Adams County
Legal Journal

ol. 37 November 3, 1995 No. 23, pp. 113–116

ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Representing Residential Landlords & Tenants*. December 12—8:45 a.m. Room 207B, Adams County Courthouse—4 C.L.E. credits in substantive law and 0 C.L.E. credit in ethics. Registration through P.B.I.
2. *Hot Issues in Custody*. January 17—8:45 a.m. Room 207B, Adams County Courthouse—5 C.L.E. credits in substantive law and 1 C.L.E. credit in ethics. Registration through P.B.I.

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 112 Baltimore Street, Gettysburg, PA 17325.

Business Office – 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

Second-class postage paid at Gettysburg, PA 17325.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-N-257 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of December, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the **Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:**

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

BEGINNING at an iron pipe on the Southern side of Pennsylvania Route No. 116 (Third Street), said pipe located eighteen (18) feet from the center of said Pennsylvania Route No. 116 at other lands now or formerly of Lester Pascoe, Grantee herein, and other lands now or formerly of Edward C. Smith, Grantor herein; thence along said other lands now or formerly of Edward C. Smith and passing through a steel pin set back ten (10) feet from the end hereof South no (00) degrees forty-four (44) minutes thirty-five (35) seconds West one hundred ninety and eighty-eight hundredths (190.88) feet to a point on the Northern side of a twenty (20) feet wide alley, thence along the Northern side of said twenty (20) feet wide alley South eighty-nine (89) degrees four (4) minutes thirty-five (35) seconds West ten and eighty-eight hundredths (10.88) feet to a point at other lands now or formerly of Lester Pascoe, Grantee herein; thence along said other lands North four (4) degrees East one hundred ninety-one and fifty-one hundredths (191.51) feet to the point and place of BEGINNING. CONTAINING 1,037 Square Feet, neat measure. This description is taken from an approved Subdivision Plan prepared for Edward C. Smith by J. H. Rife, Registered Engineer, dated August 9, 1978, and recorded in Plat Book 32, page 10, of the Adams County Records.

IT BEING a part of a larger tract of land which **Bertha J. Sappington Unmarried,** by her **Deed dated September 15, 1964,** and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed book Vol. 252, page 473, granted and conveyed unto Edward C. Smith, Grantor herein.

SEIZED and taken into execution as the property of **Lester W. Pascoe,** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 2, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/3, 10, 17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been or will be filed with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation.

The name of the proposed corporation which has been organized under the Business Corporation Law of 1988 adopted December 21, 1988, P.L. 1444, No. 177, Section 103, as amended, is CROUSE BROTHERS LOGGING, INC.

Matthew R. Battersby, Esq.
20 West Main Street
P.O. Box 215
Fairfield, PA 17320

11/3

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on October 13, 1995 a certificate will be filed under the Fictitious Name Act approved May 24, 1945, in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Raymond Masenheimer, 404 Barts Church Road, Hanover, PA 17331 and David Livingston, 211 Poplar Street, Hanover, PA 17331 are the only person(s) owning or interested in a business, the character of which is general painting and wallpapering and that the name, style and designation under which said business is and will be conducted is PAINTING BY RAYDAVE and the location where said business is and will be located is 404 Barts Church Road, Hanover, PA 17331.

Larry W. Wolf, Esquire

11/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on October 6, 1995, with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, for the purpose of obtaining a Certificate of Incorporation of a proposed nonprofit corporation to be organized under the Nonprofit Corporation Law of the Commonwealth of Pennsylvania, 1988, December 21, P.L. 1444, No. 177, and its amendments and supplements, for the purpose of forming a homeowners' association. The name of the corporation is: HUNTERS CROSSING OF GETTYSBURG HOMEOWNERS' ASSOCIATION.

Hursh & Hursh, P.C.
229 State Street
Harrisburg, PA 17101-1152

11/3

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, on or about October 30, 1995, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation to be organized under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is SPORTING FRIENDS DEVELOPMENT, INC. and the purpose for which it is being organized is for the development and improvement of real estate and real estate related businesses and all other activities permitted by the PA Business Corporation Law, as amended, within and outside the Commonwealth of Pennsylvania, and the corporation shall have unlimited powers to engage in and to do any lawful act concerning any and all business for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1988, and for these purposes to have, possess, and enjoy all the rights, benefits and privileges of said Act of Assembly and its supplements and amendments. The initial registered office of the corporation is 27½ Chambersburg Street, Gettysburg, Pennsylvania 17325.

Wilcox, James and Cook
Attorneys at Law
234 Baltimore Street
Gettysburg, PA 17325

11/3

After trial, counsel suggested that Ms. Morelock's in court identification conflicted with testimony at the preliminary hearing, prior consistent identifications were admissible. Commonwealth v. Doa, 381 Pa.Super. 181, 553 A.2d 416 (1989). See also Commonwealth v. Ly, 528 Pa. 523, 599 A.2d 613 (1991).

Counsel cannot be said to be ineffective for failing to request cautionary instructions regarding Ms. Morelock's testimony.

Where identification is positive and certain, there is no need for cautionary instructions, id.

Defendant complained that trial counsel failed to request a line up. Ms. Morelock was shown a photographic line up and identified defendant. This is sufficient. Commonwealth v. Doa, supra.

Defendant complained that trial counsel failed to dress someone up similar to Ms. Morelock's description of attire. Trial counsel explained his failure to do so. Having witnessed a similar demonstration in the trial of CC-418-93, we are unimpressed by defendant's arguments. The sweatshirt and sunglasses did not serve as an effective disguise. At any rate, counsel's decision was trial strategy which cannot be classified as unreasonable. Commonwealth v. Savage, 529 Pa. 108, 602 A.2d 309 (1992).

Following the hearing, the court scheduled argument for July 25, 1994. At the scheduled argument, counsel appeared not only for this case, but for CC-418-93 as well. The issue was raised at the time concerning the legality of defendant's arrest, since it was based on an accomplice's confession, which was ultimately suppressed.

The court indicated that it would rule on this as an issue in both cases. On August 3, 1994, we ruled that defendant had no standing to raise the validity of the accomplice's confession. Apparently, the original order is entered in case CC-417-93.

It has long been the rule that facts establishing probable cause do not necessarily have to be admissible at trial. Hearsay may be considered. The uncorroborated confession of a co-defendant, which implicates defendant, may establish probable cause. Commonwealth v. Zook, 532 Pa. 79, 615 A.2d 1 (1992).

Thus, the arrest in this case was proper and any identification resulting therefrom was also.

In conclusion, we find no merit in any of the complaints made by defendant.

CC-418-93

Facts in this case indicate an identical modus operandi to that employed in CC-383-93. Trial counsel was the same as the last mentioned lawyer in CC-383-93. Following guilty verdicts in this case, defendant alleged ineffective assistance of counsel and new counsel was appointed. We conducted a hearing (February 17, 1995) and heard trial counsel's explanation for his actions. As in the previous case, we accept that testimony as true.

At trial, which occurred December 8, 1994, Shelby Greenawalt testified that she was employed as a night auditor at Holiday Inn Express, in Straban Township, Adams County on March 27, 1993. She said that a person wearing a hooded sweatshirt and sun glasses entered the establishment around 2:30 A.M. The witness said the person pointed a gun at her and said "Give me all your money". (Trial, p. 41, 46) She described the man's clothing, said he was "six, six-one, about 170 pounds", (Trial, p. 43) had a prominent nose, high cheek bones, a cleft and a thick mustache. (id, p. 44) After taking money, the person left. The witness positively identified defendant at trial as being the perpetrator. (Trial, p. 46)

Although Ms. Greenawalt admitted a possible misidentification at a photographic line up (Trial, p. 53), her in court testimony was positive and unequivocal. (Trial, p. 57)

Cautionary instructions concerning identification were given. (Trial, p. 126)

Defendant presents the following arguments, which will be discussed as presented:

1. Trial counsel was ineffective for failure to preserve a double jeopardy claim.

The contention is made that Ivan Taylor, a corporal with the Pennsylvania State Police, provoked a mistrial on September 16, 1994, when he began to explain that he asked other law enforcement agencies for photographs of defendant. We have been informed on numerous occasions, many times by defendant himself, that he was charged with robberies in other counties and it was to those proceedings the corporal referred.

Normally, retrials are permitted when mistrials result from defense motions, even if provoked by prosecutorial conduct. Commonwealth v. Johnson, 417 Pa.Super. 159, 611 A.2d 1315 (1992); Commonwealth v. Lively, 530 Pa. 464, 610 A.2d 7 (1992). The only exception is if the misconduct was deliberate, undertaken in bad faith and done with the specific intent to deny defendant of a fair trial. Commonwealth v. Santiago, __Pa.Super.__, 654 A.2d 1062 (1994).

Defendant argues this test has been met because the same officer's testimony resulted in a mistrial in an unconnected case.

Corporal Taylor's testimony falls far short of crossing the standard of egregiousness necessary. As trial counsel pointed out at the hearing, the officer immediately apologized to the court after the jury was discharged. The unfortunate remark occurred early in the proceedings. There was no indication that Commonwealth's case faced any problems. In short, there is no double jeopardy claim that was affected by trial counsel's inaction.

2. Trial counsel was ineffective for failure to procure the testimony of an accomplice, Timothy Moody, and Steven Powell.

Trial counsel explained why the last mentioned witness was not produced. There is no indication that the testimony would have been helpful to defendant. Moody may or may not have been available. The Commonwealth was interested in producing him but could not locate him for trial.

Had Moody testified and exonerated defendant, his testimony could have been impeached through the use of prior inconsistent statements (the confession) which implicated defendant. Furthermore, Moody's testimony in the post-verdict hearing contained nothing that could have helped defendant.

3. Ineffective assistance by failing to impeach Ms. Greenawalt's testimony by use of prior inconsistent statements made at the preliminary hearing.

Trial counsel testified that he reviewed a tape recording of the preliminary hearing. His cross-examination concentrated on prior failures to identify defendant. This was simply a choice in style or strategy and was not unreasonable.

4. Exclusion of a jail house confession.

Defendant produced a witness who was ready to testify that

Moody confessed to him at Adams County Prison. After considering the offer, the court decided that the statements, although technically an admission against penal interest, lacked sufficient reliability to be probative. The court's rationale appears full in the transcript, beginning on page 87.

The situation presented bears startling resemblance to the hypothetical example appearing in Commonwealth v. Bracero, 515 Pa. 355, 528 A.2d 936 (1987). Supreme Court said:

> We believe that a rule requiring assurance of the trustworthiness and reliability of an out of court statement, such as that announced in Hackett and Chambers, and as mandated by Federal Rules of Evidence (Rule 804 (b)(3)), is the better view. Experience teaches us that it is not rare for friends, peers and family members to help an accused win an acquittal or avoid a jail sentence. In Chambers, the Supreme Court noted the following hypothetical:
>
> "A could be charged with a crime; B could tell C & D that he committed the crimes; *B could go into hiding* and at A's trial C & D would testify as to B's admission of guilt; A would be acquitted and B would return to stand trial; B could then provide several witnesses to testify as to his whereabouts at the time of the crime. The testimony of those witnesses along with A's statement that he really committed the crime could result in B's acquittal. A would be barred from further prosecution because of the protection against double jeopardy. No one could be convicted of perjury as A did not testify at his first trial, B did not lie under oath, and C & D were truthful in their testimony." (emphasis in original)
>
> Chambers v. State of Mississippi, 93 S.Ct at 1049
>
> Commmonwealth v. Bracero, 528 A.2d at 941

See also, Commonwealth v. McCracken, 373 Pa.Super. 90, 540 A.2d 537 (1988).

As has been previously noted, Moody gave a confession which implicated defendant as well as himself in these crimes. That confession was suppressed because the police told Moody they

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-556 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of December, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those certain two (2) tracts of land:

TRACT NO. 1: ALL that certain lot of land situate, lying and being in Hamilton Township, Adams County, Pennsylvania, known and numbered as Lot No. 5 on a Plan of Lots hereinafter referred to, bounded and described as follows:

BEGINNING at a point in the center of Township Road T-529, also known as Forest Drive, at the westernmost corner of Lot No. 4 on said Plan of Lots hereinafter referred to; thence along said Lot No. 4 and through a reference iron pin set back 25 feet from the Beginning of this course, South 44 degrees 52 minutes 10 seconds East, 583.86 feet to an iron pin at lands now or formerly of George Lillich; thence along said lands now or formerly of George Lillich, South 45 degrees 07 minutes 50 seconds West,162.70 feet to an iron pin; thence along same, North 55 degrees 31 minutes 40 seconds West, 670.08 feet through a reference iron pin set back 25 feet from the center of said Forest Drive to an iron pin in the center of said Forest Drive, also known as Township Road T-529; thence in a centerline of said Forest Drive, North 59 degrees 43 minutes 50 seconds East, 269.19 feet to a point in the center of said Forest Drive, the place of BEGINNING. Containing 3.150 acres.

