

00-1013-CD
SAM S. FLORO -vs- EDWARD WALKO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

SAM S. FLORO, : NO. 00-1013 C.D.
Plaintiff :
VS. : TYPE OF CASE: CIVIL
EDWARD WALKO, :
Defendant : TYPE OF PLEADING: PETITION FOR
: LEAVE TO APPEAL NUNC PRO TUNC
: FILED ON BEHALF OF: DEFENDANT
: EDWARD WALKO
: COUNSEL OF RECORD:
: CHRISTOPHER E. MOHNEY, ESQUIRE
: SUPREME COURT NO.: 63494
: BLAKLEY, JONES & MOHNEY
: 90 BEAVER DRIVE, BOX 6
: DU BOIS, PA 15801
: (814) 371-2730

FILED

AUG 18 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

SAM S. FLORO,	:	NO. 00 -	- C.D.
	:		
Plaintiff	:		
	:		
VS.	:		
	:		
EDWARD WALKO,	:		
	:		
Defendant	:		

PETITION FOR LEAVE TO APPEAL NUNC PRO TUNC

AND NOW, comes Defendant **EDWARD WALKO**, by his undersigned counsel,
CHRISTOPHER E. MOHNEY, ESQUIRE, and who seeks leave to appeal nunc pro tunc from
District Justice judgment entered on or about June 5, 2000, and in support thereof avers as follows:

1. Plaintiff **SAM S. FLORO** filed a Civil Complaint before District Justice Patrick N. Ford,
Magisterial District 46-3-01, copy of which Civil Complaint is attached hereto as Exhibit "A".
2. In his Complaint, Mr. Floro names as Defendant "Ed Walko", with an address at 123
North Main Street, Du Bois, PA 15801.
3. Mr. Walko neither resides at 123 North Main Street, Du Bois, PA 15801, nor does he
maintain an ownership interest in a business enterprise at said address.
4. Mr. Walko did not properly receive service of said Complaint, Notice of Hearing to
Appear and Defend, or Transcript of Proceedings/Notice of Judgment, which latter Notice contains
important rights concerning appeal of judgment within thirty (30) days of entry.

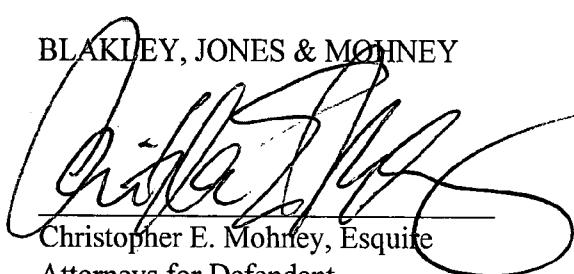
5. Mr. Walko has had personalty levied upon, on July 19, 2000, namely, a 1983 Buick.
6. Mr. Walko has caused to be posted with the District Magistrate proper bond for stay of execution pursuant to District Justice Rule of Civil Procedure 410.
7. The failure of **EDWARD WALKO** to be properly served with Complaint and Notice to Defend constitutes a material breakdown in the legal process so as to justify the allowance of an appeal at this time.

WHEREFORE, Defendant **EDWARD WALKO** respectfully requests that this Court enter an Order permitting him to appeal nunc pro tunc from the District Justice Order.

Respectfully submitted,

BLAKLEY, JONES & MOHNEY

BY:


Christopher E. Mohney, Esquire
Attorneys for Defendant

VERIFICATION

I, **EDWARD WALKO**, being duly authorized to make this verification, have read the foregoing Petition for Leave to Appeal Nunc Pro Tunc. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C. S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 8-16-00



Edward Walko

WEALTH OF PENNSYLVANIA
Y OF: CLEARFIELD

CIVIL COMPLAINT

Ag. Dist. No.:

46-3-01

DJ Name: Hon.

PATRICK N. FORD
Address: 109 NORTH BRADY STREET
P.O. BOX 452
DUBOIS, PA 15801
Telephone: (814) 371-5321

PLAINTIFF:

SAM S FLORO
132 BONNIE CT
CROWNSVILLE PA

NAME and ADDRESS

DEFENDANT:

ED WALKO
123 MAIN ST
DUBOIS, PA

VS.

