

00-1469-CD  
C. GLENN ABERNETHY, SR. et al -vs- C. KIRK THOMAS et al

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)  
NO. 00-  
-CD

C. GLENN ABERNETHY, SR., et al,  
Plaintiffs

VS.

CARL KEITH, et al,  
Defendants

COMPLAINT IN EJECTMENT

R. DENNING GEARHART  
ATTORNEY AT LAW  
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

C. GLENN ABERNETHY, SR. :  
C. GLENN ABERNETHY, JR. and :  
JAY C. ABERNETHY, Plaintiffs, :  
VS. : No. 00- 1469 -CD  
: :  
: :  
CARL KEITH and ROGER STONE, :  
Defendants :  
:

CASE NUMBER: 00- -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: COMPLAINT IN EJECTMENT

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE  
Supreme Court I.D. #26540  
215 East Locust Street  
Clearfield, PA 16830  
(814) 765-1581

FILED

NOV 22 2000

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6/4/00 1:00 PM  
WILLIAM A. GEARHART  
P.O. 80-  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

C. GLENN ABERNETHY, SR.,	:	
C. GLENN ABERNETHY, JR. and	:	
JAY C. ABERNETHY, Plaintiffs,	:	
	:	
VS.	:	No. 00- -CD
	:	
	:	
CARL KEITH and ROGER STONE,	:	
Defendants	:	

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator's Office  
Clearfield County Courthouse  
Clearfield, PA 16830  
814-765-2641 Ext. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

C. GLENN ABERNETHY, SR., :  
C. GLENN ABERNETHY, JR. and :  
JAY C. ABERNETHY, Plaintiffs, :  
:  
VS. : No. 00- -CD  
:  
:  
CARL KEITH and ROGER STONE, :  
Defendants :  
:

**COMPLAINT IN EJECTMENT**

**AND NOW**, comes the Plaintiffs, C. GLENN ABERNETHY, SR., C. GLENN ABERNETHY, JR and JAY C. ABERNETHY, by and through their attorney, R. DENNING GEARHART, who aver as follows:

1. The first Plaintiff is C. GLENN ABERNETHY, SR. of 955 Hannah Street, Houtzdale, PA 16651.
2. The second Plaintiff is C. GLENN ABERNETHY, JR. of R.R. #2, Box 129-J, Ginter, PA 16651.
3. The third Plaintiff is JAY C. ABERNETHY of R.R. #2, Box 129-J, Ginter, PA 16651.
4. The first Defendant is CARL KEITH of R.R. 1, Houtzdale, PA 16651.
5. The second Defendant is ROGER STONE of R.R. 1, Houtzdale, PA 16651.
6. Plaintiffs are the owners of a certain parcel of real estate described as follows:

*ALL* those two certain lots situate in Frazerville in the Township of Woodward, County of Clearfield and Commonwealth of Pennsylvania, more particularly bounded and described as follows:

**THE FIRST THEREOF:** *BEGINNING* at a post on the South side of Penn Siding tramway; thence South 45 degrees 131 feet to a post 33 feet from the center line of Beaver Run Branch Railroad; thence North 63 degrees 15 minutes West 33 feet from center line of said railroad 46 feet to a post; thence North 45 degrees East 162 feet to post; thence South 39 1/2 degrees East 46 feet to a post; the place of beginning. Being known and designated as part of Lot No. 10 in plan of Frazerville. Subject to right of way granted and appropriated by the Altoona and Philipsburg Connecting Railroad Co.

**THE SECOND THEREOF:** *BEGINNING* at a post 33 feet from Beaver Run Branch of the T&C Railroad; thence North 45 degrees East 101 feet to a post; thence North 39 1/2 degrees West 144 feet to post; thence South 45 degrees West 10 feet to post; thence South 39 degrees East 44 feet to post; thence South 45 degrees West 131 feet to a post 33 feet from the centerline of the Beaver Run Branch of Tyrone & Clearfield Railroad; thence South 63 degrees West 100 feet to post, the place of beginning. Being known and designated as Lots 6 and 8 in general plan of Village of Frazerville.

