proceeding brought against any person lawfully performing or furnishing the design, planning, supervision or observation of construction, or construction of any improvement to real property must be commenced within 12 years after completion of construction of such improvement to recover damages for:

- (1) Any deficiency in the design, planning, supervision or observation of construction or construction of the improvement.
- (2) Injury to property, real or personal, arising out of any such deficiency.
- (3) Injury to the person or for wrongful death arising out of any such deficiency.
- (4) Contribution or indemnity for damages sustained on account of any injury mentioned in paragraph (2) or (3).

42 Pa.C.S.A. § 5536(a).

In order to gain protection under this statute a party must prove: (1) an improvement to real property; (2) more than 12 years have elapsed between the completion of the improvement to the real property and the injury; and (3) the activity of the moving party is within the class protected by the Statute of Repose. *McConnaughey v. Building Components Inc.*, 536 Pa. 95, 99, 637 A.2d 1331,1333 (1994). Hershey has sufficiently set forth these elements in its Motion and Plaintiffs are not opposed. Hershey is therefore dismissed from Plaintiffs' suit.

Defendants, Inland and Anderson, assert that Section 5536 does not apply to their cross claim for indemnification. They argue that the statute of repose has no effect on their cross claim because an indemnification action is distinct from the underlying cause of action. Defendants rely further on case law analyzing the relationship between a statute of limitation on an original action and a claim for indemnifi-

cation. In *Kitchen v. Borough of Grampion*, 421 Pa.464, 466, 219 A.2d 685, 686 (1966) (citations omitted), our Supreme Court held that “[t]he fact that the statute of limitations will bar plaintiff from a direct recovery against the additional defendant can have no effect on the defendant’s right to enforce his claim of contribution or indemnity.”

Recently, the Pennsylvania Supreme Court has granted a petition for allowance of appeal in *Vargo v. Koppers Company Inc.*, 452 Pa. Super. 275, 280, 681 A.2d 815, 818 (1996), appeal granted, 695 A.2d 412 (1997), on the issue of whether 42 Pa.C.S.A. § 5536 can be considered a statute of repose or a statute of limitations. However, Pennsylvania Courts have traditionally held that 42 Pa.C.S.A. § 5536 is a statute of repose. See, e.g., *Vargo v. Koppers Company Inc.*, 452 Pa. Super. 275, 280, 681 A.2d 815, 818 (1996), appeal granted, 695 A.2d 412 (1997), *Altoona Area School Dist v. Campbell*, 152 Pa. Commw.131, 142, 618 A.2d 1129,1134, (1992); *Alloc dn.* 631 A.2d 1010.

A statute of repose differs from a statute of limitations in that it does not merely bar Plaintiffs right to remedy but instead completely abolishes the cause of action. *Vargo v. Koppers Company Inc.*, 681 A.2d at 818. “[S]tatutes of limitation are procedural devices which bar recovery on a viable cause of action, whereas statutes of repose are substantive in nature because they extinguish a cause of action and preclude its revival.” *Altoona Area School Dist. v. Campbell*, 618 A.2d at 1132.

However, this distinction is not dispositive of the issue at hand. A clear reading of the language in 42 Pa.C.S.A. § 5536 demonstrates that no claim for indemnification or contribution may be raised against a party protected under the statute. Section 5536(a)(4) by its express language precludes both Inland and Anderson from filing a civil action against Hershey seeking indemnification for damages to real or personal property caused by Hershey’s alleged deficient construction of the subject building unless said action is filed within 12 years after completion of the construction. None of the claims filed against Hershey by Defendants, Inland or Anderson are timely.

Accordingly, the attached Order is entered.

ORDER

AND NOW, this 28th day of October 1997, Defendant Hershey Equipment Corporations’ Motion for Summary Judgment is hereby granted.

charges for use or sale of, or loan payments for the financing of, the project; (vi) the setting aside of reserves or sinking funds and the regulation and disposition thereof; (vii) limitations on the issuance of additional bonds; (viii) the terms and provisions of any deed of trust, mortgage or indenture securing the bonds, or under which the same may be issued, and (ix) any other or additional agreements with the holders of the bonds.

