

Adams County Legal Journal

Vol. 41

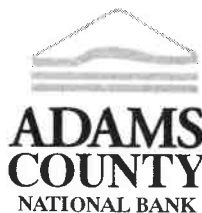
August 6, 1999

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AMERICAN STATES INSURANCE CO. VS.
SNADER ESTATE
and
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ZONING HEARING BOARD

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-65 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, August 20, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a steel pin set at corner of land of Annie M. Brough, said steel pin being West of the Ball Town Road on line of land of Upper Bermudian Lutheran Church; thence by said land of Upper Bermudian Lutheran Church and crossing said Ball Town Road (T-589) North 58 degrees 0 minutes 0 seconds East 595.14 feet to a concrete monument; thence by Lot No. 2 on the hereinafter described subdivision plan and running through a concrete monument located 30 feet from the end of this line, South 10 degrees 20 minutes 30 seconds East 272.68 feet to a point located near the edge of the aforementioned Ball Town Road (T-589) and at land of Annie M. Brough; thence by said land of Brough, South 79 degrees 39 minutes 30 seconds West, 126.20 feet to a steel pin; thence by same South 77 degrees 9 minutes 30 seconds West 294.11 feet to a steel pin and stones; thence by same North 74 degrees 0 minutes 45 seconds West 148.50 feet to a steel pin at land of Upper Bermudian Lutheran Church, the place of BEGINNING. CONTAINING 2.050 acres.

BRT# 22-1404-20-000

BEING known as 108 Balltown Road, Gardners, PA 17324.

SEIZED and taken into execution as the property of **Rodney D. Hollabaugh & Tina Marie Hollabaugh** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
June 30, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 13, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/23, 30, & 8/6

FICTITIOUS NAME

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Fictitious Names Act, 54 Pa. C.S. §311, et seq., and its amendments and supplements, of filing with the Secretary of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania on May 9, 1994, an application for conducting business under the assumed or fictitious name of H&M MOTORS, with its principal place of business at 2285 Biglerville Road, Gettysburg, Pennsylvania 17325. The names and addresses of all persons owning or interested in said business are: Barry Hush, 15 Ed Avenue, Aspers, PA 17304; Larry Miller, Jr., 2285 Biglerville Road, Gettysburg, PA 17325

8/6

NOTICE

NOTICE is hereby given that a hearing has been scheduled for August 23, 1999, in the Orphans' Court Division of the Court of Common Pleas of Adams County to review the Transfer of Property Petition of Family Planning Agency of Adams County, Inc., Family Health Council of Central Pennsylvania, Inc. and Planned Parenthood of Central Pennsylvania, Inc.

Theresa Melchiorre
Barley, Snyder, Senft & Cohen, LLC
126 East King Street
Lancaster, PA 17602

7/30, 8/6 & 13

AMERICAN STATES INSURANCE CO.VS. SNADER ESTATE

1. The ability to vacate an arbitration award is defined in Section 7314 of the Uniform Arbitration Act as opposed to Section 7302.
2. A court may vacate an arbitration award only on those grounds listed in Section 7314 and not on the basis that the award is "contrary to law."
3. A court may vacate an arbitration award for arbitrator misconduct upon a showing of "evident partiality."

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 95-S-1108, AMERICAN STATES INSURANCE COMPANY VS. TRACYL. SNADER, ADMINISTRATRIX OF THE ESTATE OF WAYNE K. SNADER.

Barbara A. Zimmerman, Esq., for Plaintiff
James R. Carroll, Esq., for Defendant

OPINION ON AMERICAN STATES INSURANCE COMPANY'S PETITION TO VACATE ARBITRATION AWARD

This case is before this Court on a petition to vacate an arbitration award. For the following reasons, the petition is denied in part.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Kuhn, J., July 14, 1998.

On May 10, 1995, Wayne K. Snader was involved in a fatal car accident in Dauphin County, Pennsylvania. At the time of the accident Mr. Snader was operating a dump truck for his employer, Brenize's Trucking. The dump truck was insured under a policy issued by American States Insurance Company ("American") to Brenize Trucking Inc. According to the complaint, Tracy L. Snader ("Snader") is seeking underinsured motorist ("UIM") benefits under the policy. (Complaint ¶ 8).

This case began on November 30, 1995, when American filed a declaratory judgment action against Snader, as administratrix of her deceased husband's estate, to obtain a decision from this Court on the issue of whether UIM benefits were available to Snader. Snader filed preliminary objections on December 13, 1995, arguing that the case should be submitted to arbitration. American opposed this motion claiming that because the issues raised in the complaint required statutory interpretation the court of common pleas had jurisdiction. By Opinion dated March 28, 1996, the undersigned granted Snader's preliminary objections and the issues were submitted to arbitration. American States Insurance Company v. Snader, 38 Ad.Co.L.J. 141 (1996).

American appealed from this decision on April 25, 1996. On June 5, 1996, Snader filed a Petition for Appointment of Arbitrator but arbitration was delayed until resolution of American's appeal. On August 28, 1996, the appeal was discontinued due to its interlocutory nature. Arbitration took place on November 7, 1997, and the arbitration board issued its decision on December 5, 1997. The board decided that it had jurisdiction over the issue because the Pennsylvania Uniform Arbitration Act, 42 Pa.C.S.A. § 7301, et seq., was applicable and because the matter had been submitted to the board by this Court. American argued at the hearing that Mr. Brenize signed a rejection of UIM coverage on November 28, 1990, but the board awarded in favor of Snader in the amount of \$855,000.00 holding that American did not prove a valid waiver of UIM benefits.

One arbitrator, Timothy I. Mark, Esquire, dissented. Mr. Mark argued that the board did not have jurisdiction under the Pennsylvania Uniform Arbitration Act because the insurance policy had no UIM coverage and thus no arbitration clause. Mr. Mark believed that Snader had no standing to contest coverage because Mr. Brenize "validly elected not to carry underinsured motorist coverage." (Award of Arbitrators, Dissent).

On December 29, 1997, American petitioned this Court to vacate the arbitration award and requested permission to proceed with oral argument, depositions and affidavits. Argument was heard on March 27, 1998 and the issues are now before this Court for disposition.

LEGAL DISCUSSION

American raises the following issues in the petition to vacate: (1) award is "contrary to law" under 42 Pa.C.S.A. § 7302(d)(iii); (2) lack of jurisdiction of arbitration board; and (3) arbitrator misconduct.

The "contrary to law" standard is not applicable to American's petition to vacate. American claims that arbitration was statutory under 42 Pa.C.S.A. § 7302(d)(1)(iii) thus giving this Court authority to review the award under a "contrary to law" standard. In Snader's brief she admits that arbitration was statutory; however, she argues that 42 Pa.C.S.A. § 7302(d)(2) allows a court only to "modify or correct" the award for being "contrary to law."¹ (Respondent's Brief in Opposition to Petition to Vacate Arbitration Award, p. 9). This Court agrees.

¹Subsection (d) of section 7302 addresses the special application of this subchapter and reads, in pertinent part, as follows:

(d) Special application.-

(1) Paragraph (2) shall be applicable where:

(i) The Commonwealth government submits a controversy to arbitration.

The ability to vacate an arbitration award is defined in Section 7314 of the Uniform Arbitration Act as opposed to Section 7302. 42 Pa.C.S.A. § 7314. Section 7314 sets forth the circumstances in which a Court is permitted to vacate an arbitration award as follows:

(a) General rule.-

(1) On application of a party, the court shall **vacate** an award where:

- (i) the court would vacate the award under section 7341 (relating to common law arbitration) if this subchapter were not applicable;
- (ii) there was evident partiality by an arbitrator appointed as a neutral or corruption or misconduct in any of the arbitrators prejudicing the rights of any party;
- (iii) the arbitrators exceeded their powers;
- (iv) the arbitrators refused to postpone the hearing upon good cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 7307 (relating to hearing before arbitrators), as to prejudice substantially the rights of a party; or
- (v) there was no agreement to arbitrate **and** the issue of the existence of an agreement to arbitrate was not adversely determined in proceedings under section 7304 (relating to court proceedings to compel or stay arbitration) **and** the applicant-party raised the issue of the existence of an agreement to arbitrate at the hearing.

(2) The fact that the relief awarded by the arbitrators was such that or could not or would not be granted by a

(ii) A political subdivision submits a controversy with an employee or a representative of employees to arbitration.

(iii) Any person has been required by law to submit or to agree to submit a controversy to arbitration pursuant to this subchapter.

(2) Where this paragraph is applicable a court in reviewing an arbitration award pursuant to this subchapter shall, notwithstanding any other provision of this subchapter, **modify or correct** the award where the award is contrary to law and is such that had it been a verdict of a jury the court would have entered a different judgment notwithstanding the verdict.

42 Pa.C.S.A. § 7302(d) (emphasis added).

court of law or equity is not a ground for vacating or refusing to confirm the award.

42 Pa.C.S.A. § 7314(a) (emphasis added).

Our Superior Court has stated that a court may vacate an arbitration award only on those grounds listed in Section 7314 and not on the basis that the award is “contrary to law.” *Caron v Reliance Insurance Co*, ___ Pa. Super. ___, 703 A.2d 63, 66 (1997) (citing *Martin v. PMA Group*, 420 Pa. Super. 624, 617 A.2d 361, 362 (1992)). Thus, American’s argument that the arbitration award should be vacated because it is “contrary to law” is without merit.

American also argues that the arbitration board lacked jurisdiction because the insured had waived his rights to UIM benefits thereby excluding the arbitration clause. American further argues that arbitration is not warranted due to the exclusivity of the Workers’ Compensation Act.²

As stated above, this Court may vacate an award under the circumstances set forth in Section 7314. Specifically, under Section 7314(a)(1)(v) the court may vacate an arbitration award where (1) there is no arbitration agreement, (2) the issue of the existence of an agreement to arbitrate was not adversely determined in proceedings under section 7304, and (3) the issue was raised at the hearing. 42 Pa.C.S.A. § 7314(a)(1)(v). The issue of jurisdiction is dependent on whether or not there was a valid arbitration agreement and therefore Section 7314(a)(1)(v) is applicable.

In the case at hand Defendant filed preliminary objections asking this Court to compel arbitration under 42 Pa.C.S.A. § 7304. (Defendant’s Preliminary Objections). The objections were decided adversely to American and this Court’s Opinion is conclusive on American’s ability to raise the issue presently. *American States Insurance Company v. Snader*, 38 Ad.Co.L.J. 141. When this Court addressed Snader’s preliminary objections American did not argue lack of an arbitration agreement. (Brief in Opposition to Defendant’s Preliminary Objec-

²The issue of the exclusivity of the Workers’ Compensation Act was not raised at the arbitration hearing nor did American brief its argument. Therefore, this court will not discuss the issue. *West Shore Education Association v. West Shore School District*, 72 Pa. Commw. 374, 378, 456 A.2d 715, 717 (1983) (holding that questions not raised at the arbitration hearing are deemed waived). However, this Court notes that our Superior Court has recently held that an employer injured in the scope of his employment may bring claims for both worker’s compensation and underinsured motorists coverage under his employer’s insurance policy. See, *Gardner v. Erie Insurance Company*, 456 Pa. Super. 563, 573, 691 A.2d 459, 464 (1997); alloc. granted, 698 A.2d 601; *Warner v. Continental/C NA Insurance Companies*, 455 Pa. Super. 295, 303, 688 A.2d 177, 181 (1996); alloc. den., 698 A.2d 68.

tions). Instead, American argued that under the applicable arbitration agreement jurisdiction in the court of common pleas was permitted because the issue involved statutory interpretation. (Brief in Opposition to Defendant's Preliminary Objections). This Court interpreted the language of the arbitration clause and determined that the issues should go to arbitration. Thus, the "existence of an agreement to arbitrate" was in effect determined because this Court made its decision based upon the parties' acknowledgement that the arbitration clause was applicable. Thus, there has been an adverse determination under Section 7304 and this Court may not vacate the arbitration award under 42 Pa.C.S.A. § 7314(a)(1)(v).

Lastly, American argues that there was misconduct on the part of arbitrator Leslie Fields, Esquire. American argues that Ms. Fields failed to disclose her fiduciary relationship with Mr. Wiener, counsel for Snader. Ms. Fields' law firm allegedly represents Mr. Wiener in a criminal action thereby making Ms. Fields an employee of Mr. Wiener. Additionally, American claims that a neutral arbitrator, Stephen Feinor, Esquire and Ms. Fields communicated five times without involvement by the third arbitrator thereby wrongfully conducting deliberations outside the presence of all the arbitrators.

A court may vacate an arbitration award for arbitrator misconduct upon a showing of "evident partiality." 42 Pa.C.S.A. § 7314 (a)(1)(ii). There is presently insufficient evidence in the record to show "evident partiality" by any of the arbitrators. Therefore, this Court will permit American to proceed with discovery on the issue as requested.

Accordingly, the attached Order is issued.

ORDER OF COURT

AND NOW, this 14th day of July, 1998, Plaintiff's Petition to Vacate Arbitration Award is denied in part in accordance with the attached Opinion. The parties may proceed with discovery on the issue of arbitrator misconduct.

JUSTICE, ET AL VS.

MT. JOY TOWNSHIP ZONING HEARING BOARD

1. Where a zoning hearing board has made inadequate factual findings, the trial court should remand the matter to the board to obtain the essential factual determinations.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 97-S-1177, TIM JUSTICE, ANDREW DAVIS, ARLENE JUSTICE AND NEIL JUSTICE, APPELLANTS, VS. MT. JOY TOWNSHIP ZONING HEARING BOARD, RESPONDENT.

Clayton R. Wilcox, Esq., for Appellants
Catherine Gault, Esq., for Respondent
Edward G. Puhl, Esq. and Lynn G. Peterson, Esq., for Intervenor

OPINION PURSUANT TO APPEAL FROM
ZONING HEARING BOARD DECISION

Kuhn, J., July 16, 1998.