***EXCEPTING and RESERVING***, in accordance with prior deeds in the chain of title, all the stone, coal and other minerals lying and being underneath the said piece or parcel of land, with the free and full right of ingress, egress and regress to search for, dig, mine and carry away the same, free from all claim or claims of damages whatsoever on the part of the Grantees, their heirs or assigns.

AND

*ALL* that certain piece or parcel of land situate in the Village of West Houtzdale, Woodward Township, Clearfield County, Pennsylvania, more particularly bounded and described as follows:

*BEGINNING* at a point on the northeasterly right-of-way line of the Madera Branch Railroad and at a distance of 33 feet from the center line of said railroad (this point being the most westerly corner of a lot conveyed by the Clearfield Trust Company, et al, to Robert W. Roseweir and Beverly Roseweir by deed dated June 7, 1966); thence North 63 degrees 15 minutes West 47 feet, more or less, to a point which is the most westerly corner of the lot hereby conveyed; thence North 45 degrees East along the line of the Grantors 96 feet, more or less, to a point on the line of the Penn Collieries tramway; thence in a southeasterly direction along the line of the said tramway 40 feet, more or less, to a point on the line of land previously conveyed to Robert W. And Beverly Roseweir; thence by the line of the said Roseweir lands South 45 degrees West 75 feet, more or less, to the right-of-way of the Madera Branch Railroad and the place of beginning. Being known as a portion of Lot No. 1 in the Thomas Rickert Plot.

*EXCEPTING and RESERVING*, in accordance with prior deeds in the chain of title, all the stone, coal and other minerals lying and being underneath the said piece or parcel of land, with the free and full right of ingress, egress and regress to search for, dig, mine and carry away the same, free from all claim or claims of damages whatsoever on the part of the Grantees, their heirs or assigns.

The properties herein conveyed now being described in the map prepared by Allan L. Martin, P.E., R.S. dated June, 1984, attached hereto and being described as follows:

*BEGINNING* at an iron pin being located approximately 33 feet north of the centerline of the former Beaver Run Branch Railroad and the property now or formerly of David Hamaty; thence South 63 degrees 15 minutes East 198.0 feet to an iron pin; thence North 45 degrees East 82.5 feet to an iron pin; thence North 39 degrees 30 minutes West 191.0 feet, more or less, to an iron pin; thence South 45 degrees West 163.25 feet to an iron pin and place of beginning.

This property consists of Part Lot 4, Lot 6, Lot 8 and Part Lot 10 in the Plot of Frazerville in Township of Woodward, Clearfield County, PA.

7. Plaintiffs became the owners of the subject property by virtue of a Deed dated February 26, 1998, and recorded in the Recorder's Office of Clearfield County to Deed Book Volume 1911, Page 368, a copy of the Deed is attached hereto as Exhibit 'A'.

8. That Defendant CARL KEITH is the owner of a certain parcel of real estate adjacent to Plaintiff's property. This lot exists on the other side of a private 10' wide road owned by Plaintiffs. This road is the subject of this action.

9. That Defendant ROGER STONE rents the property owned by Defendant CARL KEITH.

10. That Plaintiffs have permitted Defendants to use the private road which is the subject of this action.

11. That Defendant ROGER STONE, as well as, his family and acquaintances, over the past years, have started to speed on the road, spin their tires, litter on the side of the road, and to otherwise act in a manner meant to harass the Plaintiffs, and have placed signs for commercial use by the public of this part of the

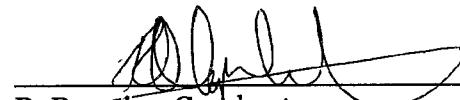
Plaintiffs' property. All of this has caused the Plaintiffs to make extensive repairs to their property and prohibits Plaintiffs from enjoying the use of this private road as well as their property around this road.

12. That Defendants use of the road, besides being in trespass, inhibits the Plaintiffs' right to the quiet enjoyment of their home.

13. That Defendant STONE has alternate access to his property via an alley off Pennsylvania Route 53, and therefore, does not need to use this private road.