The above description was taken from a final plan of Lots prepared by Adams County Surveyors on December 3, 1976, revised on February 1, 1977, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 14, Page 37.

IT BEING the same premises which David Forbes, Sr. and Myrtle Forbes, his wife, by their Deed dated September 12, 1985, and recorded in the Recorder's Office in and for Adams County, Pennsylvania, in Deed Book 408, Page 539, granted and conveyed unto Jack Forbes and Carol Elizabeth Forbes, his wife.

UNDER AND SUBJECT to easements, covenants, reservations, restrictions and rights-of-ways of record.

TRACT NO. 2: ALL that certain tract of land with the improvements thereon, situate, lying and being in Hamilton Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point at a railroad spike located in the right-of-way of a public road identified as Legislative Route 01037, known as Brough Road, and at lands now or formerly of Craig J. Mosebrook; thence through and across a portion of Legislative Route 01037 and through an iron pin located twenty-five (25) feet from the point of Beginning and along lands now or formerly of Craig J. Mosebrook, South fifty-three (53) degrees thirty-one (31) minutes thirty (30) seconds West, one hundred thirty-two (132) feet to an iron pin at lands of the same; thence along lands of the same, North sixty-one (61) degrees twenty-eight (28) minutes thirty (30) seconds West, four hundred thirty-eight and nine hundredths (438.09) feet to an iron pin at lands of the same; thence along lands now or formerly of Craig J. Mosebrook and along lands now or formerly of Carson C. Lamberson, South thirty-four (34) degrees fifty-three (53) minutes fifty (50) seconds West, one thousand six hundred thirty-five and sixty-five hundredths (1635.65) feet to an iron pin at lands now or formerly of John W. Schlaline; thence along lands now or formerly of John W. Schlaline and through and along the right-of-way of a public road identified as Township Road 547, known as Rolling Lane, South sixty (60) degrees forty-three (43) minutes zero (0) seconds West, seven hundred eighty-seven (787) feet to a railroad spike located five-tenths (.5) feet South of the center line of the aforementioned Township Road 547 and at lands now or formerly of John W. Schlaline; thence through and across a portion of Township Road 547 and through an iron pin located across a portion of Township Road 547 and through an iron pin located twenty-five (25) feet from said point and along lands now or formerly of John W. Schlaline, North forty-five (45) degrees fifty-one (51) minutes fifteen (15) seconds West, one thousand four hundred eighty-one and seventy-nine hundredths (1481.79) feet to an existing concrete monument at lands now or formerly of Gerald R. Richardson; thence along lands now or formerly of Gerald R. Richardson, North forty-seven (47) degrees fifty-five (55) minutes zero (0) seconds East, four hundred eighty-three and fifty-five hundredths (483.55) feet to an existing iron pin at lands of the same; thence along lands now or formerly of Gerald R. Richardson and through an iron pin located twenty-five (25) feet from the center line of Township Road 529, known as Forest Drive, and through and across one-half (1/2) of Township Road 529, North forty-two (42) degrees twenty-seven (27) minutes fifty (50) seconds West, eight hundred forty-four and eighty hundredths (844.80) feet to a railroad spike located in the center of the right-of-way of Township Road 529, known as Forest Drive; thence through and along the center of Township Road 529, North fifty-nine (59) degrees forty-three (43) minutes forty-five (45) seconds East, two hundred ten and fifty hundredths (210.50) feet to a point in the center line of Township Road 529; thence through and along the center line of Township Road 529, North sixty-six (66) degrees twenty-three (23) minutes zero (0) seconds East, four hundred twenty-nine and seven hundredths (429.07) feet to a railroad spike in the center of Township Road 529 and at lands now or formerly of Jack Forbes, Sr.; thence through and across one-half (1/2) of Township Road 529 and through an iron pin located twenty-five (25) feet from said point and along lands now or formerly of Jack Forbes, Sr., South forty-seven (47) degrees twenty-four (24) minutes thirty (30) seconds East, six hundred seventy and eight hundredths (670.08) feet to an iron pin at lands now or formerly of Jack Forbes, Sr.; thence along lands now or formerly of Jack Forbes, Sr., James R. Eisenhart, Raymond Gladfelter, C. Mitchell Snider, Eugene Laughman and William C. Lockner and through an iron pin located forty-nine and two hundredths (49.02) feet from a point in the center of the aforementioned Township Road 529, North fifty-three (53) degrees fifteen (15) minutes zero (0) seconds East, nine hundred eleven and seventy-two hundredths (911.72) feet to a point in the center of the aforementioned Township Road 529, known as Forest Drive; thence through and along Township Road 529, Forest Drive, South sixty-two (62) degrees forty-three (43) minutes thirty (30) seconds East, one hundred twenty-seven and five hundredths (127.05) feet to an iron pin at Tract No. 1 of the hereinafter referred to Plan; thence along Tract No. 1 and through and across one-half (1/2) of the aforementioned Township Road 547, known as Rolling Lane, South thirty-six (36) degrees eight (8) minutes five (5) seconds East, six hundred twenty and ninety-one one-hundredths (620.91) feet to a railroad spike located in the center of Township Road 547; thence through the center of Township Road 547, North forty (40) degrees nine (9) minutes zero (0) seconds East, two hundred eighty-five and ninety hundredths (285.90) feet to a railroad spike in the middle of Township Road 547; thence along the middle of Township Road 547 and through a portion of the aforementioned Pennsylvania Legislative Route 01037, North fifty-two (52) degrees zero (0) minutes zero (0) seconds East, three hundred ninety-two and seventy hundredths (392.70) feet to a railroad spike located in the intersection of Township Road 547 and Pennsylvania Legislative Route 01037, known as Brough Road; thence through and along Pennsylvania Legislative Route 01037, known as Brough Road, South forty-three (43) degrees eighteen (18) minutes thirty (30) seconds East, eight hundred ninety-nine and sixty hundredths (899.60) feet to a railroad spike located in the center line of Pennsylvania Legislative Route 01037, Brough Road, and at lands now or formerly of Craig J. Mosebrook, the place of BEGINNING. Containing 91.010 acres.

The above description has been prepared in keeping with a survey and plan rendered by George M. Wildasin, Professional Land Surveyor, dated June 21,

1986, and identified as Field Book 27-60.

IT BEING the same premises which Jerry R. Lillich, Harold A. Lillich and Diane C. Leonard, Executors under the Last Will and Testament of Raymond M. Lillich, by Deed dated June 8, 1987, and recorded in the Recorder's Office in and for Adams County, Pennsylvania, in Deed Book 459, Page 684, granted and conveyed unto Jack Forbes and Carol E. Forbes, husband and wife.

SEIZED and taken into execution as the property of **JACK FORBES** and **CAROL E. FORBES** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 2, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27 & 11/3, 10

ESTATE NOTICES

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

SECOND PUBLICATION

ESTATE OF HERBERT L. GREEN, DEC'D
Late of 22 West Street, Fairfield, Pennsylvania 17320
Executrix: Mary Minor, P.O. Box 1146, Hanover, PA 17331
Attorney: Matthew R. Battersby, Esquire, P.O. Box 215, 20 West Main Street, Fairfield, PA 17320

ESTATE OF PAULINE E. GROFT, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executrices: Genevieve C. Bolin, 227 S. Fifth Street, McSherrystown, PA 17344; Rose M. Weaver, 624 North Street, McSherrystown, PA 17344
Attorney: Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF VIRGINIA M. WISOTZKEY, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executors: Thomas L. Wisotzkey, 110 Kinsey Drive, Gettysburg, PA 17325; David G. Wisotzkey, 494 Barlow-Greenmount Road, Gettysburg, PA 17325
Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF KATHLEEN M. BALTOZER, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325
Attorney: Donald G. Oyler, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF BETTY R. BISH, DEC'D
Late of the Borough of Littlestown, Adams County, Pennsylvania
Executrix: Charmaine B. Windlinx, 4509 Pinewood Tr., Middletown, MD 21769
Attorney: John M. Crabbs, 202 Broadway, Hanover, PA 17331

ESTATE OF BLANCHE E. BURDIS, DEC'D
Late of Columbia, Howard County, Pennsylvania
Executor: John D. Grigsby, Esquire, Shumaker Williams, P.C., P.O. Box 88, Harrisburg, PA 17108
Attorney: John D. Grigsby, Esquire, Shumaker Williams, P.C., P.O. Box 88, Harrisburg, PA 17108

ESTATE OF THOMAS E. FELTCH, DEC'D
Late of Union Township, Adams County, Pennsylvania
Executrix: Mary R. Feltch, 867 York Road, Gettysburg, PA 17325
Attorney: Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331-3192

ESTATE OF VATUS EMMA PAULINE GRIMES a/k/a VATUS EMMA GRIMES, DEC'D
Late of Butler Township, Adams County, Pennsylvania
Executor: Donald G. Oyler, 112 Baltimore Street, Gettysburg, PA 17325
Attorney: Donald G. Oyler, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROBERT R. HARTMAN a/k/a ROBERT RAY HARTMAN, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executrix: B. Josephine Seemann, 128 W. York Street, Biglerville, PA 17307
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LELA B. LAMBERSON, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executors: Betty J. Detter, 6791 Detters Mill Road, Dover, PA 17315; Harry J. Lamberson, 6740 Detters Mill Road, Dover, PA 17315
Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-776 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, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of land situated in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 400 on a Plan of Lots of LAKE MEADE SUBDIVISION, duly entered and appearing of record in the office of the Recorder of Deeds of Adams County, in Plat book 1, Page 4, and subject to all legal highways, easements, rights-of-way, and restrictions of record.

Being the same which Lois K. Brownwell, unmarried, and Beverly G. Staub and Luther F. Staub, II, her husband, by their deed dated February 13, 1989, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 515 at page 916, sold and conveyed unto Melanie J. Dissinger, the Defendant herein.

TOGETHER WITH the rights and SUBJECT TO the restrictions, reservations, conditions and/or covenants in Adams County Deed Book 301 at page 467.

IMPROVED WITH DWELLING.

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

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 11, 1995.

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, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27 & 11/3, 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-454 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, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being along the south side of Main Street in the Borough of Fairfield, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point along Main Street at corner of land now or formerly of Howard Sanders; thence along land of Howard Sanders, South 37½ degrees East, 254 feet to an alley; thence along said alley adjoining land now or formerly of John E. Brown, South 52½ degrees West, 75 feet to a point; thence along other land now or formerly of Fairfield Mennonite Church, North 37½ degrees West, 254 feet more or less, to a point along said Main Street; thence along said Main Street, North 52½ degrees East, 75 feet to a point, the place of BEGINNING.

Being the same real estate conveyed to Richard Sterling Keckler and Kimberly Mae Valentine by deed of Alfred A. Potteiger and Martha G. Potteiger, husband and wife, dated June 2, 1986 and recorded in Adams County Record Book 426, Page 650. Kimberly Mae Valentine is now known, by marriage, as Kimberly Mae Keckler.

IMPROVED with a one and one-half story frame and aluminum siding dwelling and having a street address of 138 W. Main Street, Fairfield, Pennsylvania 17320.

SEIZED and taken into execution as the property of **RICHARD STERLING KECKLER** and **KIMBERLY MAE KECKLER** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 12, 1995.

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, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27 & 11/3, 10

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on October 4, 1995 the Petition of Charlene K. Warren was filed in the Court of Common Pleas of Adams County, Pennsylvania praying for a decree to change her name to Teague Shar Haven. The Court fixed November 20, 1995 at 9:00 a.m. in Court Room 1 as the time and place for the hearing of said Petition when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

Katherman & Heim, P.C.
Attorney for Petitioner

10/20, 27 & 11/3

Adams County
Legal Journal

ol. 37 November 10, 1995 No. 24, pp. 117–120

ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Representing Residential Landlords & Tenants*. December 12—8:45 a.m. Room 207B, Adams County Courthouse—4 C.L.E. credits in substantive law and 0 C.L.E. credit in ethics. Registration through P.B.I.
2. *Hot Issues in Custody*. January 17—8:45 a.m. Room 207B, Adams County Courthouse—5 C.L.E. credits in substantive law and 1 C.L.E. credit in ethics. Registration through P.B.I.

