

Adams County Legal Journal

Vol. 48

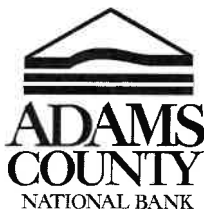
October 6, 2006

No. 20, pp. 117-122

IN THIS ISSUE

COMMONWEALTH VS. SPANGENBERG

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly 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) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

NOTICES OF FORFEITURE

NOTICE IS HEREBY GIVEN that a petition for forfeiture and condemnation of property was filed with the Adams County Clerk of Courts on June 9, 2006, and docketed at **CP-01-MD-216-2006**. The subject property, which is five hundred dollars (\$500.00) in United States currency, was seized during a search of 640 North Street, McSherrystown, Adams County, PA, on February 2, 2006. Any person claiming a possessory interest in the currency shall file a written response with the Adams County Clerk of Courts, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, on or before November 10, 2006. Failure to file a response by the aforementioned date will result in automatic forfeiture of the currency to the Commonwealth of Pennsylvania.

NOTICE IS HEREBY GIVEN that a petition for forfeiture and condemnation of property was filed with the Adams County Clerk of Courts on June 9, 2006, and docketed at **CP-01-MD-217-2006**. The subject property, which is twelve thousand eight hundred eighty dollars (\$12,880.00) in United States currency, was seized during a search of 640 North Street, McSherrystown, Adams County, PA, on February 2, 2006. Any person claiming a possessory interest in the currency shall file a written response with the Adams County Clerk of Courts, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, on or before November 10, 2006. Failure to file a response by the aforementioned date will result in automatic forfeiture of the currency to the Commonwealth of Pennsylvania.

NOTICE IS HEREBY GIVEN that a petition for forfeiture and condemnation of property was filed with the Adams County Clerk of Courts on March 22, 2006, and docketed at **CP-01-MD-126-2006**. The subject property, which is thirty-six dollars (\$36.00) in United States currency, was seized during a search of 1900 Shriver's Corner Road, Gettysburg, Adams County, PA, on September 10, 2005. Any person claiming a possessory interest in the currency shall file a written response with the Adams County Clerk of Courts, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, on or before November 10, 2006. Failure to

file a response by the aforementioned date will result in automatic forfeiture of the currency to the Commonwealth of Pennsylvania.

10/6 & 13

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, October 10, 2006, at 9:00 a.m.

ELICKER—Orphans' Court Action Number OC-112-06. The First and Final Account of Tina M. Elicker, Executors of the Estate of Carl W. Elicker, II, deceased, late of Highland Township.

PAXTON—Orphans' Court Action Number OC-114-06. The First and Final Account of PNC Bank, National Association, and Stanley A. Smith, Co-Trustees of the Deed of Trust of Kermit O. Paxton, Settlor, dated September 19, 2000, as amended October 10, 2002, deceased, late of Sarasota County, Florida.

PEIFFER—Orphans' Court Action Number OC-55-03. The First and Final Account of Thomas C. Peiffer, Administrator of the Estate of John T. Peiffer, Deceased, Late of Union Township, Adams County, Pennsylvania.

SMITH—Orphans' Court Action Number OC-121-06. The First and Final Account of Linda M. Brown, Executrix of the Estate of Frederick A. Smith, Deceased, Late of Conewago Township, Adams County, Pennsylvania.

PASCOE—Orphans' Court Action Number OC-128-06. The First and Final Account of Judy Wickline, Executrix of The Estate of Ella Pascoe, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

9/29 & 10/6

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW
NO. 06-S-1085

IN RE: Change of Name of Gary Gilbert,
to be known as: Garret Wayne Gilbert

NOTICE OF HEARING ON
PETITION FOR CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on the 20th day of September, 2006, the Petition of Gary Gilbert, was filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change his name from Gary Gilbert to Garret Wayne Gilbert. The Court has fixed November 28, 2006, at 9:00 A.M. in Courtroom No. 2 of the Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, PA 17325, as the date, time and place for the hearing on said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the said Petition should not be granted.

John R. White, Esq.
Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325
Supreme Court I.D. #21506
Attorney for Petitioner

10/6

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 **MAR-KETING VISUALIZATIONS, INC.**

Robert L. McQuaide
McQuaide Law Office
Suite 204
18 Carlisle Street
Gettysburg, PA 17325

10/6

COMMONWEALTH VS. SPANGENBERG

1. The constitutional safeguards of the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures, ensuring the right of each individual to be let alone.

2. In the context of motor vehicle stops, both federal and Pennsylvania Courts have traditionally required a showing of probable cause that a driver has violated the Vehicle Code before a traffic stop may be effectuated.

3. Probable cause exists where the facts and circumstances within the knowledge of the arresting officer and of which he has reasonably trustworthy information were sufficient to warrant a man of reasonable caution and belief to conclude that the suspect had committed or is committing a crime.

4. A reasonable suspicion, which is supported by specific articulable facts, that an operator is driving under the influence of alcohol or erratically, is sufficient in and of itself to justify the vehicle stop despite the fact that there is no evidence of any other violation of a specific Motor Vehicle Code Section.

5. Four minor crossings of the double yellow line, in a vacuum, is sufficient to effectuate a vehicle stop.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. CRIMINAL ACTION NO. CP-01-CR-882-
2005. COMMONWEALTH OF PENNSYLVANIA VS. CRAIG P.
SPANGENBERG.

Brian R. Sinnett, Assistant District Attorney, for Commonwealth
Steve Rice, Esq., for Defendant
George, J., February 7, 2006

OPINION

The Defendant, Craig P. Spangenberg (“Spangenberg”), has been charged by criminal complaint with driving under the influence of alcohol in violation of Sections 3802(a)(1) (incapable of safe driving) and 3802(c) (highest rate of alcohol) of the Pennsylvania Motor Vehicle Code. The charges result from a vehicle stop conducted by Trooper Mitchell of the Pennsylvania State Police on August 8, 2005, at 1:30 A.M. Prior to the stop, Trooper Mitchell observed Spangenberg operating his vehicle westbound on State Route 30 in Cumberland Township, Adams County. While following the vehicle, the Trooper observed the vehicle cross the center line on two occasions; each time, both the vehicle’s left side tires slightly crossed the center line. The Trooper continued to follow the vehicle as it made a left-hand turn onto Knoxlyn Road. While on Knoxlyn Road, the Trooper observed the vehicle’s driver’s side tires cross the double yellow lines on two occasions. Although the tires entirely crossed

into the other lane of travel, they did so only to a slight degree. Based upon these observations, the Trooper conducted a vehicle stop. Notably, there is no indication in the record as to the distance within which these observations were made, the condition of the roadway, the weather conditions, whether the observations were made on a straight roadway as compared to a winding or curving portion of the road, whether other vehicles or property was placed at risk, the lighting conditions or the nature of the vehicle's movements. Specifically, there was no indication of weaving within the lane of travel or abrupt or jerky movements by the vehicle. Additionally, although Trooper Mitchell has been employed as a Trooper with the Pennsylvania State Police for seven years, the record lacks information as to the Trooper's experience or familiarity in observing vehicles operated by intoxicated drivers.

Spangenberg has filed a motion to suppress all evidence derived from the vehicle stop claiming that the stop was illegal. After a hearing, the matter is ripe for disposition.

The constitutional safeguards of the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures, ensuring the "right of each individual to be let alone." *Commonwealth v. Blair*, 575 A.2d 593, 596 (Pa.Super. 1990).

In the context of motor vehicle stops, both federal and Pennsylvania Courts have traditionally required a showing of probable cause that a driver has violated the Vehicle Code before a traffic stop may be effectuated. *Delaware v. Prouse*, 440 U.S. 648, 661 (1979); *Commonwealth v. Whitmyer*, 668 A.2d 1113, 1115 (Pa. 1995). Although former 75 Pa.C.S.A. § 6308(b) (1998) permitted vehicle stops on the basis of "articulable and reasonable grounds," our Supreme Court has interpreted this standard as requiring a showing of probable cause. *Whitmyer*, cited above; *Commonwealth v. Gleason*, 785 A.2d 983, 986 (Pa. 2001).

As a result of *Whitmyer* and its progeny, the Courts have struggled with various factual scenarios in determining whether probable cause for a traffic stop existed. In *Commonwealth v. Steckler*, __ ACLJ __, CP-01-CR-576-2005 (MAG 9/30/05), I summarized recent appellate authority in this area and concluded that the severity of a violation under 75 Pa.C.S.A. § 3309 is a primary consideration in determining

whether probable cause exists. I reached this conclusion after considering a Superior Court panel opinion, which stated “where a vehicle is driven outside the lane of traffic for just a momentary period of time and in a minor manner, a traffic stop is unwarranted.” *Commonwealth v. Garcia*, 859 A.2d 820, 823 (Pa.Super. 2004). The “momentary and minor” criteria evolved from a number of appellate cases which were litigated under former Pa.C.S.A. § 6308(b).

However, on September 30, 2003, the legislature amended the statutory basis for conducting a vehicle stop when it substituted the words “reasonable suspicion” in the place of “articulable and reasonable grounds.” See 75 Pa.C.S.A. § 6308(b) (effective February 1, 2004). Following my decision in *Steckler*, the Pennsylvania Superior Court had the opportunity to rule upon the effect of this amendment. In *Commonwealth v. Sands*, the Court found that the statutory law permitting police officers to stop a vehicle based upon a reasonable suspicion did not violate the Fourth Amendment or the Pennsylvania Constitution, Article 1, Section 8.¹ *Commonwealth v. Sands*, 2005 Pa.Super. LEXIS 3982, 29-30, (Pa.Super. 2005). The Court implied that the “reasonable suspicion” standard is a lesser standard in comparison to the “articulable and reasonable grounds” standard.² The Court’s analysis in *Sands*, however, did mandate that an “officer must be able to relay specific and articulable facts that would give rise to a reasonable suspicion that the person is driving under the influence” in order to justify the stop. *Id.* at 30.

Based on this language, I can only wonder whether the legislature’s attempt to overrule the Pennsylvania Supreme Court’s decisions in *Whitmyer* and *Gleason* through the amendment of Section 6308(b) is an artificial distinction.³ Although appellate courts have

¹In a concurring Opinion, Judge Olszewski questioned the viability of a standard that requires less than “articulable and reasonable grounds” to suspect a violation of the Vehicle Code. Subsequent writers have also questioned the viability of the statutory amendment. See *Commonwealth v. Anderson*, 2005 Pa.Super. LEXIS 4178 (Pa.Super. 2005) (Gantman, dissenting). Nevertheless, the panel opinion in *Sands* provides precedential authority which this Court must follow. *Sands*, cited above.

²In the prior case of *Commonwealth v. Cook*, the Superior Court noted that the amendment “lowered the quantum of cause an officer must possess from ‘articulable and reasonable grounds’ to ‘reasonable suspicion.’” *Commonwealth v. Cook*, 865 A.2d 869, 873 n. 1 (Pa.Super. 2004).

³In *Sands*, Judge Bender referenced a particular piece of legislative history where Representative Harper expresses that the amendment’s clear intent is to override the Supreme Court’s decision in *Gleason*.

yet to specifically define the reasonable suspicion standard, this Court's research reveals that the terms "articulable and reasonable grounds" and "probable cause" have been used interchangeably by our appellate courts. Our Supreme Court has stated that probable cause exists "where the facts and circumstances within the knowledge of the arresting officer and of which he has reasonably trustworthy information were sufficient to warrant a man of reasonable caution and belief to conclude that the suspect had committed or is committing a crime." *Commonwealth v. Murray*, 331 A.2d 414, 417 (Pa. 1975). As much as I may try to find a distinction between this language and the term "reasonable suspicion," I am unable to do so. Despite the difference in language, it appears that "*the two standards amount to nothing more than a distinction without a difference.*" *Gleason*, 785 A.2d at 988. Nevertheless, this issue is not before me. I must decide this case based upon the implication presented in the *Sands* decision that a reasonable suspicion standard is a standard somewhat less than probable cause.

In resolving whether the Trooper possessed a reasonable suspicion sufficient to conduct a traffic stop, and attempting to rectify the myriad of appellate opinions in this area, it is important to define the specific basis for a vehicle stop. Appellate authority has considered this issue under two distinct factual patterns: 1) where a specific provision of the Vehicle Code has been violated and 2) where the stop is based upon a suspicion of driving under the influence of alcohol and/or erratic driving. See *Commonwealth v. Starr*, 739 A.2d 191, 195 (Pa.Super. 1999) (a stop may be based on an officer's observations of erratic driving). This distinction, however, has become blurred. Specifically, precedent analyzing the violation of a specific Vehicle Code section has been applied by courts analyzing vehicle stops based upon a suspected DUI and/or erratic driving. For instance, in *Gleason*, the Supreme Court found a vehicle stop illegal where justification for the stop was based upon a violation of 75 Pa.C.S.A. § 3309(1) (relating to vehicles driving within a single lane of travel). See generally, *Gleason*, cited above. The *Gleason* Court held that a vehicle crossing the berm line by six to eight inches on two occasions for a period of a second or two over a distance of approximately one quarter of a mile was insufficient to justify a stop under this section.

Near in time to this decision, the Superior Court found, in *Baumgardner*, that erratic driving consisting of weaving from side to

side in the lane of travel continuously over a two-mile distance was sufficient to effectuate a vehicle stop. *Baumgardner*, 767 A.2d at 1067-68. The Superior Court concluded that this evidence was sufficient evidence of erratic driving to justify the stop. Without opinion, and on the basis of *Gleason*, the Supreme Court reversed the Superior Court's decision. In doing so, the Supreme Court has signaled, perhaps unintentionally, that erratic driving short of a Vehicle Code violation is an insufficient basis for a vehicle stop. Despite this convergence of appellate authority, it is this Court's opinion, until and unless unequivocal pronouncements from our appellate courts indicate otherwise, that a reasonable suspicion, which is supported by specific articulable facts, that an operator is driving under the influence of alcohol or erratically, is sufficient in and of itself to justify the vehicle stop despite the fact that there is no evidence of any other violation of a specific Motor Vehicle Code Section. Accordingly, I will analyze the current vehicle stop under both the theory of a violation of a specific Vehicle Code provision and also under a theory of erratic driving.

I am guided by the Supreme Court's decision in *Gleason* when considering whether sufficient evidence of a violation of a specific section of the Vehicle Code, 75 Pa.C.S.A. § 3309 (driving within a single lane of travel), existed. In examining an alleged violation of this Section, the Court found that a de minimis infraction that did not create a safety hazard was insufficient to justify a stop. *Gleason* was expounded upon by the Superior Court in *Garcia*, cited above, wherein the Superior Court formulated a "monetary and minor" standard in considering the violations of 75 Pa.C.S.A. § 3309 (driving within a single lane) and 75 Pa.C.S.A. § 3301 (driving on right side of roadway). In doing so, the Court in *Garcia* instructed that "where a vehicle is driven outside the lane of traffic for just a momentary period of time in a minor manner, a traffic stop is unwarranted." *Garcia*, 859 A.2d at 823. These decisions are supported by the actual language in Section 3309, which states that a "vehicle shall be driven **as nearly as practicable** entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety." 75 Pa.C.S.A. § 3309 (emphasis added).

After applying this precedent in light of what the Commonwealth argues to be the more liberal standard of *Sands*, I find that there was

not a sufficient basis for a vehicle stop under Section 3309. The testimony at the hearing established nothing more than the fact that the vehicle's deviation from its lane of travel was "momentary and minor." There is no indication that any people or properties were placed in peril. In short, there is nothing to indicate a reasonable suspicion that Section 3309 of the Pennsylvania Motor Vehicle Code was violated.

Similarly, I am unable to ascertain from the record a reasonable basis to suspect that Spangenberg was driving under the influence of alcohol. Certainly, had the record established that Spangenberg's actions were erratic or accompanied by excessive weaving, a different result might mandate. However, this Court is left to speculate as to the circumstances surrounding Spangenberg's minor transgression across the double yellow lines. The Court has no basis upon which to determine the distance within which it occurred, the lighting conditions, the road conditions or other circumstances that would allow the Court to put Spangenberg's actions into context. Simply put, objective criteria establishing a reasonable basis that the traffic stop was lawful is not present. Absent articulable and objective evidence in that regard, it is impossible for me to determine whether or not the Trooper's suspicion was reasonable.