**WHEREFORE**, Plaintiffs request that this Court enter an Order prohibiting the Defendants or their successors in title from using said private road.

Respectfully submitted,



---

R. Denning Gearhart  
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA

: SS:

COUNTY OF CLEARFIELD

:

**AFFIDAVIT**

Before me, the undersigned officer, personally appeared, C. GLENN ABERNETHY, SR.; C. GLENN ABERNETHY, JR. And JAY C. ABERNETHY who being duly sworn according to law deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of their knowledge, information, and belief.

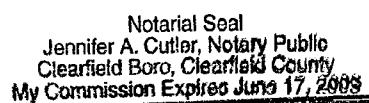
C. Glenn Abernethy SR.  
C. GLENN ABERNETHY, SR.

C. Glenn Abernethy  
C. GLENN ABERNETHY, JR.

Jay C. Abernethy  
JAY C. ABERNETHY

Sworn to and subscribed  
before me this 17<sup>th</sup> day  
of November, 2000.

Jennifer A. Cutler  
Notary Public



## THIS DEED

MADE the 26th day of February, in the year nineteen hundred and ninety-eight (1998) *BETWEEN* FAYE ABERNETHY, erroneously referred to in prior Deeds as Fay Abernethy, a widow, of Houtzdale, Clearfield County, Pennsylvania, party of the first part, hereinafter referred to as the GRANTOR,

A N D

C. GLENN ABERNETHY, SR. of Houtzdale, Clearfield County, Pennsylvania; C. GLENN ABERNETHY, JR. of Philipsburg, Pennsylvania; and JAY C. ABERNETHY of Morann, Clearfield County, Pennsylvania, to be held as tenants with the right of survivorship, **not as tenants in common**, parties of the second part, hereinafter referred to as the GRANTEEES,

*WITNESSETH*, That in consideration of One and 00/100 (\$1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant and convey to the said grantees, their heirs, successors and assigns,

*ALL* those two certain lots situate in Frazerville in the Township of Woodward, County of Clearfield and Commonwealth of Pennsylvania, more particularly bounded and described as follows:

THE FIRST THEREOF: *BEGINNING* at a post on the South side of Penn Siding tramway; thence South 45 degrees 131 feet to a post 33 feet from the center line of Beaver Run Branch Railroad; thence North 63 degrees 15 minutes West 33 feet from center line of said railroad 46 feet to a post; thence North 45 degrees East 162 feet to post; thence South 39 1/2 degrees East 46 feet to a post; the place of beginning. Being known and designated as part of Lot No. 10 in plan of Frazerville. Subject to right of way granted and appropriated by the Altoona and Philipsburg Connecting Railroad Co.

THE SECOND THEREOF: *BEGINNING* at a post 33 feet from Beaver Run Branch of the T&C Railroad; thence North 45 degrees East 101 feet to a post; thence North 39 1/2 degrees West 144 feet to post; thence South 45 degrees West 10 feet to post; thence South 39 degrees East 44

feet to post; thence South 45 degrees West 131 feet to a post 33 feet from the centerline of the Beaver Run Branch of Tyrone & Clearfield Railroad; thence South 63 degrees West 100 feet to post, the place of beginning. Being known and designated as Lots 6 and 8 in general plan of Village of Frazerville.

*EXCEPTING and RESERVING*, in accordance with prior deeds in the chain of title, all the stone, coal and other minerals lying and being underneath the said piece or parcel of land, with the free and full right of ingress, egress and regress to search for, dig, mine and carry away the same, free from all claim or claims of damages whatsoever on the part of the Grantees, their heirs or assigns.

*BEING* the same premises as was conveyed to James Robert Abernethy and Fay Abernethy by Deed of Clearfield Trust Company dated January 13, 1967 and entered for record in the Recorder's Office of Clearfield County in Deed Book Volume 537, Page 469. The said James Robert Abernethy having passed away March 11, 1967 with title thereby vesting in his surviving spouse, Faye Abernethy, the Grantor herein.