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 112 Baltimore Street, Gettysburg, PA 17325.

Business Office – 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

Second-class postage paid at Gettysburg, PA 17325.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-N-257 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of December, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pipe on the Southern side of Pennsylvania Route No. 116 (Third Street), said pipe located eighteen (18) feet from the center of said Pennsylvania Route No. 116 at other lands now or formerly of Lester Pascoe, Grantee herein, and other lands now or formerly of Edward C. Smith, Grantor herein; thence along said other lands now or formerly of Edward C. Smith and passing through a steel pin set back ten (10) feet from the end hereof South no (00) degrees forty-four (44) minutes thirty-five (35) seconds West one hundred ninety and eighty-eight hundredths (190.88) feet to a point on the Northern side of a twenty (20) feet wide alley, thence along the Northern side of said twenty (20) feet wide alley South eighty-nine (89) degrees four (4) minutes thirty-five (35) seconds West ten and eighty-eight hundredths (10.88) feet to a point at other lands now or formerly of Lester Pascoe, Grantee herein; thence along said other lands North four (4) degrees East one hundred ninety-one and fifty-one hundredths (191.51) feet to the point and place of BEGINNING. CONTAINING 1,037 Square Feet, neat measure. This description is taken from an approved Subdivision Plan prepared for Edward C. Smith by J. H. Rife, Registered Engineer, dated August 9, 1978, and recorded in Plat Book 32, page 10, of the Adams County Records.

IT BEING a part of a larger tract of land which Bertha J. Sappington Unmarried, by her Deed dated September 15, 1964, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed book Vol. 252, page 473, granted and conveyed unto Edward C. Smith, Grantor herein.

SEIZED and taken into execution as the property of **Lester W. Pascoe,** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 2, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/3, 10, 17

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

In Re: The First and Final Account of PNC Bank, N.A., (formerly The Gettysburg National Bank), Trustee under a Trust Agreement of HAROLD E. CRAIG, late of Cumberland Township, Adams County, Pennsylvania.

TO ALL BENEFICIARIES, HEIRS AND OTHER PERSONS CONCERNED:

NOTICE IS HEREBY GIVEN that the First and Final Account with Schedule of Proposed Distribution, of PNC Bank, N.A., formerly The Gettysburg National Bank, Trustee under a Trust Agreement of Harold E. Craig, dated August 18, 1978, and amended on September 22, 1978, has been filed in the Office of the Clerk of the Orphans' Court, and will be presented to the Court of Common Pleas of Adams County, Pennsylvania, at Gettysburg, Pennsylvania, for confirmation and approval on November 20, 1995, at 9:00 a.m.

Peggy J. Breighner, Clerk

Swope, Heiser & McQuaide
Attorneys for the Estate

11/10, 17

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, November 20, 1995, at 9:00 o'clock a.m.

LONG—Orphans' Court Action Number OC-125-95. The First and Final Account of James F. Long and Roanld J. Long, Co-Executors of the Estate of Catharine Mary Long, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

ROBERTS—Orphans' Court Action Number OC-134-95. The First and Final Account of CoreStates Bank, N.A., Personal Representative of the Estate of Edward J. Roberts, deceased, late of Oxford Township, Adams County, Pennsylvania.

FRANTZ—Orphans' Court Action Number OC-135-95. The First and Final Account of Farmers Bank, a Division of Dauphin Deposit Bank and Trust Company, Administrator of the Estate of Kenneth R. Frantz, deceased, late of Oxford Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

11/10 & 17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that DeBrunner & Associates, Inc. has been incorporated under the provisions of the Business Corporation Law of 1988, as amended.

James E. Reid, Jr., Esquire
Connelly, Reid & Spad
108-112 Walnut Stree
P.O. Box 963
Harrisburg, PA 17108

11/10

would mention his cooperation to the District Attorney. Moody's prosecution was dropped. Commonwealth could hardly be expected to change its theory, in light of eyewitness identification of defendant, and reopen Moody's case based upon a statement made to a fellow prisoner. Thus, Moody had nothing really to lose. During the post-verdict hearing, Moody was called to testify and repudiated, under oath, all confessions. The resemblance between the above quoted hypothetical and the situation at bar was made even closer.

In addition to the lack of trustworthiness, there is the matter of prejudice. Had we admitted the statement and defendant were convicted, it is certain we would be considering a different version of ineffective assistance argument. Had the jail house confession been admitted, the police confession would have been admissible to impeach it. The confession, made as it was to a person in authority, would doubtlessly have been viewed by the jury as much more persuasive.

We conclude that the decision to exclude the jail house confession was correct.

5. Prosecutorial misconduct: Defendant raises several arguments about the conduct of Commonwealth's attorney. None have merit.

In fact, the contention that the assistant District Attorney interfered with a witness (Moody, again) is ludicrous. Ms. Duvall, in an attempt to obtain Moody's testimony, offered him use immunity. An attempt to gain full and complete disclosure can hardly be considered improper.

At the post trial hearing, some argument was made about statements which concerned witnesses, which prejudiced the jury.

Juries are kept, in Adams County, in a separate room until summoned into the courtroom. When jury selection actually begins, the judge uses a telephone to communicate numbers to the jury assembly room. Prospective jurors are then brought as a group, in the order selected, into the courtroom. Statements made before jurors were selected could not possibly have been heard by them.

Defendant also complained about Moody being identified as a potential witness during voir dire, and not summoned. There was no need to explain this to the jury. Moody was not identified as a defense witness and his identity, as far as the jury was concerned, was

unimportant. The mere mentioning of a person as a witness does not result in prejudice when the person is not called. Commonwealth v. Sam, 535 Pa. 350, 635 A.2d 603 (1993). (D.A. does not have to call witness mentioned during opening.)

Accordingly, the attached order is entered.

ORDER OF COURT

AND NOW, this 4th day of May, 1995, the following is ordered:

1) Post-verdict motions are dismissed;

2) Jury selection, which occurred November 15, 1993, in CC-383-93, shall be transcribed and filed of record;

3) The Probation Office shall update the pre-sentence investigation previously performed and file a report;

4) Defendant shall be produced for sentencing May 31, 1995, at 9:00 A.M.; and

5) Robert Chester, Esquire, is appointed as Appellate counsel in both of these cases.

SHEELY, ET AL. VS. BOARD OF SUPERVISORS OF READING TOWNSHIP

1. Summary judgment is appropriate when no genuine factual issues exist and the moving party is clearly entitled to judgment as a matter of law.
2. Both first and second class townships are liable for failing to enforce road provisions in subdivision ordinances.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-963, NANCY SHEELY, TERRY SHEELY, ET AL., VS. BOARD OF SUPERVISORS OF READING TOWNSHIP VS. HAMPTON PLAINS, INC., ET AL.

Walton V. Davis, Esq., for Plaintiffs

Debra P. Fourlas, Esq., for Defendant Board of Supervisors of Reading Township

Donald G. Oyler, Esq., for Additional Defendants Hampton Plains, Inc., Peter A. Rondeau and Gloria W. Rondeau

John A. Wolfe, Esq., for Additional Defendants Hulse Family Properties, Inc. and Morton F. Hulse, Sr.

Robert E. Campbell, Esq., for Additional Defendant C. E. Williams Sons, Inc.

Lawrence D. Coppel, Esq., for Additional Defendant Rachuba Enterprises, Inc.

Douglas H. Gent, Esq., for Additional Defendant

OPINION ON MOTION FOR PARTIAL SUMMARY JUDGMENT

Spicer, P.J., August 29, 1995.

Plaintiffs filed a complaint in equity November 12, 1994, alleging, inter alia, that plaintiffs were residents and owners of improved real estate in a development known as Hampton Plains Development. They said that defendants failed to require developers to post adequate security for completion of roads, that roads were not completed according to standards established by defendants in its subdivisions ordinance and that such security as was provided was returned. All of these allegations were admitted in the answer filed May 15, 1995. Based on these admissions, plaintiffs move for partial summary judgment.

Summary judgment is appropriate when no genuine factual issues exist and the moving party is clearly entitled to judgment as a matter of law. State Farm Insurance Companies v. Ridenour, 435 Pa.Super. 463, 646 A.2d 1188 (1994).

Although we believe plaintiffs are entitled to summary judgment on the issue of liability, we also think Pa.R.C.P. 1511(b) applies and that a hearing will be required to determine appropriate relief. Since this case is the source of considerable activity between defendants and additional defendants, it should not be difficult to arrange such a hearing.

Much of defendants' answer and New Matter focused on the implications of dedication, by recorded plan, of streets in the development and the use of tractor trailers on the roads. We find such issues immaterial to the question of liability, in what is essentially an action for negligent administration of an ordinance. As pointed out in Caledonia Acres Property Owners Association v. South Mountain Development Company, Inc., et al., 34 A.C.L.J. 55 (1991), the private, as opposed to public character of roads, is relevant only as it might affect a township's obligation to faithfully administer its ordinance. Since the subdivision plan under consideration clearly calls for public roads,[1] that is not a consideration.

As pointed out in Caledonia Acres, Commonwealth Court has imposed liability on first class townships for failing to enforce road provisions in subdivision ordinances. Safford v. Board of Commissioners, 35 Pa.Cmwlth. 631, 387 A.2d 177 (1978). Because of virtually identical provisions in the First and Second Class Township Codes, this court extended Safford's holding to second class townships.

Plaintiffs are clearly entitled to some relief. The extent and nature of such relief must be later determined.

Thus, the attached order is entered.

ORDER OF COURT

AND NOW, this 29th day of August, 1995, partial summary judgment is entered in favor of plaintiffs and against defendants, with appropriate relief to be later determined.

---

[1] Plaintiffs do not seek a ruling presently that defendant must ordain the roads as public roads. The issue in the Caledonia Acres case was whether a statement that roads were to remain private relaxed the township's duty to insist on construction in strict conformity with township requirements. It should be noted that a final decision has not yet been rendered in that case.

Use of the road in violation of restrictions may or may not affect the relief to which plaintiffs are entitled. We are not presently called upon to answer that question.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-556 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of December, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those certain two (2) tracts of land:

TRACT NO. 1: ALL that certain lot of land situate, lying and being in Hamilton Township, Adams County, Pennsylvania, known and numbered as Lot No. 5 on a Plan of Lots hereinafter referred to, bounded and described as follows:

BEGINNING at a point in the center of Township Road T-529, also known as Forest Drive, at the westernmost corner of Lot No. 4 on said Plan of Lots hereinafter referred to; thence along said Lot No. 4 and through a reference iron pin set back 25 feet from the Beginning of this course, South 44 degrees 52 minutes 10 seconds East, 583.86 feet to an ironpin at lands now or formerly of George Lillich; thence along said lands now or formerly of George Lillich, South 45 degrees 07 minutes 50 seconds West,162.70 feet to an iron pin; thence along same, North 55 degrees 31 minutes 40 seconds West, 670.08 feet through a reference iron pin set back 25 feet from the center of said Forest Drive to an iron pin in the center of said Forest Drive, also known as Township Road T-529; thence in a centerline of said Forest Drive, North 59 degrees 43 minutes 50 seconds East, 269.19 feet to a point in the center of said Forest Drive, the place of BEGINNING. Containing 3.150 acres.

The above description was taken from a final plan of Lots prepared by Adams County Surveyors on December 3, 1976, revised on February 1, 1977, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 14, Page 37.

IT BEING the same premises which David Forbes, Sr. and Myrtle Forbes, his wife, by their Deed dated September 12, 1985, and recorded in the Recorder's Office in and for Adams County, Pennsylvania, in Deed Book 408, Page 539, granted and conveyed unto Jack Forbes and Carol Elizabeth Forbes, his wife.

UNDER AND SUBJECT to easements, covenants, reservations, restrictions and rights-of-ways of record.