My conclusion in this opinion should not be interpreted as a bright line rule that a vehicle crossing the center line on four separate occasions is insufficient to justify a stop. To the contrary, a circumstance where a vehicle crosses the center line on four occasions, or perhaps even a lesser number of occasions, may very well be sufficient to justify a vehicle stop based upon a trooper's suspicion that the driver may be driving under the influence of alcohol; however, objective and articulable facts, sufficient to support a finding of reasonable basis by the fact finder, must be present. This holding is specifically limited to the conclusion that four minor crossings of the double yellow line, in a vacuum, is insufficient to effectuate a vehicle stop.

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 7th day of February, 2006, the Defendant's Motion for Suppression is granted. All evidence obtained by the Commonwealth subsequent to the vehicle stop in this matter is suppressed and may not be entered into the evidence.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-551 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two (2) lots of ground situate, lying and being in Reading Township, Adams County, Pennsylvania, bounded, limited and described as follows, to wit:

BEGINNING at an iron pin of land now or formerly of George H. Miller and other land now or formerly of W.A. Bosserman; thence by last mentioned lands South fifty-nine (59) degrees thirty (30) minutes West fifty (50) feet to an iron pin of lands now or formerly of W.A. Bosserman; thence by the same North twenty-nine (29) degrees West twenty-nine and seven-tenths (29.7) feet to an iron pin; thence North fifty-nine (59) degrees thirty (30) minutes East fifty (50) feet to an iron pin at Lot No. 2 hereof; thence by the same and lands now or formerly of George H. Miller, aforesaid, South twenty-nine (29) degrees and seven-tenths (29.7) feet to an iron pin, the place of BEGINNING. (It being part of the same which was surveyed by George M. Wildasin, Registered Surveyor, on August 11, 1961, as the property of William Bosserman) 0.03 AC.

BEGINNING at a point in the Great Conewago Creek at corner of lands now or formerly of George Miller; thence along lands now or formerly of George Miller; thence along lands now or formerly of George Miller, South fifty-eight and one-half (58-1/2) degrees West two hundred ninety-seven (297) feet to an iron pin of Lot No. 1 hereof; thence by the same and other lands North thirty (30) degrees West sixty-five (65) feet to lands now or formerly of Paul A. Swartz; thence along said Swartz's land North fifty-eight and one-half (58-1/2) degrees East two hundred ninety-seven (297) feet to a point at the Great Conewago Creek, aforesaid; thence along said Conewago Creek South twenty and one-fourth (20-1/4) degrees East sixty-five (65) feet to a point, the place of BEGINNING. 0.444 AC.

1) Vested by Warranty Deed, dated 10/5/2004, given by Richard L. Stauffer and Linda E. Stauffer to David Schoolcraft and recorded 10/18/2004 in Book 3739 Page 48 Instrument #200400021492.

Real Property Owner: David Schoolcraft

Premises being: 45 South Hickory Lane, New Oxford, PA 17350

Tax Parcel No. 36-J09-0074-000

SEIZED and taken into execution as the property of **David Schoolcraft, IV a/k/a David B. Schoolcraft** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-101 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE three (3) contiguous tracts of land situate in Freedom Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at an iron pin at corner of lands now or formerly of Joseph E. Codori; thence by lands now or formerly of R. C. Witherow, North 2-1/2 degrees East, 48 feet to an iron pin; thence North 62 degrees East, 179 feet to an iron pin; thence South 28 degrees East, 86 feet to a point in Marsh Creek; thence by other land now or formerly of Joseph E. Codori South 62 degrees West, 52 feet to an iron pin; thence by same South 78-1/2 degrees West 157.2 feet to an iron pin, the place of BEGINNING.

CONTAINING 50 perches.

TRACT NO. 2: BEGINNING at a corner of Marsh Creek Heights Road and other land now or formerly of George A. Miller and Blanche M. Miller; thence along land now or formerly of George A. and Blanche M. Miller in a Southerly direction, 50 feet to other land now or formerly of Robert C. Witherow; thence along other land now or formerly of said Robert C. Witherow in an Easterly direc-

tion 64 feet to a stake at other land of Robert C. Witherow; thence continuing along other land now or formerly of Robert C. Witherow in an Northerly direction, 50 feet to the Marsh Creek Heights Road; thence along the said Marsh Creek Heights Road in a Westerly direction 64 feet to the land now or formerly of George A. Miller and Blanche M. Miller, the place of BEGINNING.

TRACT NO. 3: BEGINNING at an iron pin at corner of lands now or formerly of George A. Miller and Blanche M. Miller; thence along other land now or formerly of said George A. Miller and Blanche M. Miller in a Southerly direction 50 feet to a stake at land of Robert C. Witherow; thence along land now or formerly of Robert C. Witherow in an Easterly direction 50 feet to a stake; thence continuing along lands now or formerly of Robert C. Witherow, in a Northerly direction 50 feet to Marsh Creek Heights Road; thence along said road in a Westerly direction 50 feet to other lands now or formerly of George A. Miller and Blanche M. Miller, the place of BEGINNING.

CONTAINING 50 perches.

TITLE TO SAID PREMISES IS VESTED IN Daniel J. Boone, Unmarried by Deed from Celia Dunayer, unmarried dated 3/26/1998 and recorded 3/27/1998 in Record Book 1547, Page 42.

Premises being: 196 Marsh Creek Heights Road, Gettysburg, PA 17325

Tax Parcel No. 13-E17-36

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-754 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two certain tracts of land situated, lying and being in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

Tract #1

BEGINNING at a point in the center of a public road; thence by land now or formerly of W.A. Raffensperger, South 86-1/2 degrees West 175 feet to an iron pin; thence by Tract No. 2, North 9-1/4 degrees West 186.4 feet to an iron pin; thence by the same North 1-1/4 degrees West 100 feet to an iron pin on the South side of State Highway Route 234; thence North 32-1/2 degrees East 22 feet to a point in the center of said State Highway; thence in the center of said State Highway, South 87 degrees East 170 feet to a point in the center of said State Highway; thence in the public road referred to above, South 11 degrees West 35 feet to a point; thence continuing in said public road and by land now or formerly of Emma Harper, South 7 degrees East 250 feet to a point; the place of BEGINNING. CONTAINING 1 acre, 2 perches and 217 square feet.

Less, however, the following portion of said tract now or formerly reserved by Thomas R. Gormley and Madeline V. Gormley, husband and wife.

BEGINNING at a railroad spike in the intersection of Route 234 leading to Arendtsville and Township Route T-340 (not traveled) at lands now or formerly of Lela V. Harper; thence in said Township Road T-340 (not traveled) and by said lands, South 7 degrees East, 285 feet to an iron pin at lands now or formerly of W.A. Raffensperger; thence by said lands, South 86 degrees 30 minutes West 118.05 feet to an iron pin at lands now or formerly of Thomas Gormley; thence by said lands, North 9 degrees 57 minutes 10 seconds East 83.11 feet to an iron pin; thence continuing by said lands, North 13 degrees 35 minutes 10 seconds East 211.30 feet to a railroad spike in said Route 234 leading to Arendtsville; thence in said Route 234, North 81 degrees 46 minutes 50 seconds East 19.28 feet to the place of BEGINNING. CONTAINING 20,000 square feet.

The above description of the executed portion was taken from a draft of survey dated October 23, 1973, prepared by Boyer-Price Surveys.

Tract #2

BEGINNING at an iron pin on the South side of State Highway Route 234; thence by Tract No. 1; South 1-1/4 degrees East 6.1 perches to an iron pin; thence by the same, South 9-1/4 degrees East 11.3 perches to an iron pin; thence by land now or formerly of W. A. Raffensperger, South 44 degrees West 13.3 perches to an iron pin; thence by the Arendtsville Athletic Field, North 22-1/2 degrees West 27.4 perches to a point in the aforementioned State Highway on a little bridge; thence in said State Highway and by land now or formerly of Aero Realty, Inc., North 80 degrees 30 minutes East 9.1 perches to a point in said State Highway; thence North 11 degrees West 1.1 perches to a point; thence along said State Highway and by lands now or formerly of John K. Frederick and wife, North 84 degrees 51 minutes 30 seconds East 10.1 perches (erroneously stated in prior deeds as 6.8 perches) to an iron pin; thence crossing said State Highway, South 27 degrees West 2.3 perches to an iron pin, the place of BEGINNING.

Tax Parcel No.: 7 E8-58

Premises Being: 1208 Arendtsville Rd., Biglerville, PA 17307

SEIZED and taken into execution as the property of **Brenda Cunningham** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/6, 13 & 20

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on July 17, 2006.

The name of the corporation is: DJ HOMES, LLC. The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

DJ Homes, LLC
415 Cedar Ridge Road
New Oxford, PA 17350

10/6

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 NETTIE LEAH BOWER, DEC'D**

Late of the Borough of York Springs, Adams County, Pennsylvania

Administratrix: Bonita K. Kuntz, 6609 Oxford Road, Gardners, PA 17324

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF MARK D. DANNER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Attorney: Ralph D. Oyler, Esq., Oyler Law Office, 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF CRAIG M. GOUKER, DEC'D

Late of Union Township, Adams County, Pennsylvania

James Roser, 310 1/2 Broadway, Hanover, PA 17331

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

ESTATE OF LEATRICE MAE HELD-BRIDLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donna J. Winters and Tammie S. Stem, c/o Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

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

ESTATE OF ELIZABETH KINSEL, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Ms. Lynn Kinsel McDonald, 349 Old Waynesboro Rd., Fairfield, PA 17320

Attorney: William R. Bunt, Esq., 109 South Carlisle Street, P.O. Box 336, New Bloomfield, PA 17068

ESTATE OF ELWOOD S. McCLEAF, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Co-Executors: Scott A. McCleaf, 872 Frogtown Road, Hanover, PA 17331; Loy McCleaf, 234 Hall Drive, Hanover, PA 17331

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MARY K. RUTTERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donald L. Rutters, 800 Skyview Drive, York, PA 17406; Steven L. Rutters, 9 Hill Street, Hanover, PA 17331

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

ESTATE OF CLARA B. SCHOFF, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Barbara D. Booze, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

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

ESTATE OF MARIAN M. SHEARS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Edward A. Hung, III, 1389 Gamble Road, P.O. Box 548, Great Cacapon, West Virginia 25422

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

ESTATE OF ROBERT F. STORM, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Donald L. Storm, 209 Longdraft Road, Gaithersburg, MD 20878-1033

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

SECOND PUBLICATION**ESTATE OF WILLIAM B. GALLAGHER, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executors: James W. and Christine F. Gallagher, 303 North Stratton Street, Gettysburg, PA 17325; George M. Gallagher, 639 South Washington Street, Gettysburg, PA 17325

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

ESTATE OF JANE S. HUGHES a/k/a MARY JANE HUGHES, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: M & T Bank, 55 South Main Street, P.O. Box 459, Chambersburg, PA 17201-0459

Attorney: Richard K. Hoskinson, Esq., Hoskinson & Wenger, 147 East Washington Street, Chambersburg, PA 17201

ESTATE OF J. MAXINE MECKLEY a/k/a JENNIE MAXINE MECKLEY, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Co-Executors: David C. Meckley and Richard E. Meckley, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

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

ESTATE OF DOROTHY E. MILLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

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

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

THIRD PUBLICATION**ESTATE OF THELMA R. ALWINE a/k/a THELMA IRIS ALWINE, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Administrator, c.t.a.: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

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

(continued on page 6)

THIRD PUBLICATION (continued)

ESTATE OF CATHERINE R. BAKER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Donald F. Baker, Jr., 25 Warm Breeze Ct., Hanover, PA 17331
 Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LEONA H. CEHULA, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Executrix: Dolores Beebe, 10 Barley Circle, Hanover, PA 17331
 Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF JOHN H. HAAR, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania
 Co-Executrices: Joan L. Huffman, 345 Cedar Ridge Road, New Oxford, PA 17350; June E. Boyer, 110 Biesecker Road, York, PA 17408; Mary H. Ebersole, 384 Pine Road, New Oxford, PA 17350
 Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF HARRY L. HENDRICKS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executor: Erik J. Hendricks, 185 Tiffany Lane, Gettysburg, PA 17325
 Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF JOHNATHON GEORGE LAUGHMAN, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania
 Administratrix: Wendy Weikal-Beauchat, 63 West High St., Gettysburg, PA 17325
 Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

ESTATE OF RUTH MARKS a/k/a RUTH I. MARKS, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania
 Executor: Janet Doyle, 145 Race Track Road, Hanover, PA 17331
 Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

UNITED STATES POSTAL SERVICE Statement of Ownership, Management, and Circulation All Periodicals Publications Except Requester Publications

1. Publication Title: Adams County Legal Journal
 2. Issue Frequency: Weekly
 3. Number of Issues Published Annually: 52
 4. Annual Subscription Price: \$30.00
 5. Filing Date: 9-29-2006

6. Complete Mailing Address of Known Office of Publication (Not printer): Room 303, Courthouse, 111-117 Baltimore Street Gettysburg, PA 17325
 7. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer): Room 303, Courthouse, 111-117 Baltimore Street Gettysburg, PA 17325
 8. Full Name and Complete Mailing Address of Publisher, Editor, and Managing Editor (Do not leave blank):
 Publisher Name and complete mailing address:
 John W. Phillips, Esq., 101 West Middle Street, Gettysburg, PA 17325
 Editor Name and complete mailing address:
 John W. Phillips, Esq., 101 West Middle Street, Gettysburg, PA 17325

9. Owner (Do not leave blank. If this publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as the names and addresses of all individual owners. If the publication is published by a corporation or other unincorporated firm, give its name and address.)
 Full Name: Adams County Bar Association
 Complete Mailing Address: Room 303, Courthouse, 111-117 Baltimore Street, Gettysburg, PA 17325

10. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box.
 Full Name: (None)
 Complete Mailing Address: (None)

11. Publication Title: Adams County Legal Journal
 Issue Date for Circulation Data Below: 10-06-2006

12. Extent and Nature of Circulation	Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)	145	145
b. Paid Circulation (By Mail and Outside the Mail)	36	36
c. Total Paid Circulation (Sum of 12b(1), (2), (3), and (4))	135	135
d. Free or Nominal Rate (Outside-Country Copies Included on PS Form 3541)	0	0
e. Total Free or Nominal Rate Distribution (Sum of 12d(1), (2), (3), and (4))	0	0
f. Total Distribution (Sum of 12c and 12e)	135	135
g. Copies not Distributed (See instructions to Publishers at page 33)	10	10
h. Total (Sum of 12f and g)	145	145
i. Paid Paid (PS Form 3541)	932	932

13. Publication of Statement of Ownership: If the publication is a general publication, publication of this statement is required. We will print it in the 10-06-2006 issue of the publication. Publication not required.

14. Signature and Title of Editor, Publisher, Business Manager, or Owner: *Cecilia Brown, Asst. Asst. Mgr.* Date: 9-29-2006

15. I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

Adams County Legal Journal

Vol. 48

October 13, 2006

No. 21, pp. 123-128

IN THIS ISSUE

KINT VS. ROMERO ET AL

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-697 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or piece of ground situate in Mount Pleasant Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a pin at the Northern side of the right-of-way of Leg. Rt. No. 01067 leading from Rt. 30 to the New Chester-Hunterstown Road at land now or formerly of Kenneth L. Leatherman and Demetris Leatherman, said point of beginning being 753.9 feet Southeast of the center of bridge over Swift Run; thence by land now or formerly of Kenneth L. Leatherman and Demetris Leatherman, North 40 degrees 47 minutes 44 seconds East, 200 feet to a pin; thence by land now or formerly of Kenneth L. Leatherman and Demetris Leatherman, South 49 degrees 12 minutes 16 seconds East, 200 feet to a pin; thence by land now or formerly of Kenneth L. Leatherman and Demetris Leatherman, South 40 degrees 47 minutes 44 seconds West, 200 feet to a pin at the Northern right-of-way line of said

Leg. Rt. No. 01067; thence along the Northern right-of-way line of said Leg. Rt. North 49 degrees 12 minutes 16 seconds West, 200 feet to a pin, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Jennifer L. Flynn, by Deed from Edward Francis Powers, Jr., unmarried, dated 06/02/2004, recorded 06/04/2004, in Deed Book 3595, page 306.

Premises Being: 755 Brickcrater Road, New Oxford, PA 17350

Tax Parcel No. I10-43A

SEIZED and taken into execution as the property of **Jennifer L. Flynn a/k/a Jennifer L. Steele** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/13, 20 & 27

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for PENNMAF WINDOWS & EXTERIORS, INC., were filed with the Department of State of the Commonwealth of Pennsylvania on or about October 3, 2006, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, as amended.

