

Adams County Legal Journal

Vol. 40

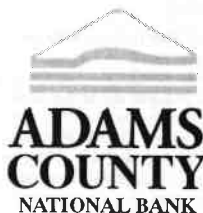
December 4, 1998

No. 28, pp. 173-174

IN THIS ISSUE

MANN
VS.
MANN

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336
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-533 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 December, 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 land situate in Liberty Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a nail in the center of a public road at corner of land now or formerly of David C. Tressler and wife, said road being Cove Haven Road; thence in said road, South 5 degrees 44 minutes West 340.40 feet to a nail in the road; thence in said road, South 25 degrees 33 minutes West 72.80 feet to a nail in road at land now or formerly of Clyde McClean; thence in a stone row to creek and passing a stream by said McClean land, North 51 degrees 1 minute 5 seconds West 436.13 feet to an existing iron pin; thence by land now or formerly of Earl Harbaugh, North 35 degrees 30 minutes East 244.50 feet to an iron pin; thence by land now or formerly of David C. Tressler and wife, and through an iron pin at an 18-inch red oak set back 11.40 feet from the end of this line, South 75 degrees 15 minutes 45 seconds East 271.38 feet to a nail in the road, the place of BEGINNING. CONTAINING 2.588 acres.

This description taken from draft of survey prepared by Harry Knox, Registered Surveyor, and being known as Lot No. 1-A on said draft; subdivision plan recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, on March 11, 1977, in Plat Book 13 at Page 41.

TOGETHER WITH the right to use a 20-foot right-of-way which follows the northwestern boundaries herein described in a general direction as now visible by inspection on said premises.

IT BEING the same premises which Martin A. Hardman and Beulah M. Hardman, husband and wife, by deed dated July 17, 1979 and recorded the same date in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 346-520, granted and conveyed unto Clyde J. Marsh and Margaret V. Marsh.

Tax Map B-18, Parcel 1-A.

SEIZED and taken into execution as the property of **Clyde J. Marsh & Margaret V. Marsh** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
September 5, 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 January 11, 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.

11/20 & 25, 12/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-396 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of January, 1999, 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 the following described tract, piece or parcel of land, situate, lying and being in the Borough of McSherrystown, County of Adams, State of Pennsylvania, bounded and limited as follows, to wit:

BEGINNING at a point on the North side of North Street at corner of Oxford Avenue; Thence along North Street, South 60 degrees, 40 minutes West, 161.5 feet to a 16 feet wide alley; Thence along said alley North 30 degrees 45 minutes West, 68.5 feet to lands now or formerly of Bessie M. Spies; Thence North 53 degrees, 35 minutes East, 162.05 feet to Oxford Avenue; Thence along the said Oxford Avenue South 30 degrees, 22 minutes East, 71.75 feet to the place BEGINNING.

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

Recorder of Deeds Office of Adams County, Pennsylvania, in Misc. Book 5, Page 842.

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

Seized in execution as the property of Dennis Charles Rishel a/k/a Dennis C. Rishel and Denise M. Rishel.

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 3, 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 February 1, 1999, 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.

11/20, 25 & 12/ 4

MANN VS. MANN

1. The test for disqualification of an attorney is not whether there is a conflict of interest, but whether there is a possibility of such conflict.
2. It is clear that a lawyer may not undertake representation adverse to a former client in a matter substantially related to one in which the attorney previously represented the party.
3. Confidential information acquired by one member of a law firm is imputable to other members.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil Action No. 92-S-468, WALTER MANN VS. TAMMY MANN.

Jeffery M. Cook, Esq., for Defendant
Pro Se, Plaintiff

MEMORANDUM OPINION

Spicer, P.J., December 15, 1997.

Plaintiff, who is a prisoner housed in a state correctional institution, seeks to disqualify defendant's counsel, Jeffrey Cook, Esq. Mr. Cook, in addition to being engaged in the general practice of law in this County, is also its Public Defender. Another member of the defender's office represented plaintiff in the criminal case that resulted in his incarceration. Plaintiff argues that Mr. Cook may have access to information garnered in the criminal case that could damage plaintiff's claim for partial custody. He makes a similar argument concerning a domestic relation proceeding.

Mr. Cook responds that he has no access to plaintiff's domestic relation file, and will not obtain any information from the public defender's file. The former position is unquestionably correct, since the Public Defender's office does not provide representation for support defendants.

Rules governing disqualification have been expressed in a number of cases. The test is not whether there is a conflict of interest, but whether there is a possibility of such conflict. It is clear that a lawyer may not undertake representation adverse to a former client in a matter substantially related to one in which the attorney previously represented the party. If counsel has acquired confidential information related to the subject matter of the second representation, he may not undertake representation. Confidential information acquired by one member of a firm is imputable to other members. Estate of Pew, 440 Pa. Super. 195, 655 A.2d 521 (1995). Triffin v. DiSalvo, 434 Pa. Super. 326, 643 A.2d 118 (1994), alloc. dn. 541 Pa. 627, 661 A.2d 874 (1995).

It is clear that Mr. Cook's assertion that he will not utilize information in the Public Defender's file does not insulate him from disqualification. It is equally clear, however, that representation of a wife and mother in divorce and custody proceedings is not substantially related to the criminal charges for which defendant was incarcerated. Thus, the only question is whether the Defender's file contained confidential information which would be detrimental to defendant's interest in this custody case. Normally, we would assume the presence of such information just because defendant has suggested it. However, it is difficult to believe that the criminal file contains anything that can be used in the present case. Of course, there is the fact of defendant's incarceration, but that is hardly confidential.

The undersigned will not be hearing the custody matter. That being so, we think a possible resolution would be to deny the request without prejudice to plaintiff either authorizing the undersigned to review the Defender's file, or providing the undersigned with more specific information about the nature of information that might possibly be involved.

ORDER OF COURT

AND NOW, this 15th day of December, 1997, plaintiff's request to disqualify Jeffrey Cook, Esq., as attorney for the defendant, is denied without prejudice to plaintiff renewing the request and either 1), authorizing the undersigned to review plaintiff's criminal file in the Public Defender's office, or 2), providing the undersigned with more specific information about any confidential information acquired by the Public Defender's office that might be germane to the pending case.

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 ALLEN WARD LARSON, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Administrator: Lee Ann Larson, 126 Artillery Drive, Gettysburg, PA 17325
 Attorney: Puhl & Eastman, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ROBERT H. SHRIVER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executor: PNC Bank, NA, 10 York Street, Gettysburg, PA 17325
 Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF BERNICE E. CULLISON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Administrator: Nelson G. Mattingly, 503 Bentwood Lane, York, PA 17404
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF BETTY C. GASS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: John W. Gass, 110 Pleasant View Dr., Strasburg, PA 17579
 Attorney: G. Steven McKonily, 119 Baltimore Street, Hanover, PA 17331

ESTATE OF KIMBERLY A. KORNBAU, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania
 Administrator: Kevin L. Kornbau, 105 Curtis Drive, East Berlin, PA 17316
 Attorney: Daniel Carn, Esq., 98 South George St., Suite 210, York, PA 17401

ESTATE OF DOROTHY M. RHOADS, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executrix: Joyce A. Albright, 420 Oxford Road, Gardners, PA 17324
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF ROBERT S. PITTMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Administratrix: Anna M. Pittman, 95 Walker Avenue, Gettysburg, PA 17325
 Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ERNEST W. WOLFE, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
 Executors: David J. Topper, 60 Hickory Bridge Road, Orrtanna, PA 17353; Teresa L. Fowler, 925 Old Waynesboro Road, Fairfield, PA 17320
 Attorney: Edward G. Puhl, Esq. Puhl & Eastman, 16 Lincoln Square, Gettysburg, PA 17325

IN THE COURT
OF COMMON PLEAS
ADAMS COUNTY, PENNSYLVANIAACTION TO QUIET TITLE
NO. 98-S-117

JOHN C. ERB

vs.

ROBERT C. MAHONEY and
ETTA K. MAHONEY, their Executors,
Administrator, Heirs and Assigns.TO: ROBERT C. MAHONEY AND ETTA
K. MAHONEY, their Executors, Admin-
istrators, Heirs and Assigns

NOTICE OF PUBLICATION

The above captioned Complaint has been filed by John C. Erb which seeks to have a mortgage dated August 16, 1971, filed in the Office of Recorder of Deeds of Adams County, Pennsylvania in Mortgage Book 39, page 908 referenced to lands located in Straban Township, Adams County, Pennsylvania in favor of Defendants marked satisfied of record.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

County Referral Officer
 Adams County Courthouse
 Gettysburg, PA 17325
 PH: (717) 334-6781

12/4

NOTICE

PURSUANT to the October 18, 1998 Order of the Court of Common Pleas of Adams County, Pennsylvania, NOTICE IS HEREBY GIVEN that Raymond Newman, Sheriff of Adams County, has filed a Petition in the Court of Common Pleas of Adams County to dispose of the following weapons and ammunition (case no. 98-S-1023):

1. Topper Jr. Model 490, 410-Gauge Hand Gun 2. R. G. 63 Rohm 38 Caliber 4-in Revolver 3. Titan 25-Caliber Automatic Revolver 4. Astra 9MM Semi-Automatic Revolver 5. 2 Colt Cobra 2 inch Airweight Revolvers 6. Ruger Blackhaws 357 Magnum 4 inch Revolver 7. 1 H&R Sportsman 22 Caliber Revolver Model 999 8. RTS Starater Pistol 9. Smith & Wesson 2 inch 32 Special 10. 2 380 Cal. Colt Clips 11. Stoeger Arms Co. 22 Cal. L.R 12. David Industries, Model P-32 Cal. 13. Smith & Wesson 38 Cal. Revolver 14. R/G 38 Cal. Revolver 15. Beretta 22 Cal. LR Pistol - Model 948 16. Derringer Model D 38 Caliber 17. Browning Double Action Shotgun - 12 gauge 18. Mossberg 500A - 12 Gauge Riot Gun 19. Winchester Model 94 Lever Action 30-30 Rifle 20. Stevens Model 73 22-Caliber Single Shot Rifle 21. Winchester 30-30 22. Mossberg 20 gauge 23. Revelation 410 gauge 24. Marlin 22 Caliber 25. Winchester Model 94 lever action 30-30 26. Commemorative Winchester Model 94 Lever Action 30-30 Rifle 27. American Gun - 12 Gauge 28. 30 rounds 33 caliber 29. 15 rounds 30/30 caliber-Western Super X 30. 26 rounds 380 caliber - in bag 31. 41 rounds 380 caliber - in box 32. 1 round 16 gauge shotshell 33. 1 round 20 gauge shotshell

Any person claiming an ownership interest in any of the above weapons or ammunition should contact the Sheriff of Adams County at (717) 337-9828, go to the Sheriff's office located on the lower level of the Adams County Courthouse, 111 Baltimore Street, Gettysburg, Pennsylvania, contact the attorney for the Sheriff as listed below, or appear at the hearing of this motion on **December 21, 1998 at 9:00 a.m.** at the Adams County Courthouse. Any such claimant should bring with him or her any proof of ownership he or she may have.

Wendy Weikal-Beauchat, Esq.
 116 Baltimore Street
 Gettysburg, Pennsylvania 17325
 (717) 334-4515
 Solicitor to the Adams County Sheriff

11/20, 25 & 12/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-670 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of January, 1999, 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 Mount Joy Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a P.K. nail in the center line of Pennsylvania Route 97, said P.K. nail being South 52 degrees 15 minutes 00 seconds East, 384 feet, more or less from corner of land now or formerly of James Martin; thence in said center line of Pennsylvania Route 97, South 52 degrees 15 minutes 00 seconds East, 478.40 feet to a P.K. nail in said center line at corner of other land now or formerly of John P. Randall; thence by said other land of John P. Randall and passing through U.T.C. Pole #96 set back 23 feet from the last mentioned point, South 29 degrees 30 minutes 00 seconds West, 463.00 feet to a steel fence post; thence by same, North 52 degrees 15 minutes 00 seconds West, 478.40 feet to a pipe; thence continuing by same, and passing through U.T.C. #94, set back 25.00 feet from the next mentioned point, North 29 degrees 30 minutes 00 seconds East, 463.00 feet to a P.K. nail, the place of BEGINNING. CONTAINING 5.032 Acres.

The above description was taken from a draft survey prepared by Adams County Surveyors, dated April 26, 1979, as recorded in Adams County Plat Book 28 at page 35.

BEING the same premises which Clarence C. Hawkins, Sr. and Kay F. Hawkins, husband and wife, by Deed dated August 9, 1989 and recorded August 9, 1989 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 530, Page 557, granted and conveyed to Barry N. Poole and Kelly A. Poole, husband and wife, Debtors herein.

TAX PARCEL NO.: MP H15-47

SEIZED and taken into execution as the property of **Barry N. Poole & Kelly A. Poole** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 10, 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 February 1, 1999, 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.
11/25, 12/4, & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-97 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of January, 1999, 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 THE RIGHT, title, interest and claim of Cheryl J. Shew of, in and to the following described property:

All the following described real estate situated in Carroll Valley Borough, Adams County, Commonwealth of Pennsylvania, lots numbered 148, 149, 150, and 201, Sec. B, Charrnita Inc., having erected thereon a dwelling known and numbered as 29 Meadowlark Trail, Fairfield, PA 17320. DBV 445, page 955. Map No. 29-158.

SEIZED and taken into execution as the property of **Cheryl J. Shew** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 10, 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 February 1, 1999, 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.
11/25, 12/4, & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-998 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of January, 1999, 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 the right, title, interest and claim of Darrell Lee Schaffner and Tina Denise Schaffner, of, in and to the following described property:

ALL THE FOLLOWING described real estate situated in the township of Mt. Joy, Adams County, and Commonwealth of Pennsylvania. Having erected thereon a dwelling being known and numbered as 963 Johnson Drive, Gettysburg, Pennsylvania 17325. Deed book volume 1160, page 134, and parcel #11-34A.

SEIZED and taken into execution as the property of **Darrell Lee & Tina Denise Schaffner** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 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 February 8, 1999, 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.

12/4, 11, 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-1148 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of January, 1999, 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 the right, title, interest and claim of Robert W. Kleine and Mable N. Kleine, in and to the following described property:

ALL THE FOLLOWING described real estate situated in the township of East Berlin, County of Adams and Commonwealth of Pennsylvania. Having erected thereon a dwelling known as 355 Kuhn Fording Road, East Berlin, PA 17361 DBV 962, PG 245., Parcel No. L8-2A.

SEIZED and taken into execution as the property of **Robert W. Kleine & Mable N. Kleine** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 10, 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 February 8, 1999, 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.

12/4, 11, 18

Adams County Legal Journal

Vol. 40

December 11, 1998

No. 29, pp. 175-186

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, December 21, 1998, at 9:00 o'clock a.m.

HUFNAGLE—Orphans' Court Action Number OC-123-98. The First and Final Account of Peter T. Hufnagle and Julia Ann Neiderer, surviving Co-Executors of the Estate of Frances A. Hufnagle, deceased, late of Conewago Township, Adams County, Pennsylvania.