#### A N D

*ALL* that certain piece or parcel of land situate in the Village of West Houtzdale, Woodward Township, Clearfield County, Pennsylvania, more particularly bounded and described as follows:

*BEGINNING* at a point on the northeasterly right-of-way line of the Madera Branch Railroad and at a distance of 33 feet from the center line of said railroad (this point being the most westerly corner of a lot conveyed by the Clearfield Trust Company, et al, to Robert W. Roseweir and Beverly Roseweir by deed dated June 7, 1966); thence North 63 degrees 15 minutes West 47 feet, more or less, to a point which is the most westerly corner of the lot hereby conveyed; thence North 45 degrees East along the line of the Grantors 96 feet, more or less, to a point on the line of the Penn Collieries tramway; thence in a southeasterly direction along the line of the said tramway 40 feet, more or less, to a point on the line of land previously conveyed to Robert W. And Beverly Roseweir; thence by the line of the said Roseweir lands South 45 degrees West 75 feet, more or less, to the right-of-way of the Madera Branch Railroad and the place of beginning. Being known as a portion of Lot No. 1 in the Thomas Rickert Plot.

*EXCEPTING and RESERVING*, in accordance with prior deeds in the chain of title, all the stone, coal and other minerals lying and being underneath the said piece or parcel of land, with the free and full right of ingress, egress and regress to search for, dig, mine and carry away the same, free from all claim or claims of damages whatsoever on the part of the Grantees, their heirs or assigns.

*BEING* the same premises as were conveyed to James Robert Abernethy and Fay Abernethy, husband and wife, by Deed of Clearfield Trust Company, a banking corporation dated December 6, 1966 and entered for record in the Recorder's Office of Clearfield County in Deeds & Records Book Volume \_\_\_\_\_, Page \_\_\_\_\_. The said James Robert Abernethy having passed away March 11, 1967 with title thereby vesting in his surviving spouse, Faye Abernethy, the Grantor herein.

The properties herein conveyed now being described in the map prepared by Allan L. Martin, P.E., R.S. dated June, 1984, attached hereto and being described as follows:

**BEGINNING** at an iron pin being located approximately 33 feet north of the centerline of the former Beaver Run Branch Railroad and the property now or formerly of David Hamaty; thence South 63 degrees 15 minutes East 198.0 feet to an iron pin; thence North 45 degrees East 82.5 feet to an iron pin; thence North 39 degrees 30 minutes West 191.0 feet, more or less, to an iron pin; thence South 45 degrees West 163.25 feet to an iron pin and place of beginning.

This property consists of Part Lot 4, Lot 6, Lot 8 and Part Lot 10 in the Plot of Frazerville in Township of Woodward, Clearfield County, PA.

**THIS IS A TRANSFER FROM MOTHER TO SON AND GRANDSONS.**

**THIS IS A CORRECTIVE DEED TO CORRECT THE DESCRIPTION OF THE PROPERTY CONVEYED BY DEED RECORDED IN DEEDS & RECORDS BOOK VOLUME 1748, PAGE 607.**

**TOGETHER** with, all and singular, the ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever of Grantors in law, equity, or otherwise, howsoever, of, in, to, or out of the same.

**TO HAVE AND TO HOLD** the said Grantors hereditaments and premises hereby granted and released, or mentioned and intended so to be, with the appurtenances, unto the said Grantees, their heirs, successors and assigns, to and for the only proper use and behoof of the said Grantees and assigns, forever.