Thomas E. Miller, Esq.
Miller & Shultis, P.C.
Solicitor

10/13

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about August 31, 2006 for the incorporation of SAMSKE, INC. under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 2035 Biglerville Road, Gettysburg, Pennsylvania 17325.

Bernard A. Yannetti, Esq.
Hartman & Yannetti
Solicitors

10/13

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly 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) 337-9812
Periodicals postage paid at Gettysburg, PA 17325.

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-696 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in the Township of Franklin, County of Adams, and Commonwealth of Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a point in the centerline of Jack Road (T-315), said point marking the common point of adjoiner of Lots #26 and #26-A on the hereinafter plan of subdivision; thence extending in and through the centerline of Jack Road, North seventy-five (75) degrees fifty-six (56) minutes fifty-four (54) seconds West, for a distance of sixty-seven and eighty-seven hundredths (67.87) feet to a point in the centerline of said roadway; thence continuing in and through the centerline of Jack Road by an arc or curve to the left having a radius of five hundred ten (510) feet, for an arc distance of seventy-eight and thirty hundredths (78.30) feet to a point in the centerline of Jack Road as Lot #27 on the plan of subdivision of Hidden Valley (Plat Book 60, page 45); thence departing from the centerline of Jack Road, and extending along Lot #27 as aforesaid, North five (05) degrees fifteen (15) minutes twenty-two (22) seconds East, through a steel pin set on the Northernmost dedicated right-of-way line of Jack Road, a distance of twenty-five and no hundredths (25.00) feet from the origin of this call, for a total distance of three hundred and no hundred (300.00) feet to a concrete monument; thence continuing along Lot #27, South seventy-eight (78) degrees forty-seven (47) minutes thirty-three (33) seconds East, for a distance of one hundred ninety-one and ninety-seven hundredths (191.97) feet to an iron pin at Lot #26 on the hereinafter mentioned plan of subdivision; thence extending along Lot #26, South ten (10) degrees eight (08) minutes three (03) seconds West, through an iron pin set on

the Northernmost dedicated right-of-way line of Jack Road, a distance of twenty-five and six hundredths (25.06) feet from the terminus of this call, for a total distance of two hundred ninety-nine and sixty-eight hundredths (299.68) feet to a point in the centerline of Jack Road, said point marking the place of BEGINNING.

CONTAINING 1.0019 acres to the dedicated right-of-way line and 1.0864 acres to the property line, and being designated as Lot #26-A on a final plan of resubdivision of Lot #26 of the Musselman Farm prepared for Harry H. Fox, Jr. by Stanley Jarmolenko, Registered Surveyor, dated November 28, 1994, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 66, at page 19.

TITLE TO SAID PREMISES IS VESTED IN Johnnie R. Palmer, Jr., and Teresa L. Palmer, his wife by Deed from Harry H. Fox, Jr. and Ann G. Fox, his wife dated 8/1/1994 and recorded 8/14/1995 in Record Book 1067 Page 62.

Premises Being: 111 Jack Road, Orrtanna, PA 17353

Tax Parcel No. 12-C12-0160-000

SEIZED and taken into execution as the property of **Johnnie R. Palmer, Jr. & Teresa L. Palmer a/k/a Teresa L. Boone** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/13, 20 & 27

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

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

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

vs.

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

and

JAMES R. COLLINS, JR., Defendant

ORDER OF COURT

AND NOW, this 19th day of September, 2006, upon consideration of the attached Motion for Judgment, IT IS HEREBY ORDERED that Defendants Thomas O. Feeser, a/k/a T. O. Feeser, and Lydia C. Feeser, husband and wife, their respective heirs, executors, administrators, successors and assigns, shall be forever barred from asserting any right, lien, title or interest in the subject real estate inconsistent with the interest or claim that the Plaintiffs have set forth in their complaint, unless Defendants Thomas O. Feeser, a/k/a T. O. Feeser, and Lydia C. Feeser, husband and wife, their respective heirs, executors, administrators, successors and assigns, enter an appearance and file an answer to the complaint within thirty (30) days of notice of this Order. If such action is not taken within the 30-day period, the Prothonotary, on praecipe from the Plaintiffs, shall enter final judgment, if appropriate.

Service of this Order upon the Defendants Thomas O. Feeser, a/k/a T. O. Feeser, and Lydia C. Feeser, husband and wife, their respective heirs, executors, administrators, successors and assigns, shall be made by publication once in the Adams County Legal Journal and once in The Gettysburg Times.

10/13

KINT VS. ROMERO ET AL

1. The Grandparent Custody and Visitation Act allows grandparents or great-grandparents to bring an action for partial custody or visitation under certain circumstances.

2. The term “grandparent” has not been defined in the Act. When the words of a statute are not defined, courts should resort to the Rules of Statutory Construction, which requires words to be construed according to their common and approved usage.

3. The term “great-grandparent” has been defined as “a parent of one’s father or mother”. Therefore, a great-grandparent is simply a grandparent of an older generation.

4. We believe the term “grandparents” in Section 5312 of the Act was meant to encompass “great-grandparents” for purposes of obtaining partial custody and visitation.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. CIVIL ACTION NO. 05-S-1101. HAROLD
KINT AND PATRICIA KINT VS. LYNNAYA ROMERO AND
RICKY HOPKINS.

Barbara Jo Entwistle, Esq., for Plaintiff
John James Mooney, III, Esq., for Defendant
Bigham, J., February 7, 2006

OPINION

STATEMENT OF FACTS

Plaintiffs, Harold and Patricia Kint, are the maternal great-grandparents filing for partial physical custody or visitation of their eight year old great-grandson. Defendants, Lynnaya Romero (hereinafter “mother”) and Ricky Hopkins (hereinafter “father”), are the natural parents of the child. The natural parents have separated and have lived apart for a period of over six months.

Since the birth of their great-grandchild, these great-grandparents have been significantly involved in his life. When their great-grandson started kindergarten during the 2004-2005 school year, he would come to their home every morning to eat breakfast. They drove their great-grandson to and from school every day and would provide child care for him in the evenings until 5:00 or 6:00. Throughout a month, he would typically spend at least two or three overnights on the weekends and they have taken their great-grandson on trips with them. In late July of 2005, mother moved to an unknown location with the child and refused to allow the great-grandparents to have any contact with their great-grandson.

The great-grandparents initiated this custody action by filing a Complaint for custody on October 13, 2005. The custody conference scheduled for October 26, 2005 had to be continued because the great-grandparents were unable to serve the mother with the custody complaint because her address was unknown. On November 22, 2005, a third party effectuated service of the custody complaint on the mother. Mother filed preliminary objections requesting this Court to dismiss the custody complaint arguing these great-grandparents do not have standing under Section 5313(a) of Title 23¹ because their great-grandson has not resided with them for a period of 12 months or longer. Great-Grandparents admit they do not have standing under Section 5313(a) but argue they have standing under Section 5312 and Section 5313(b) of Title 23.

DISCUSSION

Sections 5311, 5312, and 5313 of the Domestic Relations Code, commonly referred to as the Grandparent Custody and Visitation Act (hereinafter “Act”) allows grandparents or great-grandparents to bring an action for partial custody or visitation under certain circumstances. 23 Pa.C.S.A. §§5311-5313; *Gradwell v. Strausser*, 416 Pa. Super. 118, 126, 610 A.2d 999, 1003 (1992). Here, great-grandparents argue they have standing under Section 5312 and Section 5313(b).

At the outset, we decline to confer standing under Section 5313(b) because this Section only applies to grandparents seeking physical and legal custody. These great-grandparents are not seeking physical and legal custody; rather they are requesting partial custody and visitation. Therefore, Section 5313(b) clearly does not apply.

The only issue is whether these great-grandparents have standing under Section 5312. Section 5312 uses the term “grandparent” but does not specifically reference “great-grandparents”, it provides:

¹ Section 5313(a) entitled “Partial Custody and visitation” provides — If an unmarried child has resided with his grandparents or great-grandparents for a period of 12 months or more and is subsequently removed from the home by his parents, the **grandparents or great-grandparents** may petition the court for an order granting them reasonable partial custody or visitation rights, or both, to the child. The court shall grant the petition if it finds that visitation rights would be in the best interest of the child and would not interfere with the parent-child relationship.

In all proceedings for dissolution, subsequent to the commencement of the proceeding and continuing thereafter or when parents have been separated for six months or more, the court may, upon application of the parent or **grandparent** of a party, grant reasonable partial custody or visitation rights, or both, to the unmarried child if it finds that visitation rights or partial custody, or both, would be in the best interests of the child and would not interfere with the parent-child relationship.

The term “grandparent” has not been defined in the Act. When the words of a statute are not defined, courts should resort to the Rules of Statutory Construction, which requires words to be construed according to their common and approved usage. 1 Pa.C.S.A. § 1901, 1903(a); *Philadelphia Eagles Football Club, Inc. v. City of Philadelphia*, 823 A.2d 108, 127-128 (Pa. 2003). Generally, dictionaries are a source for determining the common and approved usage of words. *Id.*

In *Costello*, the court looked to the dictionary definition of the term “grandparent”. *Id.* at *22. A “grandparent” is a “parent’s parent”. *Id.* citing **Webster’s Third New International Dictionary (2002), 988**. A “parent” is defined as “1a: one that begets or brings forth offspring: Father, Mother; b [law] (1): a lawful parent (2): a person standing *in loco parentis* although not a natural parent ...”. A “parent” is also defined as “1: one that begets or brings forth offspring: FATHER, MOTHER [;] 2: one who brings and cares for another”. *Id.* citing **The Merriam Webster Dictionary (1997), 535**. The term “great-grandparent” has been defined as “a parent of one’s father or mother”. Therefore, a great-grandparent is simply a grandparent of an older generation.

Since the objective of all statutory construction is to determine the legislative intent behind a statute, our analysis must be guided by looking at: 1) occasion and necessity for the statute; 2) circumstances under which it was created; 3) mischief to be remedied; 4) object to be attained; 5) former law; 6) consequences of a particular interpretation; 7) contemporaneous legislative history; and 8) legislative and administrative interpretations of such statutes. 1 Pa.C.S.A. §§ 1921(a), 1921(c)(1)-(8). Section 5301 of Title 23 states the legislative policy

behind the Act was to ensure continuing contact between children and their grandparents when a parent is deceased, divorced or separated. 23 Pa.C.S.A. § 5301.

Before the 1985 Amendments to the Act, grandparents could only seek visitation rights. The 1985 Amendments permitted grandparents to seek partial custody rights in addition to visitation. The legislative purpose behind expanding the rights of grandparents was to ensure the maintenance of meaningful and healthful relationships between grandparents and grandchildren. *See House Journal, 1464-1483 (June 27, 1985)*.² The term “grandparents” was inserted into Sections 5311, 5312, and 5313(a). However, the term “great-grandparents” was only added to Section 5313(a). The legislative history is silent as to the legislature’s reasoning for using the term “grandparent” in Sections 5311, 5312 and 5313(b) but only including the term “great-grandparent” under Section 5313(a). We point out the fact that there is proposed legislation specifically addressing this issue, which will include the term “great-grandparents” under all of these Sections.³

In 1996, the Act was amended to give grandparents custody, partial custody and visitation rights. The tenor of the debate among the legislators was focusing on maintaining a balance between: (a) allowing relatives who have been actively involved in a child’s life to have the right to seek continuance or reinstatement of such contact, and (b)

²Representative Itkin stated: “... a grandparent is limited by the definition of “visitation” which appears in the Rules of Civil Procedure, which means a child may not be taken by a grandparent for a day’s outing — perhaps to a movie, an amusement park, or even out for a meal. If a grandparent is granted visitation rights under the law, he may only visit the grandchild in the presence of the custodial parent. I think many of us would agree that such limited visitation rights preclude the maintenance of meaningful and healthful relationships between grandparents and grandchildren.”

³Section 5325 of Senate Bill No. 74, specifically confers standing on “great-grandparents” for partial custody and visitation when the parent of a child is deceased, divorced, **separated for six months**, or when the child has resided with them for a period of twelve months or longer. Section 5324 of Senate Bill No. 74 deals with standing for any form of physical custody, legal custody or visitation, but does not specifically reference “great-grandparents”.

the preservation of the parent-child relationship without interference. See *Senate House Journal, 2033-2034 (June 28, 1996)*.⁴

We do not see why a grandparent should be allowed to seek partial custody and visitation when the parents are divorced or separated for six months but a great-grandparent should be denied that opportunity. It is not unusual for some great-grandparents to be younger than others who are grandparents. Anyone who has gone to their 20th high school reunion remembers how astonished they were to find some classmates were grandparents. Generations of a family having children as early as 18 years of age could easily have grandparents in their late 30's and early 40's and great-grandparents in their late 50's and early 60's. Should a young member of that family lineage marry a young person whose family history has generations having children at older ages, you could have a custody case where the great-grandparents on one side are actually younger than the grandparents on the other side. If both sets of older generations are actively involved in the lives of the children who are the subject of the custody case, why shouldn't they have equal standing under Section 5312?

We believe the term "grandparents" in Section 5312 of the Act was meant to encompass "great-grandparents" for purposes of obtaining partial custody and visitation. Our interpretation is supported by the purpose of the statute, legislative history and case law, where courts have not made any distinction between the meaning of a grandparent and great-grandparent. See *Gradwell, supra*, 416 Pa. Super. at 126, *Hill v. Divecchio*, 425 Pa. Super. 355, 360-61, 625 A.2d 642, 646 (1993), *McDonel v. Sohn*, 762 A.2d 1101, 1105 (Pa.

⁴Representative Bishop stated: "This amendment adds language to the bill to ensure that grandparents requesting custody of the child have assumed the role of parent over an extended period of time. Current law gives grandparents the right to seek partial custody and visitations when the parents are not deceased, separated or divorced if their grandchild has lived with the grandparents for at least 12 months. This amendment changes the law. It provides that a grandparent can petition for custody if the grandparent over an extended period of time has assumed the role of parent — providing for physical, emotional, and social needs for the child. Representative Blaum stated: "We would not want grandparents disrupting or invading the privacy and home life of their children seeking custody of their grandchildren if in fact it was not absolutely necessary. The words "over an extended period of time" where a debilitating instance exists with the natural parents might be appropriate to give them standing in court."

Super. 2000), *Fausey v. Hiller*, 851 A.2d 193, 198 (Pa. Super. 2004). The issue of whether the maternal great-grandparents will be awarded partial custody or visitation rights has not yet been decided. The merits of their custody action under Section 5312 will be based on whether it would be in the best interests of the child to award partial custody or visitation to the great-grandparents and if it would interfere with the parent-child relationship.

Accordingly, the attached order is entered.

ORDER

AND NOW, this 7th day of February 2006, in consideration of Defendant's Preliminary Objections, IT IS ORDERED THAT the Objections are denied. Plaintiffs have standing to bring an action for partial physical custody or visitation of their great-grandson.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-551 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two (2) lots of ground situated, lying and being in Reading Township, Adams County, Pennsylvania, bounded, limited and described as follows, to wit:

BEGINNING at an iron pin of land now or formerly of George H. Miller and other land now or formerly of W.A. Bosserman; thence by last mentioned lands South fifty-nine (59) degrees thirty (30) minutes West fifty (50) feet to an iron pin of lands now or formerly of W.A. Bosserman; thence by the same North twenty-nine (29) degrees West twenty-nine and seven-tenths (29.7) feet to an iron pin; thence North fifty-nine (59) degrees thirty (30) minutes East fifty (50) feet to an iron pin at Lot No. 2 hereof; thence by the same and lands now or formerly of George H. Miller, aforesaid, South twenty-nine (29) degrees and seven-tenths (29.7) feet to an iron pin, the place of BEGINNING. (It being part of the same which was surveyed by George M. Wildasin, Registered Surveyor, on August 11, 1961, as the property of William Bosserman) 0.03 AC.

BEGINNING at a point in the Great Conewago Creek at corner of lands now or formerly of George Miller; thence along lands now or formerly of George Miller; thence along lands now or formerly of George Miller, South fifty-eight and one-half (58-1/2) degrees West two hundred ninety-seven (297) feet to an iron pin of Lot No. 1 hereof; thence by the same and other lands North thirty (30) degrees West sixty-five (65) feet to lands now or formerly of Paul A. Swartz; thence along said Swartz's land North fifty-eight and one-half (58-1/2) degrees East two hundred ninety-seven (297) feet to a point at the Great Conewago Creek, aforesaid; thence along said Conewago Creek South twenty and one-fourth (20-1/4) degrees East sixty-five (65) feet to a point, the place of BEGINNING. 0.444 AC.