ELDERDICE—Orphans' Court Action Number OC-124-98. The First and Final Account of Elizabeth E. Reichard, Personal Representative of the Estate of Lloyd M. Elderdice, deceased, late of Oxford Township, Adams County, Pennsylvania.

SHEARER—Orphans' Court Action Number OC-88-98. The First and Final Account of Adams County National Bank, Executor of the Estate of Eva S. Shearer, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

KADEL—Orphans' Court Action Number OC-127-98. The First and Final Account of William T. Poole, Jr., Executor of the Estate of Lois Kadel, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

KAUFFMAN—Orphans' Court Action Number OC-128-98. The First and Final Account of Adams County National Bank, Executor of the Estate of Frederick G. Kauffman, deceased, late of Butler Township, Adams County, Pennsylvania.

BIGELOW—Orphans' Court Action Number OC-71-98. The First and Final Account of Rita Marie Gibbons and Lois Morningred, Administrators c.t.a. of the Last Will and Testament of Grace L. Bigelow, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

BERWAGER—Orphans' Court Action Number OC-134-98. The First and Final Account of Donald L. Berwager, Executor of the Estate of Phoebe A. Berwager, deceased, late of Oxford Township, Adams County, Pennsylvania.

KNOX—Orphans' Court Action Number OC-135-98. The First and Final Account of Adams County National Bank, Executor of the Estate of Harry I. Knox a/k/a Henry Isaac Knox, deceased, late of

Cumberland Township, Adams County, Pennsylvania.

STERNER—Orphans' Court Action Number OC-136-98. The First and Final Account of Adams County National Bank, Executor of Estate of Gladys M. Sterner, deceased, late of Fairfield Borough, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk Of Courts

12/11 & 18

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 98-S-1103
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN,
Plaintiff,

vs.

CHARNITA, INC., its successors and
assigns, Defendant.

TO: CHARNITA, INC., its successors
and assigns

TAKE NOTICE that on November 9, 1998, Lawrence E. McGlaughlin, filed a Complaint in Action to Quiet Title, against Charnita, Inc., its successors and assigns, averring that Lawrence E. McGlaughlin is the owner of the real property described herein. The Complaint requests the Court to extinguish any possible interest you may have in said real estate. The subject property is land situate in Carroll Valley, Adams County, Pennsylvania, being more particularly bounded and described as follows:

1. Lot No. 45 in Section F, Charnita Area, as shown on the records of the Adams County Mapping Department in Plat Book 1 at Page 50.

BEING THE SAME WHICH Richard L. Scholl and Ruth T. Scholl, his wife, by deed dated February 4, 1972, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 298 at Page 695, sold and conveyed unto Charnita, Inc.

2. Lot No. 46 in Section F, Charnita Area, as shown on the records of the Adams County Mapping Department in Plat Book 1 at Page 50.

BEING PART OF THE SAME WHICH Ellis L. & Margaret L. Stine, by deed dated July 2, 1965, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 251 at Page 949, sold and conveyed unto Charnita, Inc.

3. Lot No. 47 in Section F, Charnita Area, as shown on the records of the Adams County Mapping Department in Plat Book 1 at Page 50.

BEING PART OF THE SAME WHICH Ellis L. & Margaret L. Stine, by deed dated July 2, 1965, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 251 at Page 949, sold and Conveyed unto Charnita, Inc.

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

WHEREFORE, by Order dated November 12, 1998, the Court Of Common Pleas of Adams County, Pennsylvania, has ordered that service of the Complaint be made on the above Defendant, its successors and assigns, by publication. Plaintiff will request the Court to enter a final judgment ordering that any possible legal interest the Defendant might have had in the property be extinguished.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the Complaint filed in the Adams County Court of Common Pleas at No. 98-S-1103 and described hereinabove, you must take action within **twenty (20) days** after this publication by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested by the Plaintiff. You may lose property or other rights important to you.

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

COURT ADMINISTRATOR
Adams County Courthouse
Gettysburg, PA 17325
717, 334-6781

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

12/11

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

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

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-297 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of February, 1999, 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 land situate, lying and being in Littlestown Borough, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the right-of-way line of South Columbus Avenue at Lot No. 12 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 12, North forty-eight (48) degrees eight (08) minutes twenty-six (26) seconds West, one hundred eighteen and fifty-seven hundredths (118.57) feet to a point on the right-of-way and cartway of Independence Drive as shown on the hereinafter referenced subdivision plan; thence along the right-of-way and cartway of Independence Drive, North forty-one (41) degrees seventeen (17) minutes two (02) seconds East, seventy and fourteen hundredths (70.14) feet to a point at Lot No. 14 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 14, South forty-five (45) degrees forty-one (41) minutes twenty-six (26) seconds East, one hundred twenty and thirty-two hundredths (120.32) feet to a point on the right-of-way line of South Columbus Avenue; thence along the right-of-way of South Columbus Avenue, South forty-two (42) degrees forty-one (41) minutes twenty-two (22) seconds West, sixty-five (65.00) feet to a point, the point and place of BEGINNING. CONTAINING 8,066.66 square feet, 0.18 acres.

The above described lot being designated as Lot No. 13 on the Final Subdivision Plan of "Heritage Hill - Phase 2", prepared by James R. Holley, Registered Professional Surveyor, dated March 10, 1993, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 63 at page 58.

TAX PARCEL NUMBER: 11-188

SEIZED and taken into execution as the property of David A. Holland, Mary

E. Holland, Hank O. Holland & Jesse L. Holland and to be sold by me

Raymond W. Newman Sheriff

Sheriff's Office, Gettysburg, PA July 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 March 1, 1999, 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.

12/11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-391 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of January, 1999, 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 the right, title, interest and claim of Christopher Weaver and Deborah Jones of, in and to:

ALL the following described real estate situated in Mt. Joy Township, Adams County, Pennsylvania. Having erected thereon a dwelling commonly known as 2356 Baltimore Pike, Gettysburg, Pennsylvania 17325. Deed book volume 598, page 587, map G-15, parcel 16-C.

Civil Action No: 98-S-391

SEIZED and taken into execution as the property of Christopher Weaver & Deborah A. Jones and to be sold by me

Raymond W. Newman Sheriff

Sheriff's Office, Gettysburg, PA October 17, 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 February 8, 1999, 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.

12/11, 18, 23

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on October 29, 1998, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is MERCURY METAL SALES, INC.

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

Mercury Metal Sales, Inc. 336 Rt. 194 North Abbottstown, PA 17301

12/11

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that COMMUNITY TRANSPORT, INC. has been organized under the provisions of the Business Corporation Law of 1988 and has filed Articles of Incorporation with the Pennsylvania Department of State.

12/11

LEGAL NOTICE

The Annual meeting of the policyholders of Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M., on January 09, 1999 to elect directors and to transact any other business properly presented.

Attest, Marilyn Q. Butt Secretary-Treasurer

12/11, 18, 23 & 30

SMITH VS. SMITH

1. Recommendations of the master in a divorce proceeding, although entitled to careful consideration, are advisory only; the trial court is required to review the Master's Report, determine if his or her recommendations are appropriate, and enter a final decree.
2. On the issue of credibility, the master's recommendations are given the fullest consideration and his findings will not be disturbed by the Court absent an abuse of discretion.
3. An award of alimony pendente lite is designed to enable the dependent spouse to prosecute or defend a divorce action and to help the dependent spouse maintain the standard of living enjoyed while living with the independent spouse.
4. Alimony pendente lite is to continue after the divorce decree is entered until all appeals have been exhausted.
5. In ruling on a claim for alimony pendente lite, the Court should consider the following factors: the ability of the other party to pay; the separate estate and income of the petitioning party; and the character, situation, and surroundings of the parties.
6. The amount of alimony pendente lite determined from the support guidelines is presumptively valid and that presumption can be rebutted only if the amount of the award would be unjust or inappropriate.
7. In Pennsylvania, a common law marriage is a marriage by express agreement of the parties without ceremony, and usually without a witness, and *verba de praesenti*, uttered with the purpose of establishing a relation of husband and wife.
8. While cohabitation and reputation alone will not suffice to establish a common law marriage, they are relevant factors which a court may consider in determining whether the parties have entered into a common law marriage.
9. Where a relationship is meretricious in its inception, there must be clear evidence of change in status to rebut the presumption that the non-marriage continued after the impediment to marriage was removed.
10. As a general rule, only that portion of the pension attributable to the period commencing with the marriage and ending on the date of separation is marital property.
11. To determine whether to award counsel fees, the Court should consider the payor's ability to pay, the requesting party's financial resources, the value of the services rendered, and the property received in equitable distribution.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 93-S-624, GREGORY E. SMITH VS. VICKIE L. SMITH.

Larry W. Wolf, Esq., for Plaintiff

Scott Alan Mitchell, Esq., for Defendant

OPINION ON EXCEPTIONS TO MASTER'S REPORT

Kuhn, J., December 17, 1997.

On December 2, 1996, the Divorce Master issued his Report to which both parties filed exceptions. Plaintiff, Gregory Smith, filed exceptions on December 11, 1996 and Defendant, Vickie Smith, filed exceptions to the Report on December 20, 1996.

STATEMENT OF FACTS

According to the Master's Report and testimony given at the Master's Hearing, the facts are as follows: The parties began dating in

1988 and began living together in July of 1988. They had many problems and separated at least twice before holding a ceremonial marriage on October 30, 1992. Throughout the time the parties were together, Defendant used various names, including: Vickie Smith, Vickie Lane, and Vickie Lane-Smith. The parties last separated in May of 1993.

Plaintiff filed his original Complaint on July, 21, 1993 to which Defendant filed an answer alleging a common law marriage was established as of January 1, 1990. Defendant later amended her answer to aver that the common law marriage was actually established in September of 1989. At the hearing, Defendant introduced testimony of her friends and family that she often introduced Plaintiff as her husband and that he did not openly object. However, Plaintiff's family testified that the parties never held themselves out as being married and that Defendant confided to Plaintiff's sister that she felt she was "living in sin" as they were not legally married. Additionally, on occasion, Plaintiff referred to Defendant's first child from a prior marriage as his stepdaughter and when Defendant entered the hospital for the birth of the parties' second child, both parties represented themselves as being married.

The parties have two children together, Trisha and Tessie. Upon the birth of Trisha in April of 1989, Defendant had no health insurance and the parties were placed in a financial bind because of the costs. In 1989, Plaintiff placed Defendant on the health insurance coverage provided by his employer and listed her as his girlfriend. In 1990, when Defendant was pregnant with the second child, Plaintiff listed Defendant under his health insurance coverage as his wife. However, Plaintiff provided testimony indicating that his sole purpose in placing Defendant on his insurance as his wife was financial. He believed that the birth could be covered by his insurance only by representing that she was his wife.

At the time of the hearing, May through June of 1995, Defendant worked as a waitress and netted \$140 per week working twenty hours a week. She spent \$80 a week on child care provided by her paramour's mother. In 1993, Defendant filed a voluntary bankruptcy which discharged her debts. When Plaintiff is able to work, he nets \$1,850 per month; however, at the time of the Master's Hearing Plaintiff was experiencing medical problems associated with a collapsed lung and was collecting disability which began in April of 1995 and lasted throughout the Master's Hearing. Records from the parties' case in the Domestic Relations Office, DR-739-91 reveal that Plaintiff returned to work on July 24, 1995. Plaintiff's disability pay netted him \$245 bi-weekly after child support obligations were met.

On December 10, 1991, during one of the parties' separations, Defendant, using the name Vickie L. Lane, filed a custody action against Plaintiff in which she alleged that the children were born "out

of wedlock” and in which she referred to herself and Plaintiff as being “single.” In Defendant’s 1991 Federal and state tax returns she listed herself as “head of household,” indicating her single status.

In February of 1991, Plaintiff acquired a tract of land in Reading Township upon which he wanted to construct a home. He purchased the lot with his own funds and obtained a construction mortgage to build the home. He is the sole mortgagor on the loan.

There were various stipulations at the Master’s hearing, including the following: The parties agreed that if the property in Reading Township was found to be non-marital that they would stipulate there was no increase in the value of the property from the time of the ceremonial marriage until the time of separation. Additionally, the parties agreed that regardless of whether the property was determined to be marital or non-marital, the Plaintiff would “continue to own and occupy the premises and that it would be awarded to him.” (Transcript from Master’s Hearing 10:1-4). The parties also agreed that if alimony pendente lite (“APL”) was awarded to Defendant, the beginning date of the award would be July 7, 1994. The parties further stipulated that the valuation of Plaintiff’s pension plan would be determined as of the date of separation.

LEGAL DISCUSSION

Plaintiff raises the following exceptions to the Master’s Report arguing that the Master erred in: (1) awarding APL to wife; (2) finding that husband’s pension was marital property valued at \$1,949.33; and (3) imposing all of the costs of the hearing on him. Defendant argues that the Master erred in: (1) finding that she had not proven a common law marriage existed before October 30, 1992; (2) finding that Husband paid \$620.00 per month in child support as opposed to the reduced amount he was actually paying; (3) computing APL; (4) not disposing of the pension found to be marital property; (5) not awarding wife attorney’s fees and costs; and (6) finding that the parties stipulated that the residential real estate in Reading Township be taken by husband free and clear of any claim by wife.

When deciding on an appeal from a Master’s Report, the Superior Court has said “A master’s report is entitled to great consideration by, but is not binding upon, the trial court.” *Morschhauser v. Morschhauser*, 357 Pa. Super. 339, 349, 516 A.2d 10, 15 (1986) (citations omitted). “Recommendations of the master in a divorce proceeding, although entitled to careful consideration, are advisory only; the trial court is required to review the Master’s Report, determine if his or her recommendations are appropriate, and enter a final decree.” *Reed v. Reed*, 354 Pa. Super. 284, 289, 511 A.2d 874, 877 (1986). On the issue of credibility however, the master’s recommendations are given the fullest consideration. *McBride v. McBride*, 335 Pa. Super, 296, 298,

484 A.2d 141, 142 (1984). Because the master is in the best position to evaluate the witnesses' credibility the Court will not disturb his findings on credibility absent an abuse of discretion. *Rice v. Rice*, 29 Ad. Co. L. J. 109, 110 (1987).

Plaintiff has argued that awarding APL to Defendant in the amount of \$180 from July 7, 1994 to present was an error because Defendant was unable to prove that a common law marriage existed, thereby prolonging the divorce for many months which, in turn, extended the payment period. Additionally, Plaintiff has argued that there was a delay in the decision by the Master during which he suffered severe health problems making it impossible for him to pay the APL until receipt of an income tax refund. Plaintiff has also argued that Defendant has failed to show economic need.

The law on APL has been summarized by our Superior Court as follows:

“An award of alimony pendente lite is designed to enable the dependent spouse to prosecute or to defend a divorce action.” *DeMasi v. DeMasi*, 366 Pa. Super. 19, 38, 530 A.2d 871, 880 (1987), appeal denied, 517 Pa. 631, 539 A.2d 811 (1988). “It is also designed to help the dependent spouse maintain the standard of living enjoyed while living with the independent spouse.” *Id.* at 38, 530 A.2d at 880. In ruling on a claim for alimony pendente lite, the court should consider the following factors: the ability of the other party to pay; the separate estate and income of the petitioning party; and the character, situation, and surroundings of the parties. *Orr v. Orr*, 315 Pa. Super. 168, 461 A.2d 850 (1983).

