

Adams County Legal Journal

Vol. 48

February 2, 2007

No. 37, pp. 238-246

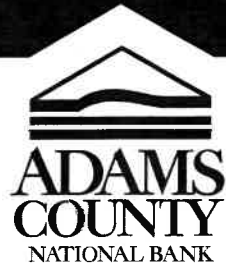
IN THIS ISSUE

COMMONWEALTH VS. SMITH

This opinion continued from last issue (1/26/2007)

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

Celebrating 150 years!
1857-2007



www.acnb.com

Equal Housing Lender. Equal Opportunity Lender. Member FDIC.

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1156 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point in a public driveway at other lands of the within Grantors; thence along said last mentioned lands South fifty-four (54) degrees West, eight hundred seventy (870) feet to a point at lands now or formerly of Verna B. Lillich; thence along said last mentioned lands South forty-eight (48) degrees fifteen (15) minutes East, one hundred ninety-one (191) feet to a poplar tree and lands formerly of Roy Laughman; thence along said last mentioned lands North fifty-four (54) degrees, fifteen (15) minutes East, eight hundred forty-eight (848) feet to an iron pin on the Southern side of the public driveway first above mentioned; thence North fifty-two (52) degrees, fifteen (15) minutes West, one hundred ninety-one (191) feet to an iron pin on the Northern part of said public driveway at the point and place of BEGINNING. CONTAINING three (3) acres 116.47 square perches as per survey of Curvin A. Wentz, Registered Surveyor, bearing date of March 8, 1966.

IT BEING the same tract of land which Steven E. Hardy, Sr. and Ruth R. Hardy, his wife, by their deed dated the October 11, 2001, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 2440 at Page 220, granted and conveyed unto Steven E. Hardy, Sr., grantor herein.

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Catherine H. Lefevre, a single person, by Deed from Steven E. Hardy, Sr., a single person, dated 12/01/2004, recorded 12/09/2004, in Deed Book 3799, page 141.

Premises being: 950-B Green Springs Road, Hanover, PA 17331

Tax Parcel No. 04-L11-0121A-000

SEIZED and taken into execution as the property of **Catherine H. Lefevre a/k/a Catherine Lefevre** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/19, 26 & 2/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1190 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a corner at a post of lands now or formerly of Mrs. Amanda Sterner and Jefferson Avenue; thence with said Jefferson Avenue South 17 degrees, 15 minutes West 60 feet to stake at other lands now or formerly of Mary C. Diller, Et Vir; thence with said lands North 70 degrees 55 minutes West 130 feet to a stake at other lands now or formerly of said Mary C. Diller, Et Vir, thence with said lands North 17 degrees 15 minutes East 60 feet to a stake at

lands now or formerly of Mrs. Amanda Sterner, aforesaid; thence with said lands South 70 degrees 55 minutes East 130 feet to a post at Jefferson Avenue, aforementioned, and the place of BEGINNING.

BEING the same premises which Franklin Credit Management Corporation, by its deed dated January 7, 2005, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 3842, Page 99, granted and conveyed unto Mark H. Miler and Anna C. Miler, husband and wife, the grantors herein.

Being Known As: 230 Jefferson Street, (Conewago Township), Hanover, PA 17331

Property ID No.: 9-38

TITLE TO SAID PREMISES IS VESTED IN Thomas C. Shorb, Jr., sole owner by deed from Mark H. Miler and Anna C. Miler, husband and wife dated 7/15/05 recorded 7/20/05 in Deed Book 4049 Page 229.

SEIZED and taken into execution as the property of **Thomas C. Shorb, Jr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/19, 26 & 2/2

COMMONWEALTH VS. SMITH

Continued from last issue (1/26/2007)

Due Process Violation

Smith next seeks to exclude the opinion testimony of Trooper Pushart. Since Trooper Pushart's opinion is based on his inspection of the vehicles involved in the accident, Smith argues that admission of this testimony is improper since the Commonwealth failed to preserve the vehicles thereby effectively denying the defense the opportunity to conduct its own independent examination. Based on *Commonwealth v. Deans*, 610 A.2d 32 (Pa. 1992), Smith claims that the Commonwealth's failure to preserve the vehicles for the defense's inspection violates his due process rights.

In *Deans*, the Supreme Court prohibited prosecution for forgery of an instant lottery ticket where the prosecution was not commenced until approximately three years after the alleged criminal act. During this time period, the actual ticket was lost by the Commonwealth. The Supreme Court held that the Commonwealth's failure to preserve the evidence under these circumstances violated the defendant's fundamental right to due process. See *Deans*, 610 A.2d at 32. For the reasons set forth below, I find *Deans* inapplicable and deny Smith's motion.

Historically, a criminal defendant was required to show that the police demonstrated bad faith in failing to preserve potentially useful evidence before the court was able to find a denial of due process of law. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). Four years later in *Deans*, the Pennsylvania Supreme Court changed this principal by deleting the requirement of bad faith where the Commonwealth intended to rely on trial evidence unavailable to the defense because the Commonwealth "lost" the evidence. It is important to note that *Deans* is limited, by the language in the opinion, to the specific facts before the Pennsylvania Supreme Court. Those facts are substantially different than the record before this Court.

Perhaps the greatest distinction between the current circumstances and the facts in *Deans* is that the record lacks any information indicating that the evidence in question was ever taken into the custody or placed under the exclusive control of Commonwealth agents. The record reveals that immediately following the accident, the vehicles were towed to Dick's Towing. While it is true that a search warrant was served on Dick's Towing on April 12, 2005, there is nothing in the record to indicate that the Troopers removed the vehicles from

that location. In fact, the parties have stipulated that Smith's vehicle was released to him on April 21, 2005. Similarly, the decedent's vehicle was released to the decedent's family. Thus, not only did the Commonwealth not lose the evidence, but Smith's vehicle was returned to him and apparently "lost" by him.⁵

Importantly, unlike *Deans*, there is substantial indication in the record that Smith was aware that he was the subject of a criminal investigation. On the morning following the accident, the Pennsylvania State Police obtained a second sample of Smith's blood directly from him. He was obviously aware that he was involved in a serious accident prior to the time the State Police sought a sample of his blood. It is also apparent from the record that Smith became aware shortly after the accident that the operator of the other vehicle had died. As indicated, a search warrant was served on April 12, 2005, and the receipt/inventory indicates that it was left with the vehicle following the search. Although charges were not actually filed until July 25, 2005, the record abundantly supports the conclusion that Smith had reason to suspect that he was the subject of a criminal investigation.

Smith argues that although he was aware of the general nature of the potential charges against him, he was unaware that evidence derived from his vehicle would be relied upon by the Commonwealth in the prosecution. In this regard, he suggests that the Commonwealth did not advise him at the time the vehicle was returned to him that evidence derived from the vehicle would lead to an opinion relating to Smith's speed at the time of the accident. In essence, Smith is attempting to expand *Deans* to require the Commonwealth, as a condition for the Commonwealth's use of evidence, to advise a defendant of every possible theory for which evidence may be used when such evidence is returned to a defendant. I reject Smith's request to extend *Deans* in such an unreasonable fashion.

Moreover, even if we presume that the Commonwealth had some part in losing the evidence, the "[l]oss of evidence need not preclude expert reports or testimony in every case." *Deans*, 610 A.2d at 35. Where the opinions derived from the evidence are more subjective or more likely to be inconsistent or contradictory, the need to present

⁵It appears that Smith's vehicle was classified as "totaled" by the insurance carrier and is no longer available for inspection.

the evidence is greater. *Id.* On the other hand, highly reliable information decreases the need for the production of the actual evidence. *Id.* In the present case, the Commonwealth relied on its inspection of the vehicles to determine crush depth measurements. Based upon the crush depth measurements from the vehicles, Trooper Pushart rendered an opinion as to the vehicles' speeds prior to impact. In this regard, photographs of the vehicles were taken and preserved and are available to Smith. There is no implication that there is any intricacy to the measures that cannot be reproduced from the photographs. Accordingly, I do not find any basis to bring the current situation within the confines of *Deans*.

Suppression of Smith's Medical Records

Following the accident, the Pennsylvania State Police sought the assistance of the Maryland State Police in obtaining a search warrant for Smith's blood and medical records at the Washington County Hospital. Although Smith concedes that the search warrant is sufficient to obtain the blood alcohol test results, he argues that the Affidavit of Probable Cause is lacking in regard to justifying a search of Smith's entire medical records. Additionally, Smith claims that portions of the medical records are protected by privilege.

"It is a fundamental rule of law that a warrant must name or describe with particularity the property to be seized and the person and place to be searched. *Commonwealth v. Eichelberger*, 508 A.2d 589, 592 (Pa.Super. 1986). "In addition, the search may not go beyond the scope of the warrant." *Id.* In assessing "the validity of the description contained in a warrant, a court must initially determine [from the Affidavit supporting the search warrant] for what items probable cause existed." *Commonwealth v. Grossman*, 555 A.2d 896, 900 (Pa. 1989). A court must then measure the sufficiency of the description "against those items for which there was probable cause." *Id.* If there is an "unreasonable discrepancy between the items for which there is probable cause and the description in the warrant, [the proper remedy is suppression]." *Id.*

Under this standard, the Affidavit supporting the warrant at issue is sufficient to justify a search of Smith's medical records. The facts in the Affidavit are quite thorough in establishing the following: 1) at the time of the accident, Smith was the operator of a vehicle involved in a fatal accident; 2) the accident was the result of Smith's improper

operation of a motor vehicle; and 3) Smith was under the influence of alcohol making him incapable of driving safely. Certainly, the warrant properly requests Smith's medical records as they relate to Smith's drug and/or alcohol content. Smith, through counsel, conceded the same at argument.

Despite the concession, Smith argues that a request for **all** medical records is overly broad. The fallacy with this argument, however, is that evidence affecting the admissibility of the blood alcohol content at trial may rely, to some extent, upon all treatment rendered to Smith as evidenced by his entire medical record prior to the drawing of the sample. As briefly discussed above, blood alcohol test results derived from a sample of blood taken after two hours from the time an individual last drove may still be admissible if certain criteria are met. Included in these criteria is the Commonwealth's ability to show good cause why a chemical test could not be performed within two hours and its ability to establish that the individual did not imbibe any alcohol or utilize controlled substances prior to obtaining the sample. 75 Pa.C.S.A. § 3802. Medical records may be necessary to establish both elements of the exception.⁶

Ironically, Smith has earlier challenged the existence of a prima facie case on the basis of the Commonwealth's alleged failure to establish that the blood was drawn within two hours or otherwise meets the criteria for the statutory exception. It is precisely his argument in the habeas corpus motion that highlights the necessity for the search of all Smith's medical records. Absent medical records concerning Smith's treatment prior to the blood draw, the Commonwealth could not effectively address the applicability of the exception. Therefore, probable cause justified the breadth of this search warrant.

Nevertheless, Smith argues that the evidence in medical records is privileged. Although Smith does not specifically identify the privilege that he attempts to assert, his claim of privilege is presumably based upon the patient/physician relationship.

⁶The Affidavit of Probable Cause in support of the search warrant describes the two separate draws of Smith's blood: the medical draw by Washington County Hospital at 0055 hours on April 8, 2005, and the draw by the Pennsylvania State Police at 0230 hours on April 8, 2005. The exception under the Vehicle Code to the two-hour rule is clearly at issue in regard to the second draw by the Pennsylvania State Police.

Pennsylvania has codified the physician/patient privilege in 42 Pa.C.S.A. § 5929. The very language of that section, however, makes it inapplicable to criminal proceedings. *Commonwealth v. Moore*, 548 A.2d 1250, 1258 (Pa.Super. 1988) app. granted, 557 A.2d 722, reversed on other grounds 584 A.2d 936. Although the statute is intended to protect the privacy interests of patients, our courts and legislature have determined that “this privacy interest must yield to the proper administration of justice.” *Commonwealth v. Ellis*, 608 A.2d 1090, 1093 (Pa.Super. 1992). Since Smith has failed to cite any other applicable privilege, his motion to suppress is denied.

Challenge to Search Warrant for Smith’s Vehicle

Smith challenges all evidence seized from the State Police’s inspection of his vehicle on April 12, 2005. He argues that the Affidavit supporting the warrant is insufficient to establish probable cause.

“In determining whether [a] warrant is supported by probable cause, the [court] may not consider any evidence outside the four corners of the affidavit.” *Commonwealth v. Sharp*, 683 A.2d 1219, 1223 (Pa.Super. 1996). The legal principles applicable to a review of the sufficiency of a probable cause affidavit are well settled and were recently enunciated in *Commonwealth v. Dean*:

“Before an issuing authority may issue a constitutionally valid search warrant, he or she must be furnished with information sufficient to persuade a reasonable person that probable cause exists to conduct a search. The standard for evaluating the search warrant is a ‘totality of the circumstances’ test as set forth in *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), and adopted in *Commonwealth v. Gray*, 509 Pa. 476, 503 A.2d 921 (1985). A magistrate is to make a ‘practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘voracity’ and ‘basis for knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of crime will be found in a particular place.’ The information offered to establish probable cause must be viewed in a commonsense, non-technical manner. Probable cause is based on a finding of probability, not a prima facie showing of criminal activity, and

deference is to be accorded a magistrate's finding of probable cause."