T. The Authority may enter into any deeds of trust, indentures, mortgages, or other agreements, with any bank or trust company, including any Federal agency, as security for such bonds, and may assign and pledge the assets or all or any of the revenues or receipts of the Authority thereunder. Such deed of trust, indenture, mortgage or other agreement, may contain such provisions as may be customary in such instruments, or as the Authority may authorize, including (but without limitation) provisions as to (i) the acquisition of any project and the duties of the Authority and the project applicant or project user with reference thereto; (ii) the application of funds and the safeguarding of funds on hand or on deposit; and (iii) the rights and remedies of the trustee and the holders of the bonds, (which may include restrictions upon the individual right of action or such bondholders); and (iv) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

7. The Authority shall have no power at any time or in any manner to pledge the general credit or taxing power of the Commonwealth of Pennsylvania, the County of Adams, or any other political subdivision, except, however, to the extent a project applicant pledges any such credit or taxing power to the Authority with respect to a public project, and the obligations of the Authority shall be limited as provided in 73 P.S. §377.(a). The bonds of the Authority shall on the face thereof clearly set forth the foregoing limitation. In addition, the Authority shall have no power to:

A. Acquire or finance the acquisition of a project which shall cause the removal of a plant, facility or other business from one area of this Commonwealth to another area of this Commonwealth, unless the Secretary has found that relocation of the plant, facility or other business is necessary in order for the plant, facility or other business to remain competitive or to prevent the plant, facility or other business from leaving this Commonwealth.

B. Enter into any agreement to finance the acquisition of a project in excess of the cost of the project.

C. Engage in business, trade or commerce for a profit as an owner or lessee of a project, or otherwise.

D. Finance any project which will be used in whole or in part for illegal activities.

E. Finance any project which is not located within this Commonwealth.

IN WITNESS WHEREOF, the County, by its duly elected and incumbent Commissioners, has duly executed and adopted the present Articles of Incorporation of the "Adams County Industrial Development Authority", this 19th day of August, 1998.

ATTEST:
Brenda J. Constable Chief Clerk
COUNTY OF ADAMS
ADAMS COUNTY COMMISSIONERS
Thomas J. Weaver, Chairman
Harry Stokes, Commissioner
Thomas L. Collins, Commissioner

3. Notice of adoption of the present Resolution shall be duly published and advertised in accordance with the requirements of the Act, in The Gettysburg Times and the Adams County Legal Journal, one (1) time, which Notice, inter alia, shall state that on a day certain, not less than three (3) days after publication of said Notice, Articles of Incorporation of the Authority will be filed with the Secretary of the Commonwealth of Pennsylvania.

4. This Resolution shall be effective immediately.

IN WITNESS WHEREOF, the County, by its Commissioners, has duly adopted the present Resolution this 19th day of August, 1998.

ATTEST:
Brenda J. Constable Chief Clerk
COUNTY OF ADAMS COUNTY
COMMISSIONERS
Thomas J. Weaver
Harry Stokes, Commissioner
Thomas L. Collins, Commissioner

A true and correct copy of the above Resolution may be examined without charge or obtained for a charge not greater than the cost thereof at the Adams County Commissioners' Office, Second Floor, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Adams County, Pennsylvania 17325, during regular business hours (Monday - Friday, 8:00 a.m. - 4:30 p.m.).

COUNTY OF ADAMS
ADAMS COUNTY COMMISSIONERS
Thomas J. Weaver, Chairman
Harry Stokes, Commissioner
Thomas L. Collins, Commissioner
Brenda J. Constable, Chief Clerk
John R. White, Solicitor
8/28

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

In re: Estate of Lillian E. Carr, late of York County, Pennsylvania, an incompetent No. OC-73-90 First and Final Account of Adams County National Bank, guardian.

NOTICE

NOTICE IS HEREBY GIVEN that Adams County National Bank, Guardian of the Estate of Lillian E. Carr, an incompetent, has filed its First and Final Account and Proposed Schedule of Distribution in the Office of the Clerk of Courts of Common Pleas of Adams County, Pennsylvania, Orphans' Court Division, and that the same will be presented to said Court for confirmation of the Account September 10, 1998, at 9:00 o'clock a.m., at the Adams County Courthouse, Gettysburg, Pennsylvania.

Peggy J. Braighner
Clerk of said Court
Bulleit, Schultz & Thrasher
Attorneys

8/21 & 28

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on June 15, 1998 a certificate was filed under the Fictitious Name Act approved December 16, 1982, in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Michael E. Braighner, 14 Cherry Court, New Oxford, PA 17350 is the only person(s) owning or interested in a business, the character of which is planting, cultivation and sale of trees and that the name, style and designation under which said business is and will be conducted is F.E.B. ESTATE QUALITY TREES and the location where said business is and will be located is 14 Cherry Court, New Oxford, PA 17350.