Appellants, Tim Justice, Andrew Davis, Arlene Justice, and Neil Justice, filed an application for a special exception under the Mt. Joy Township Zoning Ordinance. A hearing was held on September 30, 1997, at which time the application was denied. On December 12, 1997, Appellants filed a Notice of Appeal with this Court.

STATEMENT OF FACTS

Appellants wish to open a paintball game area on 175 acres of farmland located in a Rural Residential zone under the Mt. Joy Township Zoning Ordinance. The Zoning Hearing Board's ("Board") findings of fact were as follows. Paintball games are "mock combat games using guns which shoot paintballs which splatter upon contact." (Decision of Mt. Joy Township Zoning Hearing Board). The paintballs are shot through guns using compressed gas and travel at speeds of about 204 miles per hour or 300 feet per second. Each player averages 1200 rounds per game. The paintballs are non-toxic and biodegradable. The games at Appellants' site would be conducted primarily on the weekends with approximately 60 players a day. Games would begin at 8:30 or 9:00 in the morning and would continue throughout the day until dusk.

The property in question consists of wooded areas and cultivated fields. Four separate game fields, located in the wooded areas of the property, would be used to conduct the games.

A fifty-foot buffer zone would be provided between what is described as Field 1 and the neighboring property. A forty-five foot buffer zone would be provided between what are called Fields 3 and 4 and the neighboring property. Some of the neighboring properties are used for livestock (horses, ponies, sheep) which may be pastured near the playing fields.

Saint James United Church of Christ is located nearly in the center of the subject property. The church property is improved with a church, a parking lot, and a cemetery. Typical church activities include Sunday services as well as church suppers, socials, weddings, and funerals.

LEGAL DISCUSSION

In zoning cases where, as here, the trial court did not receive any

additional evidence, its scope of review is limited to determining whether the zoning hearing board committed an error of law or a manifest abuse of discretion. *Hogan, Lepore & Hogan v. Pequea Township Zoning Board*, 162 Pa. Commw. 282, 288, 638 A.2d 464, 467 (1994), alloc. den. 647 A.2d 905; *Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board*, 139 Pa. Commw. 206, 217, 590 A.2d 65,70 (1991).

Section 110-16D is the applicable provision of the Mt. Joy Township Zoning Ordinance. This Section permits special exceptions to areas zoned rural residential if all of the following factors are satisfied:

- A. The use will not clearly violate any Township ordinances or any County, State and Federal laws or regulations known to the Township.
- B. The uses will not create or compound a traffic hazard or serious traffic congestion problem.
- C. The use will not create a public safety hazard, including fire, toxic or explosive hazards.
- D. The use will employ adequate site design methods, including screening, setbacks and traffic control to avoid negative influences on adjacent uses.

The Board found that subsections A through C were satisfied and Appellants therefore concentrate their argument on subsection D. Appellants argue, in pertinent part, that the Board's decision that subsection D was not satisfied was in error because it was not supported by the facts and because the Board failed to consider placing conditions on the activity as opposed to denying the applicant entirely. (Appeal at ¶10 a-h).

In respect to subsection D the Board made the following conclusions in its written decision:

1. It is possible or even probable that paintballs would be shot beyond the boundaries of the subject property.
2. The paintball activities on the subject property could adversely affect wildlife and neighboring livestock.
3. The conduct of paintball games on the subject property could adversely affect certain activities of the Saint James Untied Church of Christ such as, but not limited to, a funeral service in the cemetery.
4. Use of the subject property for paintball games as described by the Applicants will cause negative influences on adjacent uses and will be injurious to the public interest.

(Decision of the Mount Joy Township Zoning Hearing Board, Conclusions at ¶¶ 4-7).

However, there are no factual findings made in the Board's decision

to support these conclusions. For example, there are no factual findings indicating exactly where the church and cemetery are located within the subject property. Additionally, the exact distance between the church and playing fields is unclear. There are no findings on the presence or absence of perimeter fencing on the property. The density of the wooded area and the extent to which the wooded area extends beyond the playing fields has not been addressed. The Board's findings provide no indication of where Harney Road is located. The amount of noise that will reach the church, due to distance and acoustical variables, is not discussed. Additionally, the Board concluded that the paintball activities would adversely affect the wildlife in the area but there is no factual finding on what wildlife is present. These are all factual findings that the Board would have to address before it could support its conclusions set forth above.

Before this Court can adequately address this appeal, further factual findings are necessary. "Where a zoning hearing board has made inadequate factual findings, the trial court should remand the matter to the board to obtain the essential factual determinations." *Kramer v. Zoning Hearing Board of Upper Saucon Township*, 163 Pa. Commw. 559, 564, 641 A.2d 685, 687 (1994) (citing *Brighton Enterprises, Inc. v. City of Philadelphia*, 95 Pa. Commw. 409, 505 A.2d 1084 (1986)). This is so even when the record contains complete testimony presented to the zoning hearing board. *Yost v. Zoning Hearing Board of the Borough of Canonsburg*, ___ Pa. Commw. ___, 694 A.2d 384, 388 (1997) (citations omitted). Thus, the matter will be remanded to the Mt. Joy Township Zoning Hearing Board to allow for further factual findings.

Thus, the attached Order is issued.

ORDER OF COURT

AND NOW, this 16th day of July, 1998, this case is remanded to the Mt. Joy Township Zoning Hearing Board.

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 ELIZABETH H. FREEDOM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Deb Bair, Trust Officer, Allfirst Bank, 13 Baltimore Street, Hanover, PA 17331

Attorney: Louis T. Guthrie, Esq., Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF RICHARD GRIEST, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Jean G. Brannock, P.O. Box 1416, Athens, TN 37371

Attorney: Edward B. Bulleit, Esq., Puhl, Eastman & Thrasher, Esqs., 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF SUE ANN LOTT, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Robert C. Lott, Jr., 760 Wenksville Road, Biglerville, PA 17307

Attorney: Vicky Ann Trimmer, Esq., Mette, Evans & Woodside, 3401 North Front Street, P.O. Box 5950, Harrisburg, PA 17110-0950

ESTATE OF EARL W. RENOLL, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Edwin H. Eline, R.D. #5, Spring Grove, PA 17362; Roger C. Zeigler, 910 Taxville Road, York, PA 17404

Attorney: Donald W. Dorr, Esq., Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF KENNETH M. BENNER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Ruth Ann Peart, 730 Bollinger Road, Littlestown, PA 17340

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

ESTATE OF AMBER LOUISE GROFT, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Administratrix: Lisa Diane Groft, 5 Upper Trail, Fairfield, PA 17320

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DOROTHY CAROLYN KNACKSTEDT, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: Fred B. Knackstedt, 550 Ground Oak Church Road, Gardeners, PA 17324

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

ESTATE OF RICHARD W. WAGAMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Rita Wagaman, 2796 York Road, Gettysburg, PA 17325

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

ESTATE OF ALANSON F. WICK, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Judith Beth Rapp, 601 N. George St., Hanover, PA 17331

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

ESTATE OF PAUL F. WORCESTER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

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

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

THIRD PUBLICATION

ESTATE OF HAROLD G. RICHARDSON, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: James T. Yingst, 40 York Street, Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF FRANCENE SWIFT THORNE, a/k/a FRANCENE ELIZABETH THORNE, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Geraldine Ann Swift Raub, P.O. Box 207, Bendersville, PA 17306

Attorney: Richard E. Thrasher, Esq., Puhl, Eastman & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

LEGAL NOTICE

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

CIVIL

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

Pursuant to the provisions of Pa.R.J.A. 1901(c) and Local Rule of Court No. 10 (e) notice is given hereby that the following cases will be listed by the Adams County Prothonotary for general call before the Adams County Court on Monday, September 9, 1999 at 9:00 a.m., to request the Court to dismiss for failure to proceed unless good cause for continuing the proceedings shall be given on or before that date.

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

Betty A. Starner and James E. Starner, her husband vs. Mary E. Robbins - 92-S-280

Patrick S. Dietz and Susan F. Hoover, now known as Susan F. Dietz vs. William John Madden, III and Lynford K. Donivan vs. Edward L. Stoner, t/d/b/a E.K. Stoner Excavating - 92-S-415

Thomas Boyd Shank and Patricia Shank, his wife, vs. Randall E. Rickrode and Knouse Foods Coop., Inc. vs. Anheuser Busch, Inc. and Adams County Beverage - 92-S-720

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

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

Gettysburg Foundry Specialties Co. vs. Hobart Brother Company - 94-S-305

Richard L. Michael and Timeless Towns of the Americas, Inc. vs. Gettysburg Foundry Specialties Co. - 94-S-482

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

Gettysburg Foundry Specialty Co. vs. Hanover Metals Company, Inc. - 95-S-8

Everfresh Beverages, Inc. vs. South Penn Beverage Distributors, Inc. - 95-S-68

Penelope Sites, as parent and natural guardian of Joel Leake vs. George T. Price - 95-S-268

John W. Siler vs. James E. Quesenberry - 95-S-444

Nancy A. Host vs. Randy Worley and Michelle Winand - 95-S-695

Claude C. Kelley vs. Warren N. Keiley - 95-S-725

Barbara A. Fissel vs. Paul E. Blough - 95-S-783

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

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

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

John A. Warehime and Patricia M. Warehime vs. David L. Showers and

Bonnie J. Showers - 95-S-966

Peter Mulder vs. Sally Shenk - 95-S-995

Lewis W. Bodkins and Cheryl D. Bodkins vs. Rodney E. Heagey, individually and Rodney E. Heagey, General Contractor - 95-S-1046

Paul E.V. Foltz, t/d/b/a Foltz Architectural Millwork vs. Superior Building Systems, Inc. a/k/a SBS Custom Homes - 95-S-1085

James R. Ekdahl vs. Michael & Laura Raffensberger - 95-S-1088

Adam L. Stotsky, Jr. vs. David D. Williams and Kathy A. Williams - 95-S-1156

Dusan Bratic vs. Paul Hook and Marcia Hook - 95-S-1172

U.S. Energy Partners vs. Gettysburg Foundry Specialties Co. - 95-S-1174

Dianne L. Irvin vs. Scott A. Irvin - 96-S-10

Albano Ildefonso vs. Arturo Lua - 96-S-14

U & T, Inc. vs. Harry E. Musgrove and Florence E. Musgrove, their heirs, administrators, executors, successors and assigns and the Tax Claim Bureau of the County of Adams - 96-S-35

Marie M. Recard vs. Billy White and Mattie A. White - 96-S-44

Carl Leach and Carol Leach, t/d/b/a York Springs Equestrian Center vs. Charles Dickey - 96-S-93

Deborah P. Bowling vs. Peter K. Bowling - 96-S-114

Kenneth A. Bloyer, Jr. vs. Wendy Heller - 96-S-126

H & S Supply, Inc. vs. Richard E. Simpson, t/d/b/a Richard E. Simpson, Builder - 96-S-152

BBI Company, Inc. f/n/a Bonanza Buildings, Inc. vs. Umbaugh Buildings, Inc. - 96-S-154

Kenneth Scott Elwood vs. Kimberly Ann Conti Elwood - 96-S-161

Joel A. Hager and Lori S. Hager vs. Steven Peters and Christina L. Peters - 96-S-163

Shirley A. Hoffacker vs. Todd J. Hoffacker - 96-S-180

Wayne Wolf vs. Thomas J. Verbinski - 96-S-191

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Juliane Lee Royston vs. Timothy Allen Royston - 96-S-972

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Robert Owens vs. Joseph Topper and Ruth Topper - 96-S-1034

Michael W. Showers vs. Donald F. Klingensmith & Tammy Garza - 96-S-1053

RBL Development Corporation and Patrick J. Barry vs. Berwick Township, Peter N. Hugger, Alan Carey, Robert L. Coleman, Joan Coleman, Robert Myers, Fred O'Brien, Charles McInturff, Concerned Citizens by Robert L. Coleman, Joan Coleman, Robert Myers and Peter N. Hugger; Trustees Ad Litem; Timothy R. Knoebel, William F. Hill, Wm. F. Hill & Assoc., Inc. - 96-S-1083

Adams County Legal Journal

Vol. 41

August 13, 1999

No. 11, pp. 61-70

NOTICE OF ACTION IN EJECTMENT IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PA

CIVIL ACTION-LAW
NO. -S-572

FIRST UNION NATIONAL BANK,
Plaintiff,

vs.

WAYNE E. HORTON OR OCCU-
PANTS, Defendant(s).

NOTICE

TO: David Tracy or Occupants

YOU ARE HEREBY notified that on June 21, 1999, Plaintiff First Union National Bank filed an Ejectment Complaint endorsed with Notice to Defend, against you in the Court of Common Pleas of Adams County Pennsylvania, docketed at 99-S-572. Wherein Plaintiff seeks to Evict all occupants at the property 82 Hollow Road, York Springs, PA 17372, whereupon your property was sold by the Sheriff of Adams County.

YOU ARE HEREBY notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or Judgment will be entered against you.

NOTICE

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

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

Adams County
Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
(717) 337-9846

8/13

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State, of the Common-

wealth of Pennsylvania, at Harrisburg, Pennsylvania, on July 8, 1999, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is RED ENTERPRISES, INC.

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

RED ENTERPRISES, INC.
3575 Baltimore Pike
Littlestown, PA 17340

8/13

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

NO. 99-S-427
Action to Quiet Title

LEE M. WICKER and MICHELLE L.
DESCHEEMAER, Plaintiffs,

vs.

LAKE MEADE, INC. and DEB QUIVEL,
as Personal Representative of the
Estate of Fred Cookerly, Deceased,
Defendants.