Commonwealth v. Dean, 693 A.2d 1360, 1365 (Pa.Super. 1997).

In the present case, the Commonwealth concedes that the Affidavit supporting the search warrant lacks probable cause. Indeed, the Affidavit appears to be a summary of information without any reference to the source of the information. The Affidavit inexplicably lacks any information that would allow the magisterial district judge to ascertain the reliability of the information contained in the Affidavit. For instance, the Affidavit lacks such basic information as whether the applicant had previously been involved in any aspect of the investigation. In light of the Commonwealth's concession in this regard, it is not necessary for the Court to further rule on this issue.⁷

Although the Commonwealth concedes the insufficiency of the warrant, they correctly point out that only those items seized as a result of the deficient warrant should be suppressed. According to the receipt/inventory that followed the search at issue, Trooper Pushart seized a speedometer assembly and the SRS unit (airbag) from Smith's vehicle. Therefore, I order that those items be suppressed and may not be used as evidence by the Commonwealth.

Smith, however, seeks also to suppress any portion of Trooper Pushart's investigative report and opinion that is based upon information obtained from the illegal search. To assist the Court in ruling on this argument, Smith has provided a copy of Trooper Pushart's investigative report.

⁷ In a recent plurality Opinion by the Pennsylvania Supreme Court in *Commonwealth v. Ruey*, Madame Justice Newman wrote an opinion wherein she stated that the exclusionary rule, pursuant to the Pennsylvania Constitution, applies only to evidence discovered as a result of a search that violates fundamental constitutional guarantee as opposed to the Pennsylvania Rules of Criminal Procedure. *Commonwealth v. Ruey*, 2006 Pa. LEXIS 64, 14 (March 6, 2006). In her Opinion she appears to make a distinction between an affidavit's absence of probable cause as compared to the mere lack of a full and complete articulation of probable cause. The Opinion stresses "the notion of probable cause [is] based on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.* at 35. (quoting *Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985)). Interestingly, the facts in *Ruey* are fairly similar to the current circumstance. The paucity of information in the current warrant, however, exceeds the generous interpretation that Madame Justice Newman's Opinion grants the *Ruey* warrant.

In his report, Trooper Pushart references five conclusions. The first three conclusions discuss the direction of the respective vehicles as well as the location on the highway where the impact occurred. In support of those conclusions, the Trooper refers to the damage to the front of the respective vehicles and the fact that a piece of Smith's front bumper was jammed under the front of Smith's vehicle. The Trooper further relies upon gouge marks in the roadway to reach his conclusions.

The final two conclusions reached by the Trooper relate to the speed of the respective vehicles. In support of the conclusions regarding speed, the Trooper's report includes his calculations. These calculations include information from a number of reference materials as well as crush depth measurements from the respective vehicles.

As a practical matter, before one may prevail on a suppression issue related to an illegal search, one must be able to show a privacy interest in the area searched. *Commonwealth v. Sell*, 470 A2d, 457, 469 (Pa. 1983).

An expectation of privacy is present when the individual, by his conduct, 'exhibits an actual (subjective) expectation of privacy' and that the subjective expectation 'is one that society is prepared to recognize as reasonable.' The constitutional legitimacy of an expectation of privacy is not dependent on the subjective intent of the individual asserting the right but on whether the expectation is reasonable in light of all the surrounding circumstances.

Commonwealth v. Brundidge, 620 A.2d 1115, 1118 (Pa. 1993) (internal citations omitted). Pennsylvania law makes it clear that there is no legally cognizable expectation of privacy in the exterior of a vehicle in a public location. *Commonwealth v. Mangini*, 386 A.2d 482, 487 (Pa. 1978) (the mere viewing of the exterior of a vehicle in a public location is not a "search" because there is no unconstitutional intrusion into an area where there exists a reasonable expectation of privacy); see generally *Commonwealth v. Rogers*, 849 A.2d 1185 (Pa. 2004) (warrantless canine sniff of exterior of vehicle upheld). Pennsylvania precedent in this area is consistent with prior interpretations of the Federal Constitution. See generally *Cardwell v. Lewis*, 417 U.S. 583, (1974) (warrantless search of the exterior of a vehicle is permissible).

In the present case, Trooper Pushart observed the exterior of a vehicle that was housed at a location where it had been towed following a vehicle accident. In the interest of public safety, automobiles are frequently taken to such locations following accidents. "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). Therefore, there is no issue as to the right of Trooper Pushart to be at the area where the vehicle was located.⁸

Additionally, the exterior of motor vehicles has little capacity for escaping public scrutiny. A car travels "public thoroughfares where both its occupants and its contents are in plain view." *Cardwell*, 417 U.S. at 590. This general exposure is magnified by the fact that Smith's vehicle was immobilized blocking a public highway as a result of a two-vehicle accident. To suggest that investigating officers could not observe the exterior of a vehicle at the accident scene is ludicrous. Arguing that Trooper Pushart could not conduct the same exterior observations of the vehicle following the towing of the vehicle to a location where he had legal access is equally unreasonable. I fail to comprehend what expectation of privacy was infringed. Stated simply, the invasion of privacy, if any, is "abstract and theoretical." *Id.* at 593.⁹

For the foregoing reasons, all evidence obtained by the Commonwealth as a result of the interior search of Smith's vehicle is suppressed. The Commonwealth may not introduce this evidence nor express expert opinion which relies upon such evidence as foundation. On the other hand, any evidence obtained by the Commonwealth as a result of an inspection of the exterior of Smith's vehicle is admissible.

⁸Moreover, since the charges against Smith are not possessory crimes, Smith has neither a proprietary nor a possessory interest in the location where the vehicles were housed and, therefore, lacks standing to challenge the search of the exterior of the vehicles on this basis. See *Commonwealth v. Ferretti*, 577 A.2d 1375, 1380 (Pa.Super. 1990).

⁹I do not contend that the warrantless search of the interior of a vehicle is permissible; in the present case I have suppressed all items seized from the interior of the vehicle. Accordingly, this Opinion is limited to the expectation of privacy one has to the exterior of a vehicle towed to a storage area following its immobilization on a public highway due to a motor vehicle accident.

ORDER

AND NOW, this 28th day of April, 2006, the Defendant's Omnibus Pre-trial Motions are denied for the reasons set forth in the attached Opinion with the exception that any evidence obtained by the Commonwealth as a result of the search of the interior of the Defendant's vehicle is suppressed and may not be used by the Commonwealth for purposes of any expert opinion offered in the Commonwealth's case-in-chief.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1294 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground situate in Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the right-of-way Legislative Route A-6810 and Hanover Street (referred to on the draft of survey; thence along the right-of-way of such Legislative Route 01004 and Hanover Road) at corner of Lot No. 12 on such draft of survey; thence along the right-of-way of such Legislative Route North 36 degrees 00 minutes 00 seconds West 84.39 feet to a point at corner of Lot No. 10; thence along Lot No. 10 North 54 degrees 00 minutes 00 seconds East, 110.00 feet to appoint on the rear line of Lot No. 63; thence along portion of Lot Nos. 63 and 645, South 36 degrees 00 minutes 00 seconds East, 84.39 feet to a point at corner of Lot No. 12; thence along Lot No. 12 South 54 degrees 00 minutes 00 seconds West, 110.00 feet to a point, the place of BEGINNING. CONTAINING 9,282.900 square feet or 0.213 acres.

The above description was taken from a draft of survey of Oxford Estates prepared by George M. Wildasin, P.E. dated December 4, 1979, subdivided by William E. Sacra, Jr., on the same date, a plat of which is recorded in Adams County Plat Book 34 at page 58, the above lot being designated at Lot No. 11 thereon.

Tax parcel no: 8-86

Premises Being: 384 Hanover Street, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Michael B. Sutherland & Cynthia A. Sutherland** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/19, 26 & 2/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1296 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that improved tract of land situate, lying and being in Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a concrete nail in the center line of Legislative Route 01002, Barlow-Greenmount Road, at the Southwest corner of land formerly of Leroy Bowers, now lands of Paul P. Frazer and Juanita C. Frazer; thence in the center of said Legislative Route 01002, Barlow-Greenmount Road, North 80 degrees 58 minutes West, 100 feet to a concrete nail; thence by lands formerly of Hylde Eyer and Betty J. Dickson, now lands of Roger W. Houser and Katherine E. Houser, and running through an iron pipe set back along the line 18.58 feet from the beginning of this course, North 20 degrees 52 minutes East, 515.75 feet to an iron pipe; thence by lands of Viebe Viersma and Ann Viersma, South 77 degrees 34 minutes East, 100 feet to an iron pin on line of land formerly of Leroy Bowers, now lands of Paul P. Frazer and Juanita C. Frazer; thence along lands of Paul P. Frazer and Juanita C. Frazer, South 20 degrees 59 minutes West, 510.13 feet to a concrete nail at the center of Legislative Route 01002, Barlow-Greenmount Road, the point and place of BEGINNING. CONTAINING 1.1519 Acres.

The above description was taken from a draft of survey of the property of Hylde Eyer, located in Cumberland Township, Adams County, Pennsylvania, surveyed under the supervision of J.R. Hershey, R.E., dated November 13, 1972.

Parcel Identification No: 09-F16-0040A-000

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Victor D. Burkett, Jr., a single man, by Deed from Ven Ralf Patterson, Executor of the Estate of Jack R. Beard a/k/a Jack Robert Beard, late, dated

04/25/1996, recorded 06/03/1996, in Deed Book 1204, page 129.

Premises: 95 Barlow-Greenmount Road, Gettysburg, PA 17325-0000, Cumberland Township, Adams County, Pennsylvania

SEIZED and taken into execution as the property of **Victor D. Burkett a/k/a Victor D. Burkett, Jr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN that SMB WARRANTY CO., INC., a Pennsylvania corporation with its last registered office located at 6020 York Road, New Oxford, PA 17350, is dissolving and winding up its affairs under the Pennsylvania Business Corporation Law of 1988, as amended.

Wendy Weikal-Beauchat, Esq.
Attorney for the Corporation
Beauchat & Beauchat, LLC
63 West High Street
Gettysburg, PA 17325

2/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1284 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of land situated in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1247 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Plat Book 1, page 7, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING the same premises which Mary Lou Strobeck, now by marriage Mary Lou Strobeck-Couche, joined by her husband Charles F. Couche, by their deed dated October 31, 2005, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Record Book 4187, Page 16, granted and conveyed to Jay Forbes, joined now by his wife, Pauline Forbes, the Grantors herein.

Parcel Identification No: 24-003-0013-000

TITLE TO SAID PREMISES IS VESTED IN Jerene L. Stump, by Deed from Jay Forbes, joined by his wife and Pauline Forbes, dated 11/01/2005, recorded 11/23/2005, in Deed Book 4218, page 252.

Premises being: 23 Fisher Drive, East Berlin, PA 17316

SEIZED and taken into execution as the property of **Jerene L. Stump** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-755 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of William C. Little and Theresa E. Little of, in and to the following described property:

ALL the following described real estate situated in the Borough of Biglerville, County of Adams, Pennsylvania. Having erected thereon a dwelling being known and numbered as 65 Fifth Street, Biglerville, PA 17307. DBV 3165, Page 257, and Parcel #05, 004-0104.

SEIZED and taken into execution as the property of **William C. Little & Theresa E. Little** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

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, February 12, 2007, at 9:00 a.m.

BROWN—Orphans' Court Action Number OC-174-06. The First and Final Account of Calvin D. Brown, Executor of the Estate of Paul G. Brown, deceased, late of Mount Joy Township, Adams County, Pennsylvania.

BOYD—Orphans' Court Action Number OC-64-06. The First and Final Account of Cathy D. Boyd, Executrix of the Estate of Doris L. Boyd, deceased, late of Mount Joy Township, Adams County, Pennsylvania.

SALAZAR—Orphans' Court Action Number OC-53-04. The First and Final Account of Judith Koper Morris, Esq., Administratrix of the Estate of Ivonne M. Salazar, deceased, late of Oxford Township, Adams County, Pennsylvania.