1) Vested by Warranty Deed, dated 10/5/2004, given by Richard L. Stauffer and Linda E. Stauffer to David Schoolcraft and recorded 10/18/2004 in Book 3739 Page 48 Instrument #200400021492.

Real Property Owner: David Schoolcraft

Premises being: 45 South Hickory Lane, New Oxford, PA 17350

Tax Parcel No. 36-J09-0074-000

SEIZED and taken into execution as the property of **David Schoolcraft, IV a/k/a David B. Schoolcraft** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-101 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE three (3) contiguous tracts of land situate in Freedom Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at an iron pin at corner of lands now or formerly of Joseph E. Codori; thence by lands now or formerly of R. C. Witherow, North 2-1/2 degrees East, 48 feet to an iron pin; thence North 62 degrees East, 179 feet to an iron pin; thence South 28 degrees East, 86 feet to a point in Marsh Creek; thence by other land now or formerly of Joseph E. Codori South 62 degrees West, 52 feet to an iron pin; thence by same South 78-1/2 degrees West 157.2 feet to an iron pin, the place of BEGINNING.

CONTAINING 50 perches.

TRACT NO. 2: BEGINNING at a corner of Marsh Creek Heights Road and other land now or formerly of George A. Miller and Blanche M. Miller; thence along land now or formerly of George A. and Blanche M. Miller in a Southerly direction, 50 feet to other land now or formerly of Robert C. Witherow; thence along other land now or formerly of said Robert C. Witherow in an Easterly direction 64 feet

to a stake at other land of Robert C. Witherow; thence continuing along other land now or formerly of Robert C. Witherow in a Northerly direction, 50 feet to the Marsh Creek Heights Road, thence along the said Marsh Creek Heights Road in a Westerly direction 64 feet to the land now or formerly of George A. Miller and Blanche M. Miller, the place of BEGINNING.

TRACT NO. 3: BEGINNING at an iron pin at corner of lands now or formerly of George A. Miller and Blanche M. Miller; thence along other land now or formerly of said George A. Miller and Blanche M. Miller in a Southerly direction 50 feet to a stake at land of Robert C. Witherow; thence along land now or formerly of Robert C. Witherow in an Easterly direction 50 feet to a stake; thence continuing along lands now or formerly of Robert C. Witherow, in a Northerly direction 50 feet to Marsh Creek Heights Road; thence along said road in a Westerly direction 50 feet to other lands now or formerly of George A. Miller and Blanche M. Miller, the place of BEGINNING.

CONTAINING 50 perches.

TITLE TO SAID PREMISES IS VESTED IN Daniel J. Boone, Unmarried by Deed from Celia Dunayer, unmarried dated 3/26/1998 and recorded 3/27/1998 in Record Book 1547, Page 42.

Premises being: 196 Marsh Creek Heights Road, Gettysburg, PA 17325

Tax Parcel No. 13-E17-36

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/6, 13 & 20

NOTICES OF FORFEITURE

NOTICE IS HEREBY GIVEN that a petition for forfeiture and condemnation of property was filed with the Adams County Clerk of Courts on June 9, 2006, and docketed at **CP-01-MD-216-2006**. The subject property, which is five hundred dollars (\$500.00) in United States currency, was seized during a search of 640 North Street, McSherrystown, Adams County, PA, on February 2, 2006. Any person claiming a possessory interest in the currency shall file a written response with the Adams County Clerk of Courts, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, on or before November 10, 2006. Failure to file a response by the aforementioned date will result in automatic forfeiture of the currency to the Commonwealth of Pennsylvania.

NOTICE IS HEREBY GIVEN that a petition for forfeiture and condemnation of property was filed with the Adams County Clerk of Courts on June 9, 2006, and docketed at **CP-01-MD-217-2006**. The subject property, which is twelve thousand eight hundred eighty dollars (\$12,880.00) in United States currency, was seized during a search of 640 North Street, McSherrystown, Adams County, PA, on February 2, 2006. Any person claiming a possessory interest in the currency shall file a written response with the Adams County Clerk of Courts, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, on or before November 10, 2006. Failure to file a response by the aforementioned date will result in automatic forfeiture of the currency to the Commonwealth of Pennsylvania.

NOTICE IS HEREBY GIVEN that a petition for forfeiture and condemnation of property was filed with the Adams County Clerk of Courts on March 22, 2006, and docketed at **CP-01-MD-126-2006**. The subject property, which is thirty-six dollars (\$36.00) in United States currency, was seized during a search of 1900 Shriver's Corner Road, Gettysburg, Adams County, PA, on September 10, 2005. Any person claiming a possessory interest in the currency shall file a written response with the Adams County Clerk of Courts, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, on or before November 10, 2006. Failure to file a response by the aforementioned date will result in automatic forfeiture of the currency to the Commonwealth of Pennsylvania.

10/6 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-754 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two certain tracts of land situated, lying and being in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

Tract #1

BEGINNING at a point in the center of a public road; thence by land now or formerly of W.A. Raffensperger, South 86-1/2 degrees West 175 feet to an iron pin; thence by Tract No. 2, North 9-1/4 degrees West 186.4 feet to an iron pin; thence by the same North 1-1/4 degrees West 100 feet to an iron pin on the South side of State Highway Route 234; thence North 32-1/2 degrees East 22 feet to a point in the center of said State Highway; thence in the center of said State Highway, South 87 degrees East 170 feet to a point in the center of said State Highway; thence in the public road referred to above, South 11 degrees West 35 feet to a point; thence continuing in said public road and by land now or formerly of Emma Harper, South 7 degrees East 250 feet to a point; the place of BEGINNING. CONTAINING 1 acre, 2 perches and 217 square feet.

Less, however, the following portion of said tract now or formerly reserved by Thomas R. Gormley and Madeline V. Gormley, husband and wife.

BEGINNING at a railroad spike in the intersection of Route 234 leading to Arendtsville and Township Route T-340 (not traveled) at lands now or formerly of Lela V. Harper; thence in said Township Road T-340 (not traveled) and by said lands, South 7 degrees East, 285 feet to an iron pin at lands now or formerly of W.A. Raffensperger; thence by said lands, South 86 degrees 30 minutes West 118.05 feet to an iron pin at lands now or formerly of Thomas Gormley; thence by said lands, North 9 degrees 57 minutes 10 seconds East 83.11 feet to an iron pin; thence continuing by said lands, North 13 degrees 35 minutes 10 seconds East 211.30 feet to a railroad spike in said Route 234 leading to Arendtsville; thence in said Route 234, North 81 degrees 46 minutes 50 seconds East 19.28 feet to the place of BEGINNING. CONTAINING 20,000 square feet.

The above description of the executed portion was taken from a draft of survey dated October 23, 1973, prepared by Boyer-Price Surveys.

Tract #2

BEGINNING at an iron pin on the South side of State Highway Route 234; thence by Tract No. 1; South 1-1/4 degrees East 6.1 perches to an iron pin; thence by the same, South 9-1/4 degrees East 11.3 perches to an iron pin; thence by land now or formerly of W. A. Raffensperger, South 44 degrees West 13.3 perches to an iron pin; thence by the Arendtsville Athletic Field, North 22-1/2 degrees West 27.4 perches to a point in the aforementioned State Highway on a little bridge; thence in said State Highway and by land now or formerly of Aero Realty, Inc., North 80 degrees 30 minutes East 9.1 perches to a point in said State Highway; thence North 11 degrees West 1.1 perches to a point; thence along said State Highway and by lands now or formerly of John K. Frederick and wife, North 84 degrees 51 minutes 30 seconds East 10.1 perches (erroneously stated in prior deeds as 6.8 perches) to an iron pin; thence crossing said State Highway, South 27 degrees West 2.3 perches to an iron pin, the place of BEGINNING.

Tax Parcel No.: 7 E8-58

Premises Being: 1208 Arendtsville Rd., Biglerville, PA 17307

SEIZED and taken into execution as the property of **Brenda Cunningham** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/6, 13 & 20

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 JEAN E. BROWNING, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Executrix: Lisa L. Bennett, 660 Mt. Tabor Road, Gardners, PA 17324

ESTATE OF EILEEN K. KEATING a/k/a EILEEN M. KEATING, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: John W. Keating, 1631 Park Avenue, Apt. 12, Baltimore, MD 21217

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

SECOND PUBLICATION**ESTATE OF NETTIE LEAH BOWER, DEC'D**

Late of the Borough of York Springs, Adams County, Pennsylvania

Administratrix: Bonita K. Kuntz, 6609 Oxford Road, Gardners, PA 17324

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF MARK D. DANNER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Attorney: Ralph D. Oyler, Esq., Oyler Law Office, 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF CRAIG M. GOUKER, DEC'D

Late of Union Township, Adams County, Pennsylvania

James Roser, 310 1/2 Broadway, Hanover, PA 17331

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

ESTATE OF LEATRICE MAE HELDI-BRIDLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donna J. Winters and Tammie S. Stern, c/o Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

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

ESTATE OF ELIZABETH KINSEL, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Ms. Lynn Kinsel McDonald, 349 Old Waynesboro Rd., Fairfield, PA 17320

Attorney: William R. Bunt, Esq., 109 South Carlisle Street, P.O. Box 336, New Bloomfield, PA 17068

ESTATE OF ELWOOD S. McCLEAF, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Co-Executors: Scott A. McCleaf, 872 Frogdown Road, Hanover, PA 17331; Loy McCleaf, 234 Hall Drive, Hanover, PA 17331

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MARY K. RUTTERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donald L. Rutters, 800 Skyview Drive, York, PA 17406; Steven L. Rutters, 9 Hill Street, Hanover, PA 17331

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

ESTATE OF CLARA B. SCHOFF, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Barbara D. Booze, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

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

ESTATE OF MARIAN M. SHEARS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Edward A. Hung, III, 1389 Gamble Road, P.O. Box 548, Great Cacapon, West Virginia 25422

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

ESTATE OF ROBERT F. STORM, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Donald L. Storm, 209 Longdraft Road, Gaithersburg, MD 20878-1033

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

THIRD PUBLICATION**ESTATE OF WILLIAM B. GALLAGHER, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executors: James W. and Christine F. Gallagher, 303 North Stratton Street, Gettysburg, PA 17325; George M. Gallagher, 639 South Washington Street, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 106 W. Middle St., Gettysburg, PA 17325

ESTATE OF JANE S. HUGHES a/k/a MARY JANE HUGHES, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: M & T Bank, 55 South Main Street, P.O. Box 459, Chambersburg, PA 17201-0459

Attorney: Richard K. Hoskinson, Esq., Hoskinson & Wenger, 147 East Washington Street, Chambersburg, PA 17201

ESTATE OF J. MAXINE MECKLEY a/k/a JENNIE MAXINE MECKLEY, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Co-Executors: David C. Meckley and Richard E. Meckley, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

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

ESTATE OF DOROTHY E. MILLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

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

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

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

NO. TERM
06-S-1111

EMINENT DOMAIN PROCEEDING
IN REM

IN RE: CONDEMNATION BY THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, OF THE RIGHT-OF-WAY FOR STATE ROUTE 0234, SECTION 008 IN THE BOROUGH OF EAST BERLIN

NOTICE OF CONDEMNATION
AND DEPOSIT OF ESTIMATED
JUST COMPENSATION

NOTICE IS HEREBY GIVEN that the Commonwealth of Pennsylvania, by the Secretary of Transportation, whose address is the Commonwealth of Pennsylvania, Department of Transportation, Office of Chief Counsel, Real Property Division, Commonwealth Keystone Building, Harrisburg, Pennsylvania 17120, pursuant to the provisions of Section 2003(e) of the Administrative Code of 1929, P.L. 177, 71 P.S. 513(e), as amended, has filed on September 28, 2006 a Declaration of Taking to the above term and number, condemning the property shown on the plans of the parcels listed on the Schedule of Property Condemned which have been recorded in the Recorder's Office of the above county at the places indicated on the said schedule. The name(s) of the owner(s) of the property interest(s) condemned is (are) also shown on the aforesaid Schedule. The Governor has approved the within con-

demnation by signing on August 18, 2006 a plan entitled Commonwealth of Pennsylvania, Department of Transportation, Drawings Authorizing Acquisition of Right-of-Way for State Route 0234, Section 008 R/W, a copy of which plan was recorded in the Recorder's Office of the aforesaid county on August 28, 2006, in Book 1, Page 61.

The purpose of the condemnation is to acquire fee simple title to Parcel # 12, Unknown Owner, as shown on sheet 9 of 19 on the above-mentioned plan.

Plans showing the property condemned from the parcels listed on the Schedule of Property Condemned have been recorded in the aforesaid Recorder's Office at the places indicated on the Schedule, where they are available for inspection. The Property Interest thereby condemned is designated on the Declaration of Taking heretofore filed. The Commonwealth of Pennsylvania is not required to post security, inasmuch as it has the power of taxation.

Because the identity or the whereabouts of the condemnee(s) listed below is (are) unknown or for other reasons he (they) cannot be served, this notice is hereby published in accordance with Section 405(b) of the Eminent Domain Code of 1964 (26 P.S. 1-405(b)).

Claim No.: 0100160000
Parcel No.: 12
Name: Unknown Owner
Address: Unknown

The power or right of the Secretary of Transportation of the Commonwealth of Pennsylvania to appropriate the property condemned, the procedure followed by the Secretary of Transportation or the

Declaration of Taking may be challenged by filing preliminary objections within thirty (30) days of the date of this notice.

FURTHERMORE NOTICE IS GIVEN THAT the Commonwealth of Pennsylvania, Department of Transportation, pursuant to Section 522 of the Eminent Domain Code of 1964 (26 P.S. 1-522), will, no less than twenty (20) days subsequent to the expiration of the statutory period for the filing of preliminary objections to the Declaration of Taking, present a petition to the Court of Common Pleas of the above county to deposit into court the just compensation estimated by the Commonwealth to be due all parties in interest for damages sustained as the result of the condemnation of the property herein involved.

The petition to deposit estimated just compensation may not be presented to the court if the owner(s) of the property herein involved inform the District Right-of-Way Administrator of the District noted below of their existence and/or whereabouts prior to the expiration of the noted period. After estimated just compensation has been deposited into court, the said monies may be withdrawn by the persons entitled thereto only upon petition to the court.

David B. Reynolds
District Right-of-Way Administrator
Engineering District 8-0
Pennsylvania Department
of Transportation
2140 Herr St.
Harrisburg, PA 17103-1699

10/13

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



Member FDIC

Adams County Legal Journal

Vol. 48

October 20, 2006

No. 22, pp. 129–136

IN THIS ISSUE

TATE ET AL VS. SWAN LAKE ET AL

This opinion continues to next issue (10/27/2006)

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designed for the Publication of Court and other Legal Notices. Published weekly 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) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-696 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situated in the Township of Franklin, County of Adams, and Commonwealth of Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a point in the centerline of Jack Road (T-315), said point marking the common point of adjoiner of Lots #26 and #26-A on the hereinafter plan of subdivision; thence extending in and through the centerline of Jack Road, North seventy-five (75) degrees fifty-six (56) minutes fifty-four (54) seconds West, for a distance of sixty-seven and eighty-seven hundredths (67.87) feet to a point in the centerline of said roadway; thence continuing in and through the centerline of Jack Road by an arc or curve to the left having a radius of five hundred ten (510) feet, for an arc distance of seventy-eight and thirty hundredths (78.30) feet to a point in the centerline of Jack Road as Lot #27 on the plan of subdivision of Hidden Valley (Plat Book 60, page 45); thence departing from the centerline of Jack Road, and extending along Lot #27 as aforesaid, North five (05) degrees fifteen (15) minutes twenty-two (22) seconds East, through a steel pin set on the Northernmost dedicated right-of-way line of Jack Road, a distance of twenty-five and no hundredths (25.00) feet from the origin of this call, for a total distance of three hundred and no hundred (300.00) feet to a concrete monument; thence continuing along Lot #27, South seventy-eight (78) degrees forty-seven (47) minutes thirty-three (33) seconds East, for a distance of one hundred ninety-one and ninety-seven hundredths (191.97) feet to an iron pin at Lot #26 on the hereinafter mentioned plan of subdivision; thence extending along Lot #26, South ten (10) degrees eight (08) minutes three (03) seconds West, through an iron pin set on

the Northernmost dedicated right-of-way line of Jack Road, a distance of twenty-five and six hundredths (25.06) feet from the terminus of this call, for a total distance of two hundred ninety-nine and sixty-eight hundredths (299.68) feet to a point in the centerline of Jack Road, said point marking the place of BEGINNING.