TO: Lake Meade, Inc., its distributees,
successors and assigns

TAKE NOTICE that on July 27, 1999, the Honorable Oscar F. Spicer entered the following Order with regard to the above-captioned Action to Quiet Title:

ORDER

AND NOW, TO WIT, this 27th day of July, 1999, upon consideration of the attached Motion, it is hereby

ORDERED that Defendant, Lake Meade, Inc., in the above-captioned matter be forever barred from asserting any right, lien, title or interest in the land, which is the subject matter of this action, inconsistent with the interest or claim of the Plaintiffs as set forth in their Complaint, unless Defendant, Lake Meade, Inc., makes an appearance or files an Answer to the Complaint within thirty (30) days of this Order.

By the Court
/s/ Oscar F. Spicer, P.J.
Countess Gilbert Andrews
Joseph C. Adams
Attorneys for Plaintiffs
29 North Duke Street
York, PA 17401

8/13

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, August 23, 1999, at 9:00 o'clock a.m.

TOPPER—Orphans' Court Action Number OC-59-99. The First and Final Account of Donald I. Topper and Patricia A. Hewitt, Co-Executors of the Estate of Gertrude E. Topper, deceased, late of Hamiltonban Township, Adams County, Pennsylvania.

MARTIN—Orphans' Court Action Number OC-64-94. The Second and Final Account of Robert N. Martin, Jr., Executor of the Last Will and Testament of Hoye B. Martin a/k/a Hoy B. Martin, deceased, late of Liberty Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

8/13, 20

CHANGE OF NAME

NOTICE IS HEREBY GIVEN that Jason Randall King has filed a petition in the Court of Common Pleas of Adams County, Pennsylvania, in No. 98-S-648 on July 12, 1999, requesting a decree to change his name from Jason Randall King to Jayson Randall King. The Court has fixed August 23, 1999 at 9:00 a.m. in Courtroom No. 1, 2, or 3 of the Adams County Courthouse, 111- 117 Baltimore Street, Gettysburg, Pennsylvania, as the time and place for the hearing on the petition, when and where all interested parties may appear and show cause, if any, why the request of the petitioner should not be granted.

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

8/13

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

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

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

Periodicals postage paid at Gettysburg, PA 17325.

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-239 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, September 17, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described two (2) tracts of land situate in Reading Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

TRACT NO. 1: BEGINNING at a post of lands now or formerly of Michael Rebert; thence South two (2) degrees East, two hundred thirty-one (231) feet to a point at the Big Conewago Creek; thence South sixty-eight (68) degrees West, one hundred ninety-eight (198) feet to a point at lands now or formerly of William Hildebrand; thence along the same, Northeighteen (18) degrees West, two hundred seventy-two and twenty-five hundredths (272.25) feet to a post at lands now or formerly of William Brough; thence along the same North seventy-nine (79) degrees East, one hundred seven and twenty five hundredths (107.25) feet to a stone in a public road and lands now or formerly of C.M. Spangler; thence along, property now or formerly of C.M. Spangler, North eighty-three (83) degrees, thirty (30) minutes East, one hundred fifty-six and seventy-five hundredths (156.75) feet to a point, the place of BEGINNING, CONTAINING one (1) acre and seventy (70) perches, more or less.

TRACT NO. 2: BEGINNING at the center of a public road and intersection of another public road at lands now or formerly of East Berlin Borough and now or formerly of Arthur F. Peiffer; thence through said public road and along lands now or formerly of Arthur F. Peiffer, South Twenty (20) degrees thirty (30) minutes East, one hundred twenty-two and twenty-five hundredths (122.25) feet to a point; thence by land now or formerly of Arthur F. Peiffer, North sixty-four (64) degrees thirty (30) minutes East, twenty-seven (27) feet to a point; thence South five (5) degrees thirty (30) minutes East, forty-three and two-tenths (43.2) feet to a point; thence by land now or formerly of East Berlin Borough, North fifty-eight (58) degrees twenty-five (25) minutes West, one hundred six and ten hundredths (106.10) feet to a point beyond the public road; thence along land now or formerly

of East Berlin Borough and in said public road North ten (10) degrees East, one hundred thirteen and eighty hundredths (113.80) feet to the place of BEGINNING, CONTAINING thirteen hundredths (0.013) acres.

THIS DESCRIPTION taken from a draft of survey made by George M. Wildasin, Professional Engineer, on July 17, 1954.

BEING THE SAME PREMISES which Daniel E. Kauffman by Melissa J. Crawford, his attorney in fact, single man, by his Deed dated May 7, 1997 and recorded in the Office of the Recorder of Deeds in and for Adams County on May 7, 1997, in Record Book 1371, Page 309, granted and conveyed unto Gerald D. Gay, Jr. and Robin L. Gay, two of the Defendants herein.

SEIZED and taken into execution as the property of **Gerald D. Gay Jr. & Robin L. Gay** and to be sold by me

Raymond W. Newnam
Sheriff

Sheriff's Office, Gettysburg, PA
July 7, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 11, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/13, 20, 27

NOTICE

NOTICE is hereby given that a hearing has been scheduled for August 23, 1999, in the Orphans' Court Division of the Court of Common Pleas of Adams County to review the Transfer of Property Petition of Family Planning Agency of Adams County, Inc., Family Health Council of Central Pennsylvania, Inc. and Planned Parenthood of Central Pennsylvania, Inc.

Theresa Melchiorre
Barley, Snyder, Senft & Cohen, LLC
126 East King Street
Lancaster, PA 17602

7/30, 8/6 & 13

NOTICE OF JUDICIAL CHANGE OF NAME

NOTICE IS HEREBY GIVEN that Andrew Phillip Rucker, a minor, by his legal guardian, Sher T. Pettito of 3039 Hanover Pike, Hanover, Adams County, Pennsylvania 17331, has filed with the Court of Common Pleas of Adams County, Pennsylvania, a Petition to change his name from ANDREW PHILLIP RUCKER to JAKOB DYLAN PETTITO. Said Court has fixed a Hearing on said Petition for September 9, 1999, at 9:00 a.m. in Courtroom No. 1 of the Adams County Courthouse in Gettysburg, Pennsylvania, at which time and place all persons interested may appear and show cause, if any, they have as to why the prayer of said Petition should not be granted.

Thomas E. Miller, Esquire
Miller & Shultis, P.C.
Attorney for Petitioner

8/13

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State, of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on June 28, 1999, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is ALL CLEAN BUILDING MAINTENANCE, INC.

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

All Clean Building
Maintenance, Inc.
P.O. Box 647
East Berlin, PA 17316

8/13

SMITH VS. SMITH

1. A master's report is entitled to great consideration by, but is not binding upon, the trial court.

2. Recommendations of the master in a divorce proceeding, although entitled to careful consideration, are advisory only; the trial court is required to review the Master's Report, determine if his or her recommendations are appropriate, and enter a final decree.

3. Because the master is in the best position to evaluate the witnesses' credibility the Court will not disturb his findings on credibility absent an abuse of discretion.

4. It is well settled that when valuing pensions, "increases due to interest or returns on investment in the value of the amount contributed during marriage are marital property." However, contributions made towards the pension by the employee or employer after the date of separation are not marital property.

5. An equitable distribution scheme may include an award, to the nonpossession spouse, of one-half of the rental value of the marital residence, when possessed exclusively by the other spouse during the parties' separation...However, we have also upheld deductions from rental value awards for the non-possessing spouse's share of expenses related to preserving the marital residence (i.e., mortgage, insurance, taxes maintenance.) The award of rental value is within the sound discretion of the trial court.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil.
No. 95-S-038. F. ANDREW SMITH VS. THERESE A. SMITH.

Claudia L. DeArment, Esq., for Plaintiff
Timothy J. Shultis, Esq., for Defendant

OPINION ON EXCEPTIONS TO THE MASTER'S REPORT

Bigham, J., July 20, 1998.

On January 12, 1995, Plaintiff, F. Andrew Smith, filed an action in divorce. A Divorce Master was appointed and hearings were held on August 26, 1997 and September 6, 1997. The Master filed his report on February 25, 1998. A Decree of Divorce was entered on April 8, 1998. Both parties have filed exceptions to the Master's recommendations which are now before this Court for disposition.

STATEMENT OF FACTS

The Master made the following findings of fact:

The parties were married on August 21, 1974 in Westminster, Maryland. The parties separated on January 6, 1995 when Husband moved from the marital residence.

Husband who is fifty years old spent six years in the United States Marine Corp immediately following graduation from Delone Catholic High School in 1965. After leaving the Marines, Husband attended Wilkes College for one semester and Maryland College for almost two years but did not receive any type of degree. From the time of the

marriage until the present Husband has been employed by the Pennsylvania Department of Corrections. Starting out as a correctional officer, he was promoted to Sergeant in 1987 and was promoted to Lieutenant in December of 1990. Husband's overall health is good; however, Husband has experienced a degeneration in the lower spine and although he sees a chiropractor every six weeks, he does not take any medication nor does his lower back problem prohibit him from performing his job duties. Husband currently works a full forty hour week at an hourly pay rate of \$25.85. Husband has been the principal wage earner contributing to the majority of the income to the marital household throughout the marriage. Husband is unlikely to receive any type of substantial inheritance.

Wife who is forty-nine years old graduated from St. Joseph's Academy in McSherrystown, Pennsylvania in 1965. Wife has not received any further vocational or post secondary education. She has received some on the job training in a floral business. At the time of separation Wife was working at Hanover House Industries at minimum wage and has held various other minimum wage jobs including Hardees, Princess Laundry, and Colonial Crest Apartments during the marriage. For awhile Wife worked at Klunk's Greenhouse where she developed an interest and some skill in the floral business. Wife's current income from her self-employment is at the minimum wage level. Both Wife and Husband described their lifestyle throughout the marriage as modest and indicated that the Wife was primarily responsible for raising the children and performing most of the domestic chores such as cooking, cleaning, and seeing to the needs of children. Wife's current health is generally good.

Both parties have been previously married. Wife received Social Security benefits due to the fact that her first husband died while there were two minor children for her to raise. Wife used Social Security benefits to purchase groceries and help defray some of the marital bills throughout the course of the present marriage. The parties also attempted to farm the five acres that are part of the marital home by raising animals for slaughter and vegetables to augment the family diet and offset the amount necessary to pay for groceries from the combined income.

All of the children of previous marriages are now adults and are, therefore, not a factor in the statutory analysis for any claims herein.

(MASTER'S REPORT)

This Court generally finds support in the record for the Master's conclusions. However, at the time of separation Wife was not em-

ployed by Hanover House Industries but was in fact self-employed at the Posie Patch flower shop making less than minimum wage.

LEGAL DISCUSSION

When deciding on an appeal from a Master's Report, the Superior Court has said "[a] master's report is entitled to great consideration by, but is not binding upon, the trial court." *Morschhauser v. Morschhauser*, 357 Pa. Super. 339, 349, 516 A.2d 10, 15 (1986) (citations omitted). "Recommendations of the master in a divorce proceeding, although entitled to careful consideration, are advisory only; the trial court is required to review the Master's Report, determine if his or her recommendations are appropriate, and enter a final decree." *Reed v. Reed*, 354 Pa. Super. 284, 289, 511 A.2d 874, 877 (1986). On the issue of credibility however, the master's recommendations are given the fullest consideration. *McBride v. McBride*, 335 Pa. Super. 296, 298, 484 A.2d 141, 142 (1984). Because the master is in the best position to evaluate the witnesses' credibility the Court will not disturb his findings on credibility absent an abuse of discretion. *Rice v. Rice*, 29 Ad. Co. L. J. 109, 110 (1987).

The parties raise a total of 17 exceptions that will be addressed in a logical order within this discussion. Husband argues that the Master erred in finding that Wife was employed at Hanover House until the time of separation. As noted above, this Court agrees. The record indicates that Wife was working at the Posie Patch Flower Shop in which she was part owner and at which her income was below minimum wage. (T. at 266). Additionally, Husband argues the Master erred in indicating in his report that the property was deeded to the parties jointly in 1995. After having reviewed the record it is apparent that the property was deeded in joint names in 1975. (Def.'s Exhibit 4).

Husband argues that the Master erred in failing to recognize that Patrick Sheaffer testified that if the marital real estate were to be developed in conjunction with the development occurring on the adjacent property, the real estate would easily be worth \$150,000.00. This Court does not agree. Although Patrick Sheaffer did acknowledge the possibility of development, he testified that with the present soil condition and apparent lack of access to the property, development was unlikely. (T. at 38). In addition, Mr. Sheaffer indicated that his estimation of the fair market value of the marital real estate would be 108 to 110 thousand dollars. (T. at 36). Thus, the Master's valuation of the marital property at \$110,000.00 was fair.

Husband claims the Master erred in crediting him for monthly mortgage payments for three months at \$118.40 when the payments were \$282.28 per month. The parties do not dispute that the mortgage payments were \$282.28 at the time Husband was paying them. Additionally, it is clear from the record that the payments were at a rate of \$282.28 per month. (Plt.'s Exhibit 13-A). Thus, the total credit to Husband at \$355.20 was erroneous. The correct credit is \$846.84.

Husband claims the Master erred in failing to recognize the 1986 Ford Bronco valued at \$4,800.00. The Master recommended that all personal property remain with the party that had possession at the time of distribution, with minor exceptions.¹ In making this distribution, the Master adopted the appraisal values of the personal property made by Randy Hilker. (Def.'s Exhibits 21, 28). Within Mr. Hilker's appraisal, he valued the 1986 Ford Bronco at \$4,800.00. (Def.'s Exhibit 21). Thus, it is presumed that the Master was distributing the vehicle to Wife at this stated value.² However, the Master's Report is not completely clear on the issue. Therefore, this Court will treat the 1986 Ford Bronco in Wife's possession separately for purposes of clarity. The value of the Bronco at \$4,800.00 provided by Mr. Hilker is adopted and Wife will retain possession of the vehicle.

