

01-911-CD
EDWARD A. GEARHART -vs- MONA MAE BLAKESLEE

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

EDWARD A. GEARHART
Plaintiff

vs.

No. 01-911-CO

MONA MAE BLAKESLEE
Defendant

Type of Pleading: Complaint in Equity

Filed on behalf of: Edward A. Gearhart,
Plaintiff.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court I.D. No. 42519

900 Beaver Drive
DuBois, Pennsylvania 15801

(814) 375-0300

FILED

JUN 13 2001

William A. Shaw
Prothonotary

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

EDWARD A. GEARHART,
Plaintiff

vs. : No.

MONA MAE BLAKESLEE
Defendant

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.

Office of the Court Administrator
Clearfield County Courthouse
One North Second Street
Clearfield, Pennsylvania 16830
(814) 765-2641

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

EDWARD A. GEARHART,
Plaintiff

vs. : No.

MONA MAE BLAKESLEE
Defendant

**COMPLAINT IN EQUITY FOR PARTITION OF REAL PROPERTY AND FOR
ACCOUNTING AND PAYMENT OF RENTS DUE**

1. Plaintiff is Edward Alan Gearhart who currently resides at Lot 24 Cedarwood Lane, Erie, Pennsylvania.

2. Defendant is Mona Mae Blakeslee who currently resides at RD#4, Box 468, DuBois, Pennsylvania.

3. Plaintiff and Defendant are brother and sister and the owners of certain real estate situate in Brady Township, Clearfield County, described in a deed from Paul Turner and Ann Bell Turner to Homer B. Gearhart and Leota N. Gearhart dated September 15, 1955 and recorded in the Office of the Recorder of Deed in Volume 446 at page 178. A copy of which is attached hereto as Exhibit "A".

4. The Plaintiff and Defendant acquired title to the premise by testamentary descent in the Orphans' Court of Clearfield County under Docket No. 96-451 and all the interests of the parties in said property is held as tenants in common and is undivided.

5. The Plaintiff has a one-half undivided interest in the property, as does the Defendant.

6. No person other than the parties to this suit has any interest in the said property.

7. Defendant is in exclusive possession of the property and Plaintiff has been excluded from possession.

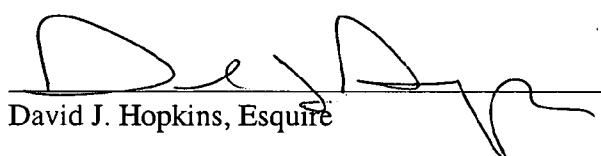
8. Plaintiff believes, and therefore avers, that the fair rental value of the property is a minimum of five hundred dollars (\$500.00) per month and that for a period of at least forty-one (41) months Plaintiff has been denied his portion of the five hundred dollar (\$500.00) per month fair rental value.

9. No partition or division of the above-described property has ever been made and Defendant has continually refused Plaintiff's request for amicable adjustment or partition.

WHEREFORE, Plaintiff requests:

- A. That the Court decree partition of said real estate;
- B. That the said share of which the respective parties are entitled be set out to them in severalty and that all proper and necessary conveyances and assurances be executed for carrying such partition into effect; and that if said real estate cannot be divided without prejudice to or spoiling the whole, such proper and necessary sale of same may be made by such person and in such manner as the Honorable Court may direct;
- C. That the Defendant account to and pay over to the Plaintiff such rents as the Honorable Court may deem appropriate; and
- D. Such other and further relief be granted as the Court deems just and proper.

Respectfully submitted,



David J. Hopkins, Esquire

Dated: 6 - 5 - 2001

VERIFICATION

I hereby verify that the statements made in this complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to Unsworn Falsification to Authorities.

Edward A. Gearhart

Edward A. Gearhart

This Deed,

Made the Fifteenth (15th) day of September in the year
of our Lord one thousand nine hundred fifty-five (1955)

Between PAUL TURNER and ANNA BELL TURNER, husband and wife,
of the Village of Luthersburg, County of Clearfield, and State
of Pennsylvania, hereinafter known as the

Grantors,
and HOMER B. GEARHART and LEOTA M. GEARHART, tenants
by entireties, of the City of DuBois, County of Clearfield, and
State of Pennsylvania, hereinafter known as the

Grantees :
Witnesseth, that in consideration of ONE HUNDRED AND SIXTY-NINE
(\$169.00) Dollars,
in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby
grant and convey to the said grantees,

ALL THAT certain lot or piece of land situated in the Township of
Brady, County of Clearfield, and State of Pennsylvania, bounded
and described as follows, to wit:-

BEGINNING at a tack in the center line of
U. S. Highway Route No. 322 leading from
Luthersburg to Reynoldsville, said tack being
the Northwest corner of land of Warren McClelland; thence by the west line of land
of Warren McClelland South 6° 54' West Seven
Hundred and sixteen (716) feet to an iron
bolt, thence by line of land of B. Lyons

FILED

JUN 13 2001
1:45 AM
Cathy Heltzel, PC
William A. Shaw
Prothonotary
\$80.00

Cathy Heltzel

1 Complainant certified to
Orphan's Court 3/1/03

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11122

GEARHART, EDWARD A.