**BUYER ALSO UNDERSTANDS THAT THERE IS NO COMMUNITY OR PUBLIC SEWAGE SYSTEM AVAILABLE TO THE WITHIN PROPERTY. A PERMIT FOR ANY NEW INDIVIDUAL SEWAGE SYSTEM, OR ANY REPAIRS TO ANY EXISTING INDIVIDUAL SEWAGE SYSTEM, WILL HAVE TO BE OBTAINED FROM THE LOCAL AGENCY DESIGNATED AS PROVIDED IN THE PENNSYLVANIA SEWAGE FACILITIES ACT.**

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

C. Glenn Abernethy Sr.  
C. Glenn Abernethy, Sr.

C. Glenn Abernethy, Jr.

Jay C. Abernethy

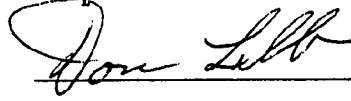
This 27<sup>th</sup> Day of February 1998

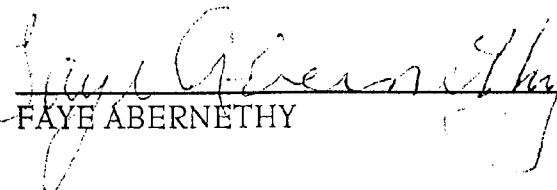
THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 10, 1965, as amended.)

The said Grantors will SPECIALLY WARRANT the property hereby conveyed.

IN WITNESS WHEREOF, said grantors have hereunto set their hands and seals, the day  
and year first above-written.

Sealed and delivered in  
the presence of:

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
FAYE ABERNETHY

### CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the grantees herein is as follows:

955 Hannah Street  
Houtzdale, PA 16651



\_\_\_\_\_  
R. Denning Gearhart, Esquire  
NO TITLE SEARCH/CERTIFICATION

COMMONWEALTH OF PENNSYLVANIA

:

COUNTY OF CLEARFIELD

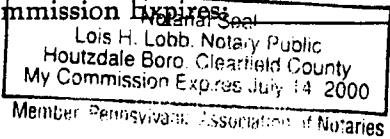
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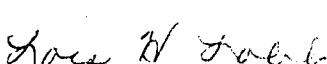
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On this, the 36<sup>th</sup> day of Feb., 1998, before me, the undersigned  
officer, a Notary Public, personally appeared FAYE ABERNETHY, a widow, known to me, or  
satisfactorily proven, to be the person whose name is subscribed to the within instrument, and  
acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

My Commission Expires:



  
\_\_\_\_\_  
Notary Public

David Abernethy

163.26

S 45° W

David

Abernethy

Property Survey for  
Mrs. Faye Abernethy  
Woodward Township - Clearfield Co.  
June 1984 0 - Scale 1" = 25'

By Allen L Martin, P.E. - P.S.

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Robert W. Roseweir

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In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10469

ABERNETHY, C. GLENN SR. AI

00-1469-CD

VS.

KEITH, CARL and ROGER STONE

COMPLAINT IN EJECTMENT

SHERIFF RETURNS

NOW DECEMBER 7, 2000 AT 2:10 PM EST SERVED THE WITHIN COMPLAINT  
IN EJECTMENT ON CARL KEITH, DEFENDANT AT RESIDENCE, RR # 1,  
HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO  
CARL KEITH A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT,  
IN EJECTMENT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: MCCLEARY/COUDRIET

*FILED*  
07/30/08 JP  
DEC 15 2000  
*W.A. Shaw*

NOW DECEMBER 7, 2000 AT 2:15 PM EST SERVED THE WITHIN COMPLAINT  
IN EJECTMENT ON ROGER STONE, DEFENDANT AT RESIDENCE, RR# 1,  
HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO  
ROGER STONE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT  
IN EJECTMENT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: MCCLEARY/COUDRIET

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Return Costs

Cost	Description
33.69	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PD. BY: ATTY.

Sworn to Before Me This

15 Day Of Dec 2000

*William A. Shaw*

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co. Clearfield, PA.

So Answers,

*Chester A. Hawkins*  
My Manly Name  
Chester A. Hawkins  
Sheriff

ORDER AND STIPULATION

FILED 3cc  
FEB 02 2001  
R. Denning Gearhart  
William A. Shaw  
Prothonotary

R. DENNING GEARHART  
ATTORNEY AT LAW  
CLEARFIELD, PA, 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSLVANIA  
(CIVIL DIVISION)

C. GLENN ABERNETHY, SR., :  
C. GLENN ABERNETHY, JR. and :  
JAY C. ABERNETHY, Plaintiffs, :  
:  
VS. : No. 00-1469-CD  
:  
:  
CARL KEITH and ROGER STONE, :  
Defendants :  
:

**O R D E R**

AND NOW, this 2<sup>nd</sup> day of February, 2001, the Plaintiffs and Defendant, Carl Keith, having entered into a Stipulation, it is the ORDER of this Court that the attached Stipulation is hereby adopted as an Order of this Court as to the Plaintiffs and Defendant, Carl Keith.