In connection with the previous exception, Husband also argues that the Master erred in failing to recognize the repair bills in the amount of \$731.00 paid by Husband after separation for the 1986 Ford Bronco in Wife's possession. This Court agrees. The repairs were made to the car during the marriage but Husband solely paid the remaining marital liability of \$731.00 after separation. Thus, Husband will be credited for the payment of \$731.00.

Husband maintains that the Master erred in finding that the Posie Patch Flower Shop was worthless. This Court does not agree. Mr. James G. Sturgill is an expert in the field and appraised the business as having a negative value. (Def.'s Exhibit 26). Thus, the Master's decision to give the business no value will stand.

Husband argues the Master erred in finding that life insurance policy number 3069240 in the amount of \$2,261.70 was marital property when said policy was purchased in May, 1965. Neither party

¹The Master distributed a high back rail chair and oak desk currently located at the Posie Patch Flower Shop to Husband. This distribution will remain in effect. There was no official valuation of these items but Husband did testify as to what he originally paid for the items at an auction. The value was nominal. (T. at 123).

²Additionally, in a letter to counsel from the Divorce Master, he indicated that he intended Wife to remain in possession of the Ford Bronco when he distributed to her "all personal property currently in her possession."

has provided any evidence indicating what portion of this insurance policy could be considered marital. In addition, in light of the fact that the policy was purchase approximately 10 years before the parties married, it is this Court's determination that the policy is non-marital.

Husband also argues the Master erred in finding that life insurance policy number 33474831 in the amount of \$756.79 was marital property as Husband was only a beneficiary of the policy. In connection with this exception, Wife argues the Master erred in deeming this same policy non-marital.³ This policy, although allegedly maintained by Husband with marital funds, is owned by Scott A. Smith and is therefore not marital.

Wife claims the Master erred in failing to award Defendant an interest in any increase in Husband's pension after separation due to factors unrelated to Husband's efforts. It is well settled that when valuing pensions, "increases due to interest or returns on investment in the value of the amount contributed during marriage are marital property." *Schneeman v. Schneeman*, 420 Pa. Super. 65, 79, 615 A.2d 1369, 1376 (1992). However, contributions made towards the pension by the employee or employer after the date of separation are not marital property. *Id.*

The parties stipulated at the hearing that the value of the pension was \$277,609.52. (T. at 125). However, according to the transcript, Plaintiff's counsel stated that although the parties were stipulating to the value, the Master could add increases to the valuation where the increase was not due to the contribution of the parties. (T. at 126). There was no objection or argument regarding this statement. In addition, Plaintiff's counsel provided a copy of a portion of the State Employees' Retirement System Member Handbook indicating that an employee's contributions are credited with 4 percent interest compounded annually. (Plt.'s Exhibit 19). Thus, the stipulation as to the value of the pension was only a stipulation on the value as of July 25, 1995 (Plt.'s Exhibit 18) and was not a stipulation that no other increases could be considered.

Thus, because marital property includes interest increases on the marital portion of a pension, the stipulated value of Husband's pension

³To clarify the parties seemingly inconsistent arguments the Court notes that the Master identified this policy by number and indicated that it would be distributed as marital property. However, the Master also identified this policy by referring to an exhibit and indicated that it was non-marital. Thus, there is clearly confusion on how this policy is to be distributed. Furthermore, the Court notes that by letter dated March 6, 1998, the Divorce Master indicated that it was his intention to have the policies in the names of the grandchildren, including policy number 33474831, be considered non-marital.

at \$277,609.52 must be increased by the appropriate interest amount. Wife is awarded 49.62301 percent of the pension or \$137,758.20, as set forth more fully below. The parties are to submit to the Court a Qualified Domestic Relations Order developed by a CPA providing that Wife receive 49.62301 percent of Husband's pension, including the 4 percent interest compounded annually attributable thereto, as of the date of separation.

Wife argues that the Master erred in distributing the gross marital estate in the proportion of 51% - 49% in favor of Husband and in failing to articulate any substantial evidence of record to support this distribution in favor of Husband. It is not clear from the Master's report exactly what overall distribution scheme he was recommending. However, the Master did fully review the factors set forth in 23 Pa.C.S.A. § 3502(a) as follows:

- 1) The length of the marriage has been significant and was a factor in awarding the marital property.
- 2) Both parties had prior marriages; however, considering the length of the present marriage and the fact that all children from the previous marriages are grown, this is not a significant factor.
- 3) Both parties are of similar age and enjoy good health and have stable employment. However, Husband makes approximately five times the income of Wife.
- 4) Neither party contributed to the education, training or increased earning power of the other party.
- 5) Husband has a larger opportunity to acquire assets due to his increased income.
- 6) The parties' sole source of income is their respective employment.
- 7) The standard of living established by the parties has been middle class and the division of the marital property and marital debts does not change the standard of living of either party although the Wife's standard of living may decrease by this divorce since she will no longer have the benefit of combined income, the high income of her husband, and coverage of medical insurance.
- 8) No evidence or testimony was heard or submitted regarding the tax ramifications to either party; therefore, no conclusion is drawn with respect to that factor.
- 9) Neither party is the custodian of any dependent minor children.

This Court agrees with the Master's conclusions on these particular factors and in light of these conclusions this Court believes that a fair distribution would be 60-40 in favor of Wife. When distributing a marital estate in equitable distribution it is necessary to first determine the total value of the estate.

The parties' assets in the case at hand include marital real estate valued at \$110,000.00 with a mortgage payoff of \$10,365.00 leaving equity in the home of \$99,635.00. The parties also own two vehicles, a 1994 Ford Bronco XLT titled in Husband's name valued at \$22,994.00 with a lien of \$13,345.92 leaving equity of \$9,648.08. Wife has a 1986 Ford Bronco titled in her name and valued at \$4,800.00. The parties also own a 1968 Trihold Boat and Royal Trail trailer with a value of \$700.00. Husband's pension had a value of \$277,609.52 at the time of separation and the Posie Patch Flower Shop had no value. The parties' personal property is extensive, including a considerable amount of farming equipment, totaling \$16,694.50.⁴ (Def.'s Exhibits 21, 28). Additionally, a chest freezer was dealt with separately by the Master and has a value of \$300.00. There are also numerous life insurance policies. Wife owns two policies valued at a total of \$6,264.75.⁵ Husband's policies total \$8,477.63.⁶ Thus, the total marital assets equal \$447,840.40.

The parties' debts include the mortgage on the marital real estate with a payoff of \$10,365.00 which shall be the sole responsibility of Wife as she is awarded the real estate in the distribution scheme set forth below. Additionally, there is a loan on the Posie Patch Flower

⁴The value of the personal property was established through an appraisal performed by Randy Hilker. Defense Exhibit 21 establishes the value for the personal property in Wife's possession at \$8,231.50. However, the parties agreed that all items highlighted on the exhibit were non-marital. (T. at 141). Additionally, Wife's Ford Bronco is included in the total value of the personal property and therefore must be subtracted from the total because this Court has dealt with the vehicle separately. The value of the chest freezer (\$20.00) must also be subtracted because it has also been dealt with separately. Thus, after subtracting the non-marital property, freezer, and value of the Ford Bronco, Wife's total value of personal property in her possession is \$2,180.50. The personal property in Husband's possession is listed in defense Exhibit 28. His total is \$2,189.00 after subtracting \$100.00 due to a stipulation of the parties on the value of the Starcraft aluminum boat and trailer. Husband is also awarded the farming equipment in his possession valued at \$8,300.00 and the farming equipment not in his possession valued at \$4,025.00. (Def. Exhibit 22). Thus, the total value of personal property to be distributed to Husband is \$14,514.00.

⁵The Master correctly valued Wife's policy through Equitable Life Insurance Company of Iowa at \$3,440.00. (Def.'s Exhibit 20). However, Wife's New York Life policy is not worth \$220.00, as determined by the Master, but has a cash value of \$2,824.75. (Def.'s Exhibit 19). Thus, Wife's two life insurance policies have a total cash value of \$6,264.75.

⁶This figure is calculated by taking all those policies in Husband's name that have been determined to be marital; including, policy number 33702857 valued at \$2,957.30, policy number 34689053 valued at \$3,412.57, and policy number 42457261 valued at \$2,107.76. The remaining policies are non-marital policies and will not be included in the distribution. Thus, the total value of the listed marital policies is \$8,477.63.

Shop originally taken for \$20,000.00 with a payoff at the time of separation of \$17,478.25 and which will also be the sole responsibility of Wife because she is awarded the business. (Def.'s Exhibit 15). There is also a loan on Husband's Ford Bronco of \$13,345.92 which shall be his sole responsibility.⁷ There were also marital debts which were paid by Husband for which he will be credited because Wife has either received the asset or has solely received the benefit. These include mortgage payments of \$846.84, repairs on Wife's 1986 Bronco of \$731.00, and a dental bill of \$677.00. Husband will be credited for these debts in the amount of \$2,254.84. Marital debts total \$43,444.01. Thus, the net value of the estate is \$404,396.39. Wife's 60 percent share is \$242,637.83 and Husband's 40 percent share is \$161,758.56.

Thus, the distribution of the property will be as follows:

A. Husband

1. Assets

1994 Ford Bronco XLT	\$22,994.00
Personal property (including farm equipment)	14,514.00
Pension (Husband's share)	139,851.32

2. Liabilities

1994 Ford Bronco XLT	13,345.92
----------------------	-----------

3. Credits

Mortgage payments	846.84
Repairs on Wife's 1986 Bronco	731.00
Dental bill	677.00

4. Net total ($177,359.32 - 13,345.92 - 2,254.84 = 161,758.56$)

\$161,758.56

B. Wife

1. Assets

1986 Ford Bronco	4,800.00
Marital real estate	110,000.00
Business (Posie Patch)	0
Trihold Boat and trailer	700.00 ⁸
Freezer	300.00
Personal property	2,180.50
Wife's life insurance	6,264.75
Husband's life insurance	8,477.63
Pension (Wife's share)	137,758.20

⁷The parties shall execute the necessary documents to effectuate the distribution scheme.

⁸Husband claims the Master erred in awarding the freezer, boat, and trailer to Husband for a total value of \$1,000.00 when none of the items were requested by him, but rather requested by Wife. This Court, in an effort to more fairly distribute the marital assets in the equitable division of the property, holds that Wife should retain these items.

2. Liabilities	
Marital real estate mortgage	10,365.00
Posie Patch Loan	17,478.25
3. Credits	0
4. Net total (270,481.08–27,843.25=242,637.83)	\$242,637.83

Husband claims the Master erred in failing to recognize any rental value of the property during the time Wife had exclusive possession of the property until the time of distribution. In discussing rental values, the Superior Court recently said:

An equitable distribution scheme may include an award, to the non-possessing spouse, of one-half of the rental value of the marital residence, when possessed exclusively by the other spouse during the parties' separation...However, we have also upheld deductions from rental value awards for the non-possessing spouse's share of expenses related to preserving the marital residence (i.e., mortgage, insurance, taxes, maintenance)...In *Trembach v. Trembach*, 419 Pa. Super 80, 87-89, 615 A.2d 33, 37 (1992), we stated that the award of rental value is *within the sound discretion of the trial court*.

Gaydos v. Gaydos, ___ Pa. Super. ___, 693 A.2d 1368, 1377 (1997). This Court believes the distribution scheme set forth above fully compensates each party and that no award of rental values is warranted.

Lastly, the parties have both disputed the Master's apportionment of appraisal fees. Husband argues the Master erred in assigning to each party one-half of the appraisal fee for Patrick Sheaffer's appraisal of the marital real estate. Mr. Sheaffer's appraisal of the real estate was necessary for the distribution of the marital assets and is a cost that should be shared by the parties. Husband provided no expert evidence controverting this appraisal but instead testified himself as to the valuation. The Master found Mr. Sheaffer's report more credible and therefore followed his appraisal. The total cost of the appraisal was \$350.00 and each party will therefore be responsible for \$175.00.

Wife argues the Master erred in assessing Wife the full cost of the pension and business appraisal. The Master stated in his report that the entire costs of these appraisals would be Wife's responsibility because she failed to present any evidence of costs for the pension appraisal and

because he felt she should be responsible for the full cost of the business appraisal. Both parties had Husband's pension appraised. Husband hired David Welber, CPA. Wife had the pension appraised by Miller & Co., LLP. Although it is not clear how much Mr. Welber charged for his appraisal, Wife did provide an invoice from Miller & Co., LLP for the amount of \$205.00. (Def.'s Exhibit 25). The parties agreed to use Mr. Welber's appraisal. This Court does not believe it is equitable to have Wife pay for two appraisals of the pension, even if it was Husband's appraisal that was relied upon. Thus, each party will pay for their respective appraisal costs related to the pension.

Sturgill & Associates performed the business appraisal. (Def.'s Exhibit 26). There is some dispute on whether the parties agreed to use this particular appraiser; however, Husband did not have any appraisal of the business conducted. (T. at 194). The cost of the appraisal by Sturgill & Associates was \$1,094.52. (Def.'s Exhibit 25). Although the appraisal revealed that the business had a negative value, it was an appraisal that was necessary for accurately valuing the business and is a cost that should be shared equally by the parties. Thus, each party is responsible for \$547.26 of the cost.

The parties have not disputed the Master's recommendation as to costs and fees or alimony and they will therefore stand. The parties will be equally responsible for the fees and costs associated with this case. The Master's fees (\$1,658.00) and Court Reporter's fees (\$932.00) total \$2,590.00. Thus, each party will be responsible for \$1,295.00. However, Husband has paid a \$500.00 deposit for which Wife will be responsible for half, or \$250.00. Thus, Wife's responsibility for the costs shall be increased by \$250.00 and Husband's responsibility will be reduced by the same amount. Therefore, Wife will owe a total of \$1,545.00 and Husband a total of \$1,045.00 of the fees and costs of this proceeding. Additionally, under the distribution scheme set forth above, this Court feels each party should be responsible for their own attorneys fees and costs. No alimony is awarded.