Litmans v. Litmans, 449 Pa. Super. 209, 224, 673 A.2d 382, 389 (1996).

Plaintiff has first argued that the wife's claim of a common law marriage prolonged the divorce and extended the payment period. However, our courts have repeatedly held that APL is to continue after the divorce decree is entered until all appeals have been exhausted.

“[A] divorce is not final for purposes of [alimony pendente lite] until appeals have been exhausted and a final decree has been entered... [alimony pendente lite] focuses on the ability of the individual who receives the [alimony pendente lite] during the course of the litigation to defend her/himself, and the only issue is whether the amount is reasonable for that purpose, which turns on the economic resources available to the spouse.”

Spink v. Spink, 422 Pa. Super. 126, 130, 619 A.2d 277, 279 (1992) (citations omitted).

Thus, the purpose of an award of APL is precisely to allow the dependent party to fight or defend the divorce action. The fact that the

party may be unsuccessful in his or her attempts is irrelevant.¹ Thus, although Defendant may have prolonged the divorce by arguing that a common law marriage existed, Plaintiff is not excused from his APL obligations until all matters are exhausted.

Plaintiff has also argued that severe health problems made it impossible for him to pay the APL. However, a close reading of the Master's Report shows that the Master recommended a suspension in the payment of APL for the period during which Plaintiff was disabled and unable to work. Additionally, pursuant to an Order by President Judge Oscar F. Spicer dated March 6, 1997, APL is to be awarded from July 7, 1994, as stipulated by the parties, until the present day, with an exception for the period during which Plaintiff was disabled. Judge Spicer listed this suspension of APL as being from April of 1995 until July of 1995. As this Order was not appealed from, this suspension period will stand.

Plaintiff's last argument is that Defendant has failed to show economic need. As set forth above, in considering an award of APL, the court must consider the "ability of the other party to pay; the separate estate and income of the petitioning party; and the character, situation, and surroundings of the parties." *Orr v. Orr*, 315 Pa. Super. 168, 461 A.2d 850 (1983). Furthermore, determination of APL falls within the scope of the support rules, Pa.R.C.P. 1910.1(a). In addition, the amount of APL determined from the support guidelines is presumptively valid and that presumption can be rebutted only if the amount of the award would be unjust or inappropriate. Pa.R.C.P. 1910.16-1(b), 42 Pa.C.S.A.

Defendant testified that her income was \$140 per week. Additionally, Defendant had four children at the time of the hearing, three of which needed day care. There was no testimony that Defendant owned assets of any substance and, in fact, had to declare bankruptcy on March 9, 1993. On the other hand, Plaintiff's salary, at approximately \$465 per week, is substantially higher than Defendants. Plaintiff also owns a home with a value of \$130,000 and, although he had a mortgage balance of \$70,491.89 as of April 6, 1995, he still had substantial equity in the home. Thus, taking these factors into consideration, it is this Court's determination that Defendant was in financial need during the divorce proceedings.

Defendant's exceptions regarding APL focus on her claim that the Master erred in finding that Husband paid \$620.00 per month in child support as opposed to the reduced amount he was actually paying thereby making the computation of APL incorrect. Defendant has argued that by Order of this Court, Plaintiff's support was reduced from \$620.00 per month to \$528.00 per month. We note that the testimony from the Master's Hearing makes reference only to the Court Order of January 6, 1995, which sets child support at \$620.00 per month. The Master's hearing was conducted in May and June of 1995 and the Court

¹ There has been no claim that Defendant's claim was made frivolously.

Order reducing child support to \$528.00 per month was filed on October 13, 1995 retroactive to April 19, 1995. Thus, this Order was not in place at the time of the Master's Hearing. Although it is this Court's determination that the Master's calculations were not in error, we must take notice of numerous child support modifications subsequent to the hearing in determining APL.

When calculating APL, Rule 1910.1 states that:

... the rules of this chapter govern all civil actions or proceedings brought in the court of common pleas to enforce a duty of support, or an obligation to pay alimony pendente lite.

Pa.R.C.P. 1910.1, 42 Pa.C.S.A. Our Supreme Court has held that "Rule 1910.16-1 explicitly states that the amount of support, whether it be child support, spousal support or alimony pendente lite, shall be determined in accordance with the support guidelines which consist of not only the grids set forth in Rule 1910.16-2 and the formula set forth in Rule 1910.16-3, but also Rule 1910.16-5 which discusses in detail the operation of the guidelines." Ball v. Minnick, 538 Pa. 441, 448 A.2d 1192, 1195 (1994).

Thus, the appropriate formula for determining APL is found in Rule 1910.16-3. Using this formula, and taking judicial notice of the child support modifications in the parties' domestic relations case (DR-739-91), APL is determined as follows:

Effective Date	Plt. Net Income	Def. Net Income	Child Support Obligation	Multiply by 30%	Weekly APL
7/20/94 ²	427.25	57.50	133.50	x.30	71.00
10/17/94	427.25	137.90	155.20	x.30	40.00
4/19/95	411.55	57.50	132.00	x.30	Suspended by order dated 3/6/97
6/30/95	267.90	57.50	95.00	x.30	35.00
7/24/95	411.55	57.50	132.00	x.30	67.00
3/6/97	495.15	139.95	136.00	x.30	66.00

If we allow the above figures to stand until the date of filing of this Opinion, Plaintiff will have an APL obligation of nearly \$10,400.00. At least since before the Master's Hearing Defendant has been residing with her paramour who, at that time, was earning in excess of \$30,000.00 per year and paying most of the household living expenses. Some delay in this matter was caused by the parties, the Master, and the Court. The Master advised the parties that no report would be prepared until the stenographer was paid. The stenographer submitted the final portion of

² Although the effective date of this Order was July 20, 1994, we will use the same figures to apply APL retroactively to the stipulated start date of July 7, 1994.

the transcript and her statement to the Master on August 18, 1995. Sufficient monies were deposited to pay the stenographer fee by October 25, 1995. The Master's report was due 30 days thereafter. Pa.R.C.P. 1920.55-2(a)(ii), 42 Pa.C.S.A. We acknowledge that the volume of the record and the issues made completion of the report within 30 days unrealistic. The Master's Report was filed December 2, 1996 and argument on the exceptions was scheduled for May 23, 1997.

The Court believes that APL should be suspended for certain periods based upon the aforementioned circumstances. Therefore, APL will be suspended for the period of January 25, 1996 until December 2, 1996 and for the period of September 26, 1997 until the date of filing of this Opinion. This will reduce Plaintiff's APL obligation by approximately \$3,700.00.

The next issue we will address is whether the wife has satisfactorily proven a common law marriage beginning on September 10, 1989. Our Superior Court has explained common law marriage as follows:

In Pennsylvania, a common law marriage is a marriage by express agreement of the parties without ceremony, and usually without a witness, and verba de praesenti, uttered with the purpose of establishing a relation of husband and wife. *In re Manfredi's Estate*, 300 Pa. 285, 291, 159 A.2d 697, 700 (1960). However, common law marriage will still be recognized without use of verba de praesenti, where the intention of the parties as expressed by their words, is that they were married. *In re Estate Stauffer*, 504 Pa. 626, 632, 476 A.2d 354, 357 (1984). While cohabitation and reputation alone will not suffice to establish a common law marriage, they are relevant factors which a court may consider in determining whether the parties have entered into a common law marriage. *Canute v. Canute*, 384 Pa. Super. 60, 63, 557 A.2d 772, 774 (1989).

Cann v. Cann, 429 Pa. Super. 234, 239-40, 632 A.2d 322, 325 (1993).

Additionally, the Superior Court has said:

An essential element for a common law marriage is intent to establish a marital relationship. Evidence of intent may consist of words uttered in the present tense with a view and for the purpose of establishing the relation of the husband and wife. *Stauffer Estate*, *supra*. *Gower Estate*, 445 Pa. 554, 284 A.2d 742 (1971); *Commonwealth v. Sullivan*, 484 Pa. 130, 398 A.2d 978 (1979)...Furthermore, where a relationship is meretricious in its inception, there must be clear evidence of change in status to rebut the presumption that the non-marriage continued after the impediment to marriage was removed. *Pierce v. Pierce*, *supra*; *Stauffer Estate*, *supra*; *In re Estate of Garges*, 474 Pa.

237, 378 A.2d 307 (1977).

Steadman v. Turner, 357 Pa. Super. 361, 365, 516 A.2d 21, 23 (1986), alloc. den. 531 A.2d 431.

In the case at hand, Defendant provided testimony of some relatives, friends and co-workers to whom she introduced Plaintiff as her husband, with no objection by him. However, Plaintiff's family testified that the parties did not regard each other as husband and wife. When making a determination on the existence of a common law marriage, it is difficult to ascertain the facts when the parties' testimony is conflicting. Thus, it is important to look to tangible evidence indicating the presence or absence of a marital relationship and to give the Master's decisions on credibility the fullest consideration as he is in the best position to evaluate the witnesses. See, *Cookson v. Cookson*, 33 Ad. Co. L. J. 21 (1990).

In support of the presence of a marital relationship, Defendant provided testimony that the parties had lived together, sporadically, since 1988 and had two children together. Plaintiff placed Defendant on his health insurance, initially as a girlfriend, but later as his wife. When the parties second child, Tessie, was born in June of 1991, Plaintiff registered Defendant in the hospital as his wife and referred to her as such to the hospital staff.

However, the evidence in opposition to the presence of a marital relationship is more compelling. Plaintiff explained the listing of Defendant as his wife on his insurance as a financial move done to provide her with insurance coverage for the birth of their second child. This would explain why Plaintiff would register Defendant as his wife and portray her as such to the staff. In order to be consistent with the false representations made in the insurance coverage the parties would need to portray themselves as a married couple.

There was testimony by both parties indicating that Defendant chose to use the last name Smith only in certain situations. She apparently would use varied names and represent her marital status diversely at her whim. Defendant filed her tax returns as a single individual and the parties kept separate banking accounts. Most significantly, in her custody action against Plaintiff filed on December 10, 1991, Defendant referred to herself as unmarried and to the children as being "born out of wedlock." Defendant even confided to her sister and Plaintiff's sister that she felt she was "living in sin" as she was not yet married to Plaintiff.

Common law marriage provides a means for couples to become married when they both intend to do so and when they generally hold themselves out in the community as being married. In the case at hand, there simply is not enough evidence to show that the community generally regarded the parties as being married or that Plaintiff actually intended to be married before the formal ceremony in 1992. The evidence provided by Defendant is simply not sufficient to prove a common law marriage.

The next argument raised by the parties concerns the Master's decision regarding Plaintiff's pension. Plaintiff argues the Master erred in recommending that his pension be found to be marital property valued at \$1,949.33. Defendant argues that the Master should have disposed of the pension because he determined it was marital property.

The Master discussed a stipulation in his report claiming that "the parties stipulated that marital property consists only of Husband's pension...." (Master's Report at 11). However, after reviewing the transcript, this Court finds no such stipulation but only an agreement that the valuation date of the pension would be the date of separation. (Transcript from Master's Hearing 9:9-11).

Thus, the determination of whether the pension may be considered marital property must be addressed. Marital property is defined as "all property acquired by either party during the marriage, including the increase in value, prior to the date of final separation of any nonmarital property...." 23 Pa. C.S.A. § 3501. Retirement pension benefits, vested and non-vested, are marital property subject to equitable distribution. *Brown v. Brown*, 447 Pa. Super. 424, 430, 669 A.2d 969, 972 (1995), alloc. gr. 677 A.2d 838 (citations omitted). As a general rule, only that portion of the pension attributable to the period commencing with the marriage and ending on the date of separation is marital property. *Id.*

As it has been determined that the parties marriage began on the date of the ceremony, October 30, 1992, only the increase in the value of the pension from this date until the parties final separation is to be distributed as marital property. The value of the pension on October 30, 1992 would have to be determined from Joint Exhibit number 6, which presented the pension's financial statements. On July 31, 1992, the financial statements show a value of \$1939.51 for the pension. This date is only three months before the ceremonial marriage between the parties and will therefore be used in calculating the increase in value. The pension's value on May 31, 1993, four days after the parties separated, was \$1949.33.³ Thus, the closest estimate of any increase in value would be the difference between these two numbers or \$9.82. Considering the minimal increase in value, it is this Court's determination that the Master was warranted in not distributing the increase in the pension's value.

Defendant argues that the Master erred in finding that the parties had stipulated that the property in Reading Township be taken free and clear of any claim by her. (Master's Report at 3). We agree. At the Master's hearing, the parties stipulated as follows regarding the property:

THE MASTER: And with respect to the real estate, obviously we have to talk about whether it is marital or nonmarital. In my letter, my understanding was that if I

³ The parties stipulated that the value of the pension would be the date of the final separation, May 26, 1993. (Transcript from Master's Hearing 9:8-14).

were to find that the real estate is not marital property, then wife waives the increase of the value during the period of time from the ceremonial marriage to the separation.

Is that still –

MR. MENGES [Defendant's attorney]: Rather than waive the increase, we will stipulate there has been no increase. But, yes, in essence, that's agreed upon.

THE MASTER: Okay. And the parties were also in agreement at that time that regardless of how the Master finds concerning the status of the real estate, that Mr. Smith will continue to own and occupy the real estate and that it would be awarded to him.

Is that still –

MR. WOLF [Plaintiff's attorney]: Yes.

MR. MENGES: Yes.

(Transcript from Master's Hearing 9:15-25, 10:1-7).

There is no express agreement that the property be taken free of Defendant's claims. Although not specifically stated by the Master, he apparently determined that the real estate was not marital property. As the Master does not discuss the issue, we will do so here. As defined above, marital property is defined in 23 Pa.C.S.A. § 3501, as follows:

(a) General rule.- As used in this chapter, "marital property" means all property acquired by either party during the marriage, including the increase in value, prior to the date of final separation, of any nonmarital property acquired pursuant to paragraphs (1) and (3), except:

(1) Property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage.

...

23 Pa.C.S.A. § 3501(a)(1).

The testimony at the Master's hearing indicated that Plaintiff purchased the lot on February 28, 1991. The money used to purchase the lot came exclusively from Plaintiff in the form of certificates of deposit and funds borrowed from family members. In order to build the home, Plaintiff obtained a **construction mortgage** from the Peoples State Bank. Plaintiff was the **sole mortgagor**. When the construction loan monies were depleted, Plaintiff apparently borrowed substantial sums from his family in order to continue construction on the home, which was still not complete at the time of the Master's Hearing.

An important fact in determining whether this home was marital property is timing. In this case, the lot was purchased in February of 1991 and the home was built that summer. It was determined above that the

parties had no common law marriage and therefore, the ceremonial date of October 30, 1992 is the date the marriage began. Although the house is still not completely finished, it was essentially done in August of 1991, as the parties were able to move into the premises at that time. The parties lived there together until December of 1991 when Defendant left the premises. She did not return until approximately April of 1992.