The case against Defendant, Roger Stone, is dismissed.

BY THE COURT,

JUDGE

FILED

FEB 02 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

C. GLENN ABERNETHY, SR.,	:
C. GLENN ABERNETHY, JR. and	:
JAY C. ABERNETHY,	:
Plaintiffs	:
VS.	:
	NO. 00-1469-CD
	:
CARL KEITH and ROGER STONE,	:
Defendants	:

**STIPULATION**

**WHEREAS**, the parties are presently involved in litigation involving a certain piece of real estate described in the attached Exhibit 'A'; and

**WHEREAS**, this real estate is used as access to real estate owned by Defendant Carl Keith who rents the residence thereon to Roger Stone by virtue of a month to month tenancy;

**WHEREAS**, the Plaintiffs and Defendant Carl Keith wish to settle their differences amicably and without the need for further litigation,

**NOW THEREFORE**, in consideration of the terms and conditions hereunder and the intent to be legally bound hereby, the parties agree as follows:

1. That the property described in Exhibit 'A' is the property of the Plaintiffs.
2. That Defendant, Carl Keith, has a license to transport across said property on the following conditions:
  - a. The use of the road is limited to Carl Keith. Provided, however, that he may permit tenants renting the residence on this Keith property, use of the property

described in Exhibit 'A' upon payment of a usage fee in an amount to be negotiated between the Plaintiffs and Defendant Keith annually in January.

b. There shall be no yard sales, or other commercial activities conducted on that property unless an alternative access is used;

c. That that use be limited to a single family;

d. That those using the road shall remain on the road and shall not leave the road, nor shall they unnecessarily cause dust, rock and other debris to be catapulted off the road onto the adjoining yards.

e. That there will be no roaring of engines;

f. That they have a speed limit of 10 m.p.h.; and

g. That this use be limited to the use of passenger cars and light trucks.

3. The parties shall divide the legal fees and costs such that the Defendants shall be responsible for \$600.00 of said fees and costs, pro-rated as the Defendant's may agree. Payment shall be to C. Glenn Abernethy, Sr. by April 1, 2001.

4. The parties agree that this Stipulation shall be submitted to the Court for purposes of an entry of an Order.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound, hereby have set their hands and seals on this 12<sup>th</sup> day of January, 2001.

**WITNESS:**

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C. Glenn Abernethy Sr.

C. GLENN ABERNETHY, SR.

C. Glenn Abernethy Jr.

C. GLENN ABERNETHY, JR.

Jay C. Abernethy

JAY C. ABERNETHY

Carl Keith

CARL KEITH

## THIS DEED

MADE the 26th day of February, in the year nineteen hundred and ninety-eight (1998) *BETWEEN* FAYE ABERNETHY, erroneously referred to in prior Deeds as Fay Abernethy, a widow, of Houtzdale, Clearfield County, Pennsylvania, party of the first part, hereinafter referred to as the GRANTOR,

A N D

C. GLENN ABERNETHY, SR. of Houtzdale, Clearfield County, Pennsylvania; C. GLENN ABERNETHY, JR. of Philipsburg, Pennsylvania; and JAY C. ABERNETHY of Morann, Clearfield County, Pennsylvania, to be held as tenants with the right of survivorship, not as tenants in common, parties of the second part, hereinafter referred to as the GRANTEEES,

*WITNESSETH*, That in consideration of One and 00/100 (\$1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant and convey to the said grantees, their heirs, successors and assigns,

*ALL* those two certain lots situate in Frazerville in the Township of Woodward, County of Clearfield and Commonwealth of Pennsylvania, more particularly bounded and described as follows:

**THE FIRST THEREOF**: *BEGINNING* at a post on the South side of Penn Siding tramway; thence South 45 degrees 131 feet to a post 33 feet from the center line of Beaver Run Branch Railroad; thence North 63 degrees 15 minutes West 33 feet from center line of said railroad 46 feet to a post; thence North 45 degrees East 162 feet to post; thence South 39 1/2 degrees East 46 feet to a post; the place of beginning. Being known and designated as part of Lot No. 10 in plan of Frazerville. Subject to right of way granted and appropriated by the Altoona and Philipsburg Connecting Railroad Co.