Accordingly, the attached Order is issued.

ORDER OF COURT

AND NOW, this 20th day of July 1998, the exceptions are determined in accordance with the attached Opinion. The parties are directed to implement the distribution scheme set forth therein.

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 THOMAS W. CLINE a/k/a TIM CLINE, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Co-Executors: Clarence E. Asbury and Wayne M. Pecht, c/o Keefer Wood Allen & Rahal, LLP, 415 Fallowfield Road, Suite 102, Camp Hill, PA 17011-4906

Attorney: Wayne M. Pecht, Esq., Keefer Wood Allen & Rahal, LLP, 415 Fallowfield Road, Suite 102, Camp Hill, PA 17011-4906

ESTATE OF EMMA S. DARON, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executors: Robert C. Daron, 1794 Coon Road, Aspers, PA 17304; Shirley Daron, 1794 Coon Road, Aspers, PA 17304; Carole Neal, 6593 Carlisle Pike, East Berlin, PA 17316

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

ESTATE OF RODNEY L. KAISER, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Administrators, c.t.a.: Tina M. Warren, 150 Timber Lane, Hanover, PA 17331; Troy J. Kaiser, 85 Cottage Lane, New Oxford, PA 17350

Attorney: Daniel M. Frey, Attorney, Daniel M. Frey & Associates, a division of Barley, Snyder, Senft & Cohen, LLC, 14 Center Square, Hanover, PA 17331

ESTATE OF ROBERT T. LITTLE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Shirley Kuhn, 6 Trudi Court, Hanover, PA 17331

Attorney: James T. Yingst, Esq., 515 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF ELIZABETH H. FREEDOM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Deb Bair, Trust Officer, Allfirst Bank, 13 Baltimore Street, Hanover, PA 17331

Attorney: Louis T. Guthrie, Esq., Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF RICHARD GRIEST, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Jean G. Brannock, P.O. Box 1416, Athens, TN 37371

Attorney: Edward B. Bulleit, Esq., Puhl, Eastman & Thrasher, Esqs., 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF SUE ANN LOTT, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Robert C. Lott, Jr., 760 Wenksville Road, Biglerville, PA 17307

Attorney: Vicky Ann Trimmer, Esq., Mette, Evans & Woodside, 3401 North Front Street, P.O. Box 5950, Harrisburg, PA 17110-0950

ESTATE OF EARL W. RENOLL, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Edwin H. Eline, R.D. #5, Spring Grove, PA 17362; Roger C. Zeigler, 910 Taxville Road, York, PA 17404

Attorney: Donald W. Dorr, Esq., Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF KENNETH M. BENNER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Ruth Ann Peart, 730 Bollinger Road, Littlestown, PA 17340

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

ESTATE OF AMBER LOUISE GROFT, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Administratrix: Lisa Diane Groft, 5 Upper Trail, Fairfield, PA 17320

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DOROTHY CAROLYN KNACKSTEDT, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: Fred B. Knackstedt, 550 Ground Oak Church Road, Gardners, PA 17324

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

ESTATE OF RICHARD W. WAGAMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Rita Wagaman, 2796 York Road, Gettysburg, PA 17325

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

ESTATE OF ALANSON F. WICK, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Judith Beth Rapp, 601 N. George St., Hanover, PA 17331

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

ESTATE OF PAUL F. WORCESTER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

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

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

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 99-S-25
Action to Quiet Title

WAYNE R. WOLF and
SHIRLEY M. WOLF, Plaintiff,
vs.

CHALMER E. HELM, JR. and KAY
M. HELM, THE BOROUGH OF YORK
SPRINGS, ADAMS COUNTY,
PENNSYLVANIA, and ANY PERSON
OR ENTITY CLAIMING ANY
INTEREST IN SAID LAND AS THE
SUCCESSORS ASSIGNS OR THE
DESCENDENTS OF WILLIAM PENN.

NOTICE

To the Defendants in the above-re-
cited action:

YOU ARE HEREBY notified that the
following Order has been entered in the
above-action by the Honorable Oscar F.
Spicer, President Judge.

The property in question is described
as a ten foot wide strip of land which lies
between the properties owned by Plain-
tiffs and Defendants Helm on the south
side of Main Street (Pa. Rt. 97) in the
Borough of York Springs, Adams County,
Pennsylvania.

ORDER

AND NOW, TO WIT, this 22nd day of
July, 1999, upon consideration of the
attached Motion, it is hereby Ordered
that the Defendants, The Borough of
York Springs, Adams County, Pennsylv-
ania, Chalmer E. Helm, Jr. and Kay M.
Helm and any person or entity having an
interest in ten foot wide strip of land
which lies between the properties owned
by Plaintiffs and Defendants Helm, their
personal representatives, heirs, devise-
es, successors, assign or other inter-
ested parties, be forever barred from
asserting any right, lien, title or interest in
the land, which is the subject matter of
this action, inconsistent with the interest
or claim of the Plaintiffs as set forth in
their Complaint, unless Defendants (or
any of them) make an appearance or file
an Answer to the Complaint within thirty
(30) days of the date of service of this
Order which shall be served by publica-
tion. Upon failure of a Defendant to take
any action before expiration of said time
period, judgment shall be final and Plain-
tiffs may issue to the Prothonotary the
praecipe authorized by Adams County,
Pennsylvania, Rule of Court No.
1066(b)(1) and the Prothonotary shall
take the actions authorized under the
provisions of said rule.

END OF ORDER

Clayton R. Wilcox, Esquire
Counsel for Plaintiffs
234 Baltimore Street
Gettysburg, PA 17325

8/13

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL DIVISION
NO. 98-S-181

CHASE MANHATTAN MORTGAGE
CORPORATION, f/k/a Chemical
Residential Mortgage Corporation,
f/k/a Margaretten & Company, Inc.,
Plaintiff,

vs.

KENNETH S. TICE and DIANNA L.
TICE, Defendants.

TAKE NOTICE that by virtue of the
above Writ of Execution issued out of the
Court of Common Pleas of Adams
County, PA, and to the Sheriff of Adams
County, directed, there will be exposed
to Public Sale at the Adams County Court-
house, 117 Baltimore St, Gettysburg, PA
17325, on Fri., Oct. 1, 1999 at 10:00
A.M., the following described real estate,
of which Kenneth S. Tice and Dianna L.
Tice are the owners or reputed owners:

ALL THE FOLLOWING DESCRIBED
REAL ESTATE SITUATED IN MOUNT
JOY TWP, ADAMS COUNTY, CMMW
OF PA. HAVING ERECTED THEREON
A DWELLING BKNA 4075 BALTIMORE
PK, LITTLESTOWN, PA 17340. DBV 893,
PG 31, PARCEL #H16-83.

The said Writ of Execution has been
issued on a judgment in the mortgage
foreclosure action of Chase Manhattan
Mortgage Corporation, f/k/a Chemical
Residential Mortgage Corporation, f/k/a
Margaretten & Company, Inc., Plaintiff,
vs. Kenneth S. Tice and Dianna L. Tice,
Defendants, at Execution Number 98-S-
181 in the amount of \$207,391.08.

Claims against the property must be
filed with the Sheriff before the above
sale date.

Claims to proceeds must be made with
the Office of the Sheriff before distribu-
tion.

Schedule of Distribution will be filed
with the Office of the Sheriff no later than
thirty (30) days from sale date.

Exceptions to Distribution or a Petition
to Set Aside the Sale must be filed with
the Office of the Sheriff no later than ten
(10) days from the date when Schedule
of Distribution is filed in the Office of the
Sheriff.

This paper is a notice of the date and
time of the sale of your property. It has
been issued because there is a judgment
against you. It may cause your property
to be held or taken to pay the judgment.
You may have legal rights to prevent
your property from being taken. A lawyer
can advise you more specifically of these
rights. If you wish to exercise your rights,
you must act promptly.

YOU SHOULD TAKE THIS NOTICE
AND THE WRIT OF EXECUTION TO
YOUR LAWYER AT ONCE, IF YOU DO
NOT HAVE A LAWYER OR CANNOT
AFFORD ONE GO TO OR TELEPHONE
THE OFFICE SET FORTH BELOW TO

FIND OUT WHERE YOU CAN GET LE-
GAL ADVICE.

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
(717) 337-9846

You may have legal rights to prevent
the Sheriff's Sale and the loss of your
property. In order to exercise those rights,
prompt action on your part is necessary.

You may have the right to prevent or
delay the Sheriff's Sale by filing, before
the sale occurs, a petition to open or
strike the judgment or a petition to stay
the execution.

If the judgment was entered because
you did not file with the Court any de-
fense or objection, you might have within
twenty (20) days after service of the
Complaint for Mortgage Foreclosure and
Notice to Defend, you may have the right
to have the judgment opened if you
promptly file a petition with the Court
alleging a valid defense and a reason-
able excuse for failing to file the defense
on time. If the judgment is opened the
Sheriff's Sale would ordinarily be de-
layed pending a trial of the issue of
whether the plaintiff has a valid claim to
foreclose the mortgage or judgment.

You may also have the right to have
the judgment stricken if the Sheriff has
not made a valid return of service of the
Complaint and Notice to Defend or if the
judgment was entered before twenty (20)
days after service or in certain other
events. To exercise this right you would
have to file a petition to strike the judg-
ment.

You may also have the right to petition
the Court to stay or delay the execution
and the Sheriff's Sale if you can show a
defect in the Writ of Execution of service
or demonstrate any other legal or equi-
table right.

YOU MAY ALSO HAVE THE RIGHT
TO HAVE THE SHERIFF'S SALE SET
ASIDE IF THE PROPERTY IS SOLD
FOR A GROSSLY INADEQUATE PRICE
OR, IF THERE ARE DEFECTS IN THE
SHERIFF'S SALE. TO EXERCISE THIS
RIGHT, YOU SHOULD FILE A PETI-
TION WITH THE COURT AFTER THE
SALE AND BEFORE THE SHERIFF HAS
DELIVERED HIS DEED TO THE PROP-
ERTY. THE SHERIFF WILL DELIVER
THE DEED IF NO PETITION TO SET
ASIDE THE SALE IS FILED WITHIN
TEN (10) DAYS FROM THE DATE
WHEN THE SCHEDULE OF DISTRIBU-
TION IS FILED IN THE OFFICE OF THE
SHERIFF.

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Adams County Legal Journal

Vol. 41

August 20, 1999

No. 12, pp. 71-76

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION-MORTGAGE
FORECLOSURE COMPLAINT
NO. 99-S-202

FIRST NATIONWIDE MORTGAGE
CORPORATION, 5280 Corporate
Drive, Frederick, MD 21703, Plaintiff,

vs.

JAMES W. LEAKE, (original
mortgagor & real owner), 9 Swallow
Trail, Fairfield, PA 17320-8065
PENELOPE LEAKE, a/k/a PENELOPE
S. SWORT LEAKE (original
mortgagor), 9 Swallow Trail, Fairfield,
PA 17320-8065
THE UNITED STATES OF AMERICA,
c/o U.S. ATTORNEY GENERAL, 10th
& Constitution Ave., NW, Room 4400,
Washington, DC 20530
Defendant(s).

NOTICE

YOU HAVE BEEN sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case

may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

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

8/20

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

ACTION TO QUIET TITLE
NO. 99-S-699

THOMAS E. BELL, and WANDA E.
BELL, Plaintiffs,

vs.

HARVIE K. MILLER, his heirs and
assigns, ADAMS COUNTY TAX CLAIM
BUREAU, its successors and assigns,
Defendants.

TO: HARVIE K. MILLER, his heirs and
assigns

NOTICE

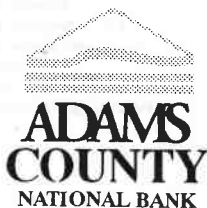
YOU ARE NOTIFIED that Plaintiff has commenced an action to quiet title against you which you are required to defend. You are required to plead to the Complaint within twenty (20) days after the service has been completed by publication. This action concerns land located in Huntingdon Township, Adams County, containing 1.2 acres, with a street address of 120 Balltown Road, Gardners, PA and further being identified as Adams County Tax Parcel Map H-4 Parcel 20A.

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

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

Court Administrator
Adams County Court House
Gettysburg, PA 17325
Phone: (717) 334-6781 Ext. 213
By: John C. Zepp, III, Esq.
P. O. Box 204
York Springs, PA 17372
Phone: (717) 528-8900

8/20



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

Periodicals postage paid at Gettysburg, PA 17325.

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-239 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, September 17, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described two (2) tracts of land situate in Reading Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

TRACT NO. 1: BEGINNING at a post of lands now or formerly of Michael Rebert; thence South two (2) degrees East, two hundred thirty-one (231) feet to a point at the Big Conewago Creek; thence South sixty-eight (68) degrees West, one hundred ninety-eight (198) feet to a point at lands now or formerly of William Hildebrand; thence along the same, North eighteen (18) degrees West, two hundred seventy-two and twenty-five hundredths (272.25) feet to a post at lands now or formerly of William Brough; thence along the same North seventy-nine (79) degrees East, one hundred seven and twenty five hundredths (107.25) feet to a stone in a public road and lands now or formerly of C.M. Spangler; thence along, property now or formerly of C.M. Spangler, North eighty-three (83) degrees, thirty (30) minutes East, one hundred fifty-six and seventy-five hundredths (156.75) feet to a point, the place of BEGINNING. CONTAINING one (1) acre and seventy (70) perches, more or less.