01-911-CD

VS.

BLAKESLEE, MONA MAE

COMPLAINT IN EQUITY

SHERIFF RETURNS

NOW JULY 10, 2001 AT 9:31 AM DST SERVED THE WITHIN COMPLAINT IN EQUITY ON MONA MAE BLAKESLEE, DEFENDANT AT RESIDENCE, RD 4, BOX 468, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MONA MAE BLAKESLEE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EQUITY AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET

Return Costs

Cost	Description
30.69	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

13th Day Of July 2001



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

So Answers,



Chester A. Hawkins
Sheriff

FILED
01330741
JUL 13 2001
Clerk
No CC

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD A. GEARHART,
Plaintiff

vs.

MONA MAE BLAKESLEE,
Defendant

: No. 01 - 911 C.D.
:
: Type of Case: EQUITY
:
: Type of Pleading: PRELIMINARY
: OBJECTIONS
:
: Filed on Behalf of: MONA MAE
: BLAKESLEE, Defendant
:
: Counsel of Record for this Party:
:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
:
: GLEASON, CHERRY AND
: CHERRY, L.L.P.
: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801
:
: (814) 371-5800

FILED

AUG 20 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD A. GEARHART, :
Plaintiff :
:
vs. : No. 01 - 911 C.D.
:
MONA MAE BLAKESLEE, :
Defendant :
:

NOTICE TO PLEAD

TO THE WITHIN PLAINTIFF:

YOU ARE HEREBY NOTIFIED TO PLEAD
TO THE WITHIN PRELIMINARY
OBJECTIONS WITHIN TWENTY (20) DAYS
FROM THE DATE OF SERVICE HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Atorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD A. GEARHART,	:
Plaintiff	:
	:
vs.	: No. 01 - 911 C.D.
	:
MONA MAE BLAKESLEE,	:
Defendant	:

DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S COMPLAINT

Defendant, MONA MAE BLAKESLEE, by and through her undersigned attorney, preliminarily objects to Plaintiff's Complaint as follows:

I. PRELIMINARY OBJECTION RAISING AN ISSUE OF LACK OF SUBJECT MATTER JURISDICTION UNDER Pa.R.C.P. 1028(a)(1)

1. The action set forth in the Complaint seeks a partition of real estate that Plaintiff claims is owned by Plaintiff and Defendant as Tenants in Common and further asks for an accounting and payment of rents allegedly due from Defendant as a co-tenant to Plaintiff as the other co-tenant.
2. That the real estate that is the subject of Plaintiff's Complaint is actually currently titled in the name of Leota M. Gearhart, who died on August 17, 1996, leaving a Last Will and Testament that gave all of her property equally to her two children, Edward A. Gearhart and Mona Mae Gearhart.
3. That Letters Testamentary were issued to Edward A. Gearhart and Mona Mae Blakeslee, as Co-Executors of the Estate of Leota M. Gearhart, and the documents evidencing

the filings of the Estate are found in the Offices of the Register of Wills of Clearfield County, Pennsylvania, at No. 96 - 451 O.C.

4. That an Inheritance Tax Return was filed at No. 96 - 451 O.C. setting forth the value of the premises of the late Leota M. Gearhart at \$49,996.00 but after payment of inheritance tax, no further action has been taken on this Estate and no final accounting has been made because the Co-Executors have not been able to agree upon the terms of the sale of the residence of Leota M. Gearhart and cannot agree to resolve the other outstanding matters of the Estate.

5. Under the Act of October 12, 1999, 20 Pa.C.S.A. §711(1), the jurisdiction over the subject matter of this action is vested exclusively in the Orphans' Court.

6. This Court has no jurisdiction over the subject matter of this action.

WHEREFORE, Defendant requests that the Plaintiff's Complaint be dismissed.

**II. PRELIMINARY OBJECTION RAISING LEGAL INSUFFICIENCY OF
A PLEADING (DEMURRER) UNDER Pa.R.C.P. 1028(4)**

7. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 6 inclusive as if set forth at length herein.

8. That the Estate of the decedent, Leota M. Gearhart, has never been settled and title to her real estate is still subject to all the powers granted to the personal representatives to lawfully administer the Estate and subject to all orders of your Honorable Court.

9. That no First and Final Accounting has ever been filed in this case which would vest title in said premises free and clear of all Orders of this Court in the Plaintiff and Defendant.