**THE SECOND THEREOF**: *BEGINNING* at a post 33 feet from Beaver Run Branch of the T&C Railroad; thence North 45 degrees East 101 feet to a post; thence North 39 1/2 degrees West 144 feet to post; thence South 45 degrees West 10 feet to post; thence South 39 degrees East 44

feet to post; thence South 45 degrees West 131 feet to a post 33 feet from the centerline of the Beaver Run Branch of Tyrone & Clearfield Railroad; thence South 63 degrees West 100 feet to post, the place of beginning. Being known and designated as Lots 6 and 8 in general plan of Village of Frazerville.

*EXCEPTING and RESERVING*, in accordance with prior deeds in the chain of title, all the stone, coal and other minerals lying and being underneath the said piece or parcel of land, with the free and full right of ingress, egress and regress to search for, dig, mine and carry away the same, free from all claim or claims of damages whatsoever on the part of the Grantees, their heirs or assigns.

*BEING* the same premises as was conveyed to James Robert Abernethy and Fay Abernethy by Deed of Clearfield Trust Company dated January 13, 1967 and entered for record in the Recorder's Office of Clearfield County in Deed Book Volume 537, Page 469. The said James Robert Abernethy having passed away March 11, 1967 with title thereby vesting in his surviving spouse, Faye Abernethy, the Grantor herein.

#### A N D

*ALL* that certain piece or parcel of land situate in the Village of West Houtzdale, Woodward Township, Clearfield County, Pennsylvania, more particularly bounded and described as follows:

*BEGINNING* at a point on the northeasterly right-of-way line of the Madera Branch Railroad and at a distance of 33 feet from the center line of said railroad (this point being the most westerly corner of a lot conveyed by the Clearfield Trust Company, et al, to Robert W. Roseweir and Beverly Roseweir by deed dated June 7, 1966); thence North 63 degrees 15 minutes West 47 feet, more or less, to a point which is the most westerly corner of the lot hereby conveyed; thence North 45 degrees East along the line of the Grantors 96 feet, more or less, to a point on the line of the Penn Collieries tramway; thence in a southeasterly direction along the line of the said tramway 40 feet, more or less, to a point on the line of land previously conveyed to Robert W. And Beverly Roseweir; thence by the line of the said Roseweir lands South 45 degrees West 75 feet, more or less, to the right-of-way of the Madera Branch Railroad and the place of beginning. Being known as a portion of Lot No. 1 in the Thomas Rickert Plot.

*EXCEPTING and RESERVING*, in accordance with prior deeds in the chain of title, all the stone, coal and other minerals lying and being underneath the said piece or parcel of land, with the free and full right of ingress, egress and regress to search for, dig, mine and carry away the same, free from all claim or claims of damages whatsoever on the part of the Grantees, their heirs or assigns.

*BEING* the same premises as were conveyed to James Robert Abernethy and Fay Abernethy, husband and wife, by Deed of Clearfield Trust Company, a banking corporation dated December 6, 1966 and entered for record in the Recorder's Office of Clearfield County in Deeds & Records Book Volume \_\_\_\_\_, Page \_\_\_\_\_. The said James Robert Abernethy having passed away March 11, 1967 with title thereby vesting in his surviving spouse, Faye Abernethy, the Grantor herein.