Alan M. Cashman, Esquire
Solicitor

8/28

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, PA of an application for registration under the Fictitious Name Act. The name of the business is WEIKERT'S MEAT MARKET with its principal place of business at 285 South Franklin Street, Gettysburg, Pennsylvania. The owner of the business is The General's Beef Jerky Company, 285 South Franklin Street, Gettysburg, Pennsylvania.

Teeter, Teeter & Teeter
Robert G. Teeter

8/28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-513 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of September, 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 that lot of ground situate on the east side of North Queen Street, in the Borough of Littlestown, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point on the inside line of the sidewalk on the East side of North Queen Street aforesaid at other lands now or formerly of Lorraine A. Mellott; thence by said lands and through a center line of the center wall of double dwelling (the southern portion of which double dwelling is on the lot hereby conveyed) North 60 degrees 18 minutes East, 184.5 feet to a point on the western side of a 20 feet alley; thence by said alley South 29 degrees 42 minutes East, 29.4 feet to a point at land now or formerly of P. Emory Weaver; thence by said lands South 60 degrees 18 minutes West, 184.5 feet to a point on the inside line of the sidewalk aforesaid; thence along the inside line of the sidewalk North 29 degrees 42 minutes West, 29.4 feet to a point, the place of BEGINNING.

BEING KNOWN AS 327 North Queen Street

Tax I.D. No. 5-51A

Title to said premises being vested in Roland W. Rode and Barbara E. Rode by Deed from Albert J. Stothard and Kristi K. Stothard, Dated 10/25/1991, Recorded in Deed Book 603, Page 756 10/25/1991.

SEIZED and taken into execution as the property of **Roland W. Rode Jr. and Barbara E. Rode** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
August 1, 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 October 19, 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.

8/28, 9/4 & 11

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF BETTY ANN ALEXANDER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Hugh L. Alexander, 4330 Fairfield Road, Fairfield, PA 17320

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

ESTATE OF JOHN I. KENNEDY, JR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administratrix: Melva L. Kennedy, 693 Grant Drive, Gettysburg, PA 17325

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

ESTATE OF RAY J. KITZMILLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Thomas L. Kitzmiller, 33 Ford Avenue, Wharton, NJ 07885; Richard L. Kitzmiller, 6316 Flamingo Drive, Apollo Beach, FL 33572; Kenneth R. Kitzmiller, RR2 Box 29, Middlebury Center, PA 16935

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF STEPHANIE OLSZEWSKI MOHRHOFF, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Chester S. Mohrhoff, 726 West Mountain Road, Sparta, NJ 07871

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

ESTATE OF ABBIE A. TRONE A/K/A ABBIE A. MURREN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robert H. Trone, 124 Artillery Drive, Gettysburg, PA 17325

Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VERA M. WOODWARD, DEC'D

Late of 30 Penn Street, Biglerville,

Adams County, Pennsylvania

Executrix: E. Grace Hassler, 572 Kraiss Avenue, Chambersburg, PA 17201

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

SECOND PUBLICATION

ESTATE OF JOAN L. BAILEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Nancy B. Seetoo, c/o Donald L. Kornfield, 17 North Church Street, Waynesboro, PA 17268

Attorney: Donald L. Kornfield, 17 North Church Street, Waynesboro, PA 17268

ESTATE OF GENEVIEVE SUSAN MECKLEY, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executor: Carl O. Meckley, c/o Peter J. Mangan, Esq., 39 E. King Street, York, PA 17401

Attorney: Peter J. Mangan, 39 E. King Street, York, PA 17401

THIRD PUBLICATION

ESTATE OF KARL GABEL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Lawrence L. Gamber, II, 218 DeGuy Avenue, Hanover, PA 17331

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

ESTATE OF JOHN M. STAUFFER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Joan C. Kump, 1897 Heidlersburg Road, Aspers, PA 17304

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

ESTATE OF ROLAND S. STEPHAN, DEC'D

Late of 304 Benning Avenue, Gettysburg, Adams County, Pennsylvania

Executrix: Claudia J. Stephens, 5691 Bossler Road, Elizabethtown, PA 17022

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

ESTATE OF LESTELLA M. THIERET, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Irene T. Shutts

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

ESTATE OF EILEEN G. WILT, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Edward Wilt

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

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
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