TRACT NO. 2: ALL that certain tract of land with the improvements thereon, situate, lying and being in Hamilton Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point at a railroad spike located in the right-of-way of a public road identified as Legislative Route 01037, known as Brough Road, and at lands now or formerly of Craig J. Mosebrook; thence through and across a portion of Legislative Route 01037 and through an iron pin located twenty-five (25) feet from the point of Beginning and along lands now or formerly of Craig J. Mosebrook, South fifty-three (53) degrees thirty-one (31) minutes thirty (30) seconds West, one hundred thirty-two (132) feet to an iron pin at lands of the same; thence along lands of the same, North sixty-one (61) degrees twenty-eight (28) minutes thirty (30) seconds West, four hundred thirty-eight and nine hundredths (438.09) feet to an iron pin at lands of the same; thence along lands now or formerly of Craig J. Mosebrook and along lands now or formerly of Carson C. Lamberson, South thirty-four (34) degrees fifty-three (53) minutes fifty (50) seconds West, one thousand six hundred thirty-five and sixty-five hundredths (1635.65) feet to an iron pin at lands now or formerly of John W. Schlaline; thence along lands now or formerly of John W. Schlaline and through and along the right-of-way of a public road identified as Township Road 547, known as Rolling Lane, South sixty (60) degrees forty-three (43) minutes zero (0) seconds West, seven hundred eighty-seven (787) feet to a railroad spike located five-tenths (.5) feet South of the center line of the aforementioned Township Road 547 and at lands now or formerly of John W. Schlaline; thence through and across a portion of Township Road 547 and through an iron pin located across a portion of Township Road 547 and through an iron pin located twenty-five (25) feet from said point and along lands now or formerly of John W. Schlaline, North forty-five (45) degrees fifty-one (51) minutes fifteen (15) seconds West, one thousand four hundred eighty-one and seventy-nine hundredths (1481.79) feet to an existing concrete monument at lands now or formerly of Gerald R. Richardson; thence along lands now or formerly of Gerald R. Richardson, North forty-seven (47) degrees fifty-five (55) minutes zero (0) seconds East, four hundred eighty-three and fifty-five hundredths (483.55) feet to an existing iron pin at lands of the same; thence along lands now or formerly of Gerald R. Richardson and through an iron pin located twenty-five (25) feet from the center line of Township Road 529, known as Forest Drive, and through and across one-half (1/2) of Township Road 529, North forty-two (42) degrees twenty-seven (27) minutes fifty (50) seconds West, eight hundred forty-four and eighty hundredths (844.80) feet to a railroad spike located in the center of the right-of-way of Township Road 529, known as Forest Drive; thence through and along the center of Township Road 529, North fifty-nine (59) degrees forty-three (43) minutes forty-five (45) seconds East, two hundred ten and fifty hundredths (210.50) feet to a point in the center line of Township Road 529; thence through and along the center line of Township Road 529, North sixty-six (66) degrees twenty-three (23) minutes zero (0) seconds East, four hundred twenty-nine and seven hundredths (429.07) feet to a railroad spike in the center of Township Road 529 and at lands now or formerly of Jack Forbes, Sr.; thence through and across one-half (1/2) of Township Road 529 and through an iron pin located twenty-five (25) feet from said point and along lands now or formerly of Jack Forbes, Sr., South forty-seven (47) degrees twenty-four (24) minutes thirty (30) seconds East, six hundred seventy and eight hundredths (670.08) feet to an iron pin at lands now or formerly of Jack Forbes, Sr.; thence along lands now or formerly of Jack Forbes, Sr., James R. Eisenhart, Raymond Gladfelter, C. Mitchell Snider, Eugene Laughman and William C. Lockner and through an iron pin located forty-nine and two hundredths (49.02) feet from a point in the center of the aforementioned Township Road 529, North fifty-three (53) degrees fifteen (15) minutes zero (0) seconds East, nine hundred eleven and seventy-two hundredths (911.72) feet to a point in the center of the aforementioned Township Road 529, known as Forest Drive; thence through and along Township Road 529, Forest Drive, South sixty-two (62) degrees forty-three (43) minutes thirty (30) seconds East, one hundred twenty-seven and five hundredths (127.05) feet to an iron pin at Tract No. 1 of the hereinafter referred to Plan; thence along Tract No. 1 and through and across one-half (1/2) of the aforementioned Township Road 547, known as Rolling Lane, South thirty-six (36) degrees eight (8) minutes five (5) seconds East, six hundred twenty and ninety-one one-hundredths (620.91) feet to a railroad spike located in the center of Township Road 547; thence through the center of Township Road 547, North forty (40) degrees nine (9) minutes zero (0) seconds East, two hundred eighty-five and ninety hundredths (285.90) feet to a railroad spike in the middle of Township Road 547; thence along the middle of Township Road 547 and through a portion of the aforementioned Pennsylvania Legislative Route 01037, North fifty-two (52) degrees zero (0) minutes zero (0) seconds East, three hundred ninety-two and seventy hundredths (392.70) feet to a railroad spike located in the intersection of Township Road 547 and Pennsylvania Legislative Route 01037, known as Brough Road; thence through and along Pennsylvania Legislative Route 01037, known as Brough Road, South forty-three (43) degrees eighteen (18) minutes thirty (30) seconds East, eight hundred ninety-nine and sixty hundredths (899.60) feet to a railroad spike located in the center line of Pennsylvania Legislative Route 01037, Brough Road, and at lands now or formerly of Craig J. Mosebrook, the place of BEGINNING. Containing 91.010 acres.

The above description has been prepared in keeping with a survey and plan rendered by George M. Wildasin, Professional Land Surveyor, dated June 21,

1986, and identified as Field Book 27-60.

IT BEING the same premises which Jerry R. Lillich, Harold A. Lillich and Diane C. Leonard, Executors under the Last Will and Testament of Raymond M. Lillich, by Deed dated June 8, 1987, and recorded in the Recorder's Office in and for Adams County, Pennsylvania, in Deed Book 459, Page 684, granted and conveyed unto Jack Forbes and Carol E. Forbes, husband and wife.

SEIZED and taken into execution as the property of **JACK FORBES** and **CAROL E. FORBES** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 2, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27 & 11/3, 10

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 WILLIAM J. DONOHUE, JR., DEC'D
- Late of Round Hill, Loudoun County, Virginia
- Executor: William A. Donohue, Route 1, Box 441, Purceville, VA 22132
- Attorney: John A. Wolfe, Esq., 47 West High Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF HERBERT L. GREEN, DEC'D
- Late of 22 West Street, Fairfield, Pennsylvania 17320
- Executrix: Mary Minor, P.O. Box 1146, Hanover, PA 17331
- Attorney: Matthew R. Battersby, Esquire, P.O. Box 215, 20 West Main Street, Fairfield, PA 17320

ESTATE OF PAULINE E. GROFT, DEC'D
- Late of the Borough of McSherrystown, Adams County, Pennsylvania
- Executrices: Genevieve C. Bolin, 227 S. Fifth Street, McSherrystown, PA 17344; Rose M. Weaver, 624 North Street, McSherrystown, PA 17344
- Attorney: Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF VIRGINIA M. WISOTZKEY, DEC'D
- Late of Cumberland Township, Adams County, Pennsylvania
- Executors: Thomas L. Wisotzkey, 110 Kinsey Drive, Gettysburg, PA 17325; David G. Wisotzkey, 494 Barlow-Greenmount Road, Gettysburg, PA 17325
- Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-776 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, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of land situated in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 400 on a Plan of Lots of LAKE MEADE SUBDIVISION, duly entered and appearing of record in the office of the Recorder of Deeds of Adams County, in Plat book 1, Page 4, and subject to all legal highways, easements, rights-of-way, and restrictions of record.

Being the same which Lois K. Brownwell, unmarried, and Beverly G. Staub and Luther F. Staub, II, her husband, by their deed dated February 13, 1989, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 515 at page 916, sold and conveyed unto Melanie J. Dissinger, the Defendant herein.

TOGETHER WITH the rights and SUBJECT TO the restrictions, reservations, conditions and/or covenants in Adams County Deed Book 301 at page 467.

IMPROVED WITH DWELLING.

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

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 11, 1995.

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, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27 & 11/3, 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-454 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, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being along the south side of Main Street in the Borough of Fairfield, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point along Main Street at corner of land now or formerly of Howard Sanders; thence along land of Howard Sanders, South 37½ degrees East, 254 feet to an alley; thence along said alley adjoining land now or formerly of John E. Brown, South 52½ degrees West, 75 feet to a point; thence along other land now or formerly of Fairfield Mennonite Church, North 37½ degrees West, 254 feet more or less, to a point along said Main Street; thence along said Main Street, North 52½ degrees East, 75 feet to a point, the place of BEGINNING.

Being the same real estate conveyed to Richard Sterling Keckler and Kimberly Mae Valentine by deed of Alfred A. Potteiger and Martha G. Potteiger, husband and wife, dated June 2, 1986 and recorded in Adams County Record Book 426, Page 650. Kimberly Mae Valentine is now known, by marriage, as Kimberly Mae Keckler.

IMPROVED with a one and one-half story frame and aluminum siding dwelling and having a street address of 138 W. Main Street, Fairfield, Pennsylvania 17320.

SEIZED and taken into execution as the property of **RICHARD STERLING KECKLER** and **KIMBERLY MAE KECKLER** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 12, 1995.

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, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/27 & 11/3, 10

Adams County
Legal Journal

Vol. 37 November 17, 1995 No. 25, pp. 121–128

ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Representing Residential Landlords & Tenants*. December 12—8:45 a.m. Room 207B, Adams County Courthouse—4 C.L.E. credits in substantive law and 0 C.L.E. credit in ethics. Registration through P.B.I.
2. *Hot Issues in Custody*. January 17—8:45 a.m. Room 207B, Adams County Courthouse—5 C.L.E. credits in substantive law and 1 C.L.E. credit in ethics. Registration through P.B.I.
3. *The 1995 Amendments to the Pa. Inheritance Tax Act & Other Recent Developments*. January 23, 1996—8:30 a.m. Room 307 A&B, Adams County Courthouse—3 C.L.E. credits in substantive law and 0 C.L.E. credit in ethics. Registration through P.B.I.

The following are the contents of a letter recently received by the Adams County Prothonotary from Sandra Mazer Moss, a judge of the First Judicial District.

RE: Orthopedic Bone Screw Litigation

"October 20, 1995

Dear Ms. Funt:

As you may know, pursuant to Pa. R.C.P. 213.1, Petitions have been filed and I have assumed jurisdiction of and consolidated statewide the orthopedic bone screw litigation for all pre-trail purposes.

As part of this complex litigation I have been issuing various Case Management and Substantive Orders which I must disseminate throughout the Commonwealth. I would very much appreciate your helping me in this endeavor.

Philadelphia Prothonotary, Joseph Evers, has kindly agreed to distribute our Orders to Prothonotaries in each and every county throughout the Commonwealth. Upon receipt we would like you to post or distribute same to the county bar using your customary distribution methods (through a legal publication, posting on a bulletin board, mailing or faxing to attorneys, etc.). Your county bar will be charged with knowledge of our Orders after such distribution. Accordingly, it is imperitive for you to distribute these Orders promptly.

A Praecipe for Coordination must be filed in your county and forwarded to the Prothonotary of Philadelphia, Joseph Evers. A copy of same is enclosed.

While we have assumed pre-trial jurisdiction, trial will commence in your county after remand by me. Thus, you need not send the court file to Philadelphia.

If you have any questions or need additional information. Please do not hesitate to call. Many thanks for you assistance in this monumental task.

Sincerely,
Sandra Mazer Moss"

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 112 Baltimore Street, Gettysburg, PA 17325.

Business Office – 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

Second-class postage paid at Gettysburg, PA 17325.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-N-257 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of December, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pipe on the Southern side of Pennsylvania Route No. 116 (Third Street), said pipe located eighteen (18) feet from the center of said Pennsylvania Route No. 116 at other lands now or formerly of Lester Pascoe, Grantee herein, and other lands now or formerly of Edward C. Smith, Grantor herein; thence along said other lands now or formerly of Edward C. Smith and passing through a steel pin set back ten (10) feet from the end hereof South no (00) degrees forty-four (44) minutes thirty-five (35) seconds West one hundred ninety and eighty-eight hundredths (190.88) feet to a point on the Northern side of a twenty (20) feet wide alley, thence along the Northern side of said twenty (20) feet wide alley South eighty-nine (89) degrees four (4) minutes thirty-five (35) seconds West ten and eighty-eight hundredths (10.88) feet to a point at other lands now or formerly of Lester Pascoe, Grantee herein; thence along said other lands North four (4) degrees East one hundred ninety-one and fifty-one hundredths (191.51) feet to the point and place of BEGINNING. CONTAINING 1,037 Square Feet, neat measure. This description is taken from an approved Subdivision Plan prepared for Edward C. Smith by J. H. Rife, Registered Engineer, dated August 9, 1978, and recorded in Plat Book 32, page 10, of the Adams County Records.