Thus, as the home was basically finished in August of 1991 but the parties did not marry until October of 1992, the home is not considered marital property as it was "acquired" before the marriage. In addition, the parties stipulated that there was no increase in the value of the premises from the date of the ceremonial marriage until the final separation; thus Defendant would have no claim to a portion of the increase in value during the marriage.

Therefore, Defendant has no claim to the property as "marital property." However, there was testimony indicating that Plaintiff was able to afford to build the home due to the financial help received from Defendant and that Defendant may have actually contributed financially to the construction of the home prior to the marriage, but that testimony was conflicting. In any event, we do not address Defendant's possible rights to the property in a civil action, see, *Bower v. Bower*, 531 Pa. 54, 611 A.2d 181 (1992); however, for purposes of equitable distribution we find she has no claim to the real estate.

Defendant's last argument is that Plaintiff should have been ordered to pay her counsel fees and Plaintiff argues that the entire cost of the hearing should not have been imposed solely upon him. The purpose of an award of counsel fees and costs is to ensure that the financially dependent spouse will be able to maintain or defend against an action for divorce, as well as to effectuate economic justice. *Schubert v. Schubert*, 398 Pa. Super. 284, 293, 580 A.2d 1351, 1356 (1990); see also, *Motter v. Motter*, 37 Ad. Co. L. J. 165, 173 (1995). Counsel fees are not awarded automatically; the petitioning spouse must show actual need before such an award is justified. *Id.* To determine whether to award counsel fees, the court should consider the payor's ability to pay, the requesting party's financial resources, the value of the services rendered, and the property received in equitable distribution. *Perlberger v. Perlberger*, 426 Pa. Super. 245, 284-85, 626 A.2d 1186, 1207 (1993), alloc. den. 637 A.2d 289 (citations omitted). Plaintiff claimed legal fees of \$7,500.00 while Defendant claimed legal fees of \$15,500.00.

The Master suggested that the stenographic fees of \$2148.75 and Master's fees of \$2175.00 be paid solely by Plaintiff. Both parties in the instant action have strained financial resources. Defendant makes only \$140 a week and must provide child care for three of her four children. She was in such dire financial straits that she voluntarily filed for bankruptcy in March of 1993. Plaintiff on the other hand, has more income than Defendant but does have child support obligations and a hefty mortgage. He had a period of disability in 1995 and has apparently needed to borrow

substantial sums from his family. As noted above, Plaintiff has been and/or will be contributing to Defendant's maintenance by payment of APL based upon an Order retroactive to July 7, 1994. Meanwhile, Defendant has been living with her paramour who pays most of the household expenses. The Master reported that each party had advanced \$2,075.00 toward costs, leaving a balance of \$173.15.

Thus, it is this Court's determination that the most equitable distribution of counsel fees and costs is to require each party to pay his/her own counsel fees and for Plaintiff to pay the balance owing on costs of \$173.75.

Therefore, the attached Order is entered.

ORDER OF COURT

AND NOW, this 17th day of December 1997, it is hereby ordered as follows:

1. Alimony Pendente Lite shall be awarded to Defendant as follows:
 - a. In the amount of \$71.00 per week effective July 7, 1994;
 - b. In the amount of \$40.00 per week effective October 17, 1994;
 - c. Suspension of APL for the period of April 19, 1995 to June 29, 1995;
 - d. In the amount of \$35.00 per week effective June 30, 1995;
 - e. In the amount of \$67.00 per week effective July 24, 1995;
 - f. **Suspension of APL** for the period of January 25, 1996 to **December 2, 1996**;
 - g. In the amount of \$67.00 per week effective December 3, 1996;
 - h. In the amount of \$66.00 per week effective March 6, 1997;
 - i. **Suspension in APL for the period of September 26, 1997 until the date of the filing of this Order.**
2. The pension is awarded to Plaintiff;
3. **Defendant has failed to prove a common law marriage existed prior to October 30, 1992;**
4. The real estate is non-marital;
5. Costs and expenses are to be paid as follows:
 - a. Each party to pay his/her own counsel fees;
 - b. The first \$4,150.00 to be paid equally and the final \$173.75 to be paid by Plaintiff.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, 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 MARGARET ALVERTA FAVORITE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

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

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

ESTATE OF JOHN B. KREBS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: William B. Krebs, 222 A Coventry Ct., New Oxford, PA 17350

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

ESTATE OF LACY E. LESTER a/k/a LACY EDWARD LESTER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Danny J. Lester, 335 Rupp Road, Gettysburg, PA 17325

Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF HELEN McCLEAF a/k/a M. HELEN McCLEAF, DEC'D

Late of Fairfield Borough, Adams County, Pennsylvania

Executor: Fred M. Herring, 45 Lakeview Drive, Gettysburg, PA 17325

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

ESTATE OF RUTH E. RAY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Richard C. Ray, 430 Sunrise Blvd., Elizabethtown, PA 17022

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

ESTATE OF GEORGE LEVAY SENTZ, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executors: George Leon Sentz, 1278A Frederick Pike, Littlestown, PA 17340; Patricia Ann Sentz, 1278 Frederick Pike, Littlestown, PA 17340

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

ESTATE OF JOHN T. STULLER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: John F. Stuller, 97 Sherrill Drive, New Oxford, PA 17350; Gloria A. Staub, 31 Locust Street, Gettysburg, PA 17325

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

SECOND PUBLICATION

ESTATE OF ALLEN WARD LARSON, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Lee Ann Larson, 126 Artillery Drive, Gettysburg, PA 17325

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

ESTATE OF ROBERT H. SHRIVER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: PNC Bank, NA, 10 York Street, Gettysburg, PA 17325

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

THIRD PUBLICATION

ESTATE OF BERNICE E. CULLISON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: Nelson G. Mattingly, 503 Bentwood Lane, York, PA 17404

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

ESTATE OF BETTY C. GASS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: John W. Gass, 110 Pleasant View Dr., Strasburg, PA 17579

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

ESTATE OF KIMBERLY A. KORNBAU, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Administrator: Kevin L. Kornbau, 105 Curtis Drive, East Berlin, PA 17316

Attorney: Daniel Carn, Esq., 98 South George St., Suite 210, York, PA 17401

ESTATE OF DOROTHY M. RHOADS, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Joyce A. Albright, 420 Oxford Road, Gardners, PA 17324

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

NOTICE OF INCORPORATION

Articles of Incorporation for Profit of CPM CONSTRUCTION PROGRAM MANAGEMENT, INC. Domestic Corporation business stock (15 Pa.C.S. §1306)

The name of the corporation is: CPM CONSTRUCTION PROGRAM MANAGEMENT, INC.

The name of the Commercial Registered Office Provider: CT Corporation System, Adams County.

The aggregate number of shares authorized is: 1,000,000.

The names and addresses of the incorporators are: Eric Holz and Susan Holz, P.O. Box 3906, Gettysburg, PA 17325

Effective date: 9/1/98

In Testimony whereof, the incorporators have signed these Articles of Incorporation this 16th day of October, 1998.
12/11

FICTITIOUS NAME NOTICE

NOTICE IS GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on November 19, 1998, pursuant to the Fictitious Name Act, setting forth that Mary Lee Kuhn, of 665 Hanover Street, New Oxford, Pennsylvania, 17350, is the only person owning or interested in a business, the character of which is the operation of a real estate office and that the name, style and designation under which said business is and will be conducted is REITZ REAL ESTATE and the location where said business is and will be conducted is 5800 York Road, New Oxford, Pennsylvania, 17350.

Guthrie, Nonemaker
Guthrie & Yingst
Solicitor

12/11

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY given that an Application for Registration of a Fictitious Name has been filed with the Department of State of the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania, on November 13, 1998, pursuant to the Fictitious Name Act, Act No. 1982-295, setting forth that Sonya K. Duncan of 100 N. Peters Street, New Oxford, Adams County, Pennsylvania 17350 is the only individual engaged or interested in a business, the character of which is the retail sale of antiques, collectibles, gifts and crafts and that the name, style and designation under which said business is and will be conducted is THE SANDERS HOUSE, and the principal office or place of business is 100 N. Peters Street, New Oxford, Adams County, Pennsylvania 17350.

Miller & Shultis
Solicitor

12/11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-670 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of January, 1999, 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 Mount Joy Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a P.K. nail in the center line of Pennsylvania Route 97, said P.K. nail being South 52 degrees 15 minutes 00 seconds East, 384 feet, more or less from corner of land now or formerly of James Martin; thence in said center line of Pennsylvania Route 97, South 52 degrees 15 minutes 00 seconds East, 478.40 feet to a P.K. nail in said center line at corner of other land now or formerly of John P. Randall; thence by said other land of John P. Randall and passing through U.T.C. Pole #96 set back 23 feet from the last mentioned point, South 29 degrees 30 minutes 00 seconds West, 463.00 feet to a steel fence post; thence by same, North 52 degrees 15 minutes 00 seconds West, 478.40 feet to a pipe; thence continuing by same, and passing through U.T.C. #94, set back 25.00 feet from the next mentioned point, North 29 degrees 30 minutes 00 seconds East, 463.00 feet to a P.K. nail, the place of BEGINNING. CONTAINING 5.032 Acres.

The above description was taken from a draft survey prepared by Adams County Surveyors, dated April 26, 1979, as recorded in Adams County Plat Book 28 at page 35.

BEING the same premises which Clarence C Hawkins, Sr. and Kay F. Hawkins, husband and wife, by Deed dated August 9, 1989 and recorded August 9, 1989 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 530, Page 557, granted and conveyed to Barry N. Poole and Kelly A. Poole, husband and wife, Debtors herein.

TAX PARCEL NO.: MP H15-47

SEIZED and taken into execution as the property of **Barry N. Poole & Kelly A. Poole** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 10, 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 February 1, 1999, 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.
11/25, 12/4, & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-97 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of January, 1999, 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 THE RIGHT, title, interest and claim of Cheryl J. Shew of, in and to the following described property:

All the following described real estate situated in Carroll Valley Borough, Adams County, Commonwealth of Pennsylvania, lots numbered 148, 149, 150, and 201, Sec. B, Charmita Inc., having erected thereon a dwelling known and numbered as 29 Meadowlark Trail, Fairfield, PA 17320, DBV 445, page 955. Map No. 29-158.

SEIZED and taken into execution as the property of **Cheryl J. Shew** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 10, 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 February 1, 1999, 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.
11/25, 12/4, & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-998 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of January, 1999, 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 the right, title, interest and claim of Darrell Lee Schaffner and Tina Denise Schaffner, of, in and to the following described property:

ALL THE FOLLOWING described real estate situated in the township of Mt. Joy, Adams County, and Commonwealth of Pennsylvania. Having erected thereon a dwelling being known and numbered as 963 Johnson Drive, Gettysburg, Pennsylvania 17325. Deed book volume 1160, page 134, and parcel #11-34A.

SEIZED and taken into execution as the property of **Darrell Lee & Tina Denise Schaffner** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 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 February 8, 1999, 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.

12/4, 11, 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-1148 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of January, 1999, 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 the right, title, interest and claim of Robert W. Kleine and Mable N. Kleine, in and to the following described property:

ALL THE FOLLOWING described real estate situated in the township of East Berlin, County of Adams and Commonwealth of Pennsylvania. Having erected thereon a dwelling known as 355 Kuhn Fording Road, East Berlin, PA 17361 DBV 962, PG 245., Parcel No. L8-2A.

SEIZED and taken into execution as the property of **Robert W. Kleine & Mable N. Kleine** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 10, 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 February 8, 1999, 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.

12/4, 11, 18

Adams County Legal Journal

Vol. 40

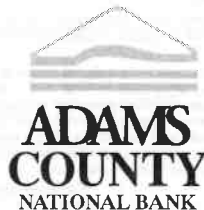
December 18, 1998

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**SHENBERGER
VS.
SHENBERGER**

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



Member FDIC

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

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

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

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NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, December 21, 1998, at 9:00 o'clock a.m.

HUFNAGLE—Orphans' Court Action Number OC-123-98. The First and Final Account of Peter T. Hufnagle and Julia Ann Neiderer, surviving Co-Executors of the Estate of Frances A. Hufnagle, deceased, late of Conewago Township, Adams County, Pennsylvania.

ELDERDICE—Orphans' Court Action Number OC-124-98. The First and Final Account of Elizabeth E. Reichard, Personal Representative of the Estate of Lloyd M. Elderdice, deceased, late of Oxford Township, Adams County, Pennsylvania.

SHEARER—Orphans' Court Action Number OC-88-98. The First and Final Account of Adams County National Bank, Executor of the Estate of Eva S. Shearer, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

KADEL—Orphans' Court Action Number OC-127-98. The First and Final Account of William T. Poole, Jr., Executor of the Estate of Lois Kadel, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

KAUFFMAN—Orphans' Court Action Number OC-128-98. The First and Final Account of Adams County National Bank, Executor of the Estate of Frederick G. Kauffman, deceased, late of Butler Township, Adams County, Pennsylvania.

BIGELOW—Orphans' Court Action Number OC-71-98. The First and Final Account of Rita Marie Gibbons and Lois Morningred, Administrators c.t.a. of the Last Will and Testament of Grace L. Bigelow, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

BERWAGER—Orphans' Court Action Number OC-134-98. The First and Final Account of Donald L. Berwager, Executor of the Estate of Phoebe A. Berwager, deceased, late of Oxford Township, Adams County, Pennsylvania.

KNOX—Orphans' Court Action Number OC-135-98. The First and Final Account of Adams County National Bank, Executor of the Estate of Harry I. Knox a/k/a Henry Isaac Knox, deceased, late of Cumberland Township, Adams County, Pennsylvania.

STERNER—Orphans' Court Action Number OC-136-98. The First and Final Account of Adams County National Bank, Executor of Estate of Gladys M. Sterner, deceased, late of Fairfield Borough, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk Of Courts

12/11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-391 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of January, 1999, 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 the right, title, interest and claim of Christopher Weaver and Deborah Jones of, in and to:

ALL the following described real estate situated in Mt. Joy Township, Adams County, Pennsylvania. Having erected thereon a dwelling commonly known as 2356 Baltimore Pike, Gettysburg, Pennsylvania 17325. Deed book volume 598, page 587, map G-15, parcel 16-C.

Civil Action No: 98-S-391

SEIZED and taken into execution as the property of **Christopher Weaver & Deborah A. Jones** and to be sold by me

Raymond W. Newman

Sheriff's Office, Gettysburg, PA
October 17, 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 February 8, 1999, 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.

12/11, 18, 23

NOTICE OF INCORPORATION

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

The name of the corporation is **FAIRVIEW VALLEY CONTRACTORS, INC.**

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

Fairview Valley
Contractors, Inc.
70 Race Horse Road
Hanover, PA 17331

12/18

LEGAL NOTICE

The Annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M., on January 09, 1999 to elect directors and to transact any other business properly presented.

Attest, Marilyn Q. Butt
Secretary-Treasurer

12/11, 18, 23 & 30

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

IN RE: Nicholas Alan Putnam,
No.: RT-4-98.

DECREE NISI

AND NOW, this 26th day of October, 1998, the parental rights of Geraldine Duncan in or to Nicholas Alan Putnam are hereby terminated.