CONTAINING 1.0019 acres to the dedicated right-of-way line and 1.0864 acres to the property line, and being designated as Lot #26-A on a final plan of resubdivision of Lot #26 of the Musselman Farm prepared for Harry H. Fox, Jr. by Stanley Jarmolenko, Registered Surveyor, dated November 28, 1994, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 66, at page 19.

TITLE TO SAID PREMISES IS VESTED IN Johnnie R. Palmer, Jr., and Teresa L. Palmer, his wife by Deed from Harry H. Fox, Jr. and Ann G. Fox, his wife dated 8/1/1994 and recorded 8/14/1995 in Record Book 1067 Page 62.

Premises Being: 111 Jack Road, Orrtanna, PA 17353

Tax Parcel No. 12-C12-0160-000

SEIZED and taken into execution as the property of **Johnnie R. Palmer, Jr. & Teresa L. Palmer a/k/a Teresa L. Boone** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/13, 20 & 27

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 Friday, November 3, 2006, at 9:00 a.m.

AMOUR—Orphans' Court Action Number OC-135-06. The First and Final Account of Kathleen Anne Redding, Executrix of the Estate of Catherine Anne Amour, deceased, late of Oxford Township, Adams County, Pennsylvania.

ZEIGLER—Orphans' Court Action Number OC-81-06. The First and Final Account of Lovina Hoff and John Everhart, Co-Executors of the Estate of Goldie C. Zeigler, Deceased, late of the Borough of York Springs, Adams County, Pennsylvania.

MAITLAND—Orphans' Court Action Number OC-137-06. The First and Final Account of Richard A. Maitland, Jr., Executor of the Estate of Janet E. Maitland a/k/a Janet R. Maitland, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

HARBAUGH—Orphans' Court Action Number OC-127-91. The First and Final Account of PNC Bank, National Association, successor by merger to The Gettysburg National Bank, Guardian of the Estate of Lacy Jane Harbaugh, a minor.

RUDISILL—Orphans' Court Action Number OC-138-06. Trust of PNC Bank, N.A., formerly The Gettysburg National Bank, Trustee under the Last Will and Testament of Nadine E. Rudisill, late of Conewago Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

10/20 & 27

TATE ET AL VS. SWAN LAKE ET AL

1. The party moving for summary judgment has the burden of proving that there is no genuine issue of material fact.

2. In order to maintain a cause of action under 42 U.S.C. § 1983, a plaintiff must be able to prove that (1) the conduct complained of was committed by a person acting under color of state law; and (2) the conduct deprived the plaintiff of rights, privileges or immunities secured by the Constitution of the United States. To satisfy the state action requirement, the defendant must have used authority derived from the state in causing the alleged harm.

3. A constable is a peace officer/police officer whose job it is to enforce the law and generally carry it out the same as police.

4. Constables are considered independent contractors who get paid on a per job basis.

5. It appears that federal courts viewing Pennsylvania law have determined that the conduct of constables can be deemed state action for purposes of § 1983.

6. Where state involvement in private action constitutes no more than acquiescence or tacit approval, the private action is not transformed into state action.

7. It is well settled that an attorney is not a state actor for purposes of section 1983 by virtue of being licensed by the state and otherwise working in the highly regulated profession. However, an attorney may become a state actor by conspiring with a state official to deprive a person of his or her constitutional rights.

8. To maintain a § 1983 conspiracy claim, a plaintiff must set forth factual allegations of agreement, combination, or understanding among all or between any of the defendants to plan, plot, or conspire to carry out the alleged chain of events.

9. If it is established that an attorney conspired with a state official to deprive a person of his or her constitutional rights, the applicability of the intracorporate conspiracy doctrine (ICD) must be examined. The ICD maintains that a corporation cannot conspire with its agents. Therefore, where employees or agents for the corporation act within the scope of their employment, there can be no conspiracy between the corporation and its employees or agents.

10. There are two exceptions to the ICD that would permit the formation of a conspiracy between attorneys and clients. The first exception to the ICD applies when attorneys act for their sole personal benefit and thus outside the course and scope of their representation. The second exception to the ICD applies when there is a third party to the conspiracy who is not an employee or agent of the corporation.

11. Qualified immunity is an affirmative defense. It is viewed as an entitlement not to face the burdens of litigation or stand trial rather than a defense to liability.

12. Qualified immunity inquiry is a two step process. First, we must determine whether the defendants violated "clearly established" rights. This entails a finding of a constitutional or statutory violation as well as a finding that the violated right was clearly established at the time of the violation. Second, we determine whether a reasonable officer would have believed that his or her conduct deprived the plaintiff of his or her constitutional rights.

13. The non-moving party bears a clear duty to respond to a motion for summary judgment. The non-moving party's response must set forth evidence showing the existence of the facts essential to the cause of action or defense which the motion cites as not having been produced. If the non-moving party does not respond, the court may grant summary judgment on that basis.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. CIVIL ACTION NO. 01-S-305. WILLIAM M.
TATE, JR. AND STEPHANIE M. GREEN VS. SWAN LAKE STA-
BLES, INC., DR. WILLIAM R. BAST, JOANNE S. BAST, HIS
WIFE, THOMAS H. HAGER, CONSTABLE, THOMAS H.
DACHEUX, CONSTABLE, ANDREW H. DOWLING, ESQUIRE.

Robert S. Mirin, Esq., for Plaintiffs

John J. McNally, III, Esq., for Defendants Swan Lake/Bast

Jered L. Hock, Esq., for Defendants Hager & Dacheux

Jeffrey P. Lewis, Esq., for Defendant Dowling

Kuhn, P.J., February 10, 2006

OPINION ON DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

Before the Court for disposition is a Motion for Partial Summary Judgment filed by all Defendants on July 29, 2005. For reasons set forth herein, said Motion is granted in part and denied in part.

This matter has a protracted history that will not be repeated here. However, on May 7, 2001 Plaintiffs, William M. Tate, Jr. ("Tate") and Stephanie Green ("Green"), filed an Amended Complaint against Swan Lake Stables, Inc. ("Swan Lake"), Dr. William R. Bast and his wife, Joanne S. Bast ("the Basts"), constables Thomas H. Hager ("Hager") and Thomas H. Dacheux ("Dacheux") and attorney Andrew H. Dowling ("Dowling"). The Amended Complaint had five counts including a count (III) for Deprivation of Civil Rights Under 42 U.S.C. § 1983 against all defendants except Swan Lake and a count (V) for Trespass against all defendants except Swan Lake.¹ A pre-trial conference was held on June 16, 2005 wherein it was directed that summary judgment motions be filed by July 29, 2005. Defendants filed their motion in a timely fashion. Plaintiffs requested until October 12, 2005 to respond. Final briefs were not received until December 14, 2005. The Motion was argued before the Court on December 29, 2005.

¹Count I, Replevin; Count II, Partnership Action For Dissolution of a Partnership; and Count IV, Invasion of Privacy. Count II has been resolved. Counts III, IV, and V are set for trial during the term beginning May 1, 2006.

ISSUES

- I. Whether Plaintiffs have produced enough evidence on their cause of action under 42 U.S.C. § 1983 to overcome Defendants' Motion for Partial Summary Judgment as to Count III.**
- II. Whether the constables are entitled to dismissal of the 42 U.S.C. § 1983 action on the basis of qualified immunity.**
- III. Whether Plaintiffs have produced enough evidence on their civil rights action under the Pennsylvania Constitution to overcome Defendants' Motion for Partial Summary Judgment as to Count III.**
- IV. Whether Plaintiffs have produced enough evidence under their Trespass action against Dowling to overcome Defendants' Motion for Partial Summary Judgment as to Count V.**

DISCUSSION

A party may move for summary judgment, in whole or in part, as a matter of law after the relevant pleadings are closed but within such time as not to unreasonably delay trial whenever there is no genuine issue of any material fact as to a necessary element of the cause of action which could be established by additional discovery. Pa.R.C.P. 1035.2. The purpose of Rule 1035.2 is to eliminate cases prior to trial where a party cannot make out a claim or defense after discovery has been completed. *Wolloch v. Aiken*, 815 A.2d 594, 596 (Pa. 2002). The party moving for summary judgment has the burden of proving that there is no genuine issue of material fact. *Citicorp Mortgage, Inc. v. Morrisville Hampton Vill. Realty Ltd. P'ship*, 662 A.2d 1120, 1122 (Pa. Super. 1995). Courts must resolve all doubts against the moving party and examine the record in a light most favorable to the non-moving party. *Id.*

Viewing the evidence and all inferences arising therefrom in favor of Plaintiffs, the record suggests the following background. Bast hired Tate to work at Swan Lake which is owned by the Basts. As part of the employment relationship, Tate, along with his teenage son and Green, his paramour (now wife), were given the opportunity to reside at 228 Flatbush Road which is adjacent to the farm owned by Swan Lake. That residence also served as an office for the corporation. Tate acted as secretary/treasurer for Swan Lake up to Spring 2000 when he resigned that position. In late September 2000, the

Basts' 18 year old daughter, Mary, revealed that Tate had been having sexual relations with her for several years.

Shortly after their daughter's revelation, the Basts hired Dowling to counsel them regarding discharge of Tate and recovery of corporate property. Dowling acted as the Basts' liaison with the police and the District Attorney's office. On October 12, 2000, Dowling contacted an investigator, Skip Gochenauer, to determine how the farm could be secured. Eventually, at Dowling's request, Gochenauer arranged for the two constables, Hager and Dacheux, to be present on December 9, 2000 "to keep the peace." The Basts expressed concern that Tate was a violent person and had guns in his residence.

Prior to December 2000, the Basts were advised not to let Tate know of the ongoing criminal investigation into Mary Bast's allegations nor do anything to raise his suspicions. By early December, the Basts felt they could wait no longer. They advised Trooper Nicholas Bloschichak of the State Police, the officer investigating the sexual allegations, that they were going to evict Tate. The trooper advised that the State Police would not involve themselves in the eviction because it was a civil matter. One of the Basts also contacted David Schuchart, a locksmith, to be present and open the lock for the eviction.²

On the morning of December 9, 2000, Dowling, the constables, and the locksmith met at the Bast residence. While Dowling and Mary Bast remained at the Bast residence, the Basts, their daughter, Sarah, the constables, the locksmith, and Walter Warehime, a hired-hand at Swan Lake Stables, traveled to 228 Flatbush. Plaintiffs' vehicles were not present. The constables were both armed and wore black jackets with bold yellow lettering reading "POLICE" and "STATE CONSTABLE." They did not request to see any verification of ownership of the premises or court authorization for the entry although the Basts may have verbally stated they were the owners.

The constables knocked at the door and received no answer. They instructed Schuchart to proceed. Schuchart was unable to pick the door lock so he drilled it open. At that point, the constables drew their sidearms and entered the home shouting "Police - is anyone home?" After searching the residence for several minutes and determining no one was present, they notified the Basts that it was safe to enter.

²Dr. Bast stated in his deposition dated April 15, 2003 that Dowling advised having the locksmith present.

The Basts entered the premises and began searching through various documents and placing them in boxes to be removed. Shortly thereafter, Tate and Green returned to the premises. They were met outside by the constables who were followed by the Basts. Tate indicated that Hager prevented him from entering the home. (Ex. 49, p. 51). Dr. Bast then began reading a letter prepared by Dowling and signed by Dr. Bast. At this point, Tate noticed that Hager had his hand on his gun. (Ex. 45, p. 140). The letter advised Tate that his employment with Swan Lake was terminated, warned him not trespass upon Bast or Swan Lake property, but allowed him to remain at 228 Flatbush until formal eviction proceedings were completed.

Dr. Bast also read a second letter, prepared by Dowling, and signed by Norman Thomas, warning Tate not to trespass at the Thomas farm. During the reading of the first letter, Green walked inside the residence and Dr. Bast directed a constable to follow and watch her. (Ex. 35, p. 22). Also during the reading, Tate walked to his car, followed by Dr. Bast and Hager. After a brief period during which Dr. Bast continued reading from the letter, Tate took several steps away from Dr. Bast and toward the residence. Hager got in front of him, physically stopped him, and told him not to move until Dr. Bast finished reading. (Ex. 45, p. 139,144,147).

Tate then returned to the residence followed by Hager. Later, when Dr. Bast was opening Tate's briefcase, Tate reached for some papers, Dacheux pulled his gun, and Hager told Tate to give the papers to Bast. Tate complied by handing them to Dacheux who, in turn, handed them to Dr. Bast. (Ex. 45 p. 154). At another time, Hager escorted Tate outside and told him "I have never shot an unarmed man, don't make me do it this time." (Ex. 38, p. 100-1; Ex. 45, p. 152).

At one point, Tate indicated he had cash in a pick up on the Thomas property. Hager volunteered to follow Tate to that location. Hager was given the key to the truck (owned by Swan Lake) and was authorized by Dr. Bast to search inside. (Ex. 40, p. 30,33,57).

After returning from the Thomas property, Hager proceeded to the second floor bedroom to search for a gun case which allegedly contained cash. (Ex. 38, p. 101; Ex. 40 p. 79).

At some point, Tate contacted the State Police for help. He eventually spoke to Trooper Bloschichak and reported property being taken from him. The trooper acknowledged knowing that the Basts

were there to evict him and that the State Police would not get involved. Instead, the trooper tried to engage Tate in a conversation about Mary Bast's allegations. (Ex. 49, p. 52, 63).

During the 5-6 hours that the Basts and others were at 228 Flatbush, various boxes of personal property as well as other items were removed. Allegedly, some of that property belonged to Plaintiffs. Dacheux was observed assisting in the removal by carrying boxes. (Ex. 39, p. 238; Ex. 45, p. 173). No inventory was made on December 9 of the property taken that day. Furthermore, Plaintiffs felt they could do nothing to stop the removal due to the size of the constables, the fact that the constables were armed, the constables' and the Basts' refusal to leave upon request, and the fact that the State Police would not intervene. (Ex. 38, p. 104; Ex. 45 p. 175; Ex. 49, p. 56).

Interestingly, Hager admitted that throughout the incident, Tate was not acting aggressively and Dacheux acknowledged that both Plaintiffs were calm, considering the circumstances. (Ex. 35, p. 23; Ex. 40, p. 46).

After December 9 and up to May, 2001, the Basts continued to engage the services of the constables to provide security. While so engaged, the constables were directed by the Basts to return some of the items of personal property taken on December 9 to Plaintiffs. The Basts paid the constables for the services they provided as described above.

I. Section 1983 Liability

In order to maintain a cause of action under 42 U.S.C. § 1983, a plaintiff must be able to prove that (1) the conduct complained of was committed by a person acting under color of state law; and (2) the conduct deprived the plaintiff of rights, privileges or immunities secured by the Constitution or the laws of the United States. *Bruner v. Litwhiler*, 245 F. Supp. 2d 614, 624 (M.D. Pa. 2003). To satisfy the state action requirement, the defendant must have used authority derived from the state in causing the alleged harm. *Harvey v. Plains Township Police Dept.*, 421 F.3d 185, 189 (3rd Cir. 2005).

Plaintiffs contend they were denied due process when their property was taken and/or detained by Defendants. The constitutional claim is not disputed at this time.³ In the instant motion, Defendants challenge their status as state actors for purposes of this § 1983 action.

³Procedural due process is implicated where there is taking or deprivation of a legally protected liberty or property interest. *Abbott v. Latshaw*, 164 F.3d 141, 146 (3rd Cir. 1998).

A. Plaintiffs have produced enough evidence on their cause of action under 42 U.S.C. § 1983 to withstand Defendants' argument that the constables' involvement was legally insufficient to establish state action.