TRACT NO. 2: BEGINNING at the center of a public road and intersection of another public road at lands now or formerly of East Berlin Borough and now or formerly of Arthur F. Peiffer; thence through said public road and along lands now or formerly of Arthur F. Peiffer, South Twenty (20) degrees thirty (30) minutes East, one hundred twenty-two and twenty-five hundredths (122.25) feet to a point; thence by land now or formerly of Arthur F. Peiffer, North sixty-four (64) degrees thirty (30) minutes East, twenty-seven (27) feet to a point; thence South five (5) degrees thirty (30) minutes East, forty-three and two-tenths (43.2) feet to a point; thence by land now or formerly of East Berlin Borough, North fifty-eight (58) degrees twenty-five (25) minutes West, one hundred six and ten hundredths (106.10) feet to a point beyond the public road; thence along land now or formerly

of East Berlin Borough and in said public road North ten (10) degrees East, one hundred thirteen and eighty hundredths (113.80) feet to the place of BEGINNING. CONTAINING thirteen hundredths (0.013) acres.

THIS DESCRIPTION taken from a draft of survey made by George M. Wildasin, Professional Engineer, on July 17, 1954.

BEING THE SAME PREMISES which Daniel E. Kauffman by Melissa J. Crawford, his attorney in fact, single man, by his Deed dated May 7, 1997 and recorded in the Office of the Recorder of Deeds in and for Adams County on May 7, 1997, in Record Book 1371, Page 309, granted and conveyed unto Gerald D. Gay, Jr. and Robin L. Gay, two of the Defendants herein.

SEIZED and taken into execution as the property of **Gerald D. Gay Jr. & Robin L. Gay** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 7, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 11, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/13, 20, 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-326 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, September 24, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

The Boro. of Gettysburg, Adams Cty., Comwith. of PA HET a dwg. k/a 803 Highland Ave., Gettysburg, 17325. Block & Lot 14-14.

SEIZED and taken into execution as the property of **Linda C. Gregg** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 22, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 18, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/20, 27 & 9/3

NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on April 29, 1999 with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, Pennsylvania for the purpose of obtaining a Certificate of Incorporation.

The name of the corporation organized under the Pennsylvania Nonprofit Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented, is SEMINARY RIDGE HISTORIC PRESERVATION FOUNDATION.

The purpose for which the Corporation was organized is to restore, preserve and maintain the national historic Civil War properties, architecture and other legacies related to Seminary Ridge at Gettysburg, Pennsylvania, and provide related education and communication of the foregoing for the benefit of the public.

Rhoads & Sinon
Lori J. McElroy, Esquire
One South Market Square,
12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146

8/20

STAMBAUGH VS. WEIDNER

1. In Pennsylvania, a common law marriage is a marriage by express agreement of the parties without ceremony, and usually without a witness, and *verba de praesenti*, uttered with the purpose of establishing a relation of husband and wife. However, common law marriage will still be recognized without use of *verba de praesenti*, where the intention of the parties as expressed by their words, is that they were married.

2. While cohabitation and reputation alone will not suffice to establish a common law marriage, they are relevant factors which a court may consider in determining whether the parties have entered into a common law marriage.

3. The parties' continued cohabitation, sharing of certain liabilities, and procreation of children together further supports a finding of intent to establish a marital relationship.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil. DR-584-97. CONNIE A. STAMBAUGH VS. RONNIE E. WEIDNER.

Muriel Ann Crabbs, Esq., for Plaintiff

Bernard A. Yannetti, Jr., Esq., for Defendant

OPINION

Bigham, J., July 17, 1998.

A hearing on the issue of common law marriage was held by this Court on June 4, 1998. By Court Order dated June 4, 1998, the matter was taken under advisement and the parties were permitted to submit legal memorandum.

STATEMENT OF FACTS

The following evidence was presented at the hearing:

The parties cohabited from August of 1990 to January of 1997. Prior to 1996, the parties were engaged but broke off the engagement before actually getting married. During the time the parties lived together there were times when Plaintiff briefly left the premises; however, the parties generally cohabited on a continuous basis. The home the parties lived in was owned solely by Defendant. Although Plaintiff's name was not on the mortgage for the home it was on the note. The parties have two children together and in 1994 Plaintiff was listed as Defendant's spouse on an application for insurance.

Plaintiff testified that on July 15, 1996, the parties executed an Affidavit of Common Law Marriage. Plaintiff further testified that the affidavit was signed under oath and contained language indicating a present tense intention to be married. Plaintiff's mother testified that the parties called her after they signed the affidavit and told her they had married. Both Plaintiff and Plaintiff's mother testified that the parties told people they were married in 1996 and generally held themselves out as married.

LEGAL DISCUSSION

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

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

Plaintiff testified that the parties intended to enter into marriage when they executed the Affidavit of Common Law Marriage on July 15, 1996, containing words of present tense intention to marry. This Court found Plaintiff's testimony credible. The affidavit fulfills the requirement that there be an express agreement between the parties including the necessary *verba de praesenti*. Additionally, the affidavit demonstrates an intent to enter into marriage. The parties' continued cohabitation, sharing of certain liabilities, and procreation of children together further supports a finding of intent to establish a marital relationship. Thus, Plaintiff has provided sufficient evidence to prove a valid common law marriage between the parties.

Accordingly, the attached Order is issued.

ORDER OF COURT

AND NOW, this 17th day of July 1998, this Court finds that the parties entered into a valid common law marriage. This case is remanded to the Adams County Domestic Relations office to conduct a conference.

VALENTINE VS. MICKIEWICZ ET AL

1. There is authority suggesting that if a defendant attempts to join an additional defendant after the 60 day limit and without permission of the court that the joinder should be stricken without further consideration of cause shown. However, more recent authority suggests that a defendant may be permitted to show cause even when the additional defendant complaint has been filed without court permission.

2. There is simply no reasonable nexus between appellant's settlement efforts and appellant's failure to file a timely joinder complaint.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil. No. 97-S-970. TIMOTHY J. VALENTINE AND MICHELLE C. VALENTINE VS. DOUGLAS MICKIEWICZ T/D/B/A MICK BUILDERS, DEFENDANT, AND TERRY EYLER, T/D/B/A/ EYLER SIDING, ADDITIONAL DEFENDANT.

Thomas M. Shultz, Esq., for Plaintiff

D. J. Hart, Esq., for Defendants

Andrew T. Kravitz, Esq., for Additional Defendants

OPINION ON ADDITIONAL PRELIMINARY OBJECTIONS

Bigham, J., July 21, 1998.

March 19, 1999

On October 14, 1997, Plaintiffs, Timothy J. Valentine and Michelle C. Valentine, filed a complaint against Defendant, Douglas Mickiewicz, t/d/b/a, Mick Builders. On January 9, 1998, Defendant answered Plaintiff's complaint and filed a complaint joining Additional Defendant, Terry Eyer, t/d/b/a, Eyer Siding. On March 5, 1998, Additional Defendant filed preliminary objections.

STATEMENT OF FACTS

This cause of action arises out of the construction of a residential home. Plaintiffs allege that they entered into a written agreement for the construction of the home with Defendant on August 9, 1995. Plaintiffs further allege that Defendant performed the construction in a poor and unworkmanlike manner, including the use of substandard lumber and the improper installation of vinyl siding. The alleged faulty workmanship caused the vinyl siding to wave and buckle. Defendant alleges that it was Additional Defendant, as subcontractor, who performed all siding related labor on Plaintiff's home.

LEGAL DISCUSSION

Additional Defendant raises two issues in his preliminary objections. First, he claims that Defendant failed to conform to Pa.R.C.P. 2253 because the additional defendant complaint was filed more than 60 days after Plaintiff served the original complaint upon Defendant. Second, Additional Defendant argues that the framer of the residence, Tony Hippensteel, is a necessary party but has failed to be joined thereby requiring the additional complaint to be dismissed.¹

¹ The Court need not address Additional Defendant's second objection because the first objection is sustained thereby causing the complaint against him to be dismissed.

Rule 2253 provides as follows:

Except as provided by Rule 1041.1(e), neither praecipe for a writ to join an additional defendant nor a complaint if the joinder is commenced by a complaint, shall be filed by the original defendant or an additional defendant later than sixty days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof unless such filing is allowed by the court upon cause shown.

Pa.R.C.P. 2253, 42 Pa.C.S.A.

In the case at hand the original complaint was served upon Defendant on October 31, 1997. The complaint joining Additional Defendant was filed on January 9, 1998, 70 days after original service. No permission of the court was obtained to file the additional defendant complaint late.² To justify late joinder, the Defendant must show:

(1) some reasonable justification or excuse for the delay; (2) a statement of the facts alleged to render the proposed additional defendant alone liable, or liable with, or liable over to defendant, or liable to the defendant on a proper cross claim; and (3) allegations that the late joinder will not be prejudicial to the proposed additional defendant... Whether cause is shown to justify late joinder is a matter for the sound discretion of the trial court....

Consul v. Burke, 403 Pa. Super. 400, 406, 589 A.2d 246, 249 (1991) (citations omitted).

Defendant argues that the delay was due to negotiations with Plaintiff causing Defendant's answer to the complaint and subsequent filing of the additional defendant complaint to be late. However, the Superior Court has held that "[t]here is simply no

²The Court notes that there is authority suggesting that if a defendant attempts to join an additional defendant after the 60 day limit and without permission of the court that the joinder should be stricken without further consideration of cause shown. *See, Leonard v. Parkway Corp.*, 373 Pa. Super. 283, 541 A.2d 13 (1988). However, more recent authority suggests that a defendant may be permitted to show cause even when the additional defendant complaint has been filed without court permission. *See, Glabatz v. Terminal Freight Handling Co.*, 386 Pa. Super. 447, 563 A.2d 151 (1989). In the case at hand, which analysis the Court applies is of no consequence as the additional defendant complaint will be dismissed under either rationale.

reasonable nexus between appellant's settlement efforts and appellant's failure to file a timely joinder complaint." *Glabbatz v. Terminal Freight Handling*, 386 Pa. Super. 447, 453, 563 A.2d 151, 153 (1989). Therefore, this argument is without merit.

Defendant also argues that after having been served with the original complaint he attempted to have discussions with Additional Defendant about the case but had problems contacting and discussing the case with him. Again, this is not a sufficient reason for the tardiness in filing the additional defendant complaint. Plaintiff's original complaint clearly states that the lawsuit is brought due to the problems with the vinyl siding. (Plt.'s complaint ¶¶ 6-7). Defendant's complaint against Additional Defendant states that "Additional Defendant in fact performed all siding related labor on said property." (Def.'s complaint ¶ 5). As contractor, Defendant knew that Additional Defendant was the subcontractor responsible for the vinyl siding from the time the original complaint was filed. This is not something that Defendant needed to discuss with Additional Defendant before filing the additional defendant complaint. *See, Taylor v. Kemper National Insurance Co. Inc., et al.*, 39 Ad.Co.L.J. 137 (holding that a late joinder be stricken where the defendant had been fully aware of the facts justifying joinder). Thus, Defendant has shown no reasonable justification for the delay in filing the additional defendant complaint.

Although this Court is aware that procedural rules applying to third party procedures are to be liberally construed, "the goal of judicial economy does not alleviate the necessity of establishing 'cause' for allowing late joinder." *Exton Development v. Sun Oil Company of Pennsylvania*, 363 Pa. Super. 17, 22, 525 A.2d 402, 404 (1987). Additionally, as pointed out in *Goodrich-Amram*:

The enforcement of the 60-day limitation will not ordinarily work any hardship on the moving party who is barred from joining an additional defendant. If the moving party has a claim against the proposed additional defendant, he may bring a subsequent separate action against him, and thus, while subjected to delay, his substantive rights are not impaired. If the contention of the moving party is that the proposed additional defendant is solely liable to the plaintiff, the defendant may assert that defense in the plaintiff's

action even though the proposed additional defendant is not joined as a party to the action.

Goodrich-Amram 2d § 2253:5. Thus, Defendant's complaint joining Additional Defendant is properly dismissed.

Accordingly, the attached Order is issued.

ORDER OF COURT

AND NOW, this 21st day of July 1998, Additional Defendant's preliminary objections are sustained in part. Defendant's complaint joining Additional Defendant is hereby dismissed.