Petitioner is directed to serve a copy of this decree on Geraldine Duncan.

This decree is entered nisi this date and will be confirmed absolute if no exceptions are filed within ten (10) days of service.

By the Court,

/s/

Robert G. Bigham, Judge

NOTICE

TO: Geraldine Duncan:

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

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

Kevin G. Robinson, Esquire
28 East High Street
Gettysburg, PA 17325

12/18

SHENBERGER VS. SHENBERGER

1. Prenuptial agreements are contracts, and, as such, should be evaluated under the same criteria as are applicable to other types of contracts and, therefore, absent fraud, misrepresentation, or duress, spouses should be bound by the terms of their agreements.

2. Parties to prenuptial agreements are normally bound by their agreements without regard to whether the terms thereof were read and fully understood and irrespective of whether the agreements embody reasonable or good terms.

3. A full and fair disclosure of the financial positions of the parties to prenuptial agreements is required, which disclosure need not be exact so long as it is "full and fair".

4. If a prenuptial agreement provides that full and fair disclosure has been made, a presumption of full disclosure arises and if a spouse attempts to rebut this presumption through an assertion of fraud or misrepresentation then this presumption can be rebutted if it is proven by clear and convincing evidence.

In the Court of Common Pleas, Adams County, Pennsylvania,
Domestic Relations No. DR-450-97 12050, BERNICE MARIE
SHENBERGER VS. ROBERT E. SHENBERGER.

Tony Sangiamo, Esq., for Plaintiff

Shawn A. Bozarth, Esq., for Defendant

MEMORANDUM OPINION

Kuhn, J., December 18, 1997.

On July 17, 1997, Complainant filed a Complaint for spousal support. Defendant contested liability based on a Prenuptial Agreement executed by the parties on November 16, 1989. The parties appeared before the undersigned on October 31, 1997, at which time the record revealed the following background.

Complainant was born on June 1, 1948 and has a 12th grade education. Defendant was born on December 2, 1945 and has his G.E.D. He claims that he can't read or write very well.

The parties began living together in the Spring of 1983. Complainant had been married previously and owned some assets, including a residence, in her name alone. At that time Defendant was not employed but later worked several years at Hanover Shoe Farm. On October 22, 1987 Defendant secured a job with Roadway Express. Among the benefits of that employment is a pension. When hired, Defendant received a benefit booklet that he took home. Admittedly Defendant discussed some of the benefits with Complainant but neither recalled any discussion about the pension benefit. Thereafter, Defendant would deposit his check into Complainant's account and she would pay the bills. The pension appears to be entirely employer funded so no deductions for employee contributions would appear on Defendant's paycheck.

In December 1988 Complainant quit her employment as a book-keeper at Lerew Ford in East Berlin and took a lower paying job. This reduction in income created some financial problems for the household so in or about May 1989 Complainant withdrew some of her pension from Lerew's.

When the parties were considering marriage Complainant insisted on a prenuptial agreement so she could protect her pre-marital assets. Complainant's attorney drafted the Agreement that included, as Exhibit "A", a Schedule of Assets. That list, prepared by Complainant, valued Complainant's assets at \$261,800, Defendant's assets at \$1,000 and joint assets at \$24,000. Neither party's pension was listed. Debt was not set forth. The Agreement provided, inter alia, that:

And Whereas, each of the parties hereto has made a full disclosure to the other of the property owned by him or her and of his or her present income from all sources.

...

2. In the...event of separation or divorce, the parties hereto agree that neither will make any claim for spousal support, alimony, alimony pendente lite...
4. Each of the parties hereby represents and warrants that they have been fully informed and are fully acquainted with the means and resources of the other party and that attached to this Agreement is a schedule of such assets and income...

The parties married on December 2, 1989. In February 1990 Complainant ceased her employment for health reasons. Thereafter she worked sporadically and operated "Bernice's What Nots". Sometime between 1990-1 Defendant's pension vested at which time it had a value of \$4,831.20. At some point in or about that time Complainant claims she first learned of Defendant's pension. She took no steps to rescind or modify the Agreement. Defendant testified that pension statements arrived at the joint residence and were available to Complainant.

The parties separated in June 1997. Defendant's pension is now valued at approximately \$72,000. Over the years the mortgage on Complainant's residence was increased although when that occurred and the amount involved was not revealed. Defendant has filed for personal bankruptcy.

Complainant now claims that the Agreement is invalid because Defendant did not disclose his pension. She contends that she would not have entered into the Agreement if she had been aware of the pension.

The leading Pennsylvania case on the validity of a prenuptial agreement is *Simone v. Simone*, 525 Pa. 392, 581 A.2d 162 (1990). From that decision certain tenets are clear:

Prenuptial agreements are contracts, and, as such, should be evaluated under the same criteria as are applicable to other types of contracts...Absent fraud, misrepresentation, or duress, spouses should be bound by the terms of their agreements. Contracting parties are normally bound by their agreements without regard to whether the terms thereof were read and fully understood and irrespective of whether the agreements embodies reasonable or good terms...581 A.2d at 165.

...

We do not depart from the longstanding principle that a full and fair disclosure of the financial positions of the parties is required. Absent this disclosure, a material misrepresentation in the inducement for entering a prenuptial agreement may be asserted...Parties to these agreements do not quite deal at arm's length, but rather at the time the contract is entered into stand in a relation of mutual confidence and trust that calls for disclosure of their financial resources...It is well settled that this disclosure need not be exact, so long as it is "full and fair." ...

If an agreement provides that full and fair disclosure has been made, a presumption of full disclosure arises. If a spouse attempts to rebut this presumption through an assertion of fraud or misrepresentation then this presumption can be rebutted if it is proven by clear and convincing evidence. 581 A.2d at 167.

Since *Simone* our Superior Court has had an opportunity on several occasions to more fully explain the amount of disclosure required. For example, *In Re: Estate of Hartman*, 399 Pa. Super. 386, 582 A.2d 648 (1990), *Alloc. den.* 592 A.2d 1301 (1991) stated that while disclosures between the parties need not be exact, they must be precise enough so as not to obscure the general financial resources of the parties, but that disclosure is adequate even if the assets have not been reduced to writing. 582 A.2d at 651. Whether adequate disclosure has been made will depend on the facts and circumstances of each case. *Mormello v. Mormello*, 452 Pa. Super. 590, 600, 682 A.2d 824, 828 (1996).

This Agreement recites that each party has made a full and fair disclosure. Therefore, a presumption of full and fair disclosure arises.

Complainant must rebut the presumption by clear and convincing evidence. Without question the Agreement does not reveal the existence of Defendant's pension, however, that fact is not dispositive. For numerous reasons we find that Complainant has not satisfied her burden. Complainant knew Defendant was employed by Roadway Express. Complainant was aware of the concept of a pension because she enjoyed that benefit through her employment. Complainant prepared the list of assets and failed to include her pension. The benefit booklet and periodic pension statements were kept with other financial records of the parties in a storage compartment in the dining room where both parties had equal access. Defendant's pension was not vested when the Agreement was executed so, technically, he did not possess an asset; only an expectancy. Complainant took no steps to revoke or revise the Agreement six years prior to separation when she claims she first learned of the pension. It is incredulous for Complainant to suggest that she would not have entered into the Agreement had she known of Defendant's non-vested pension in 1989. At that time the value of the pension would have been miniscule in comparison with the stated value of Complainant's pre-marital assets.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 18th day of December, 1997, the Complaint for Support filed on July 17, 1997 is hereby dismissed based upon the provisions of the parties' Prenuptial Agreement dated November 16, 1989. Costs to be paid by Complainant.

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 HELEN R. EISENHART, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Leo R. Eisenhart, 5417 Bears Lane, Warrenton, VA 20187
Attorney: Gary E. Hartman, Esquire, Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DAVID W. PORTER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Administratrix: Terry Porter, 714 Lee Drive, Gettysburg, PA 17325

Attorney: Wendy Weikal-Beauchat, Esquire, 116 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FLORENCE C. SEIFERD, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Personal Representatives: H. Kenneth Seiferd and Essie I. Gilmore c/o Patterson, Kiersz & Ganley, PC, 239-B East Main Street, Waynesboro, PA 17268-1681
Attorney: Patterson, Kiersz & Ganley, P.C., 239-B East Main St., Waynesboro, PA 17268-1681

SECOND PUBLICATION

ESTATE OF MARGARET ALVERTA FAVORITE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

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

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

ESTATE OF JOHN B. KREBS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: William B. Krebs, 222 A Coventry Ct., New Oxford, PA 17350

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

ESTATE OF LACY E. LESTER a/k/a LACY EDWARD LESTER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Danny J. Lester, 335 Rupp Road, Gettysburg, PA 17325

Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF HELEN McCLEAF a/k/a M. HELEN McCLEAF, DEC'D

Late of Fairfield Borough, Adams County, Pennsylvania

Executor: Fred M. Herring, 45 Lakeview Drive, Gettysburg, PA 17325

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

ESTATE OF RUTH E. RAY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Richard C. Ray, 430 Sunrise Blvd., Elizabethtown, PA 17022

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

ESTATE OF GEORGE LEVAY SENTZ, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executors: George Leon Sentz, 1278A Frederick Pike, Littlestown, PA 17340; Patricia Ann Sentz, 1278 Frederick Pike, Littlestown, PA 17340

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

ESTATE OF JOHNT. STULLER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: John F. Stuller, 97 Sherrill Drive, New Oxford, PA 17350; Gloria A. Staub, 31 Locust Street, Gettysburg, PA 17325

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

THIRD PUBLICATION

ESTATE OF ALLEN WARD LARSON, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Lee Ann Larson, 126 Artillery Drive, Gettysburg, PA 17325

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

ESTATE OF ROBERT H. SHRIVER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: PNC Bank, NA, 10 York Street, Gettysburg, PA 17325

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-998 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of January, 1999, 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 the right, title, interest and claim of Darrell Lee Schaffner and Tina Denise Schaffner, of, in and to the following described property:

ALL THE FOLLOWING described real estate situated in the township of Mt. Joy, Adams County, and Commonwealth of Pennsylvania. Having erected thereon a dwelling being known and numbered as 963 Johnson Drive, Gettysburg, Pennsylvania 17325. Deedbook volume 1160, page 134, and parcel #11-34A.

SEIZED and taken into execution as the property of **Darrell Lee & Tina Denise Schaffner** and to be sold by me

Raymond W. Newman
Sheriff
Sheriff's Office, Gettysburg, PA
October 17, 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 February 8, 1999, 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.

12/4, 11, 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-1148 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of January, 1999, 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 the right, title, interest and claim of Robert W. Kleine and Mable N. Kleine, in and to the following described property:

ALL THE FOLLOWING described real estate situated in the township of East Berlin, County of Adams and Commonwealth of Pennsylvania. Having erected thereon a dwelling known as 355 Kuhn Fording Road, East Berlin, PA 17361 DBV 962, PG 245., Parcel No. L8-2A.

SEIZED and taken into execution as the property of **Robert W. Kleine & Mable N. Kleine** and to be sold by me

Raymond W. Newman
Sheriff
Sheriff's Office, Gettysburg, PA
October 10, 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 February 8, 1999, 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.

12/4, 11, 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-392 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of January, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of real estate located in Liberty Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a railroad spike in the center line of Route T-321 (leading from Route T-318 to L.R. 01052), said railroad spike being South 35 degrees 21 minutes 50 seconds East, 291.45 feet from a point in the center of T-321 on line of land now or formerly of Robert Weikert, said line running from a post in concrete to a post in concrete and being described as North 62 degrees 56 minutes 53 seconds East and being a total length of 1855.19 feet, said point in center of T-321 being 909 feet from the Southwest post in concrete at land now or formerly of Robert Weikert; thence in the center of said Route, South 35 degrees 21 minutes 50 seconds East, 130.77 feet to a railroad spike in said Route; thence in said Route, South 41 degrees 36 minutes 30 seconds East, 269.23 feet to a railroad spike in center of said Route; thence South 38 degrees 53 minutes 30 seconds West, 328.42 feet to a post at edge of lane; thence South 32 degrees 03 minutes 20 seconds West, 279.40 feet to a 10-inch cedar at edge of lane; thence South 62 degrees 33 minutes 10 seconds West, 181.08 feet to an iron pin at the edge of lane; thence South 46 degrees 28 minutes 40 seconds West, 405.56 feet to an iron pin at edge of lane; thence North 41 degrees 36 minutes 30 seconds West, 400 feet to an iron pin; thence North 43 degrees 31 minutes 00 seconds East, 1191.49 feet to a railroad spike in the center of Route T-321, the place of BEGINNING. CONTAINING 11.500 Acres.

The above description was obtained from draft of survey prepared by Price & Associates, Inc., dated June 19, 1975, and revised July 22, 1975, entitled "James G. & Mary L. Angelaras, Deed Book 263 at Page 857, Situate in Liberty Twp., Adams Co., Pa."

UNDER AND SUBJECT TO any and all rights of persons in possession, zoning and subdivision regulations, reservations, rights of way, easements and/or restrictions of record or such as may appear from an examination of the premises.

SEIZED and taken into execution as the property of **Jeffrey Allen & Karen Lee McDannell** and to be sold by me

Raymond W. Newman
Sheriff
Sheriff's Office, Gettysburg, PA
October 17, 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 February 22, 1999, 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.

12/18, 23, 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-602 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of January, 1999, 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 THE RIGHT, title, interest and claim of Michael Schoolcraft and Suzanne Schoolcraft, a/k/a Suzanne M. Schoolcraft, of, in and to the following described property:

ALL the following described real estate situated in the township of Mt. Joy, County of Adams and Commonwealth of Pennsylvania. Having erected thereon a dwelling known as 895 Heritage Drive, Gettysburg, PA 17325. D.B. V. 1288, page 29, parcel no. 7-82

SEIZED and taken into execution as the property of **Michael Schoolcraft & Suzanne M. Schoolcraft** and to be sold by me

Raymond W. Newman
Sheriff
Sheriff's Office, Gettysburg, PA
October 24, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 22, 1999, 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.

12/18, 23, 30

Adams County Legal Journal

Vol. 40

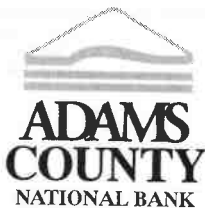
December 23, 1998

No. 31, pp. 191-194

CONTINUING LEGAL EDUCATION PROGRAMS

1. *Highlights of the New Pennsylvania Rules of Evidence*
Thursday, January 28, 1999 - 9:00 to 11:00
Room 307, Adams County Courthouse
Credits: Substantive Law - 2, Ethics - 0
2. *Fundamentals of Mortgage Foreclosures*
Friday, February 5, 1999 - 9:00 to 1:30
Room 307, Adams County Courthouse
Credits: Substantive Law - 4, Ethics - 0
3. *Second Annual Family Law Update*
Thursday, February 11, 1999 - 9:00 to 5:00
Room 307, Adams County Courthouse
Credits: Substantive Law - 5, Ethics - 1

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

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

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

Periodicals postage paid at Gettysburg, PA 17325.