Initially, Defendants argue that the constables are not "state actors" and therefore § 1983 is not applicable to any claim against them.⁴ Constables are either elected, 13 P.S. § 1, 2, or appointed by the court of common pleas, 13 P.S. § 6, 11, 12, to serve a term of six years. 13 P.S. § 14. They perform those duties authorized or imposed upon them by statute, 13 P.S. § 40, and have the right to arrest upon view, persons "guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or may be engaged in the commission of any unlawful act tending to imperil security or endanger the property of citizens" or for violating ordinances. 13 P.S. § 45. Our Supreme Court recognizes that a constable is a peace officer/police officer whose job it is to enforce the law and generally carry it out the same as police. *In Re Act 147 of 1990*, 598 A.2d 985, 991 (Pa. 1991). However, constables are not considered "police officers" under the Crimes Code and cannot legally enforce the Vehicle Code. *Commonwealth v. Roose*, 690 A.2d 268, 269 (Pa. Super. 1997). Constables are not employees of any municipal subdivision and are not salaried. They do not act for or under the control of the Commonwealth and are not considered Commonwealth employees. Instead, they are considered independent contractors who get paid on a per job basis. *Id.*

Several cases have discussed the role of constables in § 1983 actions. In *Villanova v. Solow*, 1998 U.S. Dist. Lexis 14686 (E.D. Pa. 1998), Solow was a constable in Upper Moreland Township and was authorized by a district justice in the township to serve a warrant on Balin. Solow's interaction with Villanova during his search for Balin resulted in the filing of a § 1983 action. The township's motion to dismiss the action was granted because plaintiffs had not proven harm which amounted to a constitutional violation. The township had argued that it could not be responsible for the actions of constables who are elected,

⁴On July 23, 2001, then President Judge Oscar F. Spicer authored an Opinion on Defendants' preliminary objections wherein he determined that the constables were state actors for the purposes of a civil rights litigation, citing *Abbott*, 164 F.3d at 141. Defendants argue that with a more fully developed record, they are entitled to raise this issue again at this stage of the proceedings. We have given them that opportunity.

are not employees of the township, are not supervised by the courts, are “independent contractors,” maintain their own professional liability insurance,⁵ and are trained by a state board.⁶ Nevertheless, the court did suggest that a constable directed to perform a law enforcement function who violates a citizen’s rights in the performance of that function can make the municipality liable in a § 1983 action.

Several months later, the federal appeals court addressed the civil rights liability of a constable resulting from a repossession in *Abbott*, 164 F.3d at 141. There, Latshaw contacted a constable to assist her in taking a vehicle from Abbott, her former husband. She paid the constable for his services. The constable identified himself as a constable and requested Abbott to surrender the vehicle. Abbott refused, claiming the vehicle was his, and wanted to drive home to obtain proof of ownership. The constable threatened to arrest him if he drove off in “her vehicle.” Three police also became involved as defendants. The District Court dismissed the § 1983 action on a motion for summary judgment, but on appeal the Third Circuit reversed. On the issue whether there was state action present, the court stated:

The traditional definition of action under color of state law...requires that one liable under § 1983 “have exercised power ‘possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.’” We need not dwell on whether [the constable] and [the police] were state actors. They were *clearly vested with the power and authority of the state* when they assisted Latshaw, and “state employment is generally sufficient to render the defendant a state actor.” In Pennsylvania, constables are elected public officials with prescribed duties and liabilities, see 13 Pa. Cons. Stat. Ann. §§ 1, 41, 45 (1998)...[The constable] admits that he acted as a constable, and identified himself as such to Abbott...All four law enforcement officers were *clearly state actors*. (citations omitted).

Id. at 147. (emphasis added).

Continued to next issue (10/27/2006)

⁵42 Pa. C.S.S. § 2942(b).

⁶Constables’ Education and Training Board. 42 Pa. C.S.A. § 2943.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-551 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two (2) lots of ground situate, lying and being in Reading Township, Adams County, Pennsylvania, bounded, limited and described as follows, to wit:

BEGINNING at an iron pin of land now or formerly of George H. Miller and other land now or formerly of W.A. Bosserman; thence by last mentioned lands South fifty-nine (59) degrees thirty (30) minutes West fifty (50) feet to an iron pin of lands now or formerly of W.A. Bosserman; thence by the same North twenty-nine (29) degrees West twenty-nine and seven-tenths (29.7) feet to an iron pin; thence North fifty-nine (59) degrees thirty (30) minutes East fifty (50) feet to an iron pin at Lot No. 2 hereof; thence by the same and lands now or formerly of George H. Miller, aforesaid, South twenty-nine (29) degrees and seven-tenths (29.7) feet to an iron pin, the place of BEGINNING. (It being part of the same which was surveyed by George M. Wildasin, Registered Surveyor, on August 11, 1961, as the property of William Bosserman) 0.03 AC.

BEGINNING at a point in the Great Conewago Creek at corner of lands now or formerly of George Miller; thence along lands now or formerly of George Miller; thence along lands now or formerly of George Miller, South fifty-eight and one-half (58-1/2) degrees West two hundred ninety-seven (297) feet to an iron pin of Lot No. 1 hereof; thence by the same and other lands North thirty (30) degrees West sixty-five (65) feet to lands now or formerly of Paul A. Swartz; thence along said Swartz's land North fifty-eight and one-half (58-1/2) degrees East two hundred ninety-seven (297) feet to a point at the Great Conewago Creek, aforesaid; thence along said Conewago Creek South twenty and one-fourth (20-1/4) degrees East sixty-five (65) feet to a point, the place of BEGINNING. 0.444 AC.

1) Vested by Warranty Deed, dated 10/5/2004, given by Richard L. Stauffer and Linda E. Stauffer to David Schoolcraft and recorded 10/18/2004 in Book 3739 Page 48 instrument #200400021492.

Real Property Owner: David Schoolcraft

Premises being: 45 South Hickory Lane, New Oxford, PA 17350

Tax Parcel No. 36-J09-0074-000

SEIZED and taken into execution as the property of **David Schoolcraft, IV a/k/a David B. Schoolcraft** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-101 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE three (3) contiguous tracts of land situate in Freedom Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at an iron pin at corner of lands now or formerly of Joseph E. Codori; thence by lands now or formerly of R. C. Witherow, North 2-1/2 degrees East, 48 feet to an iron pin; thence North 62 degrees East, 179 feet to an iron pin; thence South 28 degrees East, 86 feet to a point in Marsh Creek; thence by other land now or formerly of Joseph E. Codori South 62 degrees West, 52 feet to an iron pin; thence by same South 78-1/2 degrees West 157.2 feet to an iron pin, the place of BEGINNING.

CONTAINING 50 perches.

TRACT NO. 2: BEGINNING at a corner of Marsh Creek Heights Road and other land now or formerly of George A. Miller and Blanche M. Miller; thence along land now or formerly of George A. and Blanche M. Miller in a Southerly direction, 50 feet to other land now or formerly of Robert C. Witherow; thence along other land now or formerly of said Robert C. Witherow in an Easterly direction 64 feet

to a stake at other land of Robert C. Witherow; thence continuing along other land now or formerly of Robert C. Witherow in an Northerly direction, 50 feet to the Marsh Creek Heights Road; thence along the said Marsh Creek Heights Road in a Westerly direction 64 feet to the land now or formerly of George A. Miller and Blanche M. Miller, the place of BEGINNING.

TRACT NO. 3: BEGINNING at an iron pin at corner of lands now or formerly of George A. Miller and Blanche M. Miller; thence along other land now or formerly of said George A. Miller and Blanche M. Miller in a Southerly direction 50 feet to a stake at land of Robert C. Witherow; thence along land now or formerly of Robert C. Witherow in an Easterly direction 50 feet to a stake; thence continuing along lands now or formerly of Robert C. Witherow, in a Northerly direction 50 feet to Marsh Creek Heights Road; thence along said road in a Westerly direction 50 feet to other lands now or formerly of George A. Miller and Blanche M. Miller; the place of BEGINNING.

CONTAINING 50 perches.

TITLE TO SAID PREMISES IS VESTED IN Daniel J. Boone, Unmarried by Deed from Celia Dunayer, unmarried dated 3/26/1998 and recorded 3/27/1998 in Record Book 1547, Page 42.

Premises being: 196 Marsh Creek Heights Road, Gettysburg, PA 17325

Tax Parcel No. 13-E17-36

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-697 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or piece of ground situate in Mount Pleasant Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a pin at the Northern side of the right-of-way of Leg. Rt. No. 01067 leading from Rt. 30 to the New Chester-Hunterstown Road at land now or formerly of Kenneth L. Leatherman and Demetrius Leatherman, said point of beginning being 753.9 feet Southeast of the center of bridge over Swift Run; thence by land now or formerly of Kenneth L. Leatherman and Demetrius Leatherman, North 40 degrees 47 minutes 44 seconds East, 200 feet to a pin; thence by land now or formerly of Kenneth L. Leatherman and Demetrius Leatherman, South 49 degrees 12 minutes 16 seconds East, 200 feet to a pin; thence by land now or formerly of Kenneth L. Leatherman and Demetrius Leatherman, South 40 degrees 47 minutes 44 seconds West, 200 feet to a pin at the Northern right-of-way line of said Leg. Rt. No. 01067; thence along the Northern right-of-way line of said Leg. Rt. No. 49 degrees 12 minutes 16 seconds West, 200 feet to a pin, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Jennifer L. Flynn, by Deed from Edward Francis Powers, Jr., unmarried, dated 06/02/2004, recorded 06/04/2004, in Deed Book 3595, page 306.

Premises Being: 755 Brickcrafter Road, New Oxford, PA 17350

Tax Parcel No. 110-43A

SEIZED and taken into execution as the property of **Jennifer L. Flynn a/k/a Jennifer L. Steele** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-754 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two certain tracts of land situated, lying and being in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

Tract #1

BEGINNING at a point in the center of a public road; thence by land now or formerly of W.A. Raffensperger, South 86-1/2 degrees West 175 feet to an iron pin; thence by Tract No. 2, North 9-1/4 degrees West 186.4 feet to an iron pin; thence by the same North 1-1/4 degrees West 100 feet to an iron pin on the South side of State Highway Route 234; thence North 32-1/2 degrees East 22 feet to a point in the center of said State Highway; thence in the center of said State Highway, South 87 degrees East 170 feet to a point in the center of said State Highway; thence in the public road referred to above, South 11 degrees West 35 feet to a point; thence continuing in said public road and by land now or formerly of Emma Harper, South 7 degrees East 250 feet to a point; the place of BEGINNING. CONTAINING 1 acre, 2 perches and 217 square feet.

Less, however, the following portion of said tract now or formerly reserved by Thomas R. Gormley and Madeline V. Gormley, husband and wife.

BEGINNING at a railroad spike in the intersection of Route 234 leading to Arendtsville and Township Route T-340 (not traveled) at lands now or formerly of Lela V. Harper; thence in said Township Road T-340 (not traveled) and by said lands, South 7 degrees East, 285 feet to an iron pin at lands now or formerly of W.A. Raffensperger; thence by said lands, South 86 degrees 30 minutes West 118.05 feet to an iron pin at lands now or formerly of Thomas Gormley; thence by said lands, North 9 degrees 57 minutes 10 seconds East 83.11 feet to an iron pin; thence continuing by said lands, North 13 degrees 35 minutes 10 seconds

East 211.30 feet to a railroad spike in said Route 234 leading to Arendtsville; thence in said Route 234, North 81 degrees 46 minutes 50 seconds East 19.28 feet to the place of BEGINNING. CONTAINING 20,000 square feet.

The above description of the executed portion was taken from a draft of survey dated October 23, 1973, prepared by Boyer-Price Surveys.

Tract #2

BEGINNING at an iron pin on the South side of State Highway Route 234; thence by Tract No. 1; South 1-1/4 degrees East 6.1 perches to an iron pin; thence by the same, South 9-1/4 degrees East 11.3 perches to an iron pin; thence by land now or formerly of W. A. Raffensperger, South 44 degrees West 13.3 perches to an iron pin; thence by the Arendtsville Athletic Field, North 22-1/2 degrees West 27.4 perches to a point in the aforementioned State Highway on a little bridge; thence in said State Highway and by land now or formerly of Aero Realty, Inc., North 80 degrees 30 minutes East 9.1 perches to a point in said State Highway; thence North 11 degrees West 1.1 perches to a point; thence along said State Highway and by lands now or formerly of John K. Frederick and wife, North 84 degrees 51 minutes 30 seconds East 10.1 perches (erroneously stated in prior deeds as 6.8 perches) to an iron pin; thence crossing said State Highway, South 27 degrees West 2.3 perches to an iron pin, the place of BEGINNING.

Tax Parcel No.: 7 E8-58

Premises Being: 1208 Arendtsville Rd., Biglerville, PA 17307

SEIZED and taken into execution as the property of **Brenda Cunningham** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/6, 13 & 20

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 JOSEPH T. BERGER, DEC'D**

Late of Germany Township, Adams County, Pennsylvania

Administrator: James M. Berger, c/o Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

Attorney: Lynn G. Peterson, Esq., Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY C. PROSSER, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executrix: Janey E. Kopp, 6840 Kopp Road, Spring Grove, PA 17362

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

ESTATE OF CAROL ANN YANTIS, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Michael A. Yantis, 355 North Street, McSherrystown, PA 17344

Attorney: Arthur J. Becker, Jr., Esq., Arthur J. Becker, Jr., P.C., 544 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF JEAN E. BROWNING, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Executrix: Lisa L. Bennett, 660 Mt. Taber Road, Gardners, PA 17324

ESTATE OF EILEEN K. KEATING a/k/a EILEEN M. KEATING, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: John W. Keating, 1631 Park Avenue, Apt. 12, Baltimore, MD 21217

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

THIRD PUBLICATION**ESTATE OF NETTIE LEAH BOWER, DEC'D**

Late of the Borough of York Springs, Adams County, Pennsylvania

Administratrix: Bonita K. Kuntz, 6609 Oxford Road, Gardners, PA 17324

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF MARK D. DANNER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Attorney: Ralph D. Oyler, Esq., Oyler Law Office, 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF CRAIG M. GOUKER, DEC'D

Late of Union Township, Adams County, Pennsylvania

James Roser, 310 1/2 Broadway, Hanover, PA 17331

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

ESTATE OF LEATRICE MAE HELDI-BRIDLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donna J. Winters and Tammie S. Stem, c/o Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

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

ESTATE OF ELIZABETH KINSEL, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Ms. Lynn Kinsel McDonald, 349 Old Waynesboro Rd., Fairfield, PA 17320

Attorney: William R. Bunt, Esq., 109 South Carlisle Street, P.O. Box 336, New Bloomfield, PA 17068

ESTATE OF ELWOOD S. McCLEAF, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Co-Executors: Scott A. McCleaf, 872 Frogtown Road, Hanover, PA 17331; Loy McCleaf, 234 Hall Drive, Hanover, PA 17331

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MARY K. RUTTERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donald L. Rutters, 800 Skyview Drive, York, PA 17406; Steven L. Rutters, 9 Hill Street, Hanover, PA 17331

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

ESTATE OF CLARA B. SCHOFF, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Barbara D. Booze, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

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

ESTATE OF MARIAN M. SHEARS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Edward A. Hung, III, 1389 Gamble Road, P.O. Box 548, Great Cacapon, West Virginia 25422

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

ESTATE OF ROBERT F. STORM, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Donald L. Storm, 209 Longdraft Road, Gathersburg, MD 20878-1033

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

IN THE COURT OF
COMMON PLEAS OF THE
39TH JUDICIAL DISTRICT, PA
FRANKLIN COUNTY BRANCH

CIVIL ACTION—LAW
F.R. NO. 2006 - 1377
In Divorce a v.m.

JOHN M. MORT, JR., Plaintiff

vs.

WENDY S. MORT, Defendant

NOTICE TO DEFEND AND CLAIM
RIGHTS

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree of divorce or annulment may be entered against you by the Court. A judgment may also be entered against you for any other claim or relief requested in these papers by the Plaintiff. You may lose money or property or other rights important to you, including custody or visitation of your children.

When the ground for the divorce is indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the office of the Prothonotary, Franklin County Courthouse, Chambersburg, Pennsylvania 17201.

IF YOU DO NOT FILE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYER'S FEES OR EXPENSES BEFORE A DIVORCE OR ANNULMENT IS GRANTED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM.

YOU SHOULD TAKE THIS PAPER 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.

Pennsylvania Bar Association
Lawyer Referral Service
Telephone: 1-800-692-7375 (PA only)
or (717) 238-6715

Deborah K. Hoff, Attorney for Plaintiff
154 South Potomac Street
Waynesboro, PA 17268
(717) 762-0371

10/20

Adams County Legal Journal

Vol. 48

October 27, 2006

No. 23, pp. 137-144

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-770 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of December, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike in the centerline of PA. Route 394 at corner of Lot No. 1 on Plat hereinafter referred to, thence in centerline of PA. Route 394 South 66 degrees 00 minutes 00 seconds East, 386.45 feet to a PK nail in the centerline of aforesaid Road; thence continuing in said centerline of PA. Route 394 South 66 degrees 34 minutes 00 seconds East, 148.72 feet to a railroad spike at corner of Lot No. 3; thence by same South 24 degrees 00 minutes 00 seconds West, passing through an iron pin back 25 feet from centerline of PA. Route 394, 807.47 feet to an iron pin at 4 foot oak at lands of Richard E.