RIFE—Orphans' Court Action Number OC-1-07. The First and Final Account of Sherry Dennis and Phyllis Kitzmiller, Co-Executrices of the Estate of Mary L. Rife, deceased, late of Franklin Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

2/2 & 9

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF BERNICE ELIZABETH BLOCHER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Jean Elizabeth Bowers, 519 Meade Avenue, Hanover, PA 17331

Attorney: D.J. Hart, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF MABEL M. GUNNET, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325; Donna Kaye Ness, 1460 Surrey Run Court, York, PA 17408; Neil Gunnet, 945 Stoverstown Road, York, PA 17408

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF IRA L. PLANK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Anna M. Shafer, 27 Bonneau Heights Road, Gettysburg, PA 17325; Lawrence J. Shriner, 1791 Table Rock Road, Gettysburg, PA 17325

Attorney: Kathleen M. Kotula, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HENRY J. ZESHONSKY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Paul J. Zeshonsky, 55 White Oak Trail, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF MARGARET A. LEREW a/k/a MARGARET ANNA LEREW, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Debra A. King, Jacquelyn L. Messinger & John C. Lerew, c/o Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

Attorney: Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF BERNADETTE M. STULTZ, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Administrators: Garry L. Stultz, 30 E. Hanover Street, Gettysburg, PA 17325; Gloria J. Rinehart, 5 Johns Avenue, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF MILDRED E. HAYBERGER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Ronald H. Collins, 323 Commerce Street, Waynesboro, PA 17268

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

ESTATE OF MILDRED W. LEADER a/k/a MILDRED WALTER LEADER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: Robert C. Boehner, 369 E. York Street, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1275 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land lying and situate in the Carroll Valley Borough, (formerly in Liberty Township) Adams County, Pennsylvania, being Lot No. 67 in Section R1, more particularly bounded and described as follows:

BEGINNING at a point in the center of Fruitwood Trail (formerly McGlaughlin Trail) at Lot No. 66; thence by said lot South 02 degrees 37 minutes 20 seconds West, 225 feet to other lands now or formerly of Charnita, Inc.; thence by said lands North 87 degrees 22 minutes 40 seconds West, 100 feet to Lot No. 68; thence by said lot North 02 degrees 37 minutes 20 seconds East, 225 feet to a point in the center of said Fruitwood Trail (formerly McGlaughlin Trail); thence in said Fruitwood Trail (formerly McGlaughlin Trail), South 87 degrees 22 minutes 40 seconds East, 100 feet to the place of BEGINNING.

BEING more commonly known as: 73 Fruitwood Trail, Fairfield, PA 17320

Tax Parcel No.: (43) 40-52

SEIZED and taken into execution as the property of **Judith L. Guasch a/k/a Judy L. Guasch & Robert L. Guasch** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Pennsylvania's "Fictitious Names Act", 54 Pa. C.S.A. §§ 301 et seq., of the filing of an Application for Registration of Fictitious Name under the said Act. The fictitious name is WASHINGTON'S RESTAURANT. The address of the principal office or place of business to be carried on under or through the fictitious name is 2350 Harney Road, Littlestown, Adams County, Pennsylvania 17340. The name and address of the entity that is a party to the registration is Our Two Daughters, L.L.C., of 2350 Harney Road, Littlestown, Adams County, Pennsylvania 17340. An application for registration under the Fictitious Names Act of the said fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on January 8, 2007.

Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325
Attorneys for Applicant

2/2

Adams County Legal Journal

Vol. 48

February 9, 2007

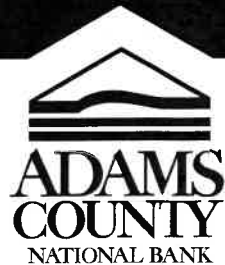
No. 38, pp. 247-251

IN THIS ISSUE


WORLEY ET AL VS. RICKERT ET AL

Serving individuals, businesses and organizations in our shared communities for 150 years is definitely something to celebrate.

Celebrating 150 years!
1857-2007



www.acnb.com

 Equal Housing Lender. Equal Opportunity Lender. Member FDIC.

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1296 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that improved tract of land situate, lying and being in Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a concrete nail in the center line of Legislative Route 01002, Barlow-Greenmount Road, at the Southwest corner of land formerly of Leroy Bowers, now lands of Paul P. Frazer and Juanita C. Frazer; thence in the center of said Legislative Route 01002, Barlow-Greenmount Road, North 80 degrees 58 minutes West, 100 feet to a concrete nail; thence by lands formerly of Hylda Eyler and Betty J. Dickson, now lands of Roger W. Houser and Katherine E. Houser, and running through an iron pipe set back along the line 18.58 feet from the beginning of this course, North 20 degrees 52 minutes East, 515.75 feet to an iron pipe; thence by lands of Viebe Viersma and Ann Viersma, South 77 degrees 34 minutes East, 100 feet to an iron pin on line of land formerly of Leroy Bowers, now lands of Paul P. Frazer and Juanita C. Frazer; thence along lands of Paul P. Frazer and Juanita C. Frazer, South 20 degrees 59 minutes West, 510.13 feet to a concrete nail at the center of Legislative Route 01002, Barlow-Greenmount Road, the point and place of BEGINNING. CONTAINING 1.1519 Acres.

The above description was taken from a draft of survey of the property of Hylda Eyler, located in Cumberland Township, Adams County, Pennsylvania, surveyed under the supervision of J.R. Hershey, R.E., dated November 13, 1972.

Parcel Identification No: 09-F16-0040A-000

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Victor D. Burkett, Jr., a single man, by Deed from Ven Ralf Patterson, Executor of the Estate of Jack R. Beard

a/k/a Jack Robert Beard, late, dated 04/25/1996, recorded 06/03/1996, in Deed Book 1204, page 129.

Premises: 95 Barlow-Greenmount Road, Gettysburg, PA 17325-0000, Cumberland Township, Adams County, Pennsylvania

SEIZED and taken into execution as the property of **Victor D. Burkett a/k/a Victor D. Burkett, Jr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1284 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of land situated in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1247 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Plat Book 1, page 7, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING the same premises which Mary Lou Strobeck, now by marriage Mary Lou Strobeck-Couche, joined by her

husband Charles F. Couche, by their deed dated October 31, 2005, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Record Book 4187, Page 16, granted and conveyed to Jay Forbes, joined now by his wife, Pauline Forbes, the Grantors herein.

Parcel Identification No: 24-003-0013-000

TITLE TO SAID PREMISES IS VESTED IN Jerene L. Stump, by Deed from Jay Forbes, joined by his wife and Pauline Forbes, dated 11/01/2005, recorded 11/23/2005, in Deed Book 4218, page 252.

Premises being: 23 Fisher Drive, East Berlin, PA 17316

SEIZED and taken into execution as the property of **Jerene L. Stump** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation will be filed with the Department of State of the Commonwealth of Pennsylvania for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Business Corporation Law of 1988. The name of the corporation is ROSENBACH AND ASSOCIATES, INC.

2/9

WORLEY ET AL VS. RICKERT ET AL

1. The Township Board, in action on a land development application, is acting in a quasi-judicial capacity and not as a party opposing the application. Noting that the term "deemed approval" means that the municipality has ruled in favor of the applicant, the Commonwealth Court concluded that a municipality cannot appeal from its own decision approving the application.

2. An essential element of standing is the requirement that a person be adversely affected by the challenged action.

3. In order for an interest to have substance, there must be a perceivable adverse impact on the interest other than the common interest of all citizens in having others comply with the law.

4. It is well settled that a municipal officer should disqualify himself from any proceeding in which he has a personal or pecuniary interest that is immediate or direct.

5. No man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.

6. In the context of zoning matters, the failure to appear before a tribunal and make an objection has been found to constitute a waiver of the right to file an appeal from a tribunal's decision.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. CIVIL ACTION NO. 05-S-1329. DANIEL T.
WORLEY, INDIVIDUALLY, LAWRENCE DOST, INDIVIDUAL-
LY, AND LATIMORE TOWNSHIP VS. TERRY T. RICKERT AND
ROBERT L. JUNKINS.

Ron Turo, Esq., for Plaintiffs

Charles M. Suhr, Esq., for Defendants

George, J., May 3, 2006

OPINION

The appeal of Daniel T. Worley, Lawrence Dost (collectively "Supervisors") and Latimore Township ("Township") is currently before the Court. The Supervisors and the Township appeal from the "deemed approval" claimed by property owners, Terry T. Rickert and Robert L. Junkins (collectively "Rickert"). The history of this matter is more thoroughly set forth in the Opinion dated February 27, 2006, and will not be substantially repeated herein. Two issues are addressed in this appeal: 1) whether the Township and the Supervisors have standing to file an appeal, and 2) whether a land development plan is "deemed approved" when a written decision in compliance with Section 508(2) of the Municipality Planning Code, 53 P.S. § 10508(2) is not provided to the landowner within the time

period required by Section 508(1) of the Municipality Planning Code, 53 P.S. § 10508(1). For the reasons set forth below, the appeal in this matter is denied.

Standing

The resolution of the standing issue is controlled by the Pennsylvania Commonwealth Court's recent decision in *Bd. of Supervisors of East Rockhill Twp. v. Mager*, 855 A.2d 917 (Pa.Cmwlt. 2004), petition for allowance of appeal denied, 863 A.2d 1149 (Pa. 2004). In *Bd. of Supervisors of East Rockhill Twp.*, the Commonwealth Court considered the issue currently of a board of supervisors' standing when appealing a "deemed approval". In resolving the issue, the Commonwealth Court noted that the Board, in acting on an application, "is acting in a quasi-judicial capacity and not as a party opposing the application." *Id.* at 920. Noting that the term "deemed approval" means that the municipality has ruled in favor of the applicant, the Commonwealth Court concluded that a "municipality cannot appeal from its own decision approving the application." *Id.*

Granting credence to the Supervisors' claim of standing would essentially abrogate the Commonwealth Court's decision in *Bd. of Supervisors of East Rockhill Twp.*, cited above. Specifically, when the Supervisors failed to properly issue a decision while acting in a quasi-judicial role, they essentially approved the land use application. To now permit those same Supervisors to avoid the ramifications of their actions, or lack of action, by permitting them to appeal from their own decision approving the application defies logic. The Township's feeble argument, which ignores the controlling precedent of *Bd. of Supervisors of East Rockhill Twp.*, is rejected.

Perhaps in recognition of the Township's lack of standing, two of the individual Supervisors have joined in this appeal in their own names. This effort to avoid the authority of *Bd. of Supervisors of East Rockhill Twp.* is equally frivolous.

In their brief, the Supervisors argue, without supporting authority, that "[s]tanding is rooted in harm accruing to a party." Supervisors' Brief, page 2. They go on to suggest that when a "deemed approval" is granted it "leads to fundamental changes to the landscape of" the Township. Supervisors' Brief, page 2. They argue that because of promises that they made during their election, their "reputations and

professional political lives are harmed when development is deemed approved despite their voting record against it.” These arguments are unconvincing.

The Commonwealth Court recognized long ago that an essential element of standing “is the requirement that a person be adversely affected by the challenged action.” *Mosside Assocs., Ltd. v. Zoning Hearing Bd. of the Municipality of Monroeville*, 454 A.2d 199, 203 (Pa.Cmwlth. 1982). The Commonwealth Court further clarified that “[i]n order for an interest to have substance, there must be a perceivable adverse impact on the interest other than the common interest of all citizens in having others comply with the law.” *Id.* Thus, the Supervisors’ claim of standing, based upon “fundamental changes to the landscape of Latimore Township”, is the type of postulation rejected by the Commonwealth Court in *Mosside Assocs., Ltd.*

Similarly, the Supervisors’ claim of harm to their reputations and professional lives lacks merit for several reasons. First, there is no factual support in the record that the deemed approval will lead to fundamental changes in the landscape; that either Worley or Dost ran on a promise to control the conversion of farmland to commercial and residential property; or that any political harm has befallen either Mr. Worley or Mr. Dost. Thus, there is no factual basis establishing standing for their appeal. Since the burden of proof of establishing standing rests with the party seeking standing, the Supervisors’ claim for standing must fail. *Hydropress Environmental Services, Inc. v. Twp. of Upper Mount Bethel County of Northampton*, 836 A.2d 912, 921 (Pa. 2003).

Even if we presume evidentiary support for their claims of standing, the claims nevertheless lack merit. The fallacy of their argument is highlighted by their claim that their political lives are in jeopardy. In essence, they claim that they are harmed as supervisors because of their lack of action as supervisors which resulted in the “deemed approval.” Their claim for standing as individuals is, therefore, directly related to their actions as Supervisors. This is precisely the standing which was rejected by the Commonwealth Court in *Bd. of Supervisors of East Rockhill Twp.*

What is most disturbing about the Supervisors’ attempt to acquire standing is the fundamental unfairness of the Supervisors sitting in a quasi-judicial role and, thereafter, personally taking an adversarial

role in the matter upon which they ruled. It is well settled that “a municipal officer should disqualify himself from any proceeding in which he has a personal or pecuniary interest that is immediate or direct.” *Amerikohl Mining Inc.*, 597 A.2d at 222 (citing *Danwell Corp. v. Zoning Hearing Bd. of Plymouth Twp.*, 540 A.2d 588 (Pa.CmwltH 1988)). The Commonwealth Court has previously held that the recusal of a member of a quasi-judicial board is warranted when that member participates in the proceedings as an advocate or witness. *Thornbury Twp. Bd. of Supervisors v. W.D.D., Inc.*, 546 A.2d 744, 747 (Pa.CmwltH. 1988). The Supervisors blatantly ignore this precedent, and attempt to acquire standing by claiming that they are personally harmed by the “deemed approval.” They argue that their political lives are in jeopardy because they ran for office on a promise to control commercial and residential development. They imply that their role as quasi-judicial officers in ruling upon land development plans is controlled by an implicit promise to vote against development. In essence, they argue that because they are pre-disposed to vote against the application at issue, they are harmed and, therefore, have standing.