10. That until the Estate is fully administered and a First and Final Account approved by your Honorable Court, Plaintiff has no cause of action against Defendant.

WHEREFORE, Defendant respectfully requests this Court to grant her Preliminary Objection by way of a demurrer and dismiss Plaintiff's Complaint.

III. PRELIMINARY OBJECTION RAISING PLAINTIFF'S LACK OF CAPACITY TO SUE UNDER Pa.R.C.P. 1028(a)(5)

11. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 10 inclusive of the preceding Counts as if the same were set forth at length herein.

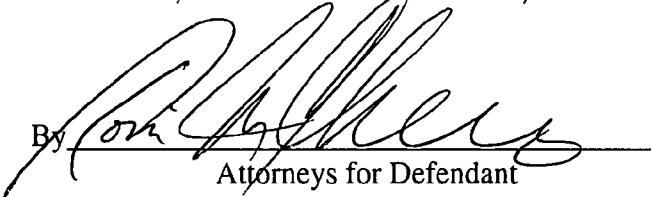
12. That until such time as a First and Final Accounting is approved by your Honorable Court and the Estate of Leota M. Gearhart is settled, Plaintiff does not have title to the real estate he desires to partition.

13. That until Plaintiff has title to the real estate free and clear of the claims of the Estate, the Co-Executors and the Court, he lacks the capacity to sue Defendant for a partition of that property.

WHEREFORE, Defendant respectfully requests that this Court dismiss Plaintiff's Complaint.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

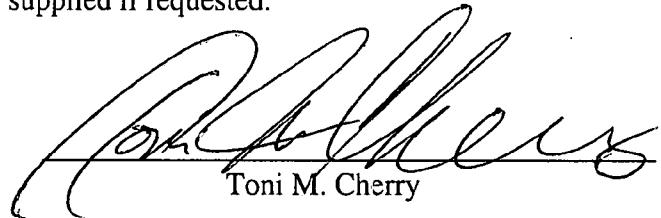

By _____
Ron P. Miller
Atorneys for Defendant

COMMONWEALTH OF PENNSYLVANIA

: SS.

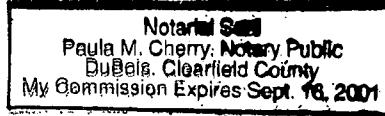
COUNTY OF CLEARFIELD

TONI M. CHERRY, Attorney at Law, being duly sworn according to law, deposes and says that she is authorized to make this Affidavit on behalf of the Defendant, MONA MAE BLAKESLEE, as her attorney; that the facts set forth in the foregoing Preliminary Objections are true and correct, partly from her own knowledge and partly from information supplied to her by Defendant; that the purpose of this Affidavit is to expedite the litigation and that an Affidavit of the Defendant will be supplied if requested.



Toni M. Cherry

Sworn to and subscribed before me this 17TH day of August, 2001.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD A. GEARHART, :
Plaintiff :
vs. : No. 01 - 911 C.D.
MONA MAE BLAKESLEE, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2001, a true and correct copy of Defendant's Preliminary Objections to Plaintiff's Complaint was served upon counsel for Plaintiff by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

DAVID J. HOPKINS, ESQ.
The Hopkins Law Firm
Attorneys at Law
900 Beaver Drive
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attnorneys for Defendant

Dated: August 17, 2001

FILED

AUG 20 2001
M 18331/cathy Cherry
William A. Shaw
Prothonotary
SAC

cc to Orphan's Court Attala Co

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

EDWARD A. GEARHART
Plaintiff

vs. : No. 01-911 C.D.

MONA MAE BLAKESLEE
Defendant

: Type of Pleading: Answer to
Preliminary Objections

: Filed on behalf of: Edward A. Gearhart,
Plaintiff.

: Counsel of Record for this party:

: DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court I.D. No. 42519

: 900 Beaver Drive
DuBois, Pennsylvania 15801

: (814) 375-0300

FILED

SEP 11 2001

**William A. Shaw
Prothonotary**

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

EDWARD A. GEARHART, :
Plaintiff :
: vs. : No. 01-911 C.D.
: :
MONA MAE BLAKESLEE :
Defendant :
:

ANSWER TO PRELIMINARY OBJECTIONS

AND NOW, comes Plaintiff, Edward Gearhart, by and through his attorneys, The Hopkins Law Firm, and answers Defendant's Preliminary Objections as follows:

PRELIMINARY OBJECTION I

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. Defendant in reality administered the Estate of Leota M. Gearhart. Defendant completed the administration of the Estate. Title to the real property involved has not been retitled.
5. Denied. A partition action is appropriate.
6. Denied. This partition action is appropriate.

WHEREFORE, Plaintiff respectfully requests this Honorable Court dismiss Defendant's first Preliminary Objection with prejudice.