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-235 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of January, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land, situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, more fully bounded and limited as follows, to wit:

BEGINNING at a corner at a point on the Northeastern edge of White Birch Drive at the southwestern most corner of Lot N, 7-A as shown on the hereinafter referred to Subdivision Plan; thence along said Lot No. 7-A, and lands now or formerly of Rosville V. Topper, III, North forty-six (46) degrees ten (10) minutes twenty-eight (28) seconds East, ninety-two and twenty-seven hundredths (92.27) feet to a point at lands now or formerly of Michael D. Sentz and Lot No. 9 on the hereinafter referred to Subdivision Plan; thence along said Lot No. 9, South forty-three (43) degrees forty-nine minutes thirty-two (32) seconds East, ninety-seven and forty-nine hundredths (97.49) feet to a point on the Northwestern edge of Holly Court on the hereinafter referred to Subdivision Plan; thence along said Holly Court the following three (3) courses and distances; (1) by a curve to the right having a radius of fifteen (15) feet the long chord of which is South twenty-two (22) seconds West, eight and sixty-seven hundredths (8.67) feet for an arc distance of eight and eighty hundredths (8.80) feet to a point; (28) seconds West, sixty and twenty-six hundredths (60.26) feet to a point; (3) North eighty-nine (89) degrees fifty-one (51) minutes fifty-two (52) seconds West, twenty-four and eighty-one hundredths (24.81) feet to a point on the Northeastern edge of White Birch Drive on the hereinafter referred to Subdivision Plan; thence along said Northeastern edge of White Birch Drive the following two (2) courses and distances; (1) by a curve to the left having a radius of one hundred eighty-five (185) feet the long chord of which is North forty-four (44) degrees fifty-one (51) minutes ten (10) seconds West, fifty-two and thirty-two hundredths (52.32) feet for an arc distance of fifty-two and fifty hun-

dredths (52.50) feet to a point; (2) North fifty-two (52) degrees fifty-eight (58) minutes fifty-nine (59) seconds West, thirty and eighty-five hundredths (30.85) feet to a point at the Southwestern most corner of Lot No., 7-A on the hereinafter referred to Subdivision Plan, being the point and place of BEGINNING.

BEING THE SAME PREMISES which Jeremy D. Forbes and Peggy L. Forbes, by their Deed dated September 24, 1993 and recorded in Adams County Recorder of Deeds Office on October 1, 1993 in Deed Book 786, page 219, granted and conveyed unto Carrol E. Snyder and Barbara J. Snyder. Barbara J. Snyder is deceased.

SEIZED IN EXECUTION AS THE PROPERTY OF CARROL E. SNYDER UNDER ADAMS COUNTY JUDGMENT NO. 1997-S-235.

PARCEL: 9-104

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

Raymond W. Newman
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 22, 1999, 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.

12/23, 30 & 1/8

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that Omnipoint Communications, Inc. filed its Preliminary/Final Land Development Plan with the Board of Supervisors of Cumberland Township for approval to construct an antenna and receiving base station at 519 Ridge Road, Cumberland Township, Adams County, Pennsylvania. The Board of Supervisors rendered a decision on May 20, 1998 and on June

19, 1998, Omnipoint filed a Land Use Appeal with the Court of Common Pleas of Adams County (No. 98-S-628) and simultaneously filed an Action in Mandamus (No. 98-S-629). On or about October 2, 1998, Omnipoint Communications, Inc. and Cumberland Township Board of Supervisors entered into a Settlement Agreement and Mutual General Release. As a result, and pursuant to 53 P.S. §10508 (2) and (3) the decision rendered on the foregoing application is, as a matter of law, deemed to have been rendered in favor of Omnipoint Communications, Inc. and the Settlement Agreement so provides.

Michael A. Finio Esquire
Saul, Ewing, Remick & Saul LLP
Penn National Tower, 7th Floor
2 North Second Street
Harrisburg, PA 17101
Attorneys for Omnipoint
Communications, Inc.

12/23

FICTITIOUS NAME NOTICE

NOTICE is hereby given that an Application for Registration of a Fictitious Name has been filed with the Department of State of the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania, on November 30, 1998, pursuant to the Fictitious Name Act, Act No. 1982-295, setting forth that Donald F. Masemer of 1596 Hanover Road, Gettysburg, Adams County, Pennsylvania, is the only individual engaged or interested in a business, the character of which is for the purpose of brokering of freight intrastate and interstate and that the name, style and designation under which said business is and will be conducted is LONE STAR BROKERAGE, and the principal office or place of business is 1596 Hanover Road, Gettysburg, Adams County, Pennsylvania.

DANIEL M. FREY & ASSOCIATES
Solicitor
14 Center Square
Hanover, PA 17331

12/23

COMMONWEALTH VS. GUTIERREZ

In cases involving criminal conspiracy, direct proof of an agreement is rarely available and proof of a criminal partnership is invariably extracted from the circumstances that attend its activities.

In the Court of Couimon Pleas, Adams County, Pennsylvania, Criminal No. CC-698-97, COMMONWEALTH VS. MARIA GUTIERREZ.

Shawn C. Wagner, Esq., for Commonwealth
Jeffery M. Cook, Esq., for Defendant

MEMORANDUM OPINION

Spicer, P. J., December 31, 1997.

Defendant seeks a dismissal of conspiracy and drug charges, which have been filed against her. She has filed a petition for a writ of habeas corpus, challenging the sufficiency of evidence presented at her preliminary hearing. Commonwealth has not presented any additional evidence. The court has reviewed transcripts of the preliminary hearing and intercepted telephone conversations.

After obtaining an order authorizing electronic interception of telephone calls to the residence of defendant and her husband and co-defendant, police recorded telephone conversations between defendant and alleged co-conspirators, including her husband. Although these conversations are certainly consistent with innocence, parts may reasonably be interpreted consistent with guilt. Defendant could be said to generally converse, exchange and relay innocuous information, or she could be said to be a conduit for information about drugs. For an example of the latter, see, e.g., pages 21 and 22 of the preliminary hearing transcript.

Commonwealth also provided testimony of Trooper Kenneth Hassinger, describing two cocaine purchases. The first occurred May 16, 1997 at the Biglerville car wash, where defendant's husband, Ignacio, delivered cocaine to the trooper. Defendant was a passenger in Ignacio's black truck. The second transpired May 26, 1997 in Lowe's parking lot near Chambersburg. During this transaction, Ignacio removed a brown paper bag containing cocaine from the passenger's side of his truck and delivered it to a person named Lori Wagner. Defendant was seated in the passenger's side of her husband's truck when the bag was removed.

In discussing the legal requirements of proof in cases involving criminal conspiracy, Superior Court has said:

It is equally plain that direct proof of such an agreement is rarely available, nor is it necessary. Thus, 'proof of a

criminal partnership is invariably extracted from the circumstances that attend its activities'. . . . An agreement can be inferred from a variety of circumstances including, but not limited to, the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode. These factors may coalesce to establish a conspiratorial agreement beyond a reasonable doubt where one factor alone might fail.

Commonwealth v. Giddings, 454 Pa. Super 524, 536, 686 A.2d 6, 12,(1996), alloc. dn. Pa., 695 A.2d 785 (1997), quoting Commonwealth v. Grekis, 411 Pa. Super 494, 601 A.2d 1275, 1283 (1992), and Commonwealth v. French, 396 Pa. Super. 436, 440-441, 578 A.2d 1292, 1294 (1990).

See also, Commonwealth v. Allen, 525 Pa. Super. 615, 625 A.2d 1266 (1993).

Applying those principles to the case at bar, we find that a jury could find that defendant knew that her husband and others were involved in the drug trade and that she participated at least to the extent of relaying information.

The attached order is entered.

ORDER OF COURT

AND NOW, this 31st day of December, 1997, defendant's petition for a writ of habeas corpus is denied.

GOTSHALL VS. TONER, ET AL.

1. Negligence may not be proven by showing prior acts of negligence.
2. Evidence of a person's habit or custom is admissible to show what occurred on a particular instance, if the past habit or routine was of sufficient regularity to make it probable that it was carried out in every instance, or in most instances.
3. A witness may not be contradicted on everything to which he or she testifies since trials cannot be side tracked into inquiries about whether a witness has been untruthful about something that is not germane to the case.
4. The test of the admissibility of evidence intended to contradict involves the connection between the contradicted evidence and an issue in the case.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-1080, SALLY GOTSHALL AND MICHAEL GOTSHALL VS. THOMAS J. TONER, JR., M.D. AND H. FRED MARTIN, M.D.

April Strang-Kutay, Esq. for Plaintiff
B. Craig Black, Esq., for Defendant Martin
Jack M. Hartman, Esq., for Defendant Toner

OPINION ON MOTION IN LIMINE

Spicer, P.J., January 8, 1998.

Plaintiffs began this medical malpractice case by a writ of summons on December 14, 1994, then followed with a complaint on March 13, 1995. The case presently presents itself on Dr. Toner's motion in limine.

It would appear from the pleadings that Mrs. Gotshall sought Dr. Martin's professional services regarding unilateral left ear "buzzing" on May 22, 1989. Evidently, this progressed to tinnitus and Dr. Martin referred Ms. Gotshall to Dr. Toner, who is an otolaryngologist, some time between September 25, 1989 and October 10, 1989. On the latter date, Dr. Toner conducted a physical examination and had an audiogram performed. Without getting involved in a great deal of detail, suffice it to say that Dr. Toner may have diagnosed Ms. Gotshall's problem as a drop in hearing that did not merit exploratory surgery. In fact, she suffered from a benign brain tumor that had to be surgically removed. The factual issue bringing the case before the court is whether Dr. Toner advised Ms. Gotshall to return for a follow-up examination within two years. Apparently, the doctor cannot explicitly remember telling his patient to return, but is prepared to testify that he has told approximately 4,000 patients with similar audiogram results and/or diagnoses to return in two years. Plaintiff has witnesses, who were former patients, who are prepared to testify that no such instructions were given to them. Dr. Toner argues that this rebuttal testimony involves collateral issues and should not be allowed into evidence.

Plaintiffs have said they would be quite satisfied by a ruling that none of the testimony is admissible. Of course, without Dr. Toner's statement, the rebuttal evidence would be irrelevant. Negligence may not be proven by showing prior acts of negligence. *Valentine v. Acme Markets, Inc.*, 455 Pa. Super 256, 687 A.2d 1157 (1997). However, evidence of a person's habit or custom is admissible to show what occurred on a particular instance, if the past habit or routine was of sufficient regularity to make it probable that it was carried out in every instance, or in most instances. *Baldrige v. Matthews*, 378 Pa. 566, 106 A.2d 809 (1954); *Commonwealth v. Rivers*, 537 Pa. 394, 644 A.2d 710 (1994); *Commonwealth v. Jones*, 391 Pa. Super. 292, 570 A.2d 1338 (1990), alloc dn. 528 Pa. 608, 596 A.2d 155 (1991).

It is well settled that a witness may not be contradicted on everything to which he or she testifies. Trials cannot be side tracked into inquiries about whether a witness has been untruthful about something that is not germane to the case. The test of admissibility involves the connection between the contradictory evidence and an issue in the case. *Hammel v. Christian*, 416 Pa. Super. 78, 610 A.2d 979 (1992), alloc dn. 533 Pa. 652, 624 A.2d 111 (1993); *Valentine v. Acme Markets, Inc.*, supra.

In the case sub judice, the purpose of Dr. Toner's testimony would be to establish that admonitions or instructions to return within two years were in fact given. Thus, if impeaching evidence directly bears upon this issue, it would be admissible. However, contradictions not directly bearing upon the issue would be collateral. Dr. Toner's testimony would be admissible to show his practice or habit, so that the jury could infer that he gave similar instructions to Ms. Gotshall. We understand that he will say that he instructed every patient to return when he knew that certain conditions occurred. The key is the doctor's perception of facts when he talked to patients, not what those facts actually were. If he testifies that he told every patient with Ms. Gotshall's audiogram results, or who were diagnosed as having her condition, to return, contradictions by witnesses with the same results or diagnosis should be permitted. If, however, the previous patient does not conform to the class so established, but plaintiff wants to prove that the witness was wrongly excluded (e.g., a previous different diagnosis was incorrect), the inquiry would deteriorate into a trial within a trial and the testimony would be inadmissible.

By denying the motion in limine, we do not mean to indicate that the testimony is admissible. That decision will have to await trial, after the judge has heard the doctor's testimony and plaintiffs' offer.

ORDER OF COURT

AND NOW, this 8th day of January, 1998, the motion in limine filed by Dr. Toner is denied.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF WILLIAMA. MADISON JR., DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Dean Madison, 121 Park Avenue, Selinsgrove, PA 17870
 Attorney: Keith R. Nonemaker, Esquire, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF CHARLES ROBERT WELLER, ALSO KNOWN AS C. ROBERT WELLER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
 Executrices: Joanne Louise Staub, 230 South Fifth Street, McSherrystown, PA 17344; Patricia Livelsberger, 372 Main Street, McSherrystown, PA 17344
 Attorney: John W. Phillips, Esquire, 101 West Middle Street, Gettysburg, PA 17325

ESTATE OF ROBERT S. WOLF, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Michael R. Wolf, 19 Krug Avenue, Hanover, PA 17331
 Attorney: James T. Yingst, Esquire, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF HELEN R. EISENHART, DEC'D

Late of Menallen Township, Adams County, Pennsylvania
 Executor: Leo R. Eisenhart, 5417 Bears Lane, Warrenton, VA 20187
 Attorney: Gary E. Hartman, Esquire, Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DAVID W. PORTER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Administratrix: Terry Porter, 714 Lee Drive, Gettysburg, PA 17325
 Attorney: Wendy Weikal-Beauchat, Esquire, 116 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FLORENCE C. SEIFERD, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Personal Representatives: H. Kenneth Seiferd and Essie I. Gilmore c/o Patterson, Kiersz & Ganley, P.C., 239-B East Main Street, Waynesboro, PA 17268-1681
 Attorney: Patterson, Kiersz & Ganley, P.C., 239-B East Main St., Waynesboro, PA 17268-1681

THIRD PUBLICATION

ESTATE OF MARGARET ALVERTA FAVORITE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOHN B. KREBS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: William B. Krebs, 222 A Coventry Ct., New Oxford, PA 17350
 Attorney: G. Steven McKonly, Esquire, 119 Baltimore Street, Hanover, PA 17331

ESTATE OF LACY E. LESTER a/k/a LACY EDWARD LESTER, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Administrator: Danny J. Lester, 335 Rupp Road, Gettysburg, PA 17325
 Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF HELEN McCLEAF a/k/a M. HELEN McCLEAF, DEC'D

Late of Fairfield Borough, Adams County, Pennsylvania
 Executor: Fred M. Herring, 45 Lakeview Drive, Gettysburg, PA 17325
 Attorney: John R. White, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF RUTH E. RAY, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: Richard C. Ray, 430 Sunrise Blvd., Elizabethtown, PA 17022
 Attorney: Gary E. Hartman, Esquire, Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GEORGE LEVAY SENTZ, DEC'D

Late of Germany Township, Adams County, Pennsylvania
 Executors: George Leon Sentz, 1278A Frederick Pike, Littlestown, PA 17340; Patricia Ann Sentz, 1278 Frederick Pike, Littlestown, PA 17340
 Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF JOHN T. STULLER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executors: John F. Stuller, 97 Sherrill Drive, New Oxford, PA 17350; Gloria A. Staub, 31 Locust Street, Gettysburg, PA 17325
 Attorney: Robert E. Campbell, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-392 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of January, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of real estate located in Liberty Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a railroad spike in the center line of Route T-321 (leading from Route T-318 to L.R. 01052), said railroad spike being South 35 degrees 21 minutes 50 seconds East, 291.45 feet from a point in the center of T-321 on line of land now or formerly of Robert Weikert, said line running from a post in concrete to a post in concrete and being described as North 62 degrees 56 minutes 53 seconds East and being a total length of 1855.19 feet, said point in center of T-321 being 909 feet from the Southwest post in concrete at land now or formerly of Robert Weikert; thence in the center of said Route, South 35 degrees 21 minutes 50 seconds East, 130.77 feet to a railroad spike in said Route; thence in said Route, South 41 degrees 36 minutes 30 seconds East, 269.23 feet to a railroad spike in center of said Route; thence South 38 degrees 53 minutes 30 seconds West, 328.42 feet to a post at edge of lane; thence South 32 degrees 03 minutes 20 seconds West, 279.40 feet to a 10-inch cedar at edge of lane; thence South 82 degrees 33 minutes 10 seconds West, 181.08 feet to an iron pin at the edge of lane; thence South 46 degrees 28 minutes 40 seconds West, 405.56 feet to an iron pin at edge of lane; thence North 41 degrees 36 minutes 30 seconds West, 400 feet to an iron pin; thence North 43 degrees 31 minutes 00 seconds East, 1191.49 feet to a railroad spike in the center of Route T-321, the place of BEGINNING. CONTAINING 11.500 Acres.