In *Prin v. The Council of Municipality of Monroeville*, the Commonwealth Court clearly held that a member of a quasi-judicial board must be disqualified from ruling on a matter after publicly expressing a pre-disposition against the project. *Prin v. The Council of Municipality of Monroeville*, 645 A.2d 450, 1452 (Pa.CmwltH. 1994). “A fair trial in a fair tribunal is a basic requirement of due process.” See *In re Schlesinger Appeal*, 172 A.2d 835, 840 (Pa. 1961). Furthermore, “no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.” *Id.* at 840-41 (Pa. 1961). These fundamental notions of fairness do not faze the Supervisors. Fortunately, due process forbids such a stance. Due process, and the spirit of our appellate decisions, requires that an individual who acts in a quasi-judicial role cannot subsequently seek standing on appeal claiming that he has been personally harmed. While the Supervisors’ management of planned development issues in Latimore Township may ultimately result in political ramifications, that issue is not a proper consideration for this Court.

Incidentally, the record does indicate that neither of the Supervisors entered an appearance as a party at the hearing to

express objection to the land development plan. In the context of zoning matters, the failure to appear before a tribunal and make an objection has been found to constitute a waiver of the right to file an appeal from a tribunal's decision. See *Leoni v. Whitpain Twp. Zoning Hearing Bd.*, 709 A.2d 999, 1001 (Pa.Cmwlt. 1998).

Since neither the Township nor the Supervisors have valid standing, the appeal is dismissed. Nevertheless, since the merits of the appeal are equally frivolous, I will briefly discuss them below.

**Township's Failure to Comply with the Statutory
Requirements of the Municipality Planning Code**

The Municipality Planning Code is unequivocal in requiring that a decision on a preliminary or final subdivision or land development plan be "in writing and shall be communicated to the applicant...not later than 15 days following the decision." 53 P.S. § 10508(1). It is undisputed that the Township failed to comply with this requirement. This Court has previously cited case law in this area in its February 27, 2006, Opinion and has recognized the instruction of our appellate courts, which states that a municipality has an absolute duty to comply with this statutory authority. See *Worley, et al v. Rickert, et al* (05-S-1329). Neither the Township nor the Supervisors have presented any cogent reason for deviating from the controlling authority cited in that Opinion. Accordingly, for the reasons set forth in the Opinion of February 27, 2006, the appeal is denied.

ORDER OF COURT

AND NOW, this 3rd day of May, 2006, the appeal in this matter is denied.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF FLORENCE P. REX, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Sandra P. Speck, 288 Thomas Dr., Gettysburg, PA 17325

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF MADELINE A. RITTER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

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

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

ESTATE OF LOIS S. SHEAFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Anne Stayer Wise, 2522 Memphis Ave., El Paso, TX 79930

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

ESTATE OF PEARL H. STERNER, DEC'D

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

Co-Executors: Sally J. Leas and Ann M. Sterner, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

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

SECOND PUBLICATION

ESTATE OF BERNICE ELIZABETH BLOCHER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Jean Elizabeth Bowers, 519 Meade Avenue, Hanover, PA 17331

Attorney: D.J. Hart, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF MABEL M. GUNNET, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325; Donna Kaye Ness, 1460 Surrey Run Court, York, PA 17408; Neil Gunnet, 945 Stoverstown Road, York, PA 17408

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF IRA L. PLANK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Anna M. Shafer, 27 Bonneau Heights Road, Gettysburg, PA 17325; Lawrence J. Shriner, 1791 Table Rock Road, Gettysburg, PA 17325

Attorney: Kathleen M. Kotula, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HENRY J. ZESHONSKY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Paul J. Zeshonsky, 55 White Oak Trail, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF MARGARET A. LEREW a/k/a MARGARET ANNA LEREV, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Debra A. King, Jacquelyn L. Messinger & John C. Lerew, c/o Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

Attorney: Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF BERNADETTE M. STULTZ, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Administrators: Garry L. Stultz, 30 E. Hanover Street, Gettysburg, PA 17325; Gloria J. Rinehart, 5 Johns Avenue, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Nonprofit Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177).

The name of the corporation is: GETTYSBURG SEMINARY ENDOWMENT FOUNDATION.

The Corporation is incorporated under the Nonprofit Corporation Law of 1988 of the Commonwealth of Pennsylvania for the purpose of conducting exclusively charitable, scientific and educational activities within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any successor United States Internal Revenue law).

Richard S. Caputo, Esq.
Stevens & Lee
111 N. Sixth Street
Reading, PA 19601

2/9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1275 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land lying and situate in the Carroll Valley Borough, (formerly in Liberty Township) Adams County, Pennsylvania, being Lot No. 67 in Section R1, more particularly bounded and described as follows:

BEGINNING at a point in the center of Fruitwood Trail (formerly McGlaughlin Trail) at Lot No. 66; thence by said lot South 02 degrees 37 minutes 20 seconds West, 225 feet to other lands now or formerly of Charnita, Inc.; thence by said lands North 87 degrees 22 minutes 40 seconds West, 100 feet to Lot No. 68; thence by said lot North 02 degrees 37 minutes 20 seconds East, 225 feet to a point in the center of said Fruitwood Trail (formerly McGlaughlin Trail); thence in said Fruitwood Trail (formerly McGlaughlin Trail), South 87 degrees 22 minutes 40 seconds East, 100 feet to the place of BEGINNING.

BEING more commonly known as: 73 Fruitwood Trail, Fairfield, PA 17320

Tax Parcel No.: (43) 40-52

SEIZED and taken into execution as the property of **Judith L. Guasch a/k/a Judy L. Guasch & Robert L. Guasch** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

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, February 12, 2007, at 9:00 a.m.

BROWN—Orphans' Court Action Number OC-174-06. The First and Final Account of Calvin D. Brown, Executor of the Estate of Paul G. Brown, deceased, late of Mount Joy Township, Adams County, Pennsylvania.

BOYD—Orphans' Court Action Number OC-64-06. The First and Final Account of Cathy D. Boyd, Executrix of the Estate of Doris L. Boyd, deceased, late of Mount Joy Township, Adams County, Pennsylvania.

SALAZAR—Orphans' Court Action Number OC-53-04. The First and Final Account of Judith Koper Morris, Esq., Administratrix of the Estate of Ivonne M. Salazar, deceased, late of Oxford Township, Adams County, Pennsylvania.

RIFE—Orphans' Court Action Number OC-1-07. The First and Final Account of Sherry Dennis and Phyllis Kitzmiller, Co-Executrices of the Estate of Mary L. Rife, deceased, late of Franklin Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

2/2 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-755 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of William C. Little and Theresa E. Little of, in and to the following described property:

ALL the following described real estate situated in the Borough of Biglerville, County of Adams, Pennsylvania. Having erected thereon a dwelling being known and numbered as 65 Fifth Street, Biglerville, PA 17307. DBV 3165, Page 257, and Parcel #05, 004-0104.

SEIZED and taken into execution as the property of **William C. Little & Theresa E. Little** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania for MNJ ENTERPRISES, INC., formed pursuant to the provisions of the Pennsylvania Business Corporation Law of 1988.

Clifton R. Guise, Esq.
Gates, Halbruner & Hatch, P.C.
1013 Mumma Road, Suite 100
Lemoyne, PA 17043

2/9

Adams County Legal Journal

Vol. 48

February 16, 2007

No. 39, pp. 252-258

IN THIS ISSUE

COMMONWEALTH VS. STALLSMITH

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

Celebrating 150 years!
1857-2007



www.acnb.com

Equal Housing Lender. Equal Opportunity Lender. Member FDIC.

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1296 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that improved tract of land situate, lying and being in Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a concrete nail in the center line of Legislative Route 01002, Barlow-Greenmount Road, at the Southwest corner of land formerly of Leroy Bowers, now lands of Paul P. Frazer and Juanita C. Frazer; thence in the center of said Legislative Route 01002, Barlow-Greenmount Road, North 80 degrees 58 minutes West, 100 feet to a concrete nail; thence by lands formerly of Hylda Eyler and Betty J. Dickson, now lands of Roger W. Houser and Katherine E. Houser, and running through an iron pipe set back along the line 18.58 feet from the beginning of this course, North 20 degrees 52 minutes East, 515.75 feet to an iron pipe; thence by lands of Viebe Viersma and Ann Viersma, South 77 degrees 34 minutes East, 100 feet to an iron pin on line of land formerly of Leroy Bowers, now lands of Paul P. Frazer and Juanita C. Frazer; thence along lands of Paul P. Frazer and Juanita C. Frazer, South 20 degrees 59 minutes West, 510.13 feet to a concrete nail at the center of Legislative Route 01002, Barlow-Greenmount Road, the point and place of BEGINNING. CONTAINING 1.1519 Acres.

The above description was taken from a draft of survey of the property of Hylda Eyler, located in Cumberland Township, Adams County, Pennsylvania, surveyed under the supervision of J.R. Hershey, R.E., dated November 13, 1972.

Parcel Identification No: 09-F16-0040A-000

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Victor D. Burkett, Jr., a single man, by Deed from Ven Ralf Patterson, Executor of the Estate of Jack R. Beard

a/k/a Jack Robert Beard, late, dated 04/25/1996, recorded 06/03/1996, in Deed Book 1204, page 129.

Premises: 95 Barlow-Greenmount Road, Gettysburg, PA 17325-0000, Cumberland Township, Adams County, Pennsylvania

SEIZED and taken into execution as the property of **Victor D. Burkett a/k/a Victor D. Burkett, Jr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1284 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of land situated in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1247 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Plat Book 1, page 7, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING the same premises which Mary Lou Strobeck, now by marriage Mary Lou Strobeck-Couche, joined by her

husband Charles F. Couche, by their deed dated October 31, 2005, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Record Book 4187, Page 16, granted and conveyed to Jay Forbes, joined now by his wife, Pauline Forbes, the Grantors herein.

Parcel Identification No: 24-003-0013-000

TITLE TO SAID PREMISES IS VESTED IN Jerene L. Stump, by Deed from Jay Forbes, joined by his wife and Pauline Forbes, dated 11/01/2005, recorded 11/23/2005, in Deed Book 4218, page 252.

Premises being: 23 Fisher Drive, East Berlin, PA 17316

SEIZED and taken into execution as the property of **Jerene L. Stump** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

COMMONWEALTH VS. STALLSMITH

1. After producing a valid driver's license and vehicle registration, the driver must be allowed to proceed without further delay unless the officer has reasonable suspicion of illegal transactions in drugs or of any other serious crime.

2. A citizen may legally consent to a search of their vehicle where an objective review of the totality of the circumstances shows that the initial detention ended and the citizen was free to drive away.

3. Where the purpose of an initial, valid traffic stop has ended and a reasonable person would have believed that he was free to leave, the law characterizes a subsequent round of questioning by the police officer as a mere encounter. On the other hand, where the purpose of an initial traffic stop has ended and a reasonable person would not have believed that he was free to leave, the law characterizes a subsequent round of questioning by the police as an investigative detention.

4. Pennsylvania law is clear that lawful consent to search which is wholly unrelated to the purpose of the initial detention cannot survive constitutional scrutiny absent reasonable suspicion.

5. The fundamental inquiry is an objective one, namely, whether the facts available to the officer at the moment of the intrusion warrant a man of reasonable caution in the belief that the action taken was appropriate. Excessive nervousness, in and of itself, may not constitute a lawful basis for investigative detention.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. CRIMINAL ACTION NO. CP-01-CR-1073-
2005. COMMONWEALTH OF PENNSYLVANIA VS. GREGORY
LEE STALLSMITH.