Kammerer; thence by same North 67 degrees 40 minutes 09 seconds West, 535.39 feet to an iron pin at corner of Lot No. 1; thence by same North 24 degrees 00 minutes 00 seconds East, passing through an iron pin back 25 feet from the centerline of PA. Route 394, 821.60 feet to a railroad spike in centerline of aforesaid road, the place of BEGINNING. CONTAINING 10.000 Acres.

Being Known As: 185 Hunterstown-Hampton Road, (Straban Township), Gettysburg, PA 17325

Property ID No.: 38-H10-105

TITLE TO SAID PREMISES IS VESTED IN Jack J. Goulet and Andree M. Goulet, husband and wife, as tenants of an estate by the entireties by deed from Gilbert C. Fisher and Evelyn Fisher, husband and wife dated 9/13/1978 recorded 9/18/1978 in Deed Book 340 Page 514.

SEIZED and taken into execution as the property of **Jack J. Goulet, Andree M. Goulet & The United States of America** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the

Sheriff in his office on December 22, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27, 11/3 & 9

CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN THAT FORESTRY COMMUNICATIONS ASSOCIATION, INC., a Virginia nonprofit corporation whose principal office in Pennsylvania is 122 Baltimore Street, Gettysburg, PA, has filed an Application for Certificate of Authority with the Pennsylvania Department of State on October 20, 2006 under the Pennsylvania Nonprofit Corporation Law of 1988.

10/27

Quality Customer Service.
Our promise to you every day.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designed for the Publication of Court and other Legal Notices. Published weekly 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) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-696 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situated in the Township of Franklin, County of Adams, and Commonwealth of Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a point in the centerline of Jack Road (T-315), said point marking the common point of adjoiner of Lots #26 and #26-A on the hereinafter plan of subdivision; thence extending in and through the centerline of Jack Road, North seventy-five (75) degrees fifty-six (56) minutes fifty-four (54) seconds West, for a distance of sixty-seven and eighty-seven hundredths (67.87) feet to a point in the centerline of said roadway; thence continuing in and through the centerline of Jack Road by an arc or curve to the left having a radius of five hundred ten (510) feet, for an arc distance of seventy-eight and thirty hundredths (78.30) feet to a point in the centerline of Jack Road as Lot #27 on the plan of subdivision of Hidden Valley (Plat Book 60, page 45); thence departing from the centerline of Jack Road, and extending along Lot #27 as aforesaid, North five (05) degrees fifteen (15) minutes twenty-two (22) seconds East, through a steel pin set on the Northernmost dedicated right-of-way line of Jack Road, a distance of twenty-five and no hundredths (25.00) feet from the origin of this call, for a total distance of three hundred and no hundred (300.00) feet to a concrete monument; thence continuing along Lot #27, South seventy-eight (78) degrees forty-seven (47) minutes thirty-three (33) seconds East, for a distance of one hundred ninety-one and ninety-seven hundredths (191.97) feet to an iron pin at Lot #26 on the hereinafter mentioned plan of subdivision; thence extending along Lot #26, South ten (10) degrees eight (08) minutes three (03) seconds West, through an iron pin set on

the Northernmost dedicated right-of-way line of Jack Road, a distance of twenty-five and six hundredths (25.06) feet from the terminus of this call, for a total distance of two hundred ninety-nine and sixty-eight hundredths (299.68) feet to a point in the centerline of Jack Road, said point marking the place of BEGINNING.

CONTAINING 1.0019 acres to the dedicated right-of-way line and 1.0864 acres to the property line, and being designated as Lot #26-A on a final plan of resubdivision of Lot #26 of the Musselman Farm prepared for Harry H. Fox, Jr. by Stanley Jarmolenko, Registered Surveyor, dated November 28, 1994, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 66, at page 19.

TITLE TO SAID PREMISES IS VESTED IN Johnnie R. Palmer, Jr., and Teresa L. Palmer, his wife by Deed from Harry H. Fox, Jr. and Ann G. Fox, his wife dated 8/1/1994 and recorded 8/14/1995 in Record Book 1067 Page 62.

Premises Being: 111 Jack Road, Orrtanna, PA 17353

Tax Parcel No. 12-C12-0160-000

SEIZED and taken into execution as the property of **Johnnie R. Palmer, Jr. & Teresa L. Palmer a/k/a Teresa L. Boone** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/13, 20 & 27

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 Friday, November 3, 2006, at 9:00 a.m.

AMOUR—Orphans' Court Action Number OC-135-06. The First and Final Account of Kathleen Anne Redding, Executrix of the Estate of Catherine Anne Amour, deceased, late of Oxford Township, Adams County, Pennsylvania.

ZEIGLER—Orphans' Court Action Number OC-81-06. The First and Final Account of Lovina Hoff and John Everhart, Co-Executors of the Estate of Goldie C. Zeigler, Deceased, late of the Borough of York Springs, Adams County, Pennsylvania.

MAITLAND—Orphans' Court Action Number OC-137-06. The First and Final Account of Richard A. Maitland, Jr., Executor of the Estate of Janet E. Maitland a/k/a Janet R. Maitland, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

HARBAUGH—Orphans' Court Action Number OC-127-91. The First and Final Account of PNC Bank, National Association, successor by merger to The Gettysburg National Bank, Guardian of the Estate of Lacy Jane Harbaugh, a minor.

RUDISILL—Orphans' Court Action Number OC-138-06. Trust of PNC Bank, N.A., formerly The Gettysburg National Bank, Trustee under the Last Will and Testament of Nadine E. Rudisill, late of Conewago Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

10/20 & 27

TATE ET AL VS. SWAN LAKE ET AL

Continued from last issue (10/20/06)

Thus, it appears that federal courts viewing Pennsylvania law have determined that the conduct of constables can be deemed state action for purposes of § 1983. However, this is not to suggest that just because a constable is on the scene when one's rights are violated that civil rights liability follows. To explain this conclusion we have examined a number of cases where police were named as § 1983 defendants.

In *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507 (5th Cir. 1980), the court determined that the presence of police during the course of the repossession of Menchaca's vehicle by the defendant's agents did not involve sufficient state action to overcome the defendant's pre-trial motion to dismiss the § 1983 action. Defendant's agents were in the process of connecting the vehicle to their tow truck when Menchaca intervened. Police arrived on the scene due to a reported disturbance. Menchaca was advised that he could be arrested if he created a breach of the peace. When the situation quieted, the police departed. The court noted that these officers had never been involved in a repossession, had never met any of the persons involved, and their arrival was not part of a pre-arranged plan between the agents and the police. Furthermore, there was no history of departmental "cooperation" with repossession agents.

In *Wright v. The National Bank of Stamford*, 600 F. Supp. 1289 (N.D. N.Y. 1985), a § 1983 action resulted from an attempt to repossess collateral securing a defaulted loan. Two sheriff deputies were present when bank personnel removed plaintiffs' cows. Plaintiffs argued that the presence of the deputies elevated what would otherwise be a private repossession into one under color of state law. In finding that other than being present, the deputies did not participate in the repossession, the court observed:

It is of course true that "at some point, as police involvement becomes increasingly important, repossession by private individuals assumes the character of state action."
Howerton v. Gabica, 708 F.2d 380, 383 (9th Cir. 1983).⁷

⁷*Howerton* involved a § 1983 action against a landlord for an allegedly unlawful eviction. In reversing the district court's dismissal of the action, the Ninth Circuit premised its holding on the fact that local police officers' affirmative assistance in the physical eviction created an appearance that the police sanctioned the eviction and

(Footnote 7 continued to next page)

That point, however, has not been approached here. The only evidence in the record is that the deputies were passive onlookers, present only to avert any violence which, considering the circumstances, was reasonably to be anticipated....There are no allegations that the deputies actually aided in the repossession. Nor are there allegations that their mere presence somehow assisted in an essentially private undertaking. See *Harris v. City of Roseburg*, 664 F.2d 1121, 1127 (9th Cir. 1981) (“We conclude that there may be a deprivation within the meaning of § 1983 not only when there has been an *actual ‘taking’* of property by a police officer, but *also* when the officer *assists in effectuating a repossession* over the objection of a debtor *or so intimidates* a debtor as to cause him to refrain from exercising his legal right to resist a repossession.”) Indeed, there could have been no such “intimidation” here, since plaintiffs eventually insisted that the repossession cease. In short, the officers were merely present throughout the entire operation with the object of preventing a breach of the peace. That exigency never realized, their presence retained its passive character and therefore fell shy of creating action under color of state law. “Where state involvement in private action constitutes no more than acquiescence or tacit approval, the private action is not transformed into state action.” *United States v. Coleman*, 628 F.2d 961, 964 (6th Cir. 1980).

Wright, 600 F.Supp. at 1295-6. (emphasis added).

Eleven months later in *Booker v. City of Atlanta*, 776 F.2d 272 (11th Cir. 1985) police involvement in a repossession was determined to be more extensive than in *Menchaca* and the district court’s action in granting defendant’s motion for summary judgment was reversed on appeal. There, the officer arrived at the scene with the reposessor. The court concluded that:

(Footnote 7 continued from previous page)

therefore was sufficient state action to allow the case to proceed. There, instead of a single incident of police standing by in case of trouble, the police were present for each step of the eviction. The landlord felt that the police presence gave him the right to disconnect utilities. The police also actively intervened by approaching the tenants and recommending that they leave.

his *arrival with the reposessor* gave the repossession a *cachet of legality* and had the *effect of intimidating* Booker into not exercising his right to resist, thus facilitating the repossession. Even if unintended, such an effect could constitute police “intervention and aid” sufficient to establish state action.

Booker, 776 F.2d at 274. (emphasis added).

Jones v. Gutschenritter, 909 F.2d 1208 (8th Cir. 1990) is another example where the granting of defendant’s motion to dismiss a § 1983 action was reversed on appeal. There, Larsen began eviction proceedings against Jones, but prior to any court authorization. He requested police presence to prevent violence while he disconnected the tenant’s electricity. Larsen advised the officer of his reason for being at the premises, that Jones had threatened him with physical harm, and there was a shotgun on the premises. The officer did not question the parties concerning their respective property rights or whether there was a court authorization for the disconnect. The officer stood near to Larsen while Larsen disconnected the electricity. Jones testified that he did not attempt to stop Larsen because he feared the police due to a prior incident when he was strip searched after being arrested for a dog violation. In finding that the evidence should have been presented to the jury, the court attempted to reconcile this case with *Menchaca*, *Howerton*, and *Harris*:

Applying the principles in *Menchaca* and *Harris*, we are satisfied that, considering the actions of [the officer] in a light most favorable to Jones and giving Jones all of the favorable inferences to which he is entitled, there is an *issue for a trier of fact* as to *whether* [the officer] was *assisting in effectuating* the disconnection of Jones’ electrical service over the objection of Jones *or so intimidating* him as to cause him to refrain from exercising his legal right to resist the disconnection. We believe that a jury could find from these facts more than mere acquiescence or standing by in case of trouble. It is true that there was no direct confrontation or exchange of words between [the officer] and Jones...[The officer] neither departed before the disconnection of the utilities as did the officers in *Menchaca*, nor engaged in direct, verbal confrontation

as occurred in *Harris*. Thus factually, the instant case occupies the middle ground between *Menchaca* and *Harris*. There was evidence that had the officer not been present Jones would have taken action to protect his rights, which is evidence similar to that in *Harris*.... We believe that it was for the jury to determine whether the *close proximity of [the officer] to Larsen* when he disconnected Jones' electrical services could have engendered fear or intimidation, that the jury could have concluded that [the officer] was not simply present and standing by, but rather was *lending police intervention* and aid in the disconnection of Jones' electrical services and that [the officer's] action constituted state action.

Jones, 909 F.2d at 1212-3. (emphasis added).

Barrett v. Harwood, 189 F.3d 297 (2nd Cir. 1999) involved a situation similar to *Menchaca*. There, a seller of a vehicle requested a tow truck operator to repossess a vehicle. The tow truck operator, in turn, requested police to be at the scene in case of resistance. In response to Barrett's question, the officer advised that the tow truck operator was taking his vehicle. Barrett protested. When Barrett produced documentation, the officer stated the incident was a civil matter and he should get an attorney. More words were exchanged and the officer warned Barrett that if he started any trouble, he would be placed in the police car. Barrett claimed he believed he would be arrested if he took further measures to resist the repossession. The district court granted summary judgment for all defendants and the circuit court affirmed. The court rejected Barrett's argument that the officer's involvement converted a private repossession into state action and noted:

no bright line has been drawn delineating the exact point at which an officer's presence and activities at the scene of a repossession become state action in aid of the repossession. In relevant case law, we discern a spectrum of police involvement at the scene of a repossession. At one end of the spectrum is de minimis police involvement not amounting to state action in aid of the repossession. For example, a police officer's mere presence at the scene is

insufficient to constitute state action...⁸ Further along the spectrum we find involvement greater than mere presence, yet still insufficient to constitute state action in aid of the repossession...⁹ When an officer begins to take a more active hand in the repossession, and as such involvement becomes increasingly critical, a point may be reached at which police assistance at the scene of a private repossession may cause the repossession to take on the character of state action...¹⁰ Hence, based on existing case law, the crucial question is whether the police officer was (1) present simply to stand by in case there was a breach of the peace, or (2) taking an active role that either affirmatively assisted in the repossession over the debtor's objection or intentionally intimidated the debtor so as to prevent him from exercising his legal right to object to the repossession... Viewing all the evidence in the light most favorable to the Barretts, as the non-movants, we are convinced, as was the district court, that [the officer's] actions amounted to no more than the carrying out of his duty to prevent violence in the event of a breach of the peace and that there was no state action to facilitate the repossession.

Barrett, 189 F.3d at 302-3.

Finally, in *Harvey*, 421 F.3d at 197, a motion for summary judgment in favor of Officer Dombroski was reversed. There, a Protection From Abuse order with an eviction provision had been entered against Olowiany. Olowiany wanted to retrieve his personal belongings from Harvey's apartment and grew impatient when requests were not being answered. Therefore, he notified the police, the landlord, and Harvey in writing of a time and date when he would appear to retrieve his property. Harvey did not get her copy of the letter and was not home at the time Olowiany, the landlord, and Dombroski arrived. Officer Dombroski directed the landlord to unlock the door and Olowiany secured his belongings. In discussing

⁸ Citing *Wright*, *supra*.

⁹ Citing *Menchaca*, *supra*.

¹⁰ Citing, *inter alia*, *Jones*, *Harris*, and *Booker*, *supra*.

the officer's role in the entry, the court also addressed the fact that Harvey was not present when entry was made into her apartment:

it appears that Dombroski "played a principal role in the seizure" and a reasonable jury could conclude that Dombroski used his public authority to help the ex-boyfriend gain entry to and seize property from Harvey's apartment. The record supports a finding that he was not a mere spectator, but in fact a but-for cause of the seizure. Dombroski relies on cases that allegedly suggest that the plaintiff's presence, here, Harvey's presence, was necessary for state action to have taken place.... While presence of the plaintiff at the alleged constitutional violation was important in these cases, it was important not in itself but as an indicator of the role that the defendant likely played. In *Barrett*, the Second Circuit found that an officer's warning to the plaintiff against "starting any trouble" was a reasonable peacekeeping response to the plaintiff's violent opposition to the repossession.... The court stated that the "crucial question" was whether or not the officer was "taking an active role that either affirmatively assisted in the repossession over the debtor's objection or intentionally intimidated the debtor so as to prevent him from exercising his legal right to object to the repossession.... However, we believe that the implication that the plaintiff must be present was in response to the factual situation presented. This is made clear by the court's earlier more general formulation of the issue: "When an officer begins to take a more active hand in the repossession, and as such involvement becomes increasingly critical, a point may be reached at which police assistance at the scene of a private repossession may cause the repossession to take on the character of state action." Thus, we do not read *Barrett* as embracing a rule that requires the plaintiff's presence in order to find state action. In *Breiner*,¹¹ the district court assigned significance to the plaintiff's absence at the scene because it showed that she was not intimidated by the police

¹¹*Breiner v. Litwhiler*, 245 F. Supp. 2d 614 (M.D. Pa. 2003).

presence — intimidation being one method by which an officer might help effectuate a constitutional violation.... However, as in Barrett, what was ultimately important was *whether the injury to the plaintiff was aided by the use of state-derived authority*, not whether the alleged state action was immediately directed to the plaintiff. Here, the record supports a finding that the officer used his authority to compel [the landlord] to open the door. Thus, the use of state-derived authority — Dombroski's order to open the door — was critical to the repossession, satisfying the state-action test discussed above. (citations omitted).