IT BEING a part of a larger tract of land which Bertha J. Sappington Unmarried, by her Deed dated September 15, 1964, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed book Vol. 252, page 473, granted and conveyed unto Edward C. Smith, Grantor herein.

SEIZED and taken into execution as the property of **Lester W. Pascoe,** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 17, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 2, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/3, 10, 17

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

In Re: The First and Final Account of PNC Bank, N.A., (formerly The Gettysburg National Bank), Trustee under a Trust Agreement of HAROLD E. CRAIG, late of Cumberland Township, Adams County, Pennsylvania.

TO ALL BENEFICIARIES, HEIRS AND OTHER PERSONS CONCERNED:

NOTICE IS HEREBY GIVEN that the First and Final Account with Schedule of Proposed Distribution, of PNC Bank, N.A., formerly The Gettysburg National Bank, Trustee under a Trust Agreement of Harold E. Craig, dated August 18, 1978, and amended on September 22, 1978, has been filed in the Office of the Clerk of the Orphans' Court, and will be presented to the Court of Common Pleas of Adams County, Pennsylvania, at Gettysburg, Pennsylvania, for confirmation and approval on November 20, 1995, at 9:00 a.m.

Peggy J. Breighner, Clerk

Swope, Heiser & McQuaide
Attorneys for the Estate

11/10, 17

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, November 20, 1995, at 9:00 o'clock a.m.

LONG—Orphans' Court Action Number OC-125-95. The First and Final Account of James F. Long and Roanld J. Long, Co-Executors of the Estate of Catharine Mary Long, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

ROBERTS—Orphans' Court Action Number OC-134-95. The First and Final Account of CoreStates Bank, N.A., Personal Representative of the Estate of Edward J. Roberts, deceased, late of Oxford Township, Adams County, Pennsylvania.

FRANTZ—Orphans' Court Action Number OC-135-95. The First and Final Account of Farmers Bank, a Division of Dauphin Deposit Bank and Trust Company, Administrator of the Estate of Kenneth R. Frantz, deceased, late of Oxford Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

11/10 & 17

KOZLOSKI VS. KOZLOSKI

1. Where husband is not covered for Social Security benefits, one must compute the present value of a Social Security benefit had husband been a Social Security participant and then deduct that value from the present value of his pension which, when multiplied by the coverture factor will give the value to be included in the marital estate for equitable distribution purposes.

2. The law is clear that in determining the value of a spouse's pension only that value available on the date of separation is marital property.

3. An award to the nonpossessing spouse of one-half of the rental value of the marital residence when possessed exclusively by the other spouse is permissible but not mandatory and is a matter within the sound discretion of the Court.

4. Although an immediate offset distribution method for equitable distribution purposes is preferred, that method cannot be used where there are insufficient assets to offset the pension.

5. Wife is entitled to enjoy the extent to which her portion of husband's pension increases in value after separation due to factors unrelated to contributions from husband or his employer.

6. Alimony is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage as well as the payer's ability to pay.

7. The purpose of an award of counsel fees is to promote the fair administration of justice by enabling a dependent spouse to maintain or defend a divorce action without being placed at a financial disadvantage.

In the Court of Common Pleas, Perry County, Pennsylvania, Civil No. 88-1063, FRANK A. KOZLOSKI VS. THERESA M. KOZLOSKI.

D. Richard Wagner, Esq., for Plaintiff
Charles Rector, Esq., for Defendant

MEMORANDUM OPINION

Kuhn, J., Specially Presiding, April 7, 1995.

PROCEDURAL HISTORY

This action was commenced by Complaint filed December 7, 1988. On July 26, 1989, a Master was appointed to address all economic issues. The Master conducted a partial hearing on January 17, 1990, during which the parties placed a purported oral settlement agreement on the record which was to be reduced to writing and executed.

Because of a dispute over who was entitled to the death benefits under Husband's pension, Wife refused to execute the tendered written agreement which resulted in Husband seeking specific performance. The undersigned, who was specially presiding, conducted a hearing on that complaint on February 27, 1991, as well as on the issue of venue. By Opinion and Order dated August 23, 1991, Husband's Complaint for Specific Performance was dismissed but venue in Perry County was retained.

On January 23, 1992, Husband petitioned for bifurcation whereas on January 27, 1992, Wife filed another request for change of venue. Hearing on these issues was held before the undersigned on March 9, 1992, after which 1) bifurcation was granted and 2) the court agreed to hear the economic issues without appointment of another Master. A divorce decree was entered April 22, 1992. Testimony was received on the economic issues on June 1, 1992.

EQUITABLE DISTRIBUTION FACTORS

23 Pa. C.S.A. §3502(a) sets forth the various factors to be considered by the Court.

1. LENGTH OF MARRIAGE - The parties were married on June 2, 1962, in Shamokin, Pennsylvania and were divorced on April 22, 1992.

2. DATE OF SEPARATION[1] - Husband contends that separation occurred in the mid 1970's when the parties stopped living as husband and wife but he listed December 1, 1985, in an affidavit as the date he stopped spending any time in the marital home. Wife contends that separation did not occur until February 2, 1987.

Husband has been a member of the Pennsylvania State Police since May, 1959. Husband acknowledges a long standing and continuing intimate relationship with a woman herein identified as P.C. whom he met in 1968. Husband and P.C. began dating within a month and shortly thereafter Husband began spending several nights per week at P.C.'s home. This relationship intensified until by the early 1970's Husband was spending most of his off-duty time at P.C.'s. He began keeping clothes, tools and guns at her residence. The duration of the relationship was corroborated by hundreds of photographs.

P.C.'s friend and neighbor, Fay Kelly, testified that she was aware of Husband's relationship with P.C. since 1970. She would see them out socially and would observe Husband mowing P.C.'s lawn and working in her garden.

P.C.'s son, Scott, testified that he knew Husband as his mother's boyfriend since the early 1970's. He recalled that during the period 1974-6 Husband stayed at their home four nights per week and by the late 1970's he was living there. At that time Scott was not aware of Husband's marital family.

Although Husband's personnel file with the State Police listed his address as the marital residence in Camp Hill up to 1988, it was known

---

[1]This factor is listed separately because it is an issue of significant contention.

at the barracks that if Husband needed to be contacted the telephone number given (pursuant to policy) was P.C.'s.

Despite the extent of this relationship Husband did not completely absent himself from Wife or the parties' child. Husband acknowledged returning to the marital home "because of obligations" to the child. In the mid 1970's he admittedly returned 1-2 times per week to pay bills or do lawn and garden work. In fact, he continued to pay utilities, which remained in his name, until late 1986 or early 1987.

The parties filed joint income tax returns through 1986 and used the Camp Hill address on the returns. The parties also had some joint bank accounts.

Husband acknowledges that for several weeks in 1984 while P.C. was going through her own divorce proceedings he returned to the marital home. He claims he did not share a bedroom with Wife at that time and, in fact, had no sexual relations with Wife after the early 1970's. Wife admits that they used separate bedrooms after 1981 because Husband would come in late at night and did not want to disturb her.

Wife testified that from 1984 to early 1987 the parties engaged in a number of social activities together including going to Hershey, church, out for dinner, vacationing with friends and sharing Thanksgiving and Christmas dinner. Photographs and disinterested witnesses corroborated numerous of these activities.

Wife believed Husband's absences from the home were caused by him working double shifts and staying at the barracks as well as hunting and fishing trips.

By sometime in 1985, Wife recognized that marital problems existed. In December, 1984, she told a friend that she suspected Husband was seeing another woman. In approximately 1971 and 1977, she confronted Husband about a possible affair which he denied at that time.

As mentioned above, Husband claims that he last lived at the marital residence in December, 1985. Testimony revealed that at least by March, 1986, he had rented a separate apartment in Liverpool, Pennsylvania. By October, 1986, Wife and Husband's attorney were exchanging correspondence regarding a possible property settlement. Nevertheless, the parties shared Thanksgiving dinner together and other social occasions in 1986. This was explained by Husband as an attempt on his part to continue involvement with his daughter who was still living at home.

Courts have often been called upon to reconcile different allegations concerning the moment of final marital separation. The difficulty

facing spouses and the courts lies in the nature of the institution of marriage. Marriage relationships differ. Often subtle changes occur over time and for numerous reasons one spouse fails or refuses to recognize the troublesome sign posts. Although no strict objective standard can be applied to each situation, there are certain principles which have been developed in an effort to help effectuate the purposes of the Divorce Code.

The Divorce Code defines "separate and apart" as a "complete cessation of any and all cohabitation, whether living in the same residence or not." 23 Pa. C.S.A. §3103. In turn, cohabitation has been defined as "the mutual assumption of those rights and duties attendant to the relationship of husband and wife." Thomas v. Thomas, 335 Pa. Super. 41, 47, 483 A.2d 945, 948 (1984). The "gravamen of the phrase 'separate and apart' becomes the existence of separate lives not separate roofs." Flynn v. Flynn, 341 Pa. Super.76, 81, 491 A.2d 156, 159 (1985). There is some suggestion that physical separation alone may not constitute an existence separate and apart for Divorce Code purposes without an independent intent on the part of one of the parties to dissolve the marriage which had been manifested and communicated to the other spouse. Sinha v. Sinha, 515 Pa.14, 18, 526 A.2d 765, 767 (1987).

Factors which have been considered by the courts include existence of sexual relations, sleeping arrangements, existence of public social life, payment of household expenses, food preparation, joint or separate bank accounts, and filing of tax returns. Gordon v. Gordon, 436 Pa. Super.126, 647 A.2d 530 (1994); Schmidt v. Krug, 425 Pa. Super.136, 624 A.2d 183 (1993); Mackey v. Mackey, 376 Pa. Super.146, 545 A.2d 362 (1988), Alloc. den. 559 A.2d 38 (1989).

These parties certainly had a minimal marital relationship for many years. Since the early 1970's they have spent little time together. Sexual relations ended many years ago and separate bedrooms were used when Husband returned to the marital home since 1981. Social activities were limited to special occasions where the parties' child was likely to be a participant. While Wife may have been extremely naive, Husband contributed significantly to that impression by denying the existence of P.C., returning to the marital home, performing household tasks, paying household expenses, receiving mail there, maintaining joint accounts and filing joint tax returns. Nevertheless, the court finds that by the end of 1985, enough changes had occurred to declare January 1, 1986, as the final date of separation. There is no credible evidence of a marital relationship after that date except for paying the bills, filing tax returns and engaging in some family social activities.

In fact, this type of relationship continued even after Wife agrees that final separation occurred. By the end of 1985, Wife was aware of marital difficulties. It doesn't appear that Husband returned to the home as frequently thereafter and certainly obtained a separate residence shortly thereafter.

3. PRIOR MARRIAGE - This was the first marriage for both parties.

4. AGE AND HEALTH - Husband was born on June 1, 1936, and is in good health. Wife was born on January 27, 1938, and also appears to be in good health.

5. SOURCES OF INCOME/EMPLOYABILITY- Husband graduated from high school in May, 1953, and then served just over four years in the U.S. Navy from which he received no special training. Husband has been employed by the Pennsylvania State Police since May 12, 1959, and has been a corporal since October 29, 1964. As of May 22,1992, he received a gross pay of $1793.12 and a net pay of $1254.00 bi-weekly. This constitutes Husband's sole source of income.

Wife is a high school graduate who began full time employment in 1979. Prior to that time she was a homemaker, raised their child, conducted census for East Pennsboro Township and sold some women's products as a door-to-door salesperson. Wife is currently employed by the Pennsylvania Medical Society Liability Insurance Company as an executive secretary. She has specialized computer training. At the time of hearing, Wife's gross income was $932.29 and her net income was $650.21 bi-weekly. She was also receiving $195.00 alimony pendente lite since March, 1992.

6. LIABILITIES AND NEEDS - Husband listed monthly expenses as of the date of hearing of $920.00[2] plus the A.P.L. payments. He lists no other liabilities or unusual needs.