Brian R. Sinnett, Esq., Assistant District Attorney, for Commonwealth
Robert J. Chester, Esq., for Defendant

George, J., May 5, 2006

OPINION

The Defendant, Gregory Lee Stallsmith ("Stallsmith"), seeks to suppress a glass smoking device discovered by the police as a result of a search of his vehicle on September 2, 2005. The stipulated record presented to the Court establishes that on September 2, 2005, Trooper Matthew Nickey of the Pennsylvania State Police clocked Stallsmith driving his truck in the southbound lane on U.S. Route 15 at a speed of eighty-one miles per hour in a posted sixty-five mile-per-hour zone. Trooper Nickey conducted a vehicle stop. During the stop, Trooper Nickey approached Stallsmith who remained seated in his vehicle. Before Trooper Nickey could ask Stallsmith for his documents, Stallsmith indicated that there was a firearm in his vehicle. Thereafter, Trooper Nickey requested not only documentation related to his license and vehicle registration, but also Stallsmith's permit

to carry a firearm. All documents were provided to Trooper Nickey without difficulty. After writing a citation for speeding, Trooper Nickey returned Stallsmith's license and other documents. While doing so, Trooper Nickey indicated that due to the holiday weekend, enforcement was increased. A brief discussion followed during which Stallsmith expressed concern over the number of points on his operator's license. Trooper Nickey answered questions by Stallsmith and continued to explain the citation and procedures regarding responding to the magisterial district judge. Following this discussion, Trooper Nickey indicated, "All righty, drive safe, slow it down, okay?"¹ Trooper Nickey then turned to walk away, took a brief step and immediately turned around and inquired, "Uh, one more thing, I know you have the gun, do you have anything else illegal in the car at all?" After Stallsmith answered "no" to this question, Trooper Nickey asked if he could search the car. Stallsmith consented. During the search of the vehicle, Trooper Nickey discovered a glass pipe inside the center console. The pipe was sent to the Pennsylvania State Police Laboratories and tested positive for marijuana residue. Stallsmith currently seeks to suppress arguing that Trooper Nickey conducted an investigative detention without a reasonable basis for doing so.

Clearly, "a police officer may stop a motor vehicle if he or she reasonably believes that a provision of the Motor Vehicle Code has been violated." *Commonwealth v. DeWitt*, 608 A.2d 1030, 1032 (Pa. 1992). Incident to such a stop, the officer may check the vehicle's registration and driver's license and issue a citation. *Commonwealth v. Talley*, 634 A.2d 640, 643 (Pa.Super. 1993). However, after producing a valid driver's license and vehicle registration, the driver must be allowed to proceed without further delay unless the officer has "reasonable suspicion of illegal transactions in drugs or of any other serious crime." *Commonwealth v. Lopez*, 609 A.2d 177, 182 (Pa.Super. 1992) (quoting *Florida v. Royer*, 460 U.S. 491 (1983)). Thus, "subsequent or concurrent detentions for questioning [during or following a traffic stop] are justified only when the officer has 'reasonable suspicion'" of criminal activity. *Commonwealth v. Strickler*, 757 A.2d 884, 896, n18 (Pa. 2000) (quoting *United States*

¹In determining the factual background in this matter, the Court had the luxury of an audio and video CD of the traffic stop and subsequent interaction between the Trooper and Stallsmith as recorded on the video camera in the Trooper's vehicle.

v. *Jones*, 44 F.3d 860, 872 (10th Cir. 1995). Neither the Federal nor the Pennsylvania Constitution can “sustain a consent search conducted in the context of, but which is wholly unrelated in its scope to, an ongoing detention, since there can be no constitutionally-valid detention independently or following a traffic or similar stop absent reasonable suspicion.” *Id.*

The rule in *Lopez* became clouded by the Superior Court’s opinion in *Commonwealth v. Hoak*, 700 A.2d 1263 (Pa.Super. 1997), affirmed by an evenly divided court, 734 A.2d 1275 (Pa. 1999). In *Hoak*, the Superior Court found that once the original lawful detention ends, subsequent interaction between the police officer and the citizen involved in the traffic stop constitutes nothing more than a “mere encounter.” *Hoak*, 700 A.2d at 1266-68. Recognizing that not all personal interaction between the police and citizens involve seizures, the *Hoak* Court held that a citizen may legally consent to a search of their vehicle where an objective review of the totality of the circumstances shows that the initial detention ended and the citizen was free to drive away. *Id.* at 1268. This decision reaffirmed the long-standing body of law that there is no constitutional prohibition against the police questioning an individual in a public place. “So long as a reasonable person would feel free ‘to disregard the police and go about his [or her] business’, the encounter is consensual and no reasonable suspicion is required.” *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (citation omitted). “Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.” *Bostick*, 501 U.S. at 434.

In an effort to further define the parameters of the *Hoak* decision, the Pennsylvania Supreme Court issued simultaneous opinions in *Commonwealth v. Freeman*, 757 A.2d 903 (Pa. 2000) and *Commonwealth v. Strickler*, 757 A.2d 884 (Pa. 2000). In these cases, our Supreme Court recognized that the transition between detention and a consensual exchange can be so seamless that the untrained eye may not notice that it has occurred. Although a valid traffic stop may have occurred, the crucial question is “[w]hen the validity of that stop has ceased.” *Commonwealth v. Dales*, 820 A.2d 807, 813 (Pa.Super. 2003). *Strickler* and *Freeman* instructed that where the purpose of an initial, valid traffic stop has ended and a reasonable person would have believed that he was free to leave, the law

characterizes a subsequent round of questioning by the police officer as a mere encounter.” *Dales*, 820 A.2d 807, 813 (Pa.Super. 2003) (quoting *Commonwealth v. By*, 812 A.2d 1250, 1255-56 (Pa.Super. 2002)). Under these circumstances, “[s]ince the citizen is free to leave, he is not detained, and the police are free to ask questions appropriate to a mere encounter, including a request for permission to search the vehicle.” *Id.* On the other hand, “where the purpose of an initial traffic stop has ended and a reasonable person would not have believed that he was free to leave, the law characterizes a subsequent round of questioning by the police as an investigative detention....” *Id.* Under this scenario, a police officer may not seek a consensual search absent “either reasonable suspicion to support the investigative detention or probable cause to support the arrest.” *Id.* In examining consensual searches obtained during traffic stops, *Strickler* and *Freeman* have cultivated “a two-prong assessment: first, the constitutional validity of the citizen/police encounter giving rise to the consent and, second, the voluntariness of said consent.” *Commonwealth v. By*, 812 A.2d 1250, 1254 (Pa.Super. 2002).

The critical issues before the Court, therefore, is whether the encounter between Trooper Nickey and Stallsmith was a mere encounter or a detention. Unfortunately, there is no “litmus-paper test for distinguishing a consensual encounter from a seizure....” *Id.* at 1255.

The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation. Moreover, what constitutes a restraint on liberty prompting a person to conclude that he is not free to ‘leave’ will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs.

Id. (citing *Royer*, 460 U.S. at 506). Essential to the analysis of this issue is whether under the circumstances, a reasonable person would feel free to leave. The Superior Court has previously recognized

Most people believe that they are validly in a police officer’s custody as long as the officer continues to interrogate them. The police officer retains the upper hand and the accouterments of authority. That the officer lacks

legal license to continue to contain them is unknown to most citizens, and a reasonable person who would not feel free to walk away as the officer continues to address him.

Commonwealth v. Zogby, 689 A.2d 280, 282 (Pa.Super. 1997). Nevertheless, our appellate courts have clearly rejected the suggestion that the subject of a valid traffic stop may never voluntarily consent to a search absent reasonable suspicion of criminal activity. See *Hoak*, cited above.

The Supreme Court, in *Freeman*, enumerated the several factors that are considered when evaluating the difference between an investigative detention and mere encounter as follows:

[T]he existence and nature of any prior seizure; whether there was a clear and expressed endpoint to any such prior detention; the character of police presence and conduct in the encounter under review (for example—the number of officers, whether they were uniformed, whether police isolated subjects, physically touched them or directed their movement, the content or manner of interrogatories or statements, and ‘excesses’ factors stressed by the United States Supreme Court); geographic, temporal and environmental elements associated with the encounter; and the presence or absence of express advice that the citizen-subject was free to decline a request for consent to search.

Freeman, 757 A.2d at 906-07 (citing *Strickler*, 757 A.2d at 889).

As indicated, Trooper Nickey’s initial detention of Stallsmith was lawful based upon the Trooper’s reasonable suspicion of a Vehicle Code violation. Trooper Nickey’s interaction with Stallsmith also suggests that Stallsmith’s consent to the search was obtained during a mere encounter. A review of the video from the cruiser indicates Trooper Nickey interacting with Stallsmith in a polite manner and without physically touching or otherwise directing Stallsmith’s movement. Discussion between him and Stallsmith was conversational and not accusatory.

On the other hand, there appears to be no clear break in the flow of the vehicle stop. Although Trooper Nickey returned Stallsmith’s license and registration, the discussion turned toward the ramifications of the citation as well as the procedures for responding to the

citation. Critically, there is no clear or expressed end point to the initial detention. Although Trooper Nickey advised Stallsmith to “drive safe, slow it down”, he continued the initial interaction by suggesting that there was “one more thing” before their interaction was concluded. In doing so, Trooper Nickey vitiated any potential endpoint to the prior detention and, in effect, prolonged the detention. As indicated above, Pennsylvania law is clear that lawful consent to search which is wholly unrelated to the purpose of the initial detention cannot survive constitutional scrutiny absent reasonable suspicion. *Strickler*, cited above.

Having found that Trooper Nickey’s request for consent to search occurred during the course of the original detention, I must now determine whether the police had reasonable suspicion to detain Stallsmith after the purpose of the initial traffic stop was achieved. In explaining the reasons for his inquiry, Trooper Nickey noted that Stallsmith “was shaky, extremely nervous, more so than the hundreds of motorists that I stop.” Preliminary hearing transcript, page 8.

In *Commonwealth v. Reppert*, the Superior Court reiterated the standard for determining whether a reasonable suspicion exists:

Although a police officer’s knowledge and length of experience weigh heavily in determining whether reasonable suspicion existed, our Courts remain mindful that the officer’s judgment is necessarily colored by his or her primary involvement in ‘the often competitive enterprise of ferreting out crime.’

Commonwealth v. Reppert, 814 A.2d 1196, 1204 (Pa.Super. 2002) (en banc) (quoting *In re D.E.M.*, 727 A.2d 570, 578 n.19 (Pa.Super. 1999)). Therefore, “the fundamental inquiry [for a review in court] is an objective one, namely, whether the facts available to the officer at the moment of the intrusion warrant a man of reasonable caution in the belief that the action taken was appropriate” *Commonwealth v. Zhahir*, 751 A.2d 1153, 1156 (2000). This inquiry will not be satisfied by an officer’s “unparticularized suspicion or hunch.” *Id.* at 1158. In applying this standard, the *Reppert* Court opined that excessive nervousness, in and of itself, may not constitute a lawful basis for investigative detention.

The *Reppert* Opinion is controlling and leads to the conclusion that the detention was not supported by reasonable suspicion.

Accordingly, evidence resulting from the search is suppressed. In reaching this conclusion, I note that I am bound by existing authority and what appears to be a trend by our appellate courts to carefully scrutinize consensual searches during vehicle stops absent a reasonable suspicion. See Generally *Commonwealth v. Johnson*, 833 A.2d 755 (Pa.Super. 2003), app. denied, 847 A.2d 1280 (Pa. 2004) (traffic stop concluded when trooper returned driving documents, issued citation, and told driver he was free to leave; but subsequent investigative detention began when trooper's questioning prohibited driver from leaving); *Commonwealth v. Jones*, 874 A.2d 108 (Pa.Super. 2005) (a second investigative detention ensued when police officer asked operator for consent to search the automobile).² Although Pennsylvania jurisprudence has not yet evolved to the extent of prohibiting consensual searches during vehicle stops absent a reasonable suspicion, it is important to be mindful that the Commonwealth has the burden of establishing the context of the police/citizen interaction and the voluntariness of the consent. Undoubtedly, the myriad of case law in this area combined with the endless variations in the facts and circumstances of vehicle stops makes it difficult for an officer to determine how to proceed. Prudence would suggest that an officer evaluate the basis for reasonable suspicion prior to seeking consent to search. Absent reasonable suspicion, law enforcement would be well-advised to clearly enunciate to the operator, through actions and words, that the operator is free to leave and not required to participate in any further interaction with the officer.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 5th day of May, 2006, the Defendant's Omnibus Pre-trial Motion to Suppress Evidence derived as a result of the search of the Defendant's vehicle is granted. The drug paraphernalia seized by the Commonwealth from the Defendant's vehicle is suppressed and may not be admitted in evidence at trial.

² It is difficult to reconcile this Superior Court Opinion with the Opinion in *Commonwealth v. Hoke*, cited above. Nevertheless, the *Jones* Opinion is indicative of our appellate court's disfavor of a request for consensual searches during traffic stops absent a reasonable suspicion.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1289 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land, situate, lying and being in Germany Township, Adams County, Pennsylvania, shown as Lot No. 8 on a final subdivision plan prepared by Adams County Surveyors dated May 26, 1976, and recorded in Adams County Plat Book 11, page 21, and more particularly described as follows:

BEGINNING at a point in the right-of-way of Pennsylvania Route 194 and the Southwest corner of Lot No. 7 as shown on said final subdivision plan; thence along Lot No. 7 South 65 degrees 05 minutes 05 seconds East, 198.58 feet to a point; thence South 19 degrees 35 minutes 05 seconds West, 125.00 feet to a point at the Eastern corner of Lot No. 9 as shown on said plan; thence along Lot No. 9 North 65 degrees 36 minutes 45 seconds West, 207.66 feet to a point located in the right-of-way of Pennsylvania Route 194; thence along and through said Pennsylvania Route 194 North 27 degrees 03 minutes 50 seconds East, 35.00 feet to a point in the right-of-way of said Pennsylvania Route 194; thence along and through the same North 22 degrees 30 minutes 07 seconds East, 91.48 feet to a point in said right-of-way, the point and place of BEGINNING. CONTAINING 25,353 square feet.