The properties herein conveyed now being described in the map prepared by Allan L. Martin, P.E., R.S. dated June, 1984, attached hereto and being described as follows:

**BEGINNING** at an iron pin being located approximately 33 feet north of the centerline of the former Beaver Run Branch Railroad and the property now or formerly of David Hamaty; thence South 63 degrees 15 minutes East 198.0 feet to an iron pin; thence North 45 degrees East 82.5 feet to an iron pin; thence North 39 degrees 30 minutes West 191.0 feet, more or less, to an iron pin; thence South 45 degrees West 163.25 feet to an iron pin and place of beginning.

This property consists of Part Lot 4, Lot 6, Lot 8 and Part Lot 10 in the Plot of Frazerville in Township of Woodward, Clearfield County, PA.

**THIS IS A TRANSFER FROM MOTHER TO SON AND GRANDSONS.**

**THIS IS A CORRECTIVE DEED TO CORRECT THE DESCRIPTION OF THE PROPERTY CONVEYED BY DEED RECORDED IN DEEDS & RECORDS BOOK VOLUME 1748, PAGE 607.**

TOGETHER with, all and singular, the ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever of Grantors in law, equity, or otherwise, howsoever, of, in, to, or out of the same.

TO HAVE AND TO HOLD the said Grantors hereditaments and premises hereby granted and released, or mentioned and intended so to be, with the appurtenances, unto the said Grantees, their heirs, successors and assigns, to and for the only proper use and behoof of the said Grantees and assigns, forever.

BUYER ALSO UNDERSTANDS THAT THERE IS NO COMMUNITY OR PUBLIC SEWAGE SYSTEM AVAILABLE TO THE WITHIN PROPERTY. A PERMIT FOR ANY NEW INDIVIDUAL SEWAGE SYSTEM, OR ANY REPAIRS TO ANY EXISTING INDIVIDUAL SEWAGE SYSTEM, WILL HAVE TO BE OBTAINED FROM THE LOCAL AGENCY DESIGNATED AS PROVIDED IN THE PENNSYLVANIA SEWAGE FACILITIES ACT.

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

C. Glenn Abernethy Sr.  
C. Glenn Abernethy, Sr.

C. Glenn Abernethy, Jr.

Jay C. Abernethy

This 27<sup>th</sup> Day of February 1998

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 10, 1965, as amended.)

The said Grantors will SPECIALLY WARRANT the property hereby conveyed.

IN WITNESS WHEREOF, said grantors have hereunto set their hands and seals, the day  
and year first above-written.

Sealed and delivered in  
the presence of:

Don Lobb

Faye Abernethy  
FAYE ABERNETHY

### CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the grantees herein is as follows:

955 Hannah Street  
Houtzdale, PA 16651

R. Denning Gearhart

R. Denning Gearhart, Esquire  
NO TITLE SEARCH/CERTIFICATION

COMMONWEALTH OF PENNSYLVANIA

:

COUNTY OF CLEARFIELD

: ss:

:

On this, the 26<sup>th</sup> day of Feb., 1998, before me, the undersigned  
officer, a Notary Public, personally appeared FAYE ABERNETHY, a widow, known to me, or  
satisfactorily proven, to be the person whose name is subscribed to the within instrument, and  
acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

My Commission Expires:

Notary Seal
Lois H. Lobb, Notary Public
Houtzdale Boro, Clearfield County
My Commission Expires July 14 2000
Member Pennsylvania Association of Notaries

Lois H. Lobb  
Notary Public

Harmony

163.26'

S 45° 15' E

David

Harmony

Property Survey for  
Mrs. Faye Abernethy  
Woodward Township - Clearfield Co.  
June 1984 0 - Scale 1" = 25'

By Allen L. Martin, P.E. - P.S.

82.50'

100' 100' 100'

308/530

Townshi  
Road

3' ft. Paved

S 45° 15' E

David Harmony

Charles Dugan

N 45° E - 84' ±

James Robert & Faye Abernethy

7.48 M. S. S.  
UNOPENED ALLEY

N 45° E - 74.0' ±

James Robert & Faye Abernethy

James Clay Abernethy

0.46 M. S. S.

S 45° 15' E

S 45° 15' E

1" = 25'