The above description was obtained from draft of survey prepared by Price & Associates, Inc., dated June 19, 1975, and revised July 22, 1975, entitled "James G. & Mary L. Angelaras, Deed Book 263 at Page 857, Situate in Liberty Twp., Adams Co., Pa."

UNDER AND SUBJECT TO any and all rights of persons in possession, zoning and subdivision regulations, reservations, rights of way, easements and/or restrictions of record or such as may appear from an examination of the premises.

SEIZED and taken into execution as the property of **Jeffrey Allen & Karen Lee McDannell** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 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 February 22, 1999, 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.

12/18, 23, 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-602 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of January, 1999, 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 THE RIGHT, title, interest and claim of Michael Schoolcraft and Suzanne Schoolcraft, a/k/a Suzanne M. Schoolcraft of, in and to the following described property:

ALL the following described real estate situated in the township of Mt. Joy, County of Adams and Commonwealth of Pennsylvania. Having erected thereon a dwelling known as 895 Heritage Drive, Gettysburg, PA 17325. D.B. V. 1288, page 29, parcel no. 7-82

SEIZED and taken into execution as the property of **Michael Schoolcraft & Suzanne M. Schoolcraft** and to be sold by me

Raymond W. Newman
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 22, 1999, 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.

12/18, 23, 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-391 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of January, 1999, 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 the right, title, interest and claim of Christopher Weaver and Deborah Jones of, in and to:

ALL the following described real estate situated in Mt. Joy Township, Adams County, Pennsylvania. Having erected thereon a dwelling commonly known as 2356 Baltimore Pike, Gettysburg, Pennsylvania 17325. Deed book volume 598, page 587, map G-15, parcel 16-C.

Civil Action No: 98-S-391

SEIZED and taken into execution as the property of **Christopher Weaver & Deborah A. Jones** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 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 February 8, 1999, 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.

12/11, 18, 23

LEGAL NOTICE

The Annual meeting of the policyholders of Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M., on January 09, 1999 to elect directors and to transact any other business properly presented.

Attest, Marilyn Q. Butt
Secretary-Treasurer

12/11, 18, 23 & 30

NOTICE OF DISSOLUTION

NOTICE IS HEREBY GIVEN that PLUMMER REALTY CO. has elected to dissolve voluntarily and has commenced winding up proceedings under the Pennsylvania Business Corporation Law of 1988.

Pamela J. Zepka Plummer, Esq.
42 Spring Creek Circle
Gettysburg, Pennsylvania 17325

12/23

NOTICE OF DISSOLUTION

NOTICE IS HEREBY GIVEN that RAINBOW LANDSCAPING L.L.C. has elected to dissolve voluntarily and has commenced winding up proceedings under the Pennsylvania Business Corporation Law of 1988

Pamela J. Zepka Plummer, Esq.
42 Spring Creek Circle
Gettysburg, Pennsylvania 17325

12/23

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Pennsylvania's "Fictitious Names Act", 54 Pa. C.S.A. §§ 301 et seq., of the filing of an Application for Registration of Fictitious Name under the said Act. The fictitious name is DICK'S TOWING SERVICE. The address of the principal office or place of business to be carried on under or through the fictitious name is 35 Belmont Road, Gettysburg, Adams County, Pennsylvania 17325. The name and address of the person who is party to the registration is Darryl M. Keller, of P. O. Box 30, Arendtsville, Adams County, Pennsylvania 17303. An application for registration under the Fictitious Name Act of the said fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on December 8, 1998.

John R. White
Campbell & White
122 Baltimore Street
Gettysburg, PA 17325
Attorneys for Applicant

12/23

Adams County Legal Journal

Vol. 40

December 30, 1998

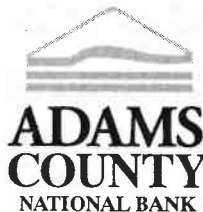
No. 32, pp. 195-200

CONTINUING LEGAL EDUCATION PROGRAMS

1. *Highlights of the New Pennsylvania Rules of Evidence*
Thursday, January 28, 1999 - 9:00 to 11:00
Room 307, Adams County Courthouse
Credits: Substantive Law - 2, Ethics - 0
2. *Fundamentals of Mortgage Foreclosures*
Friday, February 5, 1999 - 9:00 to 1:30
Room 307, Adams County Courthouse
Credits: Substantive Law - 4, Ethics - 0
3. *Second Annual Family Law Update*
30 Thursday, February 11, 1999 - 9:00 to 5:00
Room 307, Adams County Courthouse
Credits: Substantive Law - 5, Ethics - 1

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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, John W. Phillips, Esq., Editor and Business Manager.

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

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

Periodicals postage paid at Gettysburg, PA 17325.

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-235 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of January, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land, situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, more fully bounded and limited as follows, to wit:

BEGINNING at a corner at a point on the Northeastern edge of White Birch Drive at the southwestern most corner of Lot N, 7-A as shown on the hereinafter referred to Subdivision Plan; thence along said Lot No. 7-A, and lands now or formerly of Rosville V. Topper, 111, North forty-six (46) degrees ten (10) minutes twenty-eight (28) seconds East, ninety-two and twenty-seven hundredths (82.27) feet to a point at lands now or formerly of Michael D. Sentz and Lot No. 9 on the hereinafter referred to Subdivision Plan; thence along said Lot No. 9, South forty-three (43) degrees forty-nine minutes thirty-two (32) seconds East, ninety-seven and forty-nine hundredths (97.49) feet to a point on the Northwestern edge of Holly Court on the hereinafter referred to Subdivision Plan; thence along; said Holly Court the following three (3) courses and distances; (1) by a curve to the right having a radius of fifteen (15) feet the long chord of which is South twenty-two (22) seconds West, eight and sixty-seven hundredths (8.67) feet for an arc distance of eight and eighty hundredths (8.80) feet to a point; (2) seconds West, sixty and twenty-six hundredths (60.26) feet to a point; (3) North eighty-nine (89) degrees fifty-one (51) minutes fifty-two (52) seconds West, twenty-four and eighty-one hundredths (24.81) feet to a point on the Northeastern edge of White Birch Drive on the hereinafter referred to Subdivision Plan; thence along said Northeastern edge of White Birch Drive the following two (2) courses and distances; (1) by a curve to the left having a radius of one hundred eighty-five (185) feet the long chord of which is North forty-four (44) degrees fifty-one (51) minutes ten (10) seconds West, fifty-two and thirty-two hundredths (52.32) feet for an arc distance of fifty-two and fifty hundredths (52.50) feet to a point; (2) North fifty-two (52) degrees fifty-eight (58) minutes fifty-nine (59) seconds West, thirty and eighty-five hundredths (30.85) feet to a point at the Southwestern most corner of

Lot No., 7-A on the hereinafter referred to Subdivision Plan, being the point and place of BEGINNING.

BEING THE SAME PREMISES which Jeremy D. Forbes and Peggy L. Forbes, by their Deed dated September 24, 1993 and recorded in Adams County Recorder of Deeds Office on October 1, 1993 in Deed Book 786, page 219, granted and conveyed unto Carrol E. Snyder and Barbara J. Snyder. Barbara J. Snyder is deceased.

SEIZED IN EXECUTION AS THE PROPERTY OF CARROL E. SNYDER UNDER ADAMS COUNTY JUDGMENT NO. 1997-S-235.

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

Raymond W. Newman
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 22, 1999, 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.

12/23, 30 & 1/8

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is GORMLEY ELECTRICAL SERVICES, INC.

Puhl & Eastman
16 Lincoln Square
Gettysburg, PA 17325

12/30

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation for EMIG & SON, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on November 17, 1998, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Rudisill, Guthrie,
Nonemaker, Guthrie & Yingst
40 York Street,
Hanover, PA 17331
Solicitor

12/30

NOTICE

A HEARING SHALL BE HELD before the Court of Common Pleas, Adams County, Pennsylvania, in Courtroom No. 1 or 2 of the Adams County Courthouse, Gettysburg, Pennsylvania, on February 9, 1999, at 9:00 o'clock, a.m. for the purpose of considering the sale of unimproved real estate from the Upper Adams School District to Inland Container Corp., in exchange for an unimproved tract of real estate to be conveyed by Inland Container Corp., to Upper Adams School District. Any persons interested in the sale and exchange of the aforesaid real estate should appear and be heard at that time.

Robert L. McQuaide
Solicitor for Upper Adams
School District

12/30, 1/8, 15

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on November 20, 1998, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is KERM'S AUTO REPAIR SERVICE, INC.

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

Kerm's Auto Repair Service, INC.
940 Old Harrisburg Road
Gettysburg, PA 17325

12/30

BRADY VS. BOYLE

1. Since P.R.C.P. 1019 is incapable of precise measurement, the trial Court has broad discretion in determining the amount of detail that must be pleaded.

2. Generally, entitlement to punitive damages should not be decided by ruling on preliminary objections.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 97-S-531, FREDERICK M. BRADY AND LINDA S. BRADY VS. TERRANCE E. BOYLE AND TAMMY BOYLE.

John J. Mooney, III, Esq. for Plaintiffs
Bernard A. Yannetti, Jr., Esq., for Defendants

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., January 9, 1998.

Plaintiffs filed their complaint June 3, 1997, alleging that they and defendants are next-door neighbors. Some time in February, 1995, defendants apparently erected a stockade fence, which we assume was intended as a line fence, on plaintiffs' property. Plaintiffs say that the fence was relocated after they sued for trespass, but concrete footers were not removed. They have alleged numerous activities, all of which they say were designed to annoy, vex and harass them. Included in the allegations are the following: positioning the fence so as to interfere with plaintiffs' ability to care for their lawn; putting weed killer under the fence and killing grass in plaintiffs' lawn; placing dog feces on plaintiffs' porch; taking photographs of plaintiffs; snooping, peeping and eavesdropping; yelling at plaintiffs, and; tearing down a panel placed by plaintiffs to prevent peeping. All of these activities are said to have been done knowingly, willfully, maliciously and wrongfully.

Plaintiffs seek compensatory and punitive damages.

Defendants filed preliminary objections under Pa. R.C.P. 1028 (a) (2), which provides:

- (a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:
- (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter.

The explanatory comment to this rule states that the primary purposes of amending prior Rules 1017 and 1028 were to eliminate confusion engendered by "petition" and "motion"; and to cover preliminary objections in one, not two rules. However, abandonment of previous terminology, such as motion to strike, demurrer, etc. was said to be a change in style only. "The substance of most of the existing grounds available for preliminary objections is continued without change."

Although the objections filed by the defendant were under (a) (2), the objections themselves are stated in terms of (a) (3), insufficient specificity, and (4), legal insufficiency (demurrer). Objections to all allegations have defendants saying that they are "unable to ascertain from the pleading, in its present state, the nature of the damages asserted in Count I through Count V of the Complaint, with sufficient

precision to prepare a responsive pleading.” In part II of their objections, defendants say that allegations fail to support punitive damages.

There has always been a tendency on the part of some practitioners to lump motions to strike and motions for more specific pleadings together. Motions to strike are sometimes based on an argument that the pleading fails to contain the degree of specificity required by Rule 1019. This court has, in the past, utilized the same tests for each: (1) is the complaint sufficiently clear to enable defendants to prepare a response, (2) does the complaint inform defendants accurately and completely of the specific basis on which recovery is sought, (3) are defendants able to know without question upon what grounds to make their defense. Michael, et al. v. Gettysburg Foundry Specialties Co., et al., 38 Adams County Legal Journal 83 (1995). As was noted in that opinion, Superior Court has said that since Rule 1019 is incapable of precise measurement, the trial court has broad discretion in determining the amount of detail that must be pleaded. In *Re Barnes Foundation*, 443 Pa. Super. 369, 661 A.2d 889 (1995); alloc. dn. 542 Pa. 654, 668 A.2d 1119 (1995).

Defendants’ sole argument is that plaintiffs have failed to provide documentation for the dollar amounts in the complaint. While this is certainly true, it is not a reason for sustaining the objections. Plaintiffs say it cost them \$1,000.00 to remove the footers and repair the lawn. They allege they suffered damages of \$500.00 because of grass kill, and \$100.00 because of removal of a board. Generally, they have requested damages in excess of \$30,000.00 for unliquidated damages. Rule 1021 requires a plaintiff to specify the relief to which he deems himself entitled. Plaintiffs are required to state whether the amount claimed does or does not exceed the jurisdictional amount requiring arbitration by local rule. The amount claimed for unliquidated damages exceeds arbitration limits. Further, Rule 1021(b) provides “(a)ny pleading demanding relief for unliquidated damages shall not claim any specific sum.”

If plaintiffs have erred with regard to unliquidated damages, it is on the side of providing too much information.

We rule that allegations comply with Rule 1021. The only question is whether Rule 1019(f) requires more specificity. That rule provides, “Averments of time, place and items of special damage shall be specifically stated.” The “Observation” in 2 Goodrich Amram 2d, §1019(f):6 states:

General damages have been defined as those which are the natural and necessary result of the wrongful act or omission asserted as the foundation of liability, including those which follow as a conclusion of law from the statement of the facts of an injury. Special damages have been defined as those arising from the special circumstances of a case, which, if properly pleaded, may be added to the general damages which the law presumes or implies from the mere invasion of a plaintiff’s rights.

Allegations lead us to the conclusion that plaintiffs assert general, not special, damages and, therefore, pleadings are sufficient. Defendant’s remedy is to pursue more information through discovery.