Docket No.: CV 245-00
Date Filed:



	AMOUNT	DATE PAID
FILING COSTS	\$ 56 -	/ /
SERVING COSTS	\$ _____	/ /
TOTAL	\$ _____	/ /

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 1500 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

CHEF KNIVES, PERSONAL PROPERTY, KITCHEN EQUIPMENT
BROKEN CAR WINDSHIELD

I, SAM S FLORO verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Sam S. Floro".

(Signature of Plaintiff or Authorized Agent)

Plaintiff's Attorney: _____

Address: _____

Telephone: _____

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT WILL BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five (5) days before the date set for the hearing. If you have a claim against the plaintiff which is not within district justice jurisdiction, you may request information from this office as to the procedures you may follow. If you are disabled and require assistance, please contact the Magisterial District office at the address above.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

SAM S. FLORO,	:	NO. 00 -	- C.D.
	:		
Plaintiff	:		
	:		
VS.	:		
	:		
EDWARD WALKO,	:		
	:		
Defendant	:		

ORDER

AND NOW, this _____ day of _____, 2000, upon consideration of the Petition of **EDWARD WALKO** for Leave to Appeal Nunc Pro Tunc from the judgment of Magisterial Court No. 46-3-01 entered against him and in favor of **SAM S. FLORO**, it is hereby ORDERED AND DECREED that the time for filing an appeal in this matter is extended and **EDWARD WALKO** is permitted to appeal nunc pro tunc from the aforementioned Order within ten (10) days from entry of this Order.

BY THE COURT:

2 C.R.A. T. 24 Attr.

137 M7
S.C. -
Prothonotary
William A. Shaw
C/12/15/03
AUG 18 2000

FILED

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW
NO. 00 - C.D.

SAM S. FLORO,

PLAINTIFF

VS.

EDWARD WALKO,

DEFENDANT

PETITION FOR LEAVE TO
APPEAL NUNC PRO TUNC

LAW OFFICES
BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

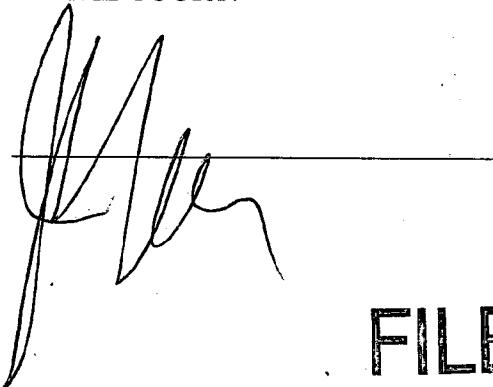
SAM S. FLORO, : NO. 00-1013-C.D.
: :
Plaintiff : :
: :
VS. : :
: :
EDWARD WALKO, : :
: :
Defendant : :

RULE RETURNABLE

AND NOW, this 21st day of August, 2000, upon consideration of the foregoing
Petition for Leave to Appeal Nunc Pro Tunc, it is the ORDER of this Court that a Rule be issued
upon the Plaintiff to show cause why the prayer of the Petitioner should not be granted.

RULE Returnable Sept. 11, 2000, for filing a written response.

BY THE COURT:



FILED

AUG 21 2000

611151w

William A. Shaw
Prothonotary

2 CENTS TO MAIL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

SAM S. FLORO, : NO. 00 - 1013 - C.D.
Plaintiff : TYPE OF CASE: CIVIL
VS. : TYPE OF PLEADING: AFFIDAVIT OF
EDWARD WALKO, : MAILING
Defendant : FILED ON BEHALF OF: DEFENDANT
 : EDWARD WALKO
 : COUNSEL OF RECORD:
 : CHRISTOPHER E. MOHNEY, ESQUIRE
 : SUPREME COURT NO.: 63494
 : BLAKLEY, JONES & MOHNEY
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FILED

SEP 01 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

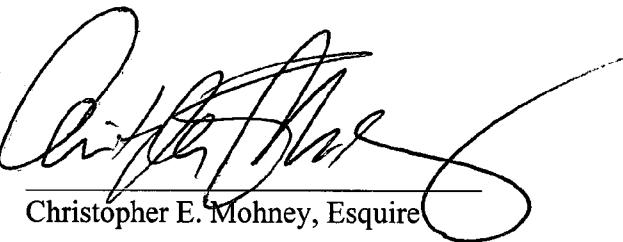
SAM S. FLORO, : NO. 00 - 1013 - C.D.
: :
Plaintiff :
: :
VS. :
: :
EDWARD WALKO, :
: :
Defendant :
:

AFFIDAVIT OF MAILING

COMMONWEALTH OF PENNSYLVANIA :
: : SS.
COUNTY OF CLEARFIELD :
:

CHRISTOPHER E. MOHNEY, ESQUIRE, being duly sworn according to law deposes and says: that he is a partner in the law firm of **BLAKLEY, JONES & MOHNEY**, Attorneys for **EDWARD WALKO**, the Defendant in the above-captioned action; that he did cause to be served upon **SAM S. FLORO**, Plaintiff in the above-captioned matter, Petition for Leave to Appeal Nunc Pro Tunc by sending the same by certified mail, return receipt requested on August 24, 2000; that said certified mail was received by **SAM S. FLORO** on August 25, 2000, as evidenced by the return receipt for certified mail attached hereto; and that the foregoing facts are true and correct to the best

of his knowledge, information and belief.

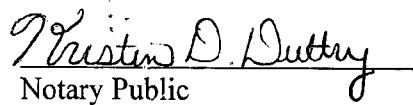


Christopher E. Mohney, Esquire

Sworn to and subscribed

before me this 31st day

of August, 2000.



Kristin D. Duttry
Notary Public

<p>Notarial Seal Kristin D. Duttry, Notary Public DuBois, Clearfield County My Commission Expires Jan. 30, 2003</p>

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SAM S. FLORO
123 BONNIE COURT
CURWENSVILLE, PA 16833

COMPLETE THIS SECTION ON DELIVERY**A. Received by (Please Print Clearly)**

Mandi Yeager

B. Date of Delivery

8/25/00

C. Signature

Mandi Yeager

Agent

Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

Yes

No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number (Copy from service label)

7099 3220 0011 0188 0436

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW
NO. 00 - 1013 - C.D.

SAM S. FLORO,

Plaintiff

VS.

EDWARD WALKO,

Defendant

AFFIDAVIT OF MAILING

FILED

SEP 01 2000

William A. Shaw
Prothonotary

LAW OFFICES
BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

SAM S. FLORO

-vs-

No. 00-1013-CD **FILED**

EDWARD WALKO

DEC 15 2000

OPINION AND ORDER

William A. Shaw
Prothonotary

This matter comes before the Court on a Petition for Leave to Appeal Nunc Pro Tunc from the District Justice's decision on a civil complaint wherein the Justice entered judgment against the Petitioner. Defendant-Petitioner failed to appear for the hearing scheduled by the District Justice and did not appeal from the judgment within 30 days from date of entry. In his Petition he alleges that he received no proper notice of filing of the complaint or of the hearing. The record from the Magistrate's office indicates service of notice was attempted by certified mail but was returned marked "unclaimed." Thereafter, the complaint was served on the Defendant's wife at her place of business in the City of DuBois, Pennsylvania. The Defendant claims improper service because his wife was not served at their residence or at an office or usual place of business of the Defendant.

Pennsylvania Rule of Civil Procedure 308 provides for service of the complaint on an adult member of the Defendant's family at his residence. But as stated in Goodrich-Amram, the basic purpose of the rule is to assure that a Defendant will receive actual notice of a commencement of action against him and of his duty to defend. Since the rules provide that service upon the Defendant's spouse is proper notice to him, it would appear to be immaterial whether the service takes place at the Defendant's residence or elsewhere as the primary purpose of the rule is satisfied by serving the Defendant's wife.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 15th day of December, 2000, upon consideration of Petition for Leave to Appeal Nunc Pro Tunc in the above-captioned matter, it is the ORDER of this Court that said Petition be and is hereby dismissed.

By the Court,

President Judge

FILED

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William A. Shaw
Prothonotary, ac PIB.

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

SAM S. FLORO :

-vs- : No. 00-1013-CD

EDWARD WALKO :

ORDER

NOW, this 15th day of January, 2001, the Court having denied Defendant's Petition to Appeal Nunc Pro Tunc, and the 30 day appeal period having expired, it is the ORDER of this Court that the District Justice shall release to the Plaintiff the bond monies posted by the Defendant to be applied towards the judgment and costs.

By the Court,

President Judge

FILED

JAN 15 2001

William A. Shaw
Prothonotary

FILED

JAN 15 2001

13:45
William A. Shaw
Prothonotary

Plaintiff

ZCC - FLORO - Plaintiff
ZCC - ALICE Mohney

ERK