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 RUTH E. BENDER, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania

Co-Executrices: Lisbeth R. Keefer, 2540 Baltimore Pike, Gettysburg, PA 17325; Corinne D. Golden, 27 South Seasons Drive, Dillsburg, PA 17019

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

ESTATE OF MARY G. DENNIS a/k/a, MARY M. DENNIS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executors: Larry Dennis, 455 Rake Factory Road, Biglerville, PA 17307; Richard Dennis, 5345 Orchard Road, Fayetteville, PA 17222

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

ESTATE OF JAMES F. RILEY, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania

Executors: John F. Riley, 2529 Emmitsburg Road, Gettysburg, PA 17325; Betty V. Harner, 950 Ridge Road, Gettysburg, PA 17325

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

ESTATE OF MILDRED K. SHINDELECKER, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executor: Clyde Eugene Kepner, 1225 Brickcrafters Road, New Oxford, PA 17350

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

ESTATE OF ISABELLE MARY TUCKEY, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Harold F. Tuckey, Box 194, 165 Fohl St., Arendtsville, PA 17303

Attorney: Stephen F. Tuckey, Esq., 562 Race St., 3rd Floor, Harrisburg, PA 17104

ESTATE OF HILDA ETOILE ZEIGLER, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executrix: Betty Tuckey, 165 Fohl St., Box 194, Arendtsville, PA 17303

Attorney: Stephen F. Tuckey, Esq., 562 Race St., 3rd Floor, Harrisburg, PA 17104

SECOND PUBLICATION

ESTATE OF THOMAS W. CLINE a/k/a TIM CLINE, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Co-Executors: Clarence E. Asbury and Wayne M. Pecht, c/o Keefer Wood Allen & Rahal, LLP, 415 Fallowfield Road, Suite 102, Camp Hill, PA 17011-4906

Attorney: Wayne M. Pecht, Esq., Keefer Wood Allen & Rahal, LLP, 415 Fallowfield Road, Suite 102, Camp Hill, PA 17011-4906

ESTATE OF EMMA S. DARON, DEC'D
Late of Reading Township, Adams County, Pennsylvania

Executors: Robert C. Daron, 1794 Coon Road, Aspers, PA 17304; Shirley Daron, 1794 Coon Road, Aspers, PA 17304; Carole Neal, 6593 Carlisle Pike, East Berlin, PA 17316

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

ESTATE OF RODNEY L. KAISER, DEC'D
Late of Mount Pleasant Township, Adams County, Pennsylvania

Administrators, c.t.a.: Tina M. Warren, 150 Timber Lane, Hanover, PA 17331; Troy J. Kaiser, 85 Cottage Lane, New Oxford, PA 17350

Attorney: Daniel M. Frey, Attorney, Daniel M. Frey & Associates, a division of Barley, Snyder, Senft & Cohen, LLC, 14 Center Square, Hanover, PA 17331

ESTATE OF ROBERT T. LITTLE, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Shirley Kuhn, 6 Trudi Court, Hanover, PA 17331

Attorney: James T. Yingst, Esq., 515 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF ELIZABETH H. FREEDOM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Deb Bair, Trust Officer, Allfirst Bank, 13 Baltimore Street, Hanover, PA 17331

Attorney: Louis T. Guthrie, Esq., Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF RICHARD GRIEST, DEC'D
Late of Berwick Township, Adams County, Pennsylvania

Executrix: Jean G. Brannock, P.O. Box 1416, Athens, TN 37371

Attorney: Edward B. Bulleit, Esq., Puhl, Eastman & Thrasher, Esqs., 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF SUE ANN LOTT, DEC'D
Late of Menallen Township, Adams County, Pennsylvania

Executor: Robert C. Lott, Jr., 760 Wensville Road, Biglerville, PA 17307

Attorney: Vicky Ann Trimmer, Esq., Mette, Evans & Woodside, 3401 North Front Street, P.O. Box 5950, Harrisburg, PA 17110-0950

ESTATE OF EARL W. RENOLL, DEC'D
Late of Conewago Township, Adams County, Pennsylvania

Executors: Edwin H. Eline, R.D. #5, Spring Grove, PA 17362; Roger C. Zeigler, 910 Taxville Road, York, PA 17404

Attorney: Donald W. Dorr, Esq., Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-901 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, September 24, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in the Borough of Carroll Valley, formerly Liberty Township, Adams County, Pennsylvania, being known as Lot No. 24, Section A, "Charnita Inc.," bounded and described as follows:

BEGINNING at a point in the center of the intersection of Fawn Trail with Spring Trail; thence in said Fawn Trail, South 88 degrees 26 minutes 40 seconds West, 202.34 feet to a point in said Fawn Trail at lands now or formerly of Charnita, Inc.; thence by said lands, North 7 degrees 10 minutes East, 117.34 feet to Lot NO. 25; thence by said lot, North 88 degrees 26 minutes 40 seconds East, 202.34 feet to a point in the center of said Spring Trail; thence in said Spring Trail South 7 degrees 10 minutes West, 117.34 feet to the place of beginning.

HAVING THEREON ERECTED A DWELLING KNOWN AS 38 Spring Trail, Fairfield, PA 17320.

BEING THE SAME PREMISES WHICH Susan E. Liverette, a/k/a Susan E. Smith, by her Deed dated June 19, 1992 and recorded in Adams County Recorder of Deeds Office on June, 23, 1992 in Deed Book 632, page 5, granted and conveyed unto Larry E. Toms, Jr. and Janet E. Carper.

SEIZED IN EXECUTION AS THE PROPERTY OF LARRY E. TOMS, JR. AND JANET E. CARPER UNDER ADAMS COUNTY JUDGMENT NO. 98-S-901.

Map & Parcel #23-75

SEIZED and taken into execution as the property of **Larry E. Toms, Jr. & Janet E. Carper** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 15, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 18, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/20, 27 & 9/3

FICTITIOUS NAME

NOTICE IS GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on July 15, 1999, pursuant to the Fictitious Name Act, setting forth that G. Ronald Albright, Bonita L. Albright, David R. Albright, and Michelle M. Albright, of 877 Oxford Road, New Oxford, PA 17350, are the only persons owning or interested in a business, the character of which is the sale of concrete related and constructions products and that the name, style and designation under which said business is and will be conducted is the HANOVER CONCRETE BUILDING SUPPLY store and the location where said business is and will be conducted is 2000 Carlisle Pike, Hanover, PA 17331.

Hanover Concrete Co., Inc.
2000 Carlisle Pike
Hanover, PA 17331

8/20

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that a business corporation known as LMC ACQUIRING, CO., has been incorporated under the provisions of the Business Corporation Law of 1988.

Barley, Snyder, Senft & Cohen, LLC
Attorneys

8/20

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, August 23, 1999, at 9:00 o'clock a.m.

TOPPER—Orphans' Court Action Number OC-59-99. The First and Final Account of Donald I. Topper and Patricia A. Hewitt, Co-Executors of the Estate of Gertrude E. Topper, deceased, late of Hamiltonban Township, Adams County, Pennsylvania.

MARTIN—Orphans' Court Action Number OC-64-94. The Second and Final Account of Robert N. Martin, Jr., Executor of the Last Will and Testament of Hoye B. Martin a/k/a Hoy B. Martin, deceased, late of Liberty Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

8/13, 20

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

IN RE:
JESSICA MAE JEFFIRIES
No.
NAME CHANGE

CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on the 29th day of July, 1999, a Petition for Change of Name of Jessica Mae Jeffiries to Jessica Mae Stevens was filed in the Court of Common Pleas of Adams County, Pennsylvania. The Court has fixed the 25th day of October, 1999, at 9:00 a.m. in Court Room No. 1 or 2, of the Adams County Court House as the time and place for hearing the 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.

Joseph C. Korsak, Esq.
Attorney for Petitioner

8/20, 27 & 9/3

Adams County Legal Journal

Vol. 41

August 27, 1999

No. 13, pp. 77-80

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-318 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, October 1, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate on the easterly right of way line of Kinneman Road in the Borough of Abbottstown, Adams County, Pennsylvania known and numbered as Lot No. 34 on a final plan of Abbotts Manor Phase I recorded in the office of the Recorder of Deeds in and for Adams County, PA in Subdivision Plan Book 69, page 95, more fully bounded and described as follows, to wit:

BEGINNING at a point on the easterly right of way line of Kinneman Road at a corner of Lot No. 35 on said plan; thence extending along the said right of way line North 1 degree 23 minutes 20 seconds East 85 feet to a point at a corner of Lot No. 33 on said plan; thence extending along the said Lot No. 33 South 88 degrees 36 minutes 40 seconds East 120 feet to point; thence South 1 degree 23 minutes 20 seconds West 85 feet to a point at a corner of Lot No. 35 on said plan; thence extending along the said Lot No. 35 North 88 degrees 36 minutes 40 seconds West 120 feet to the point the place of beginning.

CONTAINING 10,200 Sq. feet.

HAVING THEREON ERECTED A DWELLING KNOWN AS 76 Kinneman Road, Abbottstown, PA 17301.

BEING THE SAME PREMISES WHICH Garland Construction, Inc. a Pennsylvania Corporation, by their Deed dated August 29, 1997 and recorded in Adams County Recorder of Deeds Office on October 1, 1997 in Deed Book 1449, page 125, granted and conveyed unto Barbara A. Collins.

SEIZED IN EXECUTION AS THE PROPERTY OF BARBARA A. COLLINS UNDER ADAMS COUNTY JUDGMENT NO. 99-S-318.

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
August 3, 1999.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a

schedule of distribution will be filed by the Sheriff in his office on October 25, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/27, 9/3 & 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-346 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, October 1, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two certain tracts of land situated, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1: (LOT NO. 93)

BEGINNING at a point in the center of Deep Hollow Drive at Lot No. 92; thence by said lot, South 21 degrees 19 minutes West, 200 feet to Lot No. 100; thence by said lot, North 68 degrees 41 minutes West, 100 feet to Lot No. 94; thence by said lot, North 21 degrees 19 minutes East, 200 feet to a point in the center of said Deep Hollow Drive; thence in said Deep Hollow Drive, South 68 degrees 41 minutes East, 100 feet to the place of BEGINNING.

TOGETHER WITH a right of way and subject to the reservations and restrictions referred to in Deed Book 371 at Page 1048.

TRACT NO. 2: (LOT NO. 94)

BEGINNING at a point in the center of Deep Hollow Drive at Lot No. 91; thence by said lot, South 21 degrees 19 minutes West, 200 feet to Lot No. 99; thence by said lot, North 68 degrees 41 minutes West, 100 feet to Lot No. 95; thence by said lot, North 21 degrees 19 minutes East, 200 feet to a point in the center of said Deep Hollow Drive; thence in said Deep Hollow Drive, South 68 degrees 41 minutes East, 100 feet to the place of BEGINNING.

TOGETHER WITH a right of way and subject to the reservations and restrictions referred to in Deed Book 329 at Page 661.

SEIZED and taken into execution as the property of **Robert G. Sprenkle & Pamela M. Sprenkle** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
August 5, 1999.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 25, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/27, 9/3 & 10

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 PA C.S.A. 311, that an application for registration of a fictitious name was filed on July 21, 1999 with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the conducting of a business under the fictitious name of 3A ENTERPRISE, INC. with its principal office or place of business at 387 Heritage Drive, Gettysburg, PA 17325. The names and addresses of all persons owning or interested in said business are: Jayanti Patel, 387 Heritage Drive, Gettysburg, PA 17325; and Hemant Patel, 1443 Canole Wycke Drive, Middletown, PA 17057.

Alan Kim Patrono, Esq.
Attorney at Law
30 W. Middle Street
Suite 1
Gettysburg, PA 17325

8/27

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-239 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, September 17, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described two (2) tracts of land situate in Reading Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

TRACT NO. 1: BEGINNING at a post of lands now or formerly of Michael Rebert; thence South two (2) degrees East, two hundred thirty-one (231) feet to a point at the Big Conewago Creek; thence South sixty-eight (68) degrees West, one hundred ninety-eight (198) feet to a point at lands now or formerly of William Hildebrand; thence along the same, North eighteen (18) degrees West, two hundred seventy-two and twenty-five hundredths (272.25) feet to a post at lands now or formerly of William Brough; thence along the same North seventy-nine (79) degrees East, one hundred seven and twenty five hundredths (107.25) feet to a stone in a public road and lands now or formerly of C.M. Spangler; thence along, property now or formerly of C.M. Spangler, North eighty-three (83) degrees, thirty (30) minutes East, one hundred fifty-six and seventy-five hundredths (156.75) feet to a point, the place of BEGINNING. CONTAINING one (1) acre and seventy (70) perches, more or less.

TRACT NO. 2: BEGINNING at the center of a public road and intersection of another public road at lands now or formerly of East Berlin Borough and now or formerly of Arthur F. Peiffer; thence through said public road and along lands now or formerly of Arthur F. Peiffer, South Twenty (20) degrees thirty (30) minutes East, one hundred twenty-two and twenty-five hundredths (122.25) feet to a point; thence by land now or formerly of Arthur F. Peiffer, North sixty-four (64) degrees thirty (30) minutes East, twenty-seven (27) feet to a point; thence South five (5) degrees thirty (30) minutes East, forty-three and two-tenths (43.2) feet to a point; thence by land now or formerly of East Berlin Borough, North fifty-eight (58) degrees twenty-five (25) minutes West, one hundred six and ten hundredths (106.10) feet to a point beyond the public road; thence along land now or formerly

of East Berlin Borough and in said public road North ten (10) degrees East, one hundred thirteen and eighty hundredths (113.80) feet to the place of BEGINNING. CONTAINING thirteen hundredths (0.013) acres.

THIS DESCRIPTION taken from a draft of survey made by George M. Wildasin, Professional Engineer, on July 17, 1954.

BEING THE SAME PREMISES which Daniel E. Kauffman by Melissa J. Crawford, his attorney in fact, single man, by his Deed dated May 7, 1997 and recorded in the Office of the Recorder of Deeds in and for Adams County on May 7, 1997, in Record Book 1371, Page 309, granted and conveyed unto Gerald D. Gay, Jr. and Robin L. Gay, two of the Defendants herein.

SEIZED and taken into execution as the property of **Gerald D. Gay Jr. & Robin L. Gay** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 7, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 11, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/13, 20, 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-326 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, September 24, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

The Boro. of Gettysburg, Adams Cty., Com'wth. of PA HET a dwg. k/a 803 Highland Ave., Gettysburg, 17325. Block & Lot 14-14.

SEIZED and taken into execution as the property of **Linda C. Gregg** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 22, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 18, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/20, 27 & 9/3

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
CIVIL
NO. 99-S-683

In RE: Dakota Lynn Kirby
To be known as:
Dakota Lynn Davies

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that on August 2 and 10, 1999, the Petition of Heather Lynn Davies was filed in the above-named Court, requesting an Order to change the name of Dakota Lynn Kirby to Dakota Lynn Davies.

The Court has fixed the day of October 25, 1999, at 9:00 A.M., in a Courtroom to be designated of the Adams County Courthouse, Gettysburg, Pennsylvania as the time and place for the hearing on said Petition, when and where all interested parties may appear and show cause, if any, why the request of the Petitioner should not be granted.

By the Court,
Oscar F. Spicer
President Judge

8/27

COMMONWEALTH VS. REILLY

1. Local authorities may enact ordinances dealing with vehicles as permitted by the Vehicle code. 75 Pa. C.S.A. §101 et seq.