Parcel Identification No: 15-117-0138-000

TITLE TO SAID PREMISES IS VESTED IN James W. Stewart and Kimberly J. Toms, as Joint Tenants with Right of Survivorship, by Deed from Kirk Douglas Degroft, a single man and Priscilla Degroft, widow, dated 06/30/2004, recorded 07/14/2004, in Deed Book 3638, page 157.

Premises being: 1056 Frederick Pike, Littlestown, PA 17340

SEIZED and taken into execution as the property of **James W. Stewart, Jr. & Kimberly J. Toms** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 2007, and distribution will be made in accordance

with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/16, 23 & 3/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-755 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of William C. Little and Theresa E. Little, in and to the following described property:

ALL the following described real estate situated in the Borough of Biglerville, County of Adams, Pennsylvania. Having erected thereon a dwelling being known and numbered as 65 Fifth Street, Biglerville, PA 17307. DBV 3165, Page 257, and Parcel #05, 004-0104.

SEIZED and taken into execution as the property of **William C. Little & Theresa E. Little** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1275 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land lying and situate in the Carroll Valley Borough, (formerly in Liberty Township) Adams County, Pennsylvania, being Lot No. 67 in Section R1, more particularly bounded and described as follows:

BEGINNING at a point in the center of Fruitwood Trail (formerly McGlaughlin Trail) at Lot No. 66; thence by said lot South 02 degrees 37 minutes 20 seconds West, 225 feet to other lands now or formerly of Charrlita, Inc.; thence by said lands North 87 degrees 22 minutes 40 seconds West, 100 feet to Lot No. 68; thence by said lot North 02 degrees 37 minutes 20 seconds East, 225 feet to a point in the center of said Fruitwood Trail (formerly McGlaughlin Trail); thence in said Fruitwood Trail (formerly McGlaughlin Trail), South 87 degrees 22 minutes 40 seconds East, 100 feet to the place of BEGINNING.

BEING more commonly known as: 73 Fruitwood Trail, Fairfield, PA 17320

Tax Parcel No.: (43) 40-52

SEIZED and taken into execution as the property of **Judith L. Guasch a/k/a Judy L. Guasch & Robert L. Guasch** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 30, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/2, 9 & 16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1276 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot, parcel or tract of land situate in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an existing steel rod located near the West edge of Township Route T-530 (Stone Jug Road), said steel rod also being near the North edge of Township Route T-531 (Oak Hill Road); thence in said Township Route T-531 South Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West Two Hundred Sixty-One and Eleven Hundredths (261.11) feet to a steel rod; thence by land now or formerly of Harold D. Shaffer and running through a utility pole located Ten and Fifty-Eight Hundredths (10.58) feet from the beginning of this line North Seventeen (17) degrees Zero (0) minutes Fifty (50) seconds West One Hundred Seven and Fifty-Eight Hundredths (107.58) feet to a steel rod; thence by the same South Seventy-seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West Four Hundred Thirty-Six and Eight Hundredths (436.08) feet to a steel rod; thence by the same North Twenty-Six (26) degrees Thirty (30) minutes Fifty (50) seconds West One Hundred Twenty-Five and Five Hundredths (125.05) feet to a steel rod; thence by the same North Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds East One Hundred Sixteen and Sixty-Three Hundredths (116.63) feet to a steel rod; thence by the same North Twelve (12) degrees Thirty-Six (36) minutes Thirty-Five (35) seconds West One Hundred Thirty and Zero Hundredths (130.00) feet to a steel rod; thence by the same North Seventy-Seven (77) degrees Twenty-Three (23) minutes Twenty-Five (25) seconds East Two Hundred Thirty-Five and Forty-Four Hundredths (235.44) feet to a stainless steel rod; thence by the same and running through a stainless steel rod located Thirty-One and Ninety-Four Hundredths (31.94) feet from the end of this line North Forty-Six (46) degrees Twenty-Three (23) minutes Zero (0) seconds East Ninety-One and Fifteen Hundredths (91.15) feet to a railroad spike in the centerline of the aforementioned Township Route T-530; thence along the centerline of said Township Route South Fifty-Three (53) degrees Sixteen (16) minutes

Ten (10) seconds East Two Hundred Fifty-Four and Thirty-Nine Hundredths (254.39) feet to a railroad spike; thence continuing along said centerline South Fifty (50) degrees Twenty-Eight (28) minutes Twenty (20) seconds East One Hundred Twenty-Two and Ninety-Three Hundredths (122.93) feet to a railroad spike; thence in said Township Route South Forty (40) degrees Forty-Seven (47) minutes Thirty (30) seconds East One Hundred Thirty-Five and Seventy-Three Hundredths (135.73) feet to an existing steel rod; the point and place of BEGINNING.

BEING described in accordance with a subdivision plan prepared for Harold D. Shaffer by Adams County Surveyors dated November 18, 1986 and recorded in Adams County Plat Book 45, Page 79 and being known as Lot No. 2 on said subdivision plan.

BEING THE SAME PREMISES WHICH Harold D. Shaffer and Genevieve D. Shaffer by Deed dated December 30, 1986 and recorded December 31, 1986 in Deed Book 446, Page 12 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, granted and conveyed unto Mark Oliver Lemley, Grantor herein.

UNDER and subject to any and all covenants, conditions, reservations, restrictions, limitations, right-of-ways, objection, easements, agreements, etc., as they appear of record including those in Deed Book 446, Page 12.

ALSO, ALL THAT CERTAIN lot, parcel or tract of land situate in Butler Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel rod near the North edge of Township Route T-531 (Oak Hill Road) at the Southeastern corner of Lot No. 4 on the plan of lots referred to below; thence by said Lot No. 4, and running through a reference pipe located Twelve and one Tenth (12.1) feet from the beginning of this line North Eighteen (18) degrees Thirty-nine (39) minutes Ten (10) seconds West Three hundred sixty-three and fifty-four hundredths (363.54) feet to a steel rod at Lot No. 5 on the plan of lots referred to below; thence by said Lot No. 5, North Seventy-eight (78) degrees Forty-nine (49) minutes Ten (10) seconds East Two hundred eighteen and sixty-six hundredths (218.66) feet to a steel rod; thence by same, North Seventy-seven (77) degrees Twenty-three (23) minutes Twenty-five (25) seconds East One hundred forty-eight and sixty-one hundredths (148.61) feet to a steel rod at Lot No. 2 on the plan of lots referred to below; thence by said Lot No. 2, South Twelve (12) degrees Thirty-six (36) minutes Thirty-five (35) seconds East One hundred thirty and zero hundredths (130.00) feet to a steel rod; thence by the same South Seventy-

Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West One Hundred Sixteen and Sixty-Three Hundredths (116.63) feet to a steel rod; thence by same and by Lot No. 6 on the plan of lots referred to below and running through a steel rod located One hundred twenty-five and five hundredths (125.05) feet from the beginning of this line South Twenty-six (26) degrees Thirty (30) minutes Fifty (50) seconds East Two Hundred thirty-five and sixty-nine hundredths (235.69) feet to a steel rod near the North edge of Township Route T-531 (Oak Hill Road); thence along the North edge of Township Route T-531 (Oak Hill Road) South Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West Two hundred sixty-eight and ninety-three hundredths (268.93) feet to a steel rod, the place of BEGINNING.

BEING described in accordance with a subdivision plan prepared for Harold D. Shaffer by Adams County Surveyors dated November 18, 1986 and revised December 29, 1986, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 46 at page 68 and being known as Lot No. 3 on the subdivision plan referred to below.

UNDER and subject to any and all covenants, conditions, reservations, restrictions, limitations, right-of-ways, objections, easements, agreements, etc., as they appear of record including those in Record Book 456, Page 133.

BEING THE SAME PREMISES WHICH Harold D. Shaffer and Genevieve D. Shaffer by Deed dated May 4, 1987 and recorded May 6, 1987 in Deed Book 456, Page 133 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania granted and conveyed unto Mark Oliver Lemley, Grantor herein.

TITLE TO SAID PREMISES IS VESTED IN Charles J. Dunkle and Mary Dunkle, husband and wife, by Deed from Mark Oliver Lemley, single man, dated 07/25/2003, recorded 08/05/2003, in Deed Book 3230, page 315.

Premises being: 324 Stone Jug Road, Biglerville, PA 17307

SEIZED and taken into execution as the property of **Charles J. Dunkle & Mary Dunkle a/k/a Mary Christine Saunders a/k/a Mary Christine Dunkle** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

(continued on page 6)

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF LORETTA AGNES McMASTER, DEC'D

Late of the Borough of Abbotstown, Adams County, Pennsylvania

Executrix: Janet Rinehart, 4685 Holtzswamm, R.D. 1, Thomasville, PA 17364

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF E. ELIZABETH SMITH a/k/a EDNA ELIZABETH SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard I. Howes, Sr., 4807 Westfield Drive, Hampstead, MD 21074

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF DOROTHY C. WALDMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: William H. Lilley, c/o Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

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

ESTATE OF DIANE LOUISE WOLF, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Merle E. Wolf, 19 Sycamore Lane, Hanover, PA 17331

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

SECOND PUBLICATION

ESTATE OF FLORENCE P. REX, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Sandra P. Speck, 288 Thomas Dr., Gettysburg, PA 17325

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF MADELINE A. RITTER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

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

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

ESTATE OF LOIS S. SHEAFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Anne Stayer Wise, 2522 Memphis Ave., El Paso, TX 79930

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

ESTATE OF PEARL H. STERNER, DEC'D

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

Co-Executors: Sally J. Leas and Ann M. Sterner, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

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

THIRD PUBLICATION

ESTATE OF BERNICE ELIZABETH BLOCHER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Jean Elizabeth Bowers, 519 Meade Avenue, Hanover, PA 17331

Attorney: D.J. Hart, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF MABEL M. GUNNET, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325; Donna Kaye Ness, 1460 Surrey Run Court, York, PA 17408; Neil Gunnet, 945 Stoverstown Road, York, PA 17408

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF IRA L. PLANK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Anna M. Shafer, 27 Bonneau Heights Road, Gettysburg, PA 17325; Lawrence J. Shriner, 1791 Table Rock Road, Gettysburg, PA 17325

Attorney: Kathleen M. Kotula, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HENRY J. ZESHONSKY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Paul J. Zeshonsky, 55 White Oak Trail, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

(continued from page 4)

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.

2/16, 23 & 3/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1425 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain unit in the property known, named and identified in the declaration referred to below as 'South Branch Estates', located in the Township of Oxford, Adams County, Pennsylvania, which has heretofore been submitted to the provisions of the Pennsylvania Uniform condominium act, 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, PA, of a land development plan dated October 6, 1995, last revised December 14, 1995 and recorded in Book 69 Page 23 (together with all amendments and supplements thereto recorded on or before the date hereof) being all designated in such plan as Unit No. 1 as more fully bounded and described in such plan, together with a proportionate undivided interest in the Common Elements as defined in a Declaration Plan recorded in the Office of the Recorder of Deeds, in and for York County, PA in Record Book 1271 Page 34.

UNDER AND SUBJECT to any and all covenants, conditions, restrictions, rights of way, easements and agreements of record, including (but not limited to) those contained in the instruments recorded in the aforesaid Recorder's Office in Record Book 69, page 23.

TOGETHER with the limited common elements appurtenant as more fully shown of Plan 1271 Page 34.

TOGETHER with all buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and any reversions, remainders, rents, issues and profits thereof, and of every part and parcel thereof, including any interest specifically set forth, if any. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the Grantor of, in and to the same.

TO have and to hold the same premises, and the appurtenances, hereby granted to Grantees and Grantee's heirs, successors and assigns, to and for the only proper use, benefit and behoof of the said Grantee and Grantee's heirs, successors and assigns forever, under and subject to the conditions set forth, if any.

AND the said Grantor hereby covenants and agrees that Grantor will warrant specially the property hereby conveyed.

UNDER AND SUBJECT, nevertheless to the same condition, restrictions, exceptions and reservations as exist by virtue of prior recorded instruments, deeds and conveyances.

IT BEING the same premises which J.A. Myers Building and Development, Inc., a Pennsylvania Corporation, by their deed dated May 25, 1996 and recorded in the Office of the Recorder of Deeds in and for York County, Pennsylvania in Record Book 1218, Page 139, granted and conveyed unto Philip R. Garland t/d/b/a Garland Construction, Inc., Grantors herein.

TITLE TO SAID PREMISES IS VESTED IN Vincent Nieves, III and Nitza Nieves, husband and wife by Deed from Philip R. Garland, t/d/b/a, Garland Construction, Inc., dated 3-25-99, recorded 4-13-99 in Deed Book 1807, page 276.