Wife's list of expenses is much more comprehensive than Husband's but, nevertheless, seems reasonable. She lists monthly expenses of $1315.08 plus real estate taxes of $1767.78 per year and $225.00 per year for homeowners insurance.[3] Of her monthly expenses $110.00 is attributable to household repairs and expenses incurred in 1988 for a new roof, trim, gutters, spouting, bathroom floor and kitchen floor. The total cost of these repairs was $10,200.00 of which Husband contrib-

---

[2]Husband listed an expense of $834.00 for income taxes. That, however, is his monthly federal withholding and will not be included as a living expense. Husband also itemized legal expenses of $128.00 per month which are not included here but will be discussed later.

[3]Wife's legal expenses are not included herein.

uted $539.82 for the shingles. Wife also claims that she has gift expense of $1,000.00 per year. Husband basically covered all household expenses up to February, 1987, after which Wife incurred that burden. The mortgage on the marital residence was paid off in the late 1970's.

7. INHERITANCES - Neither party has any inheritance expectation.

8. CONTRIBUTIONS - Neither party has contributed to the education, training or increased earning power of the other party.

9. FUTURE ACQUISITIONS - Husband's disposable net income is nearly twice that available to Wife. Both parties are salaried with no significant increases expected for the future. Even though both parties are approaching retirement age neither has taken that step. The Court does take special note that after separation Husband has been able to accumulate significant assets. Husband had a balance of $2,400.78 in one of his credit union savings accounts as of January 22, 1987. However, by May 28, 1992, the balance in a separate account had increased to $31,751.00. Husband claims this latter account is owned equally with P.C. although it appears only on his credit union statement.

We further note that Wife's Inventory and testimony referenced her checking account with Harris Savings & Loan having an account balance as of May 27, 1992, of $3,000.00. She claims this was accumulated entirely from post-separation earnings. Ironically, in her Income statement filed simultaneously with the Inventory she lists a $500.00 checking account balance.

10. EMPLOYMENT BENEFITS- Husband receives Blue Cross/ Blue Shield medical coverage through the Pennsylvania State Police. He is not covered by the federal Social Security program but has a retirement program to which he makes contributions.[4] He has a $40,000.00 term life insurance policy[5] which terminates upon his retirement. As noted, Husband is eligible to retire.

11. PARTIES' CONTRIBUTIONS - Husband contributed throughout the marriage to the acquisition of marital assets by paying all or nearly all expenses up to February, 1987. He performed maintenance as well as lawn and garden work around the house. Wife contributed

---

[4]The pension has a survivor component which allows a designated party following Husband's death to receive the remainder of his unpaid pension benefit. The amount initially available is reduced by each pension check he receives and eventually is reduced to a zero balance after 16–18 years.

[5]Husband has another $5,000.00 life insurance policy (not through his employment) for which he has designated his daughter as beneficiary. No evidence was produced as to date purchased or cash value.

both as the homemaker and later through her employment.

12. STANDARD OF LIVING - There was no specific testimony on the parties' standard of living, however, based upon general testimony and the assets accumulated, they appear to have maintained a modest standard.

13. CHILDREN - The parties' only child is emancipated.

MARITAL PROPERTY

1. MARITAL RESIDENCE - The marital residence is a two story detached split level home located at 1479 Clover Road, Camp Hill, Cumberland County, Pennsylvania, in a residential neighborhood. The home was purchased on June 26, 1969, for $26,000.00.

The property was appraised for Husband by K. Jesse Reitenbach Associates, Ltd. on August 16, 1989, for $87,000.00. No adverse conditions were noticed. Lester G. Connor appraised the residence for Wife on November 9, 1989, and estimated fair market value of $80,000.00. He notes that the kitchen floor needed to be replaced. Finally, on May 26, 1992, Michael Connor appraised the home at $93,000.00. Each appraiser used the sales comparison approach.

The Court finds that the residence is to be valued at slightly less than $87,000.00 when this action was commenced in December, 1988, and $93,000.00 at time of hearing in June, 1992. No value was given for January, 1986.

As noted above, in 1988, Wife had extensive repairs done on the home at a cost of $10,200.00. Husband contributed $539.00 but otherwise Wife is paying for these improvements. Therefore, the value of the residence was probably less than $87,000.00 in January, 1986. We have no basis for determining the extent to which the repairs contributed to that valuation.

2. VEHICLES

a. 1978 Chevrolet Caprice - According to Wife's Inventory, Husband signed title over to her in 1987. In her Inventory filed January 17, 1990, Wife listed its value as of February, 1987 as $1,300.00 and as of January, 1990 as $1,000.00 whereas in an Inventory filed May 28, 1992, she listed value as of February, 1987 as $500.00 and as of May, 1992 as $250.00. Husband submitted an exhibit from Morrison Chevrolet, Inc. giving the car a value of $900.00 as of November, 1989. It appears that as of separation this car was worth approximately $1,000.00, but by the time of distribution will have little, if any, value.

b. 1984 Chevrolet Cavalier - The court finds that this vehicle was purchased as a gift for the parties' child.

c. 1986 Chevrolet Suburban - This vehicle was purchased by

Husband after separation in 1986 for approximately $16,000.00. Husband traded in another vehicle and borrowed $9,000.00 from his Credit Union to finance the purchase. Thus, it would appear that nearly $7,000.00 of marital property was used to acquire this vehicle. Husband presented an exhibit from Morrison Chevrolet, Inc. valuing the Suburban at $9,250.00 in November, 1989. Wife's Inventory filed May 28,1992, valued the vehicle at that time as $6500.00 based upon an average NADA wholesale and retail values. It appearing that 7/16 of the purchase price was from marital assets, the Court will use 7/ 16 x $6,500.00 = $2.844.00 as the distribution value.

3. HOUSEHOLD FURNISHINGS - Wife's appraiser, Valley Auctioning, valued household furnishings in November, 1989 at $1,095.00. Husband's appraiser, David D. Deibler, valued the household furnishings in November, 1989, at $3,209. The difference is more attributable to the latter's list being more inclusive than to significant valuation differences. Husband's list will be used.

4. CERTIFICATES OF DEPOSIT - Three Harris Savings Association certificates of deposit were identified and dated October 30, 1985 (#5-30-079181) in the amount of $6,460.43, August 11, 1988 (#10-13-127523) in the amount of $6,091.00, and October 6, 1988 (#10-31-1279639) in the amount of $11,000.00. Each certificate was in the name of Wife and daughter. It appears that Wife rolled the October 30,1985 certificate into the August 11, 1988 certificate and gave it to daughter upon her marriage. The October 6, 1988 certificate was used by Wife to pay legal fees.

Wife testified that all the funds for the certificates came as gifts from her mother over the years. Husband testified that the funding for the certificates came from his contributions and some monies given to the parties together as a gift. He further stated that originally the certificates were in both parties' names. There was no evidence presented from any source to corroborate either of these contentions.

Marital property consists of all property acquired by either party during the marriage prior to final separation, except, inter alia, property acquired by gift. The statutory presumption in favor of the property being considered as marital may be rebutted by a preponderance of the evidence. Sutliff v. Sutliff, 518 Pa.378, 543 A.2d 534 (1988). In this case, Wife's testimony is inadequate to rebut the presumption.

Therefore, these assets shall be considered marital and shall be valued at $6,091.00 and $11,000.00, respectively.

5. WIFE'S PENSION - Wife has a pension through the Pennsylvania Medical Society where she began employment on November 1, 1979. The benefit is a monthly life annuity which is equal to a

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 FLORENCE A. BAUMGARDNER, DEC'D
- Late of Menallen Township, Adams County, Pennsylvania
- Executrices: Tina Scott, 2630 E. Shippensburg Road, Biglerville, PA 17307; Karen Lawson, 1221 Windswept Circle, Chesapeake, VA 23320
- Attorney: Charles W. Wolf, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KATHLYN BURCH, DEC'D
- Late of Franklin Township, Adams County, Pennsylvania
- Executors: Joseph E. and Veronica Burch, 9505 Poorhouse Road, Port Tobacco, MD 20677
- Attorney: Gary E. Hartman, Esq., Hartman and Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROBERT P. KEBIL, DEC'D
- Late of Gettysburg Borough, Adams County, Pennsylvania
- Executor: Adams County National Bank, 675 Old Harrisburg Road, Gettysburg, PA 17325
- Attorney: Gary E. Hartman, Esq., Hartman and Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF UIMA M. LEMMON, DEC'D
- Late of the Borough of Littlestown, Adams County, Pennsylvania
- Executrix: Catherine Mort, 76 Prince Street, Littlestown, PA 17340
- Attorney: David K. James, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF THOMAS R. STORM, DEC'D
- Late of the Borough of McSherrystown, Adams County, Pennsylvania
- Executors: Elizabeth L. Krumrine, 250 South Street, McSherrystown, PA 17344; Robert L. Krumrine, 250 South Street, McSherrystown, PA 17344
- Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF WILLIAM J. DONOHUE, JR., DEC'D
- Late of Round Hill, Loudoun County, Virginia
- Executor: William A. Donohue, Route 1, Box 441, Purceville, VA 22132
- Attorney: John A. Wolfe, Esq., 47 West High Street, Gettysburg, PA 17325

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation will be filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, pursuant to the provisions of the Business Corporation Law of 1988, Act of December 21, 1988 P.L. 1444, No. 177.

The name of the proposed corporation is DATA NETWORK SYSTEMS INC. The Articles of Incorporation will be filed on or about November 1, 1995. The purposes for which it was organized are computer consulting and software development, and the corporation shall have unlimited power to engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Pennsylvania Business Corporation Law. The location of its initial registered office is 39 N. Washington St., Suite 201, Gettysburg, PA 17325.

Thomas P. Dunchack, P.C.

11/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State, Commonwealth of Pennsylvania, on or about September 18, 1995, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation under the Pennsylvania Corporation Law of 1988, 15 Pa.C.S.1306, as amended.

The name of the Corporation is KIESSLING AND NEWBERRY ENTERPRISES, INC., and its registered address is 59 York Street, Gettysburg, Pennsylvania 17325, and the purpose or purposes for which the corporation is organized are: To engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Pennsylvania Business Corporation Law.

Susan K. Kiessling
Lisa M. Newberry
Owners

11/17

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

LEGAL NOTICE
NO. 95-S-860
Action to Quiet Title

GARY M. MARKOE, Plaintiff,

vs.

ALEXANDER MELNICHAK, MILDRED B. MELNICHAK and LOUISE PITTMAN, their heirs, successors or assigns, Defendants.

TO: Alexander Melnichak, Mildred B. Melnichak and Louise Pittman

YOU ARE NOTIFIED that an Order has been entered on November 6, 1995, directing that within thirty (30) days after this publication, you shall commence an Action in Ejectment or other appropriate action against the Plaintiff above to assert any claim you may have in and to the lands herein described or be forever barred from asserting any right, lien, title or interest inconsistent with the interest or claim set forth in Plaintiff's Complaint with respect to the land herein described:

ALL that tract of land situate in the Borough of Carroll Valley (formerly Liberty Township), Adams County, Pennsylvania, being Lot No. 10 in Section IW, bounded and described as follows:

BEGINNING at a point in the center of Dora Trail at Lot No. 9; thence by said lot South 37 degrees 35 minutes 40 seconds West, 225.18 feet to Lot No. 6; thence by said lot North 54 degrees 43 minutes 20 seconds West, 102.07 feet to Lot No. 11; thence by said lot North 37 degrees 35 minutes 40 seconds East, 225.18 feet to a point in the center of said Dora Trail; thence in said Dora Trail South 54 degrees 43 minutes 20 seconds East, 102.07 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section IW, Charnita" dated September 19, 1969, prepared by Gordon L. Brown, R.S., and recorded in Adams County Plat Book 1 at Page 58.

BEING THE SAME WHICH Louise Pittman, single woman, by deed dated March 14, 1980, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 351 at Page 141, sold and conveyed unto Gary M. Markoe, Plaintiff herein.

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

11/17

Adams County
Legal Journal

Vol. 37 November 24, 1995 No. 26, pp. 129–136

ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Representing Residential Landlords & Tenants*. December 12—8:45 a.m. Room 207B, Adams County Courthouse—4 C.L.E. credits in substantive law and 0 C.L.E. credit in ethics. Registration through P.B.I.
2. *Hot Issues in Custody*. January 17—8:45 a.m. Room 207B, Adams County Courthouse—5 C.L.E. credits in substantive law and 1 C.L.E. credit in ethics. Registration through P.B.I.
3. *The 1995 Amendments to the Pa. Inheritance Tax Act & Other Recent Developments.* January 23, 1996—8:30 a.m. Room 307 A&B, Adams County Courthouse—3 C.L.E. credits in substantive law and 0 C.L.E. credit in ethics. Registration through P.B.I.