Defendants argue that demands for punitive damages are not supported by allegations. Generally, entitlement to such damages should not be decided by ruling on preliminary objections. *McClellan v. Health Maintenance*, 413 Pa. Super. 128, 604 A.2d 1053 (1992); alloc. dn. 532 Pa. 664, 616 A.2d 985 (1992).

Pennsylvania follows Restatement Torts Second, §908. *Ruffing v. 84 Lumber Co.*, 410 Pa. Super 459, 600 A.2d 545 (1991); alloc. dn. 530 Pa. 666, 610 A.2d 46 (1992). That section provides:

- (1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.
- (2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages the trier of fact can properly consider the nature and extent of the harm to the plaintiff that defendant caused or intended to cause and the wealth of the defendant.

Plaintiffs have alleged a variety of actions, ranging from defendants placing animal feces on their porch, to invasion of privacy. All actions were characterized as outrageous, intentional and malicious. We are not, at this stage of the case, prepared to hold that these allegations lack factual basis.

The attached order is entered.

ORDER OF COURT

AND NOW, this 9th day of January, 1998, defendants' preliminary objections are overruled. Defendants shall have the right to plead over in accordance with Pa. R.C.P. 1028(d).

HAMPTON PLAINS CONDOMINIUM ASSOCIATION VS. ASH-MEL, INC., ET AL.

1. A Court may exercise its discretion in entering a judgment of non pros taking the following circumstances into consideration: (1) a party has shown a lack of due diligence by failing to proceed with reasonable promptitude, (2) there is no compelling reason for the delay, and (3) the delay has caused prejudice to the adverse party.

2. In cases involving a delay for a period of two years or more, the delay will be presumed prejudicial for purposes of any proceeding to dismiss for lack of activity on the docket.

3. It is the plaintiff's burden to move a case to trial, and it is the plaintiff, not defendant, who bears the risk of not acting within a reasonable time.

4. On a Motion for Entry of Judgment of Non Pros, due diligence by Plaintiff may be shown through discovery activity not reflected on the docket, even when the inactivity exceeds two years.

5. Where no significant action was taken during the time, modest settlement negotiations do not excuse almost three years of docket inactivity.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 93-S-188, HAMPTON PLAINS CONDOMINIUM ASSOCIATION VS. ASH-MEL, INC., WARD INVESTMENTS, INC., BARRY RAUHAUSER AND SUSAN RAUHAUSER, HOME REALTY AND READING TOWNSHIP.

Donald H. Yost, Esq., for Plaintiff
Harry Ness, Esq., Val E. Winter, Esq., and Catherine Gault, Esq.,
for Defendants

OPINION ON DEFENDANT READING TOWNSHIP'S MOTION FOR ENTRY OF JUDGMENT OF NON PROS

Kuhn, J., January 9, 1998.

Defendant, Reading Township, filed a Motion for Entry of Judgment Non Pros on October 14, 1997. Argument was heard by this Court on November 24, 1997. For the following reasons, the Motion is granted.

STATEMENT OF FACTS

Plaintiff, Hampton Plains Condominium Association ("Hampton"), filed a Complaint on March 26, 1993 and an Amended Complaint on May 28, 1993. The Complaint was based on allegations that the units and common areas in Hampton Plains were poorly constructed. Plaintiff's count against Defendant Reading Township ("Reading") asked for declaratory judgment for the Township's alleged failure to enforce its applicable codes and for failure to require adequate and proper security for completion of stormwater and street improvements.

Docket activity was relatively consistent throughout 1993 and 1994 with Plaintiffs last recorded activity taking place on September 7, 1994 when a praecipe to withdraw a motion to compel discovery was filed. After this praecipe, no docket activity was recorded until June 23, 1997, a period of almost three years, when a Notice of Termination pursuant to Local Rule 10 and Pa.R.J.A. 1901 was filed by the Prothonotary of Adams County. On August 21, 1997, Plaintiff filed an objection to the termination notice claiming the case remained active.

Plaintiff argues there was activity on the case not evident from the docket. Negotiation and settlement discussions were allegedly taking place during this time, as well as a deposition of one defendant. However, the brief deposition of Barry Rauhauser on September 29, 1995, which was apparently requested by a co-defendant, dealt only with the financial worth of Mr. Rauhauser and did not address the merits of the case. Def.'s Brief in Support of the Motion for Entry of Judgment Non Pros, Exhibit A.

LEGAL DISCUSSION

In *Penn Piping, Inc. v. Insurance Company of North America*, 529 Pa. 350, 603 A.2d 1006 (1992), the Pennsylvania Supreme Court established the standard to be used when making a determination of non pros. The Court modified the original test set forth in *James Brothers Lumber Co. v. Union Banking and Trust*, 432 Pa. 129, 247

A.2d 587 (1968). The test established in *James Brothers* was that a court may exercise its discretion in entering a judgment of non pro taking the following circumstances into consideration: (1) a party has shown a lack of due diligence by failing to proceed with reasonable promptitude, (2) there is no compelling reason for the delay, and (3) the delay has caused prejudice to the adverse party. *Id.* at 132. The third prong of this test was modified in *Penn Piping* where the Court held that "in cases involving a delay for a period of two years or more, the delay will be presumed prejudicial for purposes of any proceeding to dismiss for lack of activity on the docket." *Penn Piping, Inc. v. Insurance Company of North America*, 529 Pa. at 356, 603 A.2d at 1009.

The parties in the case at hand have agreed that the third prong of this test has been satisfied as the inactivity has exceeded two years. Thus, we must concentrate on the first and second prong of the test. Initially, it is important to take note that it is the "plaintiff's burden to move a case to trial, and it is plaintiff, not defendant, who bears the risk of not acting within a reasonable time." *Pennridge Electric Inc. v. Souderton Area Joint School Authority*, 419 Pa. Super. 201, 209, 615 A.2d 95, 99 (1992) (citations omitted). Additionally, the Court in *Pennridge Electric* held:

If plaintiffs counsel finds herself faced with delays created by others, she must take action to move the case forward, such as filing praecipes for argument on undecided motions, moving to compel her opponent to file a certificate of readiness, or requesting a conference with the judge as provided by local rule to have the case put on the trial list.

Id.

With this burden in mind, we address the first prong of the test which requires a lack of due diligence in pursuing the case. Due diligence may be shown through discovery activity not reflected on the docket, even when the inactivity exceeds two years. *Gohel v. Montgomery Hospital*, ___ Pa. Super. ___, 698 A.2d 653 (1997) (citing *State of the Art Medical Products, Inc. v. Aries Medical, Inc.*, 456 Pa. Super. 148, 689 A.2d 957 (1997)). In *Gohel*, the Court held that plaintiff's limited discovery, which occurred prior to a 25 month period of inactivity, could not be considered due diligence.

In the case at hand, there was a deposition taken on September 29, 1995. This was the only activity, apart from alleged ongoing settlement negotiations, in a 33-month period of inactivity. This deposition was not initiated by Plaintiff and was not meant to lead to the discovery of evidence in support of Plaintiffs case but merely to determine the financial standing of one of the defendants. There is no evidence that Plaintiff made any effort in the period from September 7, 1994 to June 23, 1997 to move the case to trial.

Additionally, we do not believe the settlement negotiations would constitute a compelling reason for the delay. A compelling reason may include "cases where the delaying party establishes that the delay was caused by bankruptcy, liquidation, or other operation of law, or in cases awaiting significant developments in the law." *Penn Piping, Inc. v. Insurance Company of North America*, 529 Pa. at 356, n. 2, 603 A.2d

at 1009, n. 2. Our Superior Court discussed the effect of settlement negotiations as they apply to a judgment of non pros:

Absent extraordinary circumstances, it is hard to imagine any reason to permit settlement negotiations to continue without result for this long [more than four years] at the expense of any activity on the docket. The law favors settlement, and while counsel should be permitted a reasonable period of time in which to attempt to work out an amicable resolution, at some point the knowledge that there is no deadline on the negotiations serves to impede, rather than promote, settlement. It is often the prospect of vigorous litigation to ensue should the settlement negotiations break down that prompts the parties to engage in serious discussion as to what issues divide them and whether or not they can be resolved.

Pennridge Electric Inc. v. Souderton Area Joint School Authority, 419 Pa. Super. at 207, 615 A.2d at 98.

Although the period of inactivity in *Pennridge Electric* was four years, we believe the same reasoning is applicable in the case at hand, which involves a period of inactivity for just under three years. The parties dispute the extent of the negotiations which took place during this period. Plaintiff claimed the negotiations were substantial while Defendant claimed Plaintiff made only two offers which were both rejected. The earliest evidence of settlement negotiations was a letter dated July 12, 1997. This letter was from Plaintiff to Defendant, Reading Township, and stated that the purpose of the letter was to make "one final inquiry whether there is any possibility of settlement." Plt.'s Brief in Opposition to Motion for Entry of Judgment of Non Pros, Exhibit E. However, there is no indication of when the first offer of settlement was made or of the extent of the negotiations taking place before this date. Nevertheless, it seems clear to this court that the negotiations were not furthering progress toward a settlement. Discovery was underway by August of 1994 and in the time between September of 1994 and June of 1997, Plaintiff should have realized that settlement was not likely and should have continued on with discovery in order to bring this case to trial. As no significant action was taken during this time, we do not believe the settlement negotiations excuse almost three years of inactivity on the docket. Thus, the attached order is entered.

ORDER OF COURT

AND NOW, this 9th day of January, 1998, Defendant, Reading Township's Motion for Entry of Judgment Non Pros is hereby granted.

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.

SECOND PUBLICATION

ESTATE OF WILLIAM. MADISON JR., DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Dean Madison, 121 Park Avenue, Selinsgrove, PA 17870
 Attorney: Keith R. Nonemaker, Esquire, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF CHARLES ROBERT WELLMER, ALSO KNOWN AS C. ROBERT WELLMER DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
 Executrices: Joanne Louise Staub, 230 South Fifth Street, McSherrystown, PA 17344; Patricia Livelsberger, 372 Main Street, McSherrystown, PA 17344
 Attorney: John W. Phillips, Esquire, 101 West Middle Street, Gettysburg, PA 17325

ESTATE OF ROBERT S. WOLF, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Michael R. Wolf, 19 Krug Avenue, Hanover, PA 17331
 Attorney: James T. Yingst, Esquire, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF HELEN R. EISENHART, DEC'D

Late of Menallen Township, Adams County, Pennsylvania
 Executor: Leo R. Eisenhart, 5417 Bears Lane, Warrenton, VA 20187
 Attorney: Gary E. Hartman, Esquire, Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DAVID W. PORTER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Administratrix: Terry Porter, 714 Lee Drive, Gettysburg, PA 17325
 Attorney: Wendy Weikal-Beauchat, Esquire, 116 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FLORENCE C. SEIFERD, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Personal Representatives: H. Kenneth Seiferd and Essie I. Gilmore c/o Patterson, Kiersz & Ganley, P.C., 239-B East Main Street, Waynesboro, PA 17268-1681
 Attorney: Patterson, Kiersz & Ganley, P.C., 239-B East Main St., Waynesboro, PA 17268-1681

**NOTICE OF CHANGE OF NAME
 IN THE COURT OF COMMON PLEAS
 OF ADAMS COUNTY,
 PENNSYLVANIA**

NOTICE IS HEREBY GIVEN that on the 25th day of November, 1998, a petition was filed by Miriam T. Collins and Clarence H. Collins in the Court of Common Pleas of Adams County, Pennsylvania, which will result in a change of name of Aaron Lee Perry to Aaron Lee Collins.

Any interested person who has any cause why the prayer of said petition should not be granted shall file written objections with the Court within twenty (20) days of the date of publication of this notice.

Sheryl Jackson, Esq.
 Wolfe and Rice
 47 West High St.
 Gettysburg, PA 17325

12/30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-392 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of January, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of real estate located in Liberty Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a railroad spike in the center line of Route T-321 (leading from Route T-318 to L.R. 01052), said railroad spike being South 35 degrees 21 minutes 50 seconds East, 291.45 feet from a point in the center of T-321 on line of land now or formerly of Robert Weikert, said line running from a post in concrete to a post in concrete and being described as North 62 degrees 56 minutes 53 seconds East and being a total length of 1855.19 feet, said point in center of T-321 being 909 feet from the Southwest post in concrete at land now or formerly of Robert Weikert; thence in the center of said Route, South 35 degrees 21 minutes 50 seconds East, 130.77 feet to a railroad spike in said Route; thence in said Route, South 41 degrees 36 minutes 30 seconds East, 269.23 feet to a railroad spike in center of said Route; thence South 38 degrees 53 minutes 30 seconds West, 328.42 feet to a post at edge of lane; thence South 32 degrees 03 minutes 20 seconds West, 279.40 feet to a 10-inch cedar at edge of lane; thence South 62 degrees 33 minutes 10 seconds West, 181.08 feet to an iron pin at the edge of lane; thence South 46 degrees 28 minutes 40 seconds West, 405.56 feet to an iron pin at edge of lane; thence North 41 degrees 36 minutes 30 seconds West, 400 feet to an iron pin; thence North 43 degrees 31 minutes 00 seconds East, 1191.49 feet to a railroad spike in the center of Route T-321, the place of BEGINNING. CONTAINING 11.500 Acres.

The above description was obtained from draft of survey prepared by Price & Associates, Inc., dated June 19, 1975, and revised July 22, 1975, entitled "James G. & Mary L. Angelaras, Deed Book 263 at Page 857, Situate in Liberty Twp., Adams Co., Pa."

UNDER AND SUBJECT TO any and all rights of persons in possession, zoning and subdivision regulations, reservations, rights of way, easements and/or restrictions of record or such as may appear from an examination of the premises.

SEIZED and taken into execution as the property of **Jeffrey Aller, & Karen Lee McDannell** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 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 February 22, 1999, 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.

12/18, 23, 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-602 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of January, 1999, 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 THE RIGHT, title, interest and claim of **Michael Schoolcraft** and **Suzanne Schoolcraft**, a/k/a **Suzanne M. Schoolcraft** of, in and to the following described property:

ALL the following described real estate situated in the township of Mt. Joy, County of Adams and Commonwealth of Pennsylvania. Having erected thereon a dwelling known as 895 Heritage Drive, Gettysburg, PA 17325. D.B. V. 1288, page 29, parcel no. 7-82

SEIZED and taken into execution as the property of **Michael Schoolcraft & Suzanne M. Schoolcraft** and to be sold by me

Raymond W. Newman
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 22, 1999, 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.

12/18, 23, 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-184 issuing out of the Court of Common Pleas of Adams

County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of February, 1999, 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 improved tract of land, situate on the North side of South Street, in the Borough of McSherrystown, Adams County, Pennsylvania, more particularly bounded and described as follows:

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

MAP 5 PARCEL 302.

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
November 7, 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 March 8, 1999, 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.

12/30 1/8 & 15

LEGAL NOTICE

The Annual meeting of the policyholders of Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M., on January 09, 1999 to elect directors and to transact any other business properly presented.

Attest, **Marilyn Q. Butt**
Secretary-Treasurer

12/11, 18, 23 & 30