Premises being: 2 Fiddler Drive, New Oxford, PA 17350

Tax Parcel No. 35-001-0052-001

SEIZED and taken into execution as the property of **Vincent M. Nieves, III a/k/a Vincent M. Miezies & Nitza Nieves** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/16, 23 & 3/2

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

NO. 2006-S-1195

REAL PLACES, L.P.

vs.

IDA S. KOONTZ, HAZEL S. AMBREMSKI, EVELYN S. HERSH, GLENN E. SMITH, HUBER SMITH, JR., RACHEL BOYER, RUTH ANNA FOGELSANGER, HELEN TRAIL and ELSIE S. RIGGS, deceased

TO: All heirs, devisees, administrators, executors, successors and assigns of Ida S. Koontz, Evelyn S. Hersh, Huber Smith, Jr. and Elsie S. Riggs, and all other persons unknown claiming any right, title, estate, lien or interest in the herein described real property.

IMPORTANT NOTICE

Pursuant to PA R.C.P. 237.5

You are in default because you have failed to enter a written appearance personally or by attorney and file in writing with the Court your defenses or objections to the claims set forth against you. Unless you act within ten days from the date of this notice, a judgment may be entered against you without a hearing and you may lose your property or other important rights.

YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Court Administrator
Adams County Courthouse
Gettysburg, Pennsylvania 17325
Telephone (717) 337-8846

Blakey, Yost, Bupp & Rausch, LLP
Nicole M. Ehrhart, Esq.
Attorneys for Plaintiff

2/16

Adams County Legal Journal

Vol. 48

February 23, 2007

No. 40, pp. 259-264

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1289 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land, situate, lying and being in Germany Township, Adams County, Pennsylvania, shown as Lot No. 8 on a final subdivision plan prepared by Adams County Surveyors dated May 26, 1976, and recorded in Adams County Plat Book 11, page 21, and more particularly described as follows:

BEGINNING at a point in the right-of-way of Pennsylvania Route 194 and the Southwest corner of Lot No. 7 as shown on said final subdivision plan; thence along Lot No. 7 South 65 degrees 05 minutes 05 seconds East, 198.58 feet to a point; thence South 19 degrees 35

minutes 05 seconds West, 125.00 feet to a point at the Eastern corner of Lot No. 9 as shown on said plan; thence along Lot No. 9 North 65 degrees 36 minutes 45 seconds West, 207.66 feet to a point located in the right-of-way of Pennsylvania Route 194; thence along and through said Pennsylvania Route 194 North 27 degrees 03 minutes 50 seconds East, 35.00 feet to a point in the right-of-way of said Pennsylvania Route 194; thence along and through the same North 22 degrees 30 minutes 07 seconds East, 91.48 feet to a point in said right-of-way, the point and place of BEGINNING. CONTAINING 25,353 square feet.

Parcel Identification No: 15-117-0138-000

TITLE TO SAID PREMISES IS VESTED IN James W. Stewart and Kimberly J. Toms, as Joint Tenants with Right of Survivorship, by Deed from Kirk Douglas Degroft, a single man and Priscilla Degroft, widow, dated 06/30/2004, recorded 07/14/2004, in Deed Book 3638, page 157.

Premises being: 1056 Frederick Pike, Littlestown, PA 17340

SEIZED and taken into execution as the property of **James W. Stewart, Jr. & Kimberly J. Toms** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/16, 23 & 3/2

In business since 1857.
For business since 1857.

Celebrating 150 years!
1857-2007



www.acnb.com

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1276 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot, parcel or tract of land situate in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an existing steel rod located near the West edge of Township Route T-530 (Stone Jug Road), said steel rod also being near the North edge of Township Route T-531 (Oak Hill Road); thence in said Township Route T-531 South Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West Two Hundred Sixty-One and Eleven Hundredths (261.11) feet to a steel rod; thence by land now or formerly of Harold D. Shaffer and running through a utility pole located Ten and Fifty-Eight Hundredths (10.58) feet from the beginning of this line North Seventeen (17) degrees Zero (0) minutes Fifty (50) seconds West One Hundred Seven and Fifty-Eight Hundredths (107.58) feet to a steel rod; thence by the same South Seventy-seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West Four Hundred Thirty-Six and Eight Hundredths (436.08) feet to a steel rod; thence by the same North Twenty-Six (26) degrees Thirty (30) minutes Fifty (50) seconds West One Hundred Twenty-Five and Five Hundredths (125.05) feet to a steel rod; thence by the same North Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds East One Hundred Sixteen and Sixty-Three Hundredths (116.63) feet to a steel rod; thence by the same North Twelve (12) degrees Thirty-Six (36) minutes Thirty-Five (35) seconds West One Hundred Thirty and Zero Hundredths (130.00) feet to a steel rod; thence by the same North Seventy-Seven (77) degrees Twenty-Three (23) minutes Twenty-Five (25) seconds East Two Hundred Thirty-Five and Forty-Four Hundredths (235.44) feet to a stainless

steel rod; thence by the same and running through a stainless steel rod located Thirty-One and Ninety-Four Hundredths (31.94) feet from the end of this line North Forty-Six (46) degrees Twenty-Three (23) minutes Zero (0) seconds East Ninety-One and Fifteen Hundredths (91.15) feet to a railroad spike in the centerline of the aforementioned Township Route T-530; thence along the centerline of said Township Route South Fifty-Three (53) degrees Sixteen (16) minutes Ten (10) seconds East Two Hundred Fifty-Four and Thirty-Nine Hundredths (254.39) feet to a railroad spike; thence continuing along said centerline South Fifty (50) degrees Twenty-Eight (28) minutes Twenty (20) seconds East One Hundred Twenty-Two and Ninety-Three Hundredths (122.93) feet to a railroad spike; thence in said Township Route South Forty (40) degrees Forty-Seven (47) minutes Thirty (30) seconds East One Hundred Thirty-Five and Seventy-Three Hundredths (135.73) feet to an existing steel rod; the point and place of BEGINNING.

BEING described in accordance with a subdivision plan prepared for Harold D. Shaffer by Adams County Surveyors dated November 18, 1986 and recorded in Adams County Plat Book 45, Page 79 and being known as Lot No. 2 on said subdivision plan.

BEING THE SAME PREMISES WHICH Harold D. Shaffer and Genevieve D. Shaffer by Deed dated December 30, 1986 and recorded December 31, 1986 in Deed Book 446, Page 12 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, granted and conveyed unto Mark Oliver Lemley, Grantor herein.

UNDER and subject to any and all covenants, conditions, reservations, restrictions, limitations, right-of-ways, objection, easements, agreements, etc., as they appear of record including those in Deed Book 446, Page 12.

ALSO, ALL THAT CERTAIN lot, parcel or tract of land situate in Butler Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel rod near the North edge of Township Route T-531 (Oak Hill Road) at the Southeastern corner of Lot No. 4 on the plan of lots referred to below; thence by said Lot No. 4, and

running through a reference pipe located Twelve and one Tenth (12.1) feet from the beginning of this line North Eighteen (18) degrees Thirty-nine (39) minutes Ten (10) seconds West Three hundred sixty-three and fifty-four hundredths (363.54) feet to a steel rod at Lot No. 5 on the plan of lots referred to below; thence by said Lot No. 5, North Seventy-eight (78) degrees Forty-nine (49) minutes Ten (10) seconds East Two hundred eighteen and sixty-six hundredths (218.66) feet to a steel rod; thence by same, North Seventy-seven (77) degrees Twenty-three (23) minutes Twenty-five (25) seconds East One hundred forty-eight and sixty-one hundredths (148.61) feet to a steel rod at Lot No. 2 on the plan of lots referred to below; thence by said Lot No. 2, South Twelve (12) degrees Thirty-six (36) minutes Thirty-five (35) seconds East One hundred thirty and zero hundredths (130.00) feet to a steel rod; thence by the same South Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West One Hundred Sixteen and Sixty-Three Hundredths (116.63) feet to a steel rod; thence by same and by Lot No. 6 on the plan of lots referred to below and running through a steel rod located One hundred twenty-five and five hundredths (125.05) feet from the beginning of this line South Twenty-six (26) degrees Thirty (30) minutes Fifty (50) seconds East Two Hundred thirty-five and sixty-nine hundredths (235.69) feet to a steel rod near the North edge of Township Route T-531 (Oak Hill Road); thence along the North edge of Township Route T-531 (Oak Hill Road) South Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West Two hundred sixty-eight and ninety-three hundredths (268.93) feet to a steel rod, the place of BEGINNING.

BEING described in accordance with a subdivision plan prepared for Harold D. Shaffer by Adams County Surveyors dated November 18, 1986 and revised December 29, 1986, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 46 at page 68 and being known as Lot No. 3 on the subdivision plan referred to below.

UNDER and subject to any and all covenants, conditions, reservations, restrictions, limitations, right-of-ways, objections, easements, agreements, etc., as they appear of record including those in Record Book 456, Page 133.

(continued on page 4)

SPEELMAN VS. SPEELMAN

1. 23 Pa.C.S.A. §3502 provides the framework for analyzing the distribution of marital property. This list of factors serves as a guideline, although the list is neither exclusive nor specific as to the weight to be given to each of the various factors.

2. The weight to be assigned to each of the factors is at the discretion of the trial court, so long as some consideration is given to each factor of which the parties have offered evidence.

3. If a pension has vested and its value increases aside from contributions of the parties beyond the date of separation, then the increase in value is marital property. The proper date for valuing marital assets should be the date of distribution as opposed to the date of separation.

4. The most recent calculation of share price should be used because marital assets should be valued as close to the date of distribution as possible.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 03-S-792, GREG A. SPEELMAN VS. DIANA L. SPEELMAN.

Thomas R. Nell, Esq., for Plaintiff
Barbara Jo Entwistle, Esq., for Defendant
Bigham, J., May 15, 2006

OPINION

STATEMENT OF FACTS

Plaintiff, Greg A. Speelman (hereinafter referred to as “Husband”) and Defendant, Diana L. Speelman (hereinafter referred to as “Wife”) were married on December 3, 1983. Husband filed a divorce complaint with a claim for equitable distribution of the property on July 30, 2003. A Master was appointed to hear these claims on May 26, 2005. The Master held a hearing on November 18, 2005 and issued his recommendations on January 19, 2006. The Master proposed these parties divorce and their property be divided as follows:

Husband’s Share (36.5% of Total Marital Estate valued at \$554,029.91)

Cash Distribution from Wife	\$70,000
AERO Oil Retirement	\$69,386.36
Getty Petroleum Stock	\$ 2,793
1998 Bravado	\$ 3,085
1999 Chevy Silverado	\$11,295
Personal Property	\$12,015
Herff Jones Profit Sharing	\$33,593.63

Wife's Share (63.5% of Total Marital Estate valued at \$554,029.92)

Marital Home	\$290,000
1998 Yukon	\$ 7,050
Personal Property	\$ 4,301
Herff Jones ESOP	\$153,824.76

Husband filed three Exceptions to the Master's Report, which are:

- 1) Whether the divorce master erred in awarding Plaintiff, Greg A. Speelman, only 36.5% of the marital assets?
- 2) Whether the master erred in not considering the increase in value of the Defendant's pension which occurred in June & December of 2005?
- 3) Whether the master erred in using the mortgage amount owed at the time of the separation instead of using the mortgage amount owed at the time of the hearing?

DISCUSSION

We will address each exception in turn based on the arguments raised.

1) Whether the divorce master erred in awarding Plaintiff, Greg A. Speelman, only 36.5% of the marital assets?

Husband argues the Master failed to give appropriate consideration to all of the factors listed in 23 Pa.C.S.A. § 3502(a). Specifically, Husband complains the Master failed to give any reason for determining the length of marriage and station in life favors wife. Husband believes the Master should have discussed the fact that Wife's retirement benefit exceeds Husband's when discussing the three factors that he thought weighed heavily in favor of Wife. He believes Master's statement regarding Husband's opportunity to acquire assets in the future given a projected longer "life span" is not supported by any of the testimony. In addition, he believes the Master failed to consider the tax ramifications that will occur under his proposal to transfer Wife's retirement benefits to Husband by a Qualified Domestic Relations Order (hereinafter referred to as "QDRO").

The master recognized that 23 Pa.C.S.A. § 3502 provides the framework for analyzing the distribution of marital property. Section 3502(a) outlines a list of relevant factors that are to be considered. These include:

- (1) The length of marriage.
- (2) Any prior marriage of either party.
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- (4) The contribution by one party to the education, training or increased earning power of the other party.
- (5) The opportunity of each party for future acquisitions of capital assets and income.
- (6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- (7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
- (8) The value of the property set apart to each party.
- (9) The standard of living of the parties established during the marriage.
- (10) The economic circumstances of each party at the time the division of property is to become effective.
- (10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.
- (10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.
- (11) Whether the party will be serving as custodian of any dependent minor children.