2. The location of the word "or" in Section 3353 separates two scenarios in which local authorities are permitted to "prohibit, limit or restrict stopping, standing or parking of vehicles on any highway". These two scenarios are when *either* "engineering and traffic studies indicate that stopping, standing or parking would constitute a safety hazard" or "the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic." 75 Pa. C.S.A. §3353(d).

In the Court of Common Pleas of Adams County, Pennsylvania,
Criminal. No. CC-370-98, CC-371-98, CC-372-98. COMMON-
WEALTH VS. JOSEPH REILLY.

Roy A. Keefer, Esq., for Plaintiff

Michael A. Koranda, Esq., for Defendants

OPINION

Bigham, J., July 24, 1998.

Defendant was cited for parking violations under Section 405 of Chapter 15 of the Code of Ordinances of Oxford Township. He was found guilty by District Justice Zepp and proceeded to file a summary appeal to this Court. Defendant orally raised a Motion to Dismiss and on June 8, 1998, this Court dismissed the motion in part. However, Defendant's argument that Section 405 of Chapter 15 of the Code of Ordinances of Oxford Township is invalid because no traffic or engineering study was done prior to its enactment was taken under advisement. This issue is now before the Court for disposition.

STATEMENTS OF FACTS

A hearing was held on June 8, 1998, at which time the parties agreed that the facts as they related to citation number A2169955-4 would control the outcome of the case. Officer Mike Trostel testified as to the citation in question. The Officer stated that he observed a tractor trailer, with a gross vehicle weight in excess of 12,000 pounds, parked on East Locust Lane, Oxford Township, Adams County, Pennsylvania. The tractor was registered to Tess Kaelin Trucking and was parked across from Defendant's residence. Officer Trostel testified that he observed Defendant operating the vehicle on various occasions.

LEGAL DISCUSSION

Section 405 of Chapter 15 of the Code of Ordinances of Oxford Township reads as follows:

1. It shall be unlawful for any person to park, or to remain parked, on any of the following streets, or parts of streets, any large truck, bus, or motor home:

<u>Street</u>	<u>Between</u>
...	
East Locust Lane	Entire Length
....	

2. For the purposes of this ordinance, a large truck shall be defined as any vehicle or combination vehicle with a registered gross vehicle weight in excess of 12,000 lbs.

....

Code of Ordinances of Oxford Township ch. 15, § 405 (1996).

Local authorities may enact ordinances dealing with vehicles as permitted by the Vehicle Code. 75 Pa.C.S.A. § 101, *et seq.* Part V of the Vehicle Code deals with administration and enforcement. Section 6109, in particular, sets forth the powers of local authorities as follows:

- (a) **Enumeration of police powers.** – The provisions of this title shall not be deemed to prevent the department on State-designated highways and local authorities on streets or highways within their physical boundaries from the reasonable exercise of their police powers. The following are presumed to be reasonable exercises of police power:
 - (1) Regulating or prohibiting stopping, standing, or parking.
 - ...
 - (23) Adopting such other traffic regulations as are specifically authorized by this title.
- (b) **Action by local authorities.** – Action taken by local authorities under this section shall be:
 - (1) by ordinance of the local governing body;
 - or
 - (2) by a commission or public official authorized to act on specified matters.
 - ...
- (e) **Engineering and traffic investigation required.** – Action by local authorities under this section shall be taken only after completing an engineering and traffic investigation *when and in such manner as required by regulations promulgated by the department.*

...

75 Pa.C.S.A. § 6109 (emphasis added).

The Department has promulgated regulations on engineering and traffic investigations in Title 67, Chapter 201 of the Pennsylvania Code. Section 201.21, which deals with regulating stopping, standing and parking, reads as follows:

(d) *Prohibition of kinds and classes.* When parking is permitted, nothing precludes the local authorities or the Department from prohibiting certain kinds and classes of vehicles from parking for safety, capacity or environmental purposes. The prohibitions shall be indicated by official signs.

67 Pa. Code § 201.21(d) (1977).

Together, these sections clearly allow local authorities to regulate parking within their boundaries without the necessity of an engineering and traffic investigation. However, these sections deal with stopping, standing, and parking of vehicles in a general sense. It is Section 3353 of the Vehicle Code that applies to the case at hand because it specifically addresses restricting parking “on any highway.”¹ 75 Pa.C.S.A. § 3353(d).

Section 3353(d) of the Vehicle Code permits action by local authorities on stopping, standing, or parking of a vehicle on any highway when one of two requirements is met. 75 Pa.C.S.A. § 3353. Section 3353(d) reads as follows:

(d) **Restrictions by appropriate authorities.** – The department on State-designated highways and local authorities on any highway within their boundaries may by erection of official traffic-control devices prohibit, limit or restrict stopping, standing or parking of vehicles *on any highway* where engineering and traffic studies indicate that stopping, standing or parking would constitute a safety hazard **or** where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic.

75 Pa.C.S.A. § 3353(d) (emphasis added).

Defendant argues that this section requires an engineering and traffic study in order to alter any traffic restriction. This Court does not agree. A careful reading of this section shows that an engineering and traffic study need not be done in every situation. The location of the word “or” in Section 3353 separates two scenarios in which local

¹ Highway is defined in the Vehicle Code as “[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.” 75 Pa.C.S.A. § 102. This definition would include the street at issue in the case at hand.

authorities are permitted to “prohibit, limit or restrict stopping, standing or parking of vehicles on any highway.” 75 Pa.C.S.A. § 3353(d). These two scenarios are when *either* “engineering and traffic studies indicate that stopping, standing or parking would constitute a safety hazard” *or* “the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic.” 75 Pa.C.S.A. § 3353(d). Thus, Oxford Township was not required to conduct an engineering and traffic study in order to enact the ordinance in question as long as the Township determined that the parking of trucks with a gross vehicle weight over 12,000 pounds would “unduly interfere with the free movement of traffic.” 75 Pa.C.S.A. § 3353(d). No evidence was presented on the Township’s reasons for enacting the ordinance. However, the motion presently before the Court must be denied because Defendant’s argument that an engineering and traffic study was required before enacting the ordinance in question is without merit.

Thus, the attached Order is issued.

ORDER

AND NOW, this 24th day of July 1998, Defendant’s Motion to Dismiss is hereby denied.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF RACHAEL W. BARLEY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Robert H. Heldt, 31 Twin Lakes Drive, Gettysburg, PA 17325

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

ESTATE OF RICHARD ALLISON FOLKENROTH, a/k/a RICHARD A. FOLKENROTH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Betty L. Weikert, c/o Donald L. Kornfield, 17 North Church Street, Waynesboro, PA 17268

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

ESTATE OF EDWARD N. STINE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: PNC Bank, N.A., P.O. Box 308, Camp Hill, PA 17001-0308

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

SECOND PUBLICATION

ESTATE OF RUTH E. BENDER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executrices: Lisbeth R. Keefer, 2540 Baltimore Pike, Gettysburg, PA 17325; Corinne D. Golden, 27 South Seasons Drive, Dillsburg, PA 17019

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

ESTATE OF MARY G. DENNIS a/k/a, MARY M. DENNIS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executors: Larry Dennis, 455 Rake Factory Road, Biglerville, PA 17307; Richard Dennis, 5345 Orchard Road, Fayetteville, PA 17222

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

ESTATE OF JAMES F. RILEY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: John F. Riley, 2529 Emmitsburg Road, Gettysburg, PA 17325; Betty V. Harner, 950 Ridge Road, Gettysburg, PA 17325

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

ESTATE OF MILDRED K. SHINDLEDECKER, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executor: Clyde Eugene Kepner, 1225 Brickcrafters Road, New Oxford, PA 17350

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

ESTATE OF ISABELLE MARY TUCKEY, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Harold F. Tuckey, Box 194, 165 Fohl St., Arendtsville, PA 17303

Attorney: Stephen F. Tuckey, Esq., 562 Race St., 3rd Floor, Harrisburg, PA 17104

ESTATE OF HILDA ETOILE ZEIGLER, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executrix: Betty Tuckey, 165 Fohl St., Box 194, Arendtsville, PA 17303

Attorney: Stephen F. Tuckey, Esq., 562 Race St., 3rd Floor, Harrisburg, PA 17104

THIRD PUBLICATION

ESTATE OF THOMAS W. CLINE a/k/a TIM CLINE, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Co-Executors: Clarence E. Asbury and Wayne M. Pecht, c/o Keefer Wood Allen & Rahal, LLP, 415 Fallowfield Road, Suite 102, Camp Hill, PA 17011-4906

Attorney: Wayne M. Pecht, Esq., Keefer Wood Allen & Rahal, LLP, 415 Fallowfield Road, Suite 102, Camp Hill, PA 17011-4906

ESTATE OF EMMA S. DARON, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executors: Robert C. Daron, 1794 Coon Road, Aspers, PA 17304; Shirley Daron, 1794 Coon Road, Aspers, PA 17304; Carole Neal, 6593 Carlisle Pike, East Berlin, PA 17316

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

ESTATE OF RODNEY L. KAISER, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Administrators, c.t.a.: Tina M. Warren, 150 Timber Lane, Hanover, PA 17331; Troy J. Kaiser, 85 Cottage Lane, New Oxford, PA 17350

Attorney: Daniel M. Frey, Attorney, Daniel M. Frey & Associates, a division of Barley, Snyder, Senft & Cohen, LLC, 14 Center Square, Hanover, PA 17331

ESTATE OF ROBERT T. LITTLE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Shirley Kuhn, 6 Trudi Court, Hanover, PA 17331

Attorney: James T. Yingst, Esq., 515 Carlisle Street, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-901 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, September 24, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in the Borough of Carroll Valley, formerly Liberty Township, Adams County, Pennsylvania, being known as Lot No. 24, Section A, "Charnita Inc.," bounded and described as follows:

BEGINNING at a point in the center of the intersection of Fawn Trail with Spring Trail; thence in said Fawn Trail, South 88 degrees 26 minutes 40 seconds West, 202.34 feet to a point in said Fawn Trail at lands now or formerly of Charnita, Inc.; thence by said lands, North 7 degrees 10 minutes East, 117.34 feet to Lot NO. 25; thence by said lot, North 88 degrees 26 minutes 40 seconds East, 202.34 feet to a point in the center of said Spring Trail; thence in said Spring Trail South 7 degrees 10 minutes West, 117.34 feet to the place of beginning.

HAVING THEREON ERECTED A DWELLING KNOWN AS 38 Spring Trail, Fairfield, PA 17320.

BEING THE SAME PREMISES WHICH Susan E. Liverette, a/k/a Susan E. Smith, by her Deed dated June 19, 1992 and recorded in Adams County Recorder of Deeds Office on June, 23, 1992 in Deed Book 632, page 5, granted and conveyed unto Larry E. Toms, Jr. and Janet E. Carper.

SEIZED IN EXECUTION AS THE PROPERTY OF LARRY E. TOMS, JR. AND JANET E. CARPER UNDER ADAMS COUNTY JUDGMENT NO. 98-S-901.

Map & Parcel #23-75

SEIZED and taken into execution as the property of **Larry E. Toms, Jr. & Janet E. Carper** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
July 15, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 18, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/20, 27 & 9/3

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

IN RE:
JESSICA MAE JEFFRIES
No.
NAME CHANGE

CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on the 29th day of July, 1999, a Petition for Change of Name of Jessica Mae Jeffries to Jessica Mae Stevens was filed in the Court of Common Pleas of Adams County, Pennsylvania. The Court has fixed the 25th day of October, 1999, at 9:00 a.m. in Court Room No. 1 or 2, of the Adams County Court House as the time and place for hearing the 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.

Joseph C. Korsak, Esq.
Attorney for Petitioner

8/20, 27 & 9/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-988 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, October 1, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, being more particularly bounded and described as Lot No. 963-1 on a plan of lots of LAKE HERITAGE SUBDIVISION recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Miscellaneous Book 4 at Page 778, and SUBJECT to all legal highways, easements, rights-of-way and restrictions of record.

BEING THE SAME TRACT OF LAND which M. Jane Gantz, widow, by deed dated March 18, 1996, and recorded March 18, 1996, in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book Volume 1160, Page 134, granted and conveyed unto Darrell Lee Schaffner and Tina Denise Schaffner, husband and wife.

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

Raymond W. Newman
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 25, 1999, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10

days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/27, 9/3 & 10

NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Thursday, September 9, 1999, at 9:00 o'clock a.m.

FAVORITE—Orphans' Court Action Number OC-77-99. The First and Final Account of Adams County National Bank, Executor of the Estate of Margaret Alverta Favorite, deceased, late of Oxford Township, Adams County, Pennsylvania, including the Attorney-in-Fact Account of the Adams County National Bank.

BAUMGARTNER—Orphans' Court Action Number OC-77-99. The First and Final Account of Charles M. Sanders, Executor of the Estate of George K. Baumgartner, deceased, late of Oxford Township, Adams County, Pennsylvania.

STAUFFER—Orphans' Court Action Number OC-139-98. The First and Final Account of Joan C. Kump, Executrix of the Estate of John M. Stauffer, deceased, late of Straban Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

8/27 & 9/3

FICTITIOUS NAME

NOTICE IS HEREBY GIVEN that on July 16, 1999, a certificate was filed under the Fictitious Names Act in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that LARRY E. KEHR, PO Box 2306, School Street, Glenville, PA 17329 and WAYNE A. FORNEY, RD#1., Box 160, Abbottstown, PA 17301 are the only persons owning a business, which will be conducted under the name AIM RITE ARCHERY and the location where said business is and will be located is 20 Lincoln Way East, New Oxford, PA 17350.

Donald W. Dorr
Buchen, Wise & Dorr
Solicitor

8/27