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 112 Baltimore Street, Gettysburg, PA 17325.

Business Office – 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

Second-class postage paid at Gettysburg, PA 17325.

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Fictitious Name Act of Pennsylvania that an Application for Registration of a fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, for the conduct of business under the fictitious name of VANDERBECK ASSOCIATES with its principal place of business at 404 Baltimore Street, Gettysburg, PA 17325. The names and addresses of all individuals who are parties to the registration are: John R. and Hallie M. McFadden, 1109 Buchanan Valley Road, Orrtanna, PA 17353.

Dennis G. Hursh, Esq.
Hursh & Hursh, P.C.
229 State Street
Harrisburg, PA 17101-1152

11/24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, on November 3, 1995. The Corporation has been incorporated under the provisions of the Business Corporation Law of 1988. The name of the Corporation is EAST BERLIN COUNTRY KITCHEN, INC.

Donald G. Oyler
112 Baltimore Street
Gettysburg, PA 17325

11/24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for LITTLESTOWN BASKETBALL PROGRAM FOR YOUTH were filed with the Department of State, Commonwealth of Pennsylvania, under the provisions of the Non-profit Business Corporation Law of 1988, P.L. 1444, No. 177, 15 Pa. C.S.A. Section 5301 et seq.

Crabbs & Frey
Solicitors

11/24

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the filing with the Department of State of the Commonwealth of Pennsylvania, on October 25, 1995, under the Fictitious Name Act, of an Application for the Registration of the fictitious name MULTIMEDIA INSTRUCTIONAL DESIGN with its principal office or place of business at 42 North Howard Avenue, Gettysburg, PA 17325. The name and address of the person who is party to the registration is: Joan Melgaard, 42 North Howard Avenue, Gettysburg, PA 17325.

Donald G. Oyler
112 Baltimore Street
Gettysburg, PA 17325

11/24

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on November 7, 1995, an Application for Registration was filed under the Fictitious Name Act of 1982 (54 Pa.C.S. 311) in the Office of the Secretary of the Commonwealth setting forth that Edward A. Smith, 397 Mount Pleasant Road, Hanover, PA 17331 and Robin M. Smith, 444 Oxford Avenue, Hanover, PA 17331 are the only persons owning or interested in a business the character of which is trucking and/or leasing trucks to other shippers and related services and that the name style and designation under which said business is and will be conducted is REB TRUCKING and the location of the principal place of business is 444 Oxford Avenue, Hanover, PA 17331.

David C. Smith, Esquire
Solicitor

11/24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for THE QUILT PATCH HOME DECORATING CENTER, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on October 11, 1995, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Rudisill, Guthrie, Nonemaker,
Guthrie & Yingst

11/24

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on November 3, 1995, pursuant to the Fictitious Name Act, setting forth that Bollinger & Bollinger Enterprises, Inc., of R.D. #3, Box 319, Manor Drive, Hanover PA 17331, is the only entity owning or interested in a business, the character of which is to sell antiques and collectibles and that the name, style and designation under which said busness is and will be conducted is CROSS KEYS ANTIQUES & COLLECTIBLES and the location where said business is and will be conducted is 6415 York Road, New Oxford, PA 17350.

Rudisill, Guthrie, Nonemaker
Guthrie & Yingst
Solicitor

11/24

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on November 3, 1995, and application was filed under the Fictitious Name Act, No. 1982-295 (54 Pa. C.S. Section 311) in the Office of the Secretary of the Commonwealth of Pennsylvania setting forth that: William F. Reisinger and Angela L. Reisinger are the only persons or entities owning or interested in a business, the character of which is the leasing of rental property, and that the name, style and designation under which said business is and will be conducted is THIRD STREET PLAZA and the location is 701-707 Third Street, Hanover, Pennsylvania.

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

11/24

percentage of the employee's final average salary. The record only reveals the estimated annual benefit plus estimated Social Security benefits on three separate dates as follows: a) On January 1, 1986, the annual pension is $4,014.70 plus $6,391.20 in Social Security, b) on January 1, 1983, the annual pension is $4,722.25 plus $7,203.60 in Social Security and c) on January 1, 1991, the annual pension is $5,883.07 plus $8,166.00 in Social Security. Using a separation date of January 1, 1986, the entire pension would have been earned during the marriage. No present value was offered by either party.

6. HUSBAND'S PENSION - Husband is a member of the State Employees' Retirement System. The pension plan is a defined benefit plan based upon the final three year average salary and the total years of service. He is not covered for Social Security benefits.

As noted above Husband began his employment on May 12, 1959, and the parties were married on June 2, 1962. Using a separation date of January 1, 1986, Husband was employed 26.64 years of which 23.58 years were during the marriage. Furthermore, Husband purchased 4.09 years of military service during the marriage. Thus, as of separation Husband had 30.73 years of service including 27.67 years during the marriage for a coverture factor of .90.

The parties used Harry M. Leister, Jr., F.S.A., a consulting actuary, to determine the value of Husband's pension. Mr. Leister presented several separation date scenarios including December 1, 1985. This date is so close to the separation date fixed by the Court that it will be used for valuation purposes.

Before discussing Mr. Leister's calculations there are several points to address. First, because Husband is not covered for Social Security benefits, one must compute the present value of a Social Security benefit had Husband been a Social Security participant and then deduct that value from the present value of the pension which when multiplied by the coverture factor will give the value to be included in the marital estate for equitable distribution purposes. Schneeman v. Schneeman, 420 Pa. Super. 65, 615 A.2d 1369 (1992), Endy v. Endy, 412 Pa. Super. 398, 603 A.2d 641 (1992), Cornbleth v. Cornbleth, 397 Pa. Super. 421, 580 A.2d 369 (1990), alloc. den. 526 Pa. 648, 585 A.2d 468 (1991). Second, pursuant to a decision entered in Commonwealth v. State Conference of Police Lodges of the Fraternal Order of the Police, 525 Pa. 40, 575 A.2d 94 (1990), Husband's pension benefits will be increased substantially. Here, through collective bargaining, the State Police negotiated an enhanced retirement package for the contract period July 1, 1988 through June 30, 1990. See 575 A.2d at p.95. Third, in determining present value of Husband's pension Mr. Leister pre-

sented value if Husband elected to take the maximum monthly benefit or if he elected to withdraw his contributions and receive a lesser monthly benefit. The Court will assume that Husband will elect the maximum monthly benefit.

The law is quite clear that in determining the value of a spouse's pension only that value available on the date of separation is marital property. Endy v. Endy, supra., 412 Pa. Super. at 404, 603 A.2d at 644. That valuation is performed on the fiction that the employee spouse would retire on the date of separation. As of December 1, 1985, Mr. Leister valued the pension at $258,878.00 under the maximum monthly benefit election. This value multiplied by a coverture factor of 0.90 yields $232,990.00. However, the assumed Social Security benefit must also be removed. The average Social Security benefit value (average of the static and dynamic approach) calculated by Mr. Leister was $45,482.00, leaving a pension value for equitable distribution purposes of $187,508.00.

7. RENTAL VALUE - Very little information was provided to the Court regarding rental value of the marital home. Mr. Connor included an "Estimated Market Rent" analysis in his appraisal report showing a fair rental value of $580 in 1987, $610.00 in 1988, $640.00 in 1989, $675.00 in 1990, $710.00 in 1991, and $750.00 in 1992.

An award to the nonpossessing spouse of one-half of the rental value of the marital residence when possessed exclusively by the other spouse is permissible but not mandatory. Gordon v. Gordon, supra., 436 Pa. Super. at 148, 647 A.2d at 541. It is a matter within the sound discretion of the court. Trembach v. Trembach, 419 Pa. Super. 80, 87, 615 A.2d 33, 37 (1992).

Here, Husband essentially removed himself from the marital residence from January 1, 1986 forward. From that time to the date of hearing the total rental value would have been approximately $48,570.00. If this figure is divided equally, Husband's share is $24,285.00. The record suggests that after February, 1987, Wife paid all expenses related to maintaining the home including taxes and insurance. The amounts paid by Wife are not entirely clear but à figure for taxes of $8,310.00 and $1,200.00 for insurance appears reasonable. In addition, Wife made repairs totaling $10,200.00 and Husband incurred $539.82 for shingles. These figures would justify a credit of $9,585.00 and reduce Husband's rental to $14,700.00. Taking into account any physical maintenance Wife was required to perform over those years, a rental figure for equitable distribution purposes of $12,000 seems reasonable.

8. JOINT CHECKING ACCOUNT - In Husband's Inventory filed

in 1990, he claimed that Wife retained a joint checking account with a balance of $5,000.00. There was no testimony or other record evidence to corroborate the existence of this account. Therefore, the Court will ignore this potential asset for equitable distribution purposes.

EQUITABLE DISTRIBUTION PLAN

Based on a consideration of all the factors, the Court finds that Wife should receive 63% of the marital estate without consideration of the present value of her pension. The entire marital estate (excluding Wife's pension) is valued at $313,177.43 of which $197,301.78 constitutes Wife's share. Credited to Wife's share is the marital home ($93,000.00), the Caprice ($0), the furniture ($3,209.00), and the two certificates of deposit ($6,460.43 and $11,000.00) for a total of $113,669.43. This leaves an $83,632.35 shortfall, less a deduction of $12,000.00 for rental value resulting in a net shortfall of $71,632.35. The only available resource is Husband's pension.

Although an immediate offset distribution method is preferred, this method should not be used where, as here, there are insufficient assets to offset the pension. Schneeman v. Schneeman, supra., 420 Pa. Super. at 80, 615 A.2d at 1377. Generally under a deferred distribution plan present value figures are not used and the coverture factor is applied to the pension benefits when they reach pay status. Endy v. Endy, supra., 412 Pa. Super. at 403, 603 A.2d at 643, Berrington v. Berrington, 409 Pa. Super. 355, 364, 598 A.2d 31, 35 (1991), Alloc. gr. 607 A.2d 248 (1992). However, logic suggests that approach only when a non-employee spouse is awarded a fixed percentage of all marital property including the pension without credit for marital assets set aside for that spouse.

Where, as here, credit has been given against Wife's share for assets retained by her, it would be inequitable and illogical to award her 63% of the pension as well. Thus, it becomes important to determine what portion of the pension is needed to compensate her for her shortfall. In this case if an asset with a value of $71,632.35 was available for distribution the immediate offset method would be used. Lack of such a resource requires that Wife obtain that value from Husband's pension. This shortfall represents 38% of the value of the marital portion of Husband's pension at the date of separation.

We cannot simply direct that Wife receive 38% of Husband's pension benefits because other factors such as changes in the pension plan and Husband's continued employment and contributions. However, it is clear that Wife is entitled to enjoy the extent to which her portion increases in value after separation due to factors unrelated to

contributions from Husband or his employer. Berrington v. Berrington, supra. 409 Pa. Super. at 372, 598 A.2d at 40.

Our Supreme Court in the appeal in Berrington v. Berrington, 534 Pa. 393, 633 A.2d 589 (1993) set forth the formula for determining Wife's monthly benefit when Husband's pension reaches pay status by use of a fiction that Husband's salary would not change from date of separation to date of retirement. That Court first made the assumption that if there were no increases in benefits payable under the pension plan from sources other than Husband's non-marital contributions, Wife's benefits would be determined as follows: Husband's benefit payable at retirement based on his salary at separation paid until retirement multiplied times coverture factor multiplied times Wife's share of the marital portion of the pension. The Court noted that,

> Although wife may benefit from calculating the final pension based on the fiction that husband will continue to make the same post-separation contributions that he made at the time of separation, this does not award wife non-marital property, since her share is reduced by the coveture fraction multiplied by the same salary husband made at separation, but paid over years until he actually retires. The only purpose in creating the fiction that husband will make the same salary and pay the same contributions into the fund until normal retirement is that it gives wife the benefit of favorable changes in the benefits payable, if there are any, owing to factors not based on husband's increased contributions or efforts. 534 Pa. at 402, 633 A.2d at 594.