23 Pa.C.S.A. § 3502(a)(1)-(11).

This list of factors serves as a guideline, although the list is neither exclusive nor specific as to the weight to be given to each of the various factors. *Isralsky v. Isralsky*, 824 A.2d 1178, 1191 (Pa. Super. 2003). It appears the Master considered all of the factors listed in Section 3502(a) by breaking the list of factors into 18 topics¹. Out of

¹ (1) Length of marriage; (2) Prior Marriages; (3) Age; (4) Health; (5) Station in Life; (6) Sources and Amounts of Income; (7) Vocational Skills; (8) Employability; (9) Estate and Separate Property; (10) Liabilities and Needs; (11) Education and Training; (12) Opportunity to Acquire Assets; (13) Sources of Income and Benefits; (14) Contribution to Capital and Property Acquisitions; (15) Custody of Minor Child; (16) Present Economic Circumstances; (17) Tax Consequences; and (18) Dissipation of Assets.

the 18 topics he discussed, 9 were neutral, 2 slightly favored Wife², 4 favored Wife³, and 3 heavily favored Wife⁴.

The Master found four factors he considered to be the most significant: length of marriage; lifestyle to which the parties have become accustomed to during the marriage; and the parties' actual and potential income.

It is true that the Master failed to give his reasoning for weighing in favor of Wife for the factor dealing with length of marriage. However, we believe the Master explained his reasoning, in part, for weighing slightly in favor of Wife for her station in life. He explained these parties enjoyed a middle class standard of living during the marriage as evidenced by the value of home, vacations they took, places they shopped, places they had lived in the past, and the frequency of dinners eaten out. He thought both parties improved their station in life during the time that they were married and it has been declining since the date of their separation due to economic factors. Husband moved out of the marital residence. Wife has become the primary physical custodian of their child and has taken over the responsibility of making their monthly mortgage payment.

It appears the Master weighed in favor of Wife on the factors dealing with length of marriage and station in life, in light of the other two factors which weighed heavily in Wife's favor, the parties actual and potential income. These parties have been married for almost 21 years, which is a significant period of time. During their marriage, they enjoyed a middle class standard of living, which based on their income levels will be harder for Wife to as quickly or as easily reacquire. She earns approximately \$21,009⁵ a year by working about eight or nine months out of the year at Herff Jones and collecting unemployment for the remaining months. Husband earns approximately \$37,000⁶ a year at AERO as a salesman.

²Station in Life and Present Economic Circumstances

³Length of Marriage, Employability, Education & Training, and Custody of Minor Child

⁴Sources & Amounts of Income, Opportunity to Acquire Add'l Assets, and Sources of Income & Benefits

⁵Domestic Relations Office calculated Wife's monthly income for purposes of a child support at \$1,726.67 ($\$1,726.67 \times 12 \text{ months} = \$20,720.04$).

⁶Domestic Relations Office calculated Husband's monthly income for purposes of a child support at \$3,082.81 ($\$3,082.81 \times 12 \text{ months} = \$36,993.72$).

Husband is 45 years old and has been employed at AERO for 22 years⁷. He will be receiving a retirement benefit which the Master valued at \$69,386.36. In addition, he owns 105 shares of Getty Stock, which the master valued at \$2,793. Wife is 43 years old and has been employed by Herff Jones for 19 years. She has a Herff Jones Profit Sharing Account valued at \$33,593.63. In addition, she has an Employee Stock Ownership Plan (hereinafter referred to as "ESOP") which was valued by the Master to be worth \$153,824.76. In the Master's proposal, Husband would be allowed to keep all of his retirement benefit and stock, in addition to the entire value of Wife's Profit Sharing Account. Wife was allowed to keep the entire value of her ESOP.

Both of these parties have a high school education and have been employed at their respective positions for most of their marriage. Husband was working at the time they were married, and Wife was hired shortly after they were married. It does not appear either party will be changing their career. Wife's income will remain relatively the same. However, Husband's income has the potential to increase based on sales commissions. As evidenced by the increases shown in his employment records for prior years, for instance in 2003 he earned \$36,262.17, and in 2005 he would earn \$40,789.65. In addition, on his 2003 federal income tax return he reported earnings of \$32,468 and his 2004 earnings increased to \$35,707. Therefore, it becomes apparent that Husband has the potential to steadily increase his earnings from year to year.

We note that the Master's statement about Husband's "life span"⁸ is not fully developed. And, the tax ramifications resulting from setting up a QDRO in Husband's name from Wife's retirement was not specifically discussed, nor were they identified by Husband's counsel. The weight to be assigned to each of the factors is at the discretion of the trial court, so long as some consideration is given to each factor of which the parties have offered evidence. Stand. Pa. Practice, 2d § 126:607, Citing to *Wayda v. Wayda*, 576 A.2d 453 (Pa. Super. 1989);

⁷Husband began working for AERO in 1982. He left AERO in 1992 for a period of approximately two years until he returned in 1994.

⁸We note that it was suggested by Wife's counsel at oral argument that Husband's "life span" refers to his ability to set aside monies for his 401K and his employer will match up to 3% of his contributions. However, we do not believe the reference to "life span" can be read so broadly. Usually, the term "life span" refers to the length of one's life based on their health condition.

Dunn v. Dunn, 544 A.2d 448 (Pa. Super. 1988). In this case, there was very little testimony concerning the health of both parties. Even though Husband mentioned he has back problems, both parties testified that they are in good health. The Master's belief that Husband's life span is projected to be longer is not clearly supported or denied by the evidence on record. In addition, there has been no testimony presented at the Master's Hearing or by Husband's counsel about the tax consequences of setting up a QDRO. Therefore, we will not take into account Husband's life span and hypothesize on the tax implications of setting up a QDRO for Husband.

We have reviewed all of the factors listed in 23 Pa.C.S.A. § 3502(a) for which the parties have offered evidence by reviewing the Master's Report and transcript of the Master's Hearing. We have kept in mind principles of the Divorce Code which are to effectuate economic justice between the parties and insure a fair and just determination of their property rights. 23 Pa.C.S.A. § 3102(a)(6). Based on our examination, we believe the Master's proposal to give Wife 63.5% and Husband 36.5% of the marital estate is appropriate.

As pointed out by Wife, there are numerous examples of when courts have awarded a spouse more than 60% of the marital estate. See *Pearlberger v. Pearlberger*, 626 A.2d 1186 (Pa. Super. 1993)(64%/36%), *Ullom v. Ullom*, 559 A.2d 55 (Pa. Super. 1989)(65%/35%), *Teriberry v. Teriberry*, 516 A.2d 33 (Pa. Super. 1986)(72%/28%), *Mellon Bank v. Holub*, 583 A.2d 1157 (Pa. Super. 1990)(100%/0%).⁹ In this case, we believe an award of 63.5% to Wife is appropriate based on our review of the present facts. She earns less income, she remains the primary physical custodian of the child, and her ability to earn more money in the future is limited. She has to rely on unemployment compensation for a period of three to four months out of each year and has become responsible for making the mortgage payments on their former marital residence. Husband earns more income and appears to increase his earnings each year.

Continued to next issue (3/2/2007)

⁹We note that Husband's counsel argues these cases are factually dissimilar to the present case. We cite these cases to merely show there is precedent for awarding over 60% of the marital assets to one spouse.

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 MARY F. HARTMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator c.t.a.: Merial E. Heldt, 31 Twin Lakes Drive, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ERMA M. LEREW, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Carol L. Nye, 51 Idaville-York Springs Road, Gardners, PA 17324

Attorney: Ann Marie Rotz, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF RUTH CATHERINE MOLES, a/k/a R. CATHERINE MOLES, a/k/a CATHERINE R. MOLES, a/k/a CATHERINE S. MOLES, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Steven C. Moles, 515 Old Carlisle Road, Biglerville, PA 17307; Susan A. McCarrey, 4 Homestead Drive, Gettysburg, PA 17325

Attorney: Thomas R. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EMMA E. PIPP, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Clara Flohr, c/o Schrack & Linsenbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

Attorney: Schrack & Linsenbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

SECOND PUBLICATION

ESTATE OF LORETTA AGNES McMASTER, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrix: Janet Rinehart, 4685 Holtzschwamm, R.D. 1, Thomasville, PA 17364

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF E. ELIZABETH SMITH a/k/a EDNA ELIZABETH SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard I. Howes, Sr., 4807 Westfield Drive, Hampstead, MD 21074

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF DOROTHY C. WALDMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: William H. Lilley, c/o Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

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

ESTATE OF DIANE LOUISE WOLF, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Merle E. Wolf, 19 Sycamore Lane, Hanover, PA 17331

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

THIRD PUBLICATION

ESTATE OF FLORENCE P. REX, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Sandra P. Speck, 288 Thomas Dr., Gettysburg, PA 17325

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF MADELINE A. RITTER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

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

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

ESTATE OF LOIS S. SHEAFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Anne Stayer Wise, 2522 Memphis Ave., El Paso, TX 79930

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

ESTATE OF PEARL H. STERNER, DEC'D

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

Co-Executors: Sally J. Leas and Ann M. Sterner, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

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

(continued from page 2)

BEING THE SAME PREMISES WHICH Harold D. Shaffer and Genevieve D. Shaffer by Deed dated May 4, 1987 and recorded May 6, 1987 in Deed Book 456, Page 133 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania granted and conveyed unto Mark Oliver Lemley, Grantor herein.

TITLE TO SAID PREMISES IS VESTED IN Charles J. Dunkle and Mary Dunkle, husband and wife, by Deed from Mark Oliver Lemley, single man, dated 07/25/2003, recorded 08/05/2003, in Deed Book 3230, page 315.

Premises being: 324 Stone Jug Road, Biglerville, PA 17307

SEIZED and taken into execution as the property of **Charles J. Dunkle & Mary Dunkle a/k/a Mary Christine Saunders a/k/a Mary Christine Dunkle** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/16, 23 & 3/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1425 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain unit in the property known, named and identified in the declaration referred to below as 'South Branch Estates', located in the Township of Oxford, Adams County, Pennsylvania, which has heretofore been submitted to the provisions of the Pennsylvania Uniform condominium act, 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, PA, of a land development plan dated October 6, 1995, last revised December 14, 1995 and recorded in Book 69 Page 23 (together with all

amendments and supplements thereto recorded on or before the date hereof) being all designated in such plan as Unit No. 1 as more fully bounded and described in such plan, together with a proportionate undivided interest in the Common Elements as defined in a Declaration Plan recorded in the Office of the Recorder of Deeds, in and for York County, PA in Record Book 1271 Page 34.

UNDER AND SUBJECT to any and all covenants, conditions, restrictions, rights of way, easements and agreements of record, including (but not limited to) those contained in the instruments recorded in the aforesaid Recorder's Office in Record Book 69, page 23.

TOGETHER with the limited common elements appurtenant as more fully shown of Plan 1271 Page 34.

TOGETHER with all buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and any reversions, remainders, rents, issues and profits thereof, and of every part and parcel thereof, including any interest specifically set forth, if any. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the Grantor of, in and to the same.

TO have and to hold the same premises, and the appurtenances, hereby granted to Grantees and Grantee's heirs, successors and assigns, to and for the only proper use, benefit and behoof of the said Grantee and Grantee's heirs, successors and assigns forever, under and subject to the conditions set forth, if any.

AND the said Grantor hereby covenants and agrees that Grantor will warrant specially the property hereby conveyed.

UNDER AND SUBJECT, nevertheless to the same condition, restrictions, exceptions and reservations as exist by virtue of prior recorded instruments, deeds and conveyances.

IT BEING the same premises which J.A. Myers Building and Development, Inc., a Pennsylvania Corporation, by their deed dated May 25, 1996 and recorded in the Office of the Recorder of Deeds in and for York County, Pennsylvania in Record Book 1218, Page 139, granted and conveyed unto Philip R. Garland t/d/b/a Garland Construction, Inc., Grantors herein.

TITLE TO SAID PREMISES IS VESTED IN Vincent Nieves, III and Nitza Nieves, husband and wife by Deed from Philip R. Garland, t/d/b/a, Garland Construction, Inc., dated 3-25-99, recorded 4-13-99 in Deed Book 1807, page 276.

Premises being: 2 Fiddler Drive, New Oxford, PA 17350

Tax Parcel No. 35-001-0052-001

SEIZED and taken into execution as the property of **Vincent M. Nieves, III a/k/a Vincent M. Miezes & Nitza Nieves** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/16, 23 & 3/2

CERTIFICATE OF ORGANIZATION

NOTICE IS HEREBY GIVEN that a Certificate of Organization – Domestic Limited Liability Company was filed with the Commonwealth of Pennsylvania, Department of State, in Harrisburg, Pennsylvania, on February 7, 2007, under the provisions of the Pennsylvania Limited Liability Company Law of 1994 as amended.

The name of the Limited Liability Company is ICKES WELDING, LLC.

Ickes Welding, LLC has as its purpose the engaging in all lawful business for which limited liability companies may be organized.

Arthur J. Becker, Jr., Esq.
Attorney for Ickes Welding, LLC

2/23