PRELIMINARY OBJECTION II

7. No answer is required of this paragraph.
8. Denied. Defendant in reality administered the Estate of Leota M. Gearhart. Defendant completed the administration of the Estate. Title to the real property involved has not been retitled.
9. Admitted in part and denied in part. Plaintiff admits a first and final accounting has never been filed. Plaintiff denies title has not vested in Plaintiff and Defendant.
10. Denied. This partition action is appropriate.

WHEREFORE, Plaintiff respectfully requests this Honorable Court dismiss Defendant's second Preliminary Objection with prejudice.

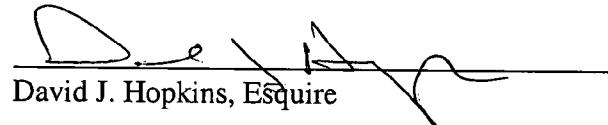
PRELIMINARY OBJECTION III

11. No answer is required of this paragraph.
12. Defendant in reality administered the Estate of Leota M. Gearhart. Defendant completed the administration of the Estate. Title to the real property involved has not been retitled.

13. Defendant in reality administered the Estate of Leota M. Gearhart. Defendant completed the administration of the Estate. Title to the real property involved has not been retitled.

WHEREFORE, Plaintiff respectfully requests this Honorable Court dismiss Defendant's third Preliminary Objection with prejudice.

Respectfully submitted,



David J. Hopkins, Esquire

Dated: September 9, 2001

FILED

SEP 11 2001

08-5212-C-Cathy Heltzer
William A. Shaw
Prothonotary
Eo
JES

cc to Orphan's Court 4/11/03

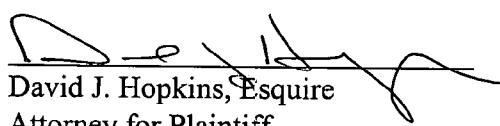
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

EDWARD A. GEARHART :
Plaintiff :
: :
vs. : No. 01-911 C.D.
: :
MONA MAE BLAKESLEE :
Defendant :
: :

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Answer to Preliminary Objections, filed on behalf of Edward A. Gearhart, Plaintiff, was forwarded on the 13th day of September, 2001, by U.S. Mail, postage prepaid, to all counsel of record, addressed as follows:

Toni M. Cherry, Esquire
Gleason, Cherry and Cherry, L.L.P.
One North Franklin Street
P.O. Box 505
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Plaintiff
Supreme Court No. 42519

FILED
SEP 17 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

EDWARD A. GEARHART : :

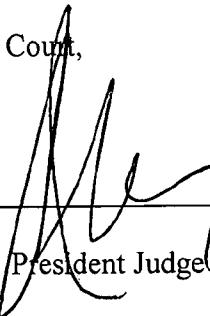
-vs- : No. 01-911-CD

MONA MAE BLAKESLEE : :

ORDER

NOW, this 14th day of November, 2001, upon consideration of Preliminary Objections filed on behalf of Defendant above-named, and argument and briefs thereon, it is the ORDER of this Court that said Objections be and are hereby sustained to the extent that the above-captioned Complaint shall be certified to the Orphans' Court for further proceedings. It is the further ORDER of this Court that the parties hereto, as co-executors of the Estate of Leota M. Gearhart, shall within 40 days from date hereof, obtain a report from a qualified real estate appraiser with regards to a valuation of the subject premises and within 10 days following receipt of said report advise this Court as to the status of the sale of the subject premises, following which additional proceedings will be had on said Preliminary Objections, if necessary.

By the Court,


President Judge

FILED

NOV 15 2001

William A. Shaw
Prothonotary

FILED

NOV 15 2001

01920100
William A. Shaw
Prothonotary

Copy to Mr. Cherry &

E
KBB

Hopkins

1 copy to Orphan's Court 3/11/03

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

EDWARD A. GEARHART

Plaintiff

*

Case No. 01-0911 C.D.

Vs.

*

MONA MAE BLAKESLEE

Defendant

*

*

*

*

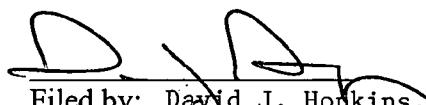
*

Praecipe to Discontinue

To the Prothonotary:

Please mark the above-referenced case Settled, Discontinued, and Ended.

7-10-07
Date


Filed by: David J. Hopkins, Esquire

FILED ^{No CC}
013:53 PM
JUL 12 2007
151 CC of
William A. Shaw
Prothonotary/Clerk of Courts
Disc. to
Atty

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Edward A. Gearhart

Vs. **No. 2001-00911-CD**
Mona Mae Blakeslee

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 12, 2007, marked:

Settled, Discontinued, and Ended

Record costs in the sum of \$80.00 have been paid in full by David J. Hopkins, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 12th day of July A.D. 2007.



William A. Shaw, Prothonotary