The Court felt that such an approach would allow Wife to receive a proportionate share of any increase in the value of the pension benefits based on factors having nothing to do with Husband's post-separation, non-marital efforts or contributions. The Court concluded,

> Accordingly, we hold that in a deferred distribution of a defined benefit pension, the spouse not participating may not be awarded any portion of the participant-spouse's retirement benefits which are based on post-separation salary increases, incentive awards or years of service. Any retirement benefits awarded to the non-participant spouse must be based only on the participant-spouse's salary at the date of separation. However, should there be increases in retirement benefits payable to the employee spouse between the date of marital separation and the date the non-participant spouse begins receiving benefits which are not

> attributable to the efforts or contributions of the participant-spouse, any such increased benefits may be shared by the non-participant spouse based upon his or her proportionate share of the marital estate. Id.

Thus, at this time we need to do nothing further until Husband retires. Then, based on the plan as it exists at that time the pension plan administrator should be in a position to calculate Wife's monthly benefit.[6] We need not, therefore, determine the effect of the successful FOP appeal referred to earlier in this Opinion. However, it should be noted that we feel comfortable in concluding that enhanced retirement benefits achieved solely because of efforts of Husband's union and without reference to his or the employer's contributions will, under Berrington, also enhance Wife's benefits.

We further understand that Husband's pension has a survivor's death benefit which is essentially equal to the balance in his account at retirement less any monthly benefits he has received. At the end of 1985, this benefit was $344,045.41 and by the end of 1988, it had increased to $420,626.89. Eventually the death benefit is reduced to zero if Husband survives long enough. It would seem reasonable that Wife's share of the death benefit would be equal to the total death benefit at Husband's retirement multiplied times the ratio which her share of the monthly pension bears to the total monthly pension enjoyed by both parties. Her share of the death benefit will then be reduced dollar for dollar as she receives each monthly pension payment.

ALIMONY

Most of the factors set forth in 23 Pa. C.S.A. §3701 as relevant to an award of alimony have been discussed above. Those factors not previously discussed are:

1. STANDARD OF LIVING - It appears that the parties enjoyed a modest standard of living. Since early 1987, Husband has been living slightly better than he did previously because he is no longer paying marital debt. Conversely, Wife's standard of living has reduced because she has been paying all expenses related to maintaining the marital residence.

2. PROPERTY BROUGHT INTO THE MARRIAGE - No evidence was presented relative to this factor.

3. RELATIVE NEEDS - Wife's income and expense statement

---

[6]If Husband would prefer to pay off Wife in a lump sum at retirement, he would be responsible to pay a value consistent with Wife's appreciated share.

filed at or about the time of hearing shows gross weekly income of $466.15 and net weekly income of $325.11 or $1,407.73 per month. She listed monthly expenses of $1,481.15 not including legal or gift expenses. Wife has been receiving A.P.L. of $195.00 per month since March, 1992. Thus, her expenses exceed her income, exclusive of A.P.L., by $73.42 per month. Wife was paying $100.00 per month on account of the household repairs made in 1986. One would expect that obligation to be nearly satisfied.

Husband's net monthly income at the time of hearing was $2,714.91. His monthly expenses are $920.00. Thus, his income exceeds his expenses by $ 1,794.91 without considering the APL payment.

Wife is currently 57 years old. Normal retirement age with her employer is age 65. She could retire at age 62 but would have to take a reduced benefit because she would not have accumulated 30 years of service in the plan. According to figures available as of January 1,1991, she would receive an annual pension of $5,883.07 and annual Social Security of $8,166.00 at age 65 for a combined gross monthly income of $1,170.76. Of course, this figure assumes no further service after January, 1991, therefore, the expected monthly income will be proportionately greater.

Husband is currently 58 years old. He has over 35 years of service with the State Police and could retire immediately. It is unknown what his monthly pension benefit would be but Mr. Leister estimated a monthly benefit of $3,327.94 (without reduction for Wife's share) if Husband retired on December 31, 1991. Rough calculations[7] would indicate that Wife's portion of that amount would be $979.00 leaving Husband with approximately $2,349.00 per month.

Thus, if both parties were retired at the end of 1991, Wife would have at least $2,387.00 per month in income while Husband would have at least $2,349.00 per month. If Husband retired immediately and Wife continued to work until age 65, her minimum monthly income would be $2,150.00 and his would be $2,349.00. These figures are obviously minimal.

4. TAX RAMIFICATIONS - No information has been provided to the Court relative to tax ramifications.

Alimony is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage as well as the payer's ability to pay. Perlberger v. Perlberger, 426 Pa. Super.245, 277-8, 626 A.2d 1186, 1203 (1993). In determining whether and to what extent alimony should be awarded, the Court must

---

[7]$3,327.94 x 27.67 / 35.73 x 38% = $979.34

apply the Divorce Code factors in a compassionate and reasonable manner in order to effectuate the overriding goal of achieving economic justice between the parties. Murphy v. Murphy, 410 Pa. Super.146, 154-5, 599 A.2d 647, 651 (1991), Alloc. den. 606 A.2d 902 (1992). The purpose of alimony is not to punish one spouse and reward the other but rather to ensure that reasonable needs of the dependent spouse are met. Nemoto v. Nemoto, 423 Pa. Super.269, 275, 620 A.2d 1216, 1220 (1993). Alimony is awarded only if it is necessary. 23 Pa. C.S.A. §3701(a). The award may not be premised solely upon the relative prosperity of the payer. Id. 620 A.2d at 1221.

With these factors in mind, it appears that an award of $150 per month in alimony commencing 30 days after the date of this Opinion is appropriate. This amount allows Wife to meet her reported modest needs with a small amount to meet unexpected contingencies. This award is certainly modifiable but shall cease when Husband retires.

COUNSEL FEES

It is not entirely clear how much each party has spent on legal fees and whether balances are outstanding. An exhibit attached to Wife's Pre-Trial Memorandum suggests her legal expenses to be $9,000.00. Wife testified to paying her legal expenses from the $11,000.00 certificate of deposit.

Husband testified to expending $11,875.00 for legal fees.

We recognize that the purpose of an award of counsel fees is to promote the fair administration of justice by enabling a dependent spouse to maintain or defend a divorce action without being placed at a financial disadvantage. Relevant factors to consider include the payer's ability to pay, the requesting party's financial resources, the value of the services rendered, and the property received in equitable distribution. Perlberger v. Perlberger, supra. An award of counsel fees is not designed to punish one spouse or reward the other. The focus should be on need and not simply the fact that one party earns more than the other. Hoover v. Hoover, 288 Pa. Super.159,431 A.2d 337 (1981).

Whatever liquid assets Wife may have utilized after separation to pay her legal fees appears to have exhausted that asset. She has been able to defend the divorce action but in doing so she has no other asset which can be liquidated except her home. Husband is receiving no liquid assets from his share of the equitable distribution. However, as has been demonstrated he has been able to accumulate significant post-separation funds.

The overall equitable and economic considerations suggest that Husband should assist Wife with a small portion of her legal expenses. We believe the sum of $2,500.00 to be reasonable. This amount should be paid within 45 days after the date of this Opinion.

COSTS AND FEES

Like other matters in this case, the amount of court costs and appraisal fees is unclear. We believe, however, that the parties should share the court costs and the fees of jointly used experts in a ratio of 65% to Husband and 35% to Wife. This is a ratio of their relative incomes. All other fees and costs shall be paid by the party incurring the same.

LIFE INSURANCE POLICIES

As noted earlier in this opinion, Husband has two life insurance policies, one of which is employment related. Based upon the decision relative to the survivor's death benefit in Husband's pension, the Court concludes that their is no reason for Husband to be required to maintain Wife as beneficiary of these policies.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 7th day of April, 1995, the economic plan set forth in the attached Opinion is hereby adopted by the Court with direction to the parties to take all steps necessary to implement that plan.

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 ROSE MARIE BRYAN, DEC'D
Late of Conewago Township, Adams County, Pennsylvania
Executrix: Laura B. Zimmerman, 171 Northview Drive, Hanover, PA 17331
Attorney: Elyse E. Rogers, Esquire; Mette, Evans & Woodside, 3401 North Front Street, Harrisburg, PA 17110

ESTATE OF BESSE D. GOOD, a.k.a. BESS T. GOOD, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executor: John D. Thrush, 200 Springs Ave., Gettysburg, PA 17325

ESTATE OF ANNE H. KORTE, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Administrators: Elizabeth Korte Gardner, 64 Belmont Rd., Gettysburg, PA 17325; Terry Richard Gardner, 64 Belmont Rd., Gettysburg, PA 17325

ESTATE OF ROSE E. REXROTH, DEC'D
Late of Butler Township, Adams County, Pennsylvania
Executrix: Susan A. McKinney, 345 Table Rock Rd., Gettysburg, PA 17325
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF PAUL R. WAYBRIGHT, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executrix: Mary B. Waybright, 716 Mason-Dixon Rd., Gettysburg, PA 17325
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF FLORENCE A. BAUMGARDNER, DEC'D
Late of Menallen Township, Adams County, Pennsylvania
Executrices: Tina Scott, 2630 E. Shippensburg Road, Biglerville, PA 17307; Karen Lawson, 1221 Windswept Circle, Chesapeake, VA 23320
Attorney: Charles W. Wolf, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KATHLYN BURCH, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Executors: Joseph E. and Veronica Burch, 9505 Poorhouse Road, Port Tobacco, MD 20677
Attorney: Gary E. Hartman, Esq., Hartman and Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROBERT P. KEBIL, DEC'D
Late of Gettysburg Borough, Adams County, Pennsylvania
Executor: Adams County National Bank, 675 Old Harrisburg Road, Gettysburg, PA 17325
Attorney: Gary E. Hartman, Esq., Hartman and Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF UIMA M. LEMMON, DEC'D
Late of the Borough of Littlestown, Adams County, Pennsylvania
Executrix: Catherine Mort, 76 Prince Street, Littlestown, PA 17340
Attorney: David K. James, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF THOMAS R. STORM, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executors: Elizabeth L. Krumrine, 250 South Street, McSherrystown, PA 17344; Robert L. Krumrine, 250 South Street, McSherrystown, PA 17344
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA17325

THIRD PUBLICATION

ESTATE OF WILLIAM J. DONOHUE, JR., DEC'D
Late of Round Hill, Loudoun County, Virginia
Executor: William A. Donohue, Route 1, Box 441, Purceville, VA 22132
Attorney: John A. Wolfe, Esq., 47 West High Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-867 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of January, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 288 in Section "K", bounded and described as follows:

BEGINNING at a point in the center of Snow Trail at Lot No. 289; thence by said lot, North 37 degrees 16 minutes 28 seconds East, 225 feet to Lot No. 264; thence by said lot and by Lot No. 265, South 55 degrees 50 minutes 46 seconds East, 179.98 feet to Lot No. 287; thence by said lot, South 66 degrees 29 minutes 35 seconds West, 265.90 feet to a point in the cul-de-sac of said Snow Trail; thence in the cul-de-sac and in said Snow Trail, North 55 degrees 50 minutes 46 seconds West, 50 feet to the place of BEGINNING.

The above descritpion was taken from a plan of lots labeled "Section K, Charnita," dated March 3, 1969, prepared by Evans, Hagan and Holdefer, and recorded in Plat Book 1 at page 42.

BEING the same property which James A. Sayler and Geralyn M. Sayler, his wife, by their deed dated February 28, 1991, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, on March 6, 1991 in Deed Book 580, page 1109, granted and conveyed unto Elmer E. Horton and Donna M. Horton, his wife.

HAVING erected thereon a dwelling know as 7 Snow Trail, Fairfield, PA 17320.

PARCEL No. 7-2.

TOGETHER WITH rights and SUBJECT TO restrictions, conditions and easements referred to in the above recited deed and contained in Deed Book 296 at page 831.

SEIZED and taken into execution as the property of **Elmer E. Horton and Donna M. Horton**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
Novmeber 2, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 5, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/24, 12/1,12/8

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-S-847 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of January, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate in Latimore Township, Adams County, Pennsylvania being more particularly described as Lot No. 1218 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

ALL THAT CERTAIN lot of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1219 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

ALL THAT CERTAIN lot of land situate on Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1220 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING 733 McCandless Drive, East Berlin, PA 17316.

PARCEL: 68.

SEIZED and taken into execution as the property of **William S. Nelson and Kathryn W. Nelson,** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
Novmeber 6, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 5, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/24, 12/1,12/8