Harvey, 421 F.3d at 191. (emphasis added).

I find that Plaintiffs' cause of action under § 1983 withstands Defendants' argument that the constables' involvement was legally insufficient to establish state action and provide this Court with jurisdiction.

First, there is enough legal authority in *Villanova* and *Abbott* to support the concept that constables can be state actors for purposes of civil rights litigation. These cases recognize that the statutory law enforcement authority of constables is sufficient to clothe them with authority of state law for § 1983 purposes. Here, the constables also outfitted themselves in such a fashion that they visually, if not verbally, identified themselves as persons having state sanctioned authority.

Second, there is sufficient evidence which, if believed, demonstrates that these constables were more than "passive onlookers" and did more than just "stand by" in case of violence. Hager and Dacheux were paid by the Basts and arrived at the scene with the Basts. Rather than passively watching the interaction of the parties, they became actively involved even when not faced with danger or hostilities. The constables entered the premises with guns drawn. Although this action did not intimidate Plaintiffs, who were not present, it demonstrates that they were not passive observers. When Plaintiffs arrived home, the constables stepped in front of them before they could enter the premises. Dacheux, at Dr. Bast's direction, followed Green into the residence even though there was no indication she was a threat. Hager followed Tate to his car and intervened when Tate tried to walk away from Dr. Bast. Hager was

actively involved in the search for cash at two separate locations and Dacheux was observed carrying boxes from the residence. Thus, they were offering affirmative assistance in physically removing property. At other times, the constables were in close proximity to the Bastis and others as property was being removed.

Third, the size of the constables, their authoritative demeanor, the display and handling of their firearms, Hager's subtle threat to Tate, and their refusal to leave throughout the incident could combine to lead a jury to conclude that Plaintiffs were intimidated from resisting the removal of their property. For example, on one occasion, Tate attempted to keep Dr. Bast from removing papers and the constables intervened and directed Tate to give up that property regardless of who was entitled to possession.

It is for the trier of fact to determine whether the constables were assisting in effectuating the removal of Plaintiffs' property or that they so intimidated Plaintiffs as to cause them to refrain from exercising their legal right to resist more fully.

Continued to next issue (11/3/2006)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-697 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of November, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or piece of ground situate in Mount Pleasant Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a pin at the Northern side of the right-of-way of Leg. Rt. No. 01067 leading from Rt. 30 to the New Chester-Hunterstown Road at land now or formerly of Kenneth L. Leatherman and Demetris Leatherman, said point of beginning being 753.9 feet Southeast of the center of bridge over Swift Run; thence by land now or formerly of Kenneth L. Leatherman and Demetris Leatherman, North 40 degrees 47 minutes 44 seconds East, 200 feet to a pin; thence by land now or formerly of Kenneth L. Leatherman and Demetris Leatherman, South 49 degrees 12 minutes 16 seconds East, 200 feet to a pin; thence by land now or formerly of Kenneth L. Leatherman and Demetris Leatherman, South 40 degrees 47 minutes 44 seconds West, 200 feet to a pin at the Northern right-of-way line of said Leg. Rt. No. 01067; thence along the Northern right-of-way line of said Leg. Rt. North 49 degrees 12 minutes 16 seconds West, 200 feet to a pin, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Jennifer L. Flynn, by Deed from Edward Francis Powers, Jr., unmarried, dated 06/02/2004, recorded 06/04/2004, in Deed Book 3595, page 306.

Premises Being: 755 Brickcrafter Road, New Oxford, PA 17350

Tax Parcel No. 110-43A

SEIZED and taken into execution as the property of **Jennifer L. Flynn a/k/a Jennifer L. Steele** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 8, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-249 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of December, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece, parcel or tract of land, situate, lying and being in McSherrystown Borough, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to wit:

BEGINNING for a point along the Easterly right-of-way line of Westview Drive and Lot No. 21 of the hereinafter referred to Subdivision Plan; thence along said Lot No. 21, North 70 degrees 40 minutes 31 seconds East 82.79 feet to a point at lands now or formerly of Philip L. Hagerman; thence along said lands now or formerly of Philip L. Hagerman, South 30 degrees 30 minutes 55 seconds East, 51.00 feet to a concrete monument along the Northernly right-of-way line of North Street; thence along the Northernly right-of-way line of North Street, South 59 degrees 29 minutes 12 seconds West, 73.79 feet to a point at the intersection of North Street and Westview Drive; thence along the intersection of North Street and Westview Drive, North 69 degrees 55 minutes 08 seconds West, 26.27 feet to a point along the Easterly right-of-way line of Westview Drive; thence along the Easterly right-of-way line of Westview Drive, North 19 degrees 19 minutes 29 seconds West, 47.67 feet to a point, the place of BEGINNING.

CONTAINING 5,029.3392 square feet and being identified as Lot No. 21-A on the Final Subdivision Plan of McSherrystown West, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 64, Page 20.

SAID tract of land being subject to the Protective Covenants and Restrictions for McSherrystown West dated January 12, 1994, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 835, Page 35.

BEING known as 4 Westview Drive, McSherrystown, PA 17344.

BEING the same premises which Manuel J. Rivera, an unmarried man and Karen T. Secrest f/k/a Karen T. Rivera, a married woman, by Deed dated May 9, 2005 and recorded May 20, 2005 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 3971, Page 227, granted and conveyed unto Scott Buchman and Ellen Buchman, husband and wife.

PARCEL No. 28, 002-0215.

SEIZED and taken into execution as the property of **Scott Buchman & Ellen Buchman** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 22, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27, 11/3 & 9

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State, of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on September 19, 2006 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 ODD JOBS ENTERPRISES, 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.

Odd Jobs Enterprises, Inc.
115 Buford Avenue
P.O. Box 3274
Gettysburg, PA 17325

10/27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-849 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of December, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

Tax Parcel No. 29-B5-6

ALL that certain tract of land situate on South Mountain in Menallen Township, Adams County, Pennsylvania, bounded, limited and described as follows:

BEGINNING at a nail in the centerline of Legislative Route No. 01041 a road leading to Shippensburg and at corner of lands now or formerly of Gary D. Reihart, Inc.; thence South 40 (incorrectly stated as 46 degrees in prior deeds of record) degrees 29 minutes 43 seconds West, 1,949.07 feet to a pin; thence North 48 degrees 24 minutes West, 200 feet to a point at corner of lands now or formerly of Miles D. Daniels and wife; thence along the property line of land now or formerly of Miles D. Daniels and wife, North 41 degrees 05 minutes 37 seconds East 2,035.06 feet to a point in the centerline of Legislative Route No. 01041; thence South along the centerline of said road South 23 degrees 18 minutes 11 seconds East, 148.86 feet to a point in the centerline of Legislative Route No. 01041; thence along the centerline of said road South 21 degrees 29 minutes 52 seconds East, 51.14 feet to the point and place of BEGINNING.

CONTAINING 8.67 ACRES, MORE OR LESS, also known as parcel number 3 according to a survey by Ernest J. Walker, Professional Engineer, dated May 16, 1968, and as revised by Noel B. Smith, Registered Surveyor, dated August 19, 1968.

BEING the same premises which Calvin L. Ott and Wendy L. Ott, his wife, by their deed dated October 03, 2003 and recorded in the Adams County Courthouse in Deed Book 3333 on page 343 granted and conveyed to Samuel M. Fittry and Constance A. Fittry, his wife mortgagors.

Premises Being: 2588 Shippensburg Rd., Biglerville, PA

SEIZED and taken into execution as the property of **Samuel M. Fittry & Constance A. Fittry a/k/a Contante A. Fittry** and to be sold by me.

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

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

2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27, 11/3 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-842 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of December, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a steel pin set in the centerline of Latimore Creek Road (T634), said pin marking the common point of adjoinder of lots numbered 6 and 7 on the hereinafter mentioned plan of subdivision with the centerline of said Latimore Creek Road; thence departing from the centerline of Latimore Creek Road and extending along Lot No. 6, South 66 degrees 40 minutes 00 seconds West, through a steel pin set on the Southwestern most dedicated right-of-way line of Latimore Creek Road a distance of 25 feet from the origin of this call, for a total distance of 732.82 feet to a steel pin at lands now or formerly of Paul B. Lerew; thence extending along lands now or formerly of Paul B. Lerew, North 31 degrees 12 minutes 15 seconds West, for a distance of 151.43 feet to a steel pin at Lot No. 8 on the hereinafter mentioned plan of subdivision; thence extending along Lot No. 8, North 66 degrees 40 minutes 00 seconds East, through a steel pin set on the Southwestern most dedicated right-of-way line of Latimore Creek Road a distance of 25 feet from the terminus of this call, for a total distance of 747.14 feet to a steel pin set in the centerline of said Latimore Creek Road; thence extending in and through the centerline of Latimore Creek Road the following two courses and distances, (1) South 23 degrees 20 minutes 00 seconds East, for a distance of 34.32 feet to a pin in the centerline of said roadway at lands now or formerly of G. Henry Osborn; (2) thence continuing in

and through the centerline of said roadway, South 26 degrees 30 minutes 15 seconds East, for a distance of 115.86 feet to a steel pin in the centerline of said Latimore Creek Road at Lot No. 6 on the hereinafter mentioned plan of subdivision, said pin marking the place of BEGINNING.

CONTAINING 2.546 acres and being designated as Lot No. 7 on a final amended plan of major subdivision of Misty Meadows prepared for Harmon Graves Company by Rodney Lee Decker and Associates, dated August 11, 1983, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plan Book 39 at page 63.

Being Known As: 922 Latimore Creek Road, (Latimore Township), York Springs, PA 17372

Property ID No.: 102-0004E-000

TITLE TO SAID PREMISES IS VESTED IN Paul W. Anthony and Cindy M. Anthony, as tenants of an estate by entireties by deed from Gregory H. Eichelberger and Terry L. Eichelberger, husband and wife dated 9/30/04 recorded 10/5/04 in Deed Book 3727 Page 211.

SEIZED and taken into execution as the property of **Paul W. Anthony & Cindy M. Anthony** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 22, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27, 11/3 & 9

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 COREY M. MILLER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Cecelia J. Miller, 365 Goldenville Road, Gettysburg, PA 17325

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

ESTATE OF RICHARD L. STAHL, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Personal Representative: Holly S. Stahl, 30 Squire Circle, McSherrystown, PA 17344

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

ESTATE OF CAROLINE TROSTLE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Donald Trostle, 1280 Good Intent Road, Gettysburg, PA 17325; Donna Cole, 171 Hunters Trail, Gettysburg, PA 17325

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

ESTATE OF WILLIAM GEORGE WALDMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Dorothy C. Waldman, c/o Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

Attorney: Lynn G. Peterson, Esq., Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF JOSEPH T. BERGER, DEC'D**

Late of Germany Township, Adams County, Pennsylvania

Administrator: James M. Berger, c/o Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

Attorney: Lynn G. Peterson, Esq., Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY C. PROSSER, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executrix: Janey E. Kopp, 6840 Kopp Road, Spring Grove, PA 17362

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

ESTATE OF CAROL ANN YANTIS, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Michael A. Yantis, 355 North Street, McSherrystown, PA 17344

Attorney: Arthur J. Becker, Jr., Esq., Arthur J. Becker, Jr., P.C., 544 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION**ESTATE OF JEAN E. BROWNING, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Executrix: Lisa L. Bennett, 660 Mt. Tabor Road, Gardners, PA 17324

ESTATE OF EILEEN K. KEATING a/k/a EILEEN M. KEATING, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: John W. Keating, 1631 Park Avenue, Apt. 12, Baltimore, MD 21217

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-802 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of December, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land situate in Hamiltonban Township, bounded and described as follows:

BEGINNING at the Southwestern corner hereof, at an existing pipe off the south side of Tom's Creek, on line of land of Ethel B. Flenner and at corner of land of Mrs. Harvey Woodring (formerly a part hereof); thence crossing Tom's Creek, running through an existing pipe off the north side of Tom's Creek, by land of Mrs. Harvey Woodring, aforesaid, North 13 degrees 10 minutes 40 seconds East, 177.31 feet to an existing pipe; thence by said last mentioned land, North 76 degrees 39 minutes 10 seconds West, 10.07 feet to an existing pipe; thence by said last mentioned land, North 13 degrees 48 minutes 40 seconds East, running through an existing steel rod near the middle of this course, and crossing the Iron Springs (L.R. 01015) Road near the end of this course, 161.55 feet to an existing angle iron at the northwest corner hereof; thence by land of Guy Bowling and land of Leroy Shelton, South 82 degrees 42 minutes 30 seconds West, 249.85 feet to an existing old square steel rod driven 15 feet north of the center line of the state highway aforesaid; thence by land of Constance Alering, running, along the north side of said state highway and in same, South 81 degrees 30 minutes 00 seconds East, 289 feet to a railroad spike set on the north edge of said state highway at the northeast corner hereof; thence crossing said state highway, and by land of Cindy Welsh, South 4 degrees 56 minutes 10 seconds East, 289.63 feet to a steel rod driven at the Southeastern corner hereof; thence by land of Ethel B. Flenner, North 87 degrees 38 minutes 30 seconds West, crossing Tom's Creek, 343.90 feet to a steel rod off the south edge of said creek; thence continuing by said mentioned land, North 86 degrees 34 minutes 40 seconds West, 284.67 feet to the above described place of BEGINNING. CONTAINING 4.202 Acres.

The above description was taken from a draft of survey prepared by Adams County Surveyors, dated June 4, 1986.

Tax parcel no: B-16-69

Premises being: 1368 Iron Springs Rd., Fairfield, PA 17320

SEIZED and taken into execution as the property of **Leroy Shelton, Jr. & Julia E. Shelton** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 22, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27, 11/3 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-230 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of December, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that following described tract of land, together with the improvements thereon erected, lying and being in the Village of Midway, Conewago Township, Adams County, Pennsylvania bounded and limited as follows, to wit:

BEGINNING at a notch in the concrete (found) on the Southern side of Third Street at lands now or formerly of Donald C. Smith; thence along lands now or formerly of Donald C. Smith, South nine (09) degrees thirty (30) minutes East, one hundred seventy-six and forty-three hundredths (176.43) feet to an iron pin on the Northern side of a twenty (20) feet wide public alley; thence along the Northern side of said public alley, South eighty (80) degrees twelve (12) minutes fifty-three (53) seconds West, eighteen and four hundredths (18.04) feet to an iron pin on the North side of said alley at lands now or formerly of the Edward F. Shorb Estate; thence along said lands now or formerly of Edward F. Shorb Estate and passing through the common partition wall of a concrete block and frame garage, North eight (08) degrees fifty-seven (57) minutes fourteen (14) seconds West, twenty-eight and twenty hundredths (28.20) feet to an iron pin (set); thence continuing along lands now or formerly of Edward F. Shorb Estate,

North nine (09) degrees twenty-two (22) minutes twenty-six (26) seconds West, eighty-one and eighty-two hundredths (81.82) feet to an iron pin (set); thence continuing further along said lands now or formerly of Edward F. Shorb Estate and passing through the common partition wall of a 2-1/2 story brick dwelling home, North nine (09) degrees seven (07) minutes twenty-two (22) seconds West, sixty-six and fifty-nine hundredths (66.59) feet to a drill hole on the Southern side of Third Street aforesaid; thence along the Southern side of said Third Street, North eighty (80) degrees fourteen (14) minutes fifty-two (52) seconds East, seventeen and fifteen hundredths (17.15) feet to a notch in the concrete, the point and place of BEGINNING.

Tax Parcel No. 08-0258A-000

Property Address: 336 Third Street Hanover, PA 17331

SEIZED and taken into execution as the property of **Robert A. Wertz & Rachel A. Wertz** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 22, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27, 11/3 & 9

NOTICE

The Adams County Tax Claim Bureau hereby gives notice that it presented a Consolidated Return of Sales to the Court of Common Pleas of Adams County, Pennsylvania on October 23, 2006, of sales of real estate for delinquent taxes made September 17, 2004. The Court confirmed said Return Nisi on October 23, 2006. Objections or exceptions thereto may be filed by any owner or lien creditor within Thirty (30) days from the date of the Return; otherwise the Return will be confirmed absolutely.

Adams County Tax Claim Bureau
By: Danielle Asper, Director

10/27