

01-1201-CD  
Donald Wells al vs Homer Schaffer

10

Date: 07/24/2003

**Clearfield County Court of Common Pleas**

User: BHUDSON

Time: 11:11 AM

**ROA Report**

Page 1 of 1

Case: 2001-01201-CD

Current Judge: John K. Reilly Jr.

Donald H. Wells Jr., Sarah J. Wells vs. Homer L. Schaffer

Civil Other

Date	Judge
07/25/2001	
① Filing: Complaint/Action to Quiet Title Paid by: Ferraro, R. Edward (attorney for Wells, Donald) Receipt number: 1828862 Dated: 07/25/2001 Amount: \$90.00 (Check) Three CC Attorney (Property is located in Bell Township, Clearfield County, PA.)	15 No Judge
② Motion for Preliminary Injunction and Permanent Injunction, filed by s/R. Edward Ferraro, Esq. Three CC Attorney	16 No Judge
Rule to Show Cause, filed. AND NOW, this 25 day of July, 2001, re:	No Judge
③ Plaintiff's Motion for Preliminary Injunction, Defendant shall show cause the 1st day of August, 2001, at 9:00a.m. BY THE COURT: /s/Fredric J. Ammerman, Judge, for Judge John K. Reilly, Jr., P.J. Three CC Attorney	2
④ ORDER, NOW, this 1st day of August, 2001, re: Hearing into Plaintiff's Motion for Temporary Injunction, Motion GRANTED. by the Court, s/JKR,JR.,P.J. 1 cc atty Ferraro, DuBois	3 John K. Reilly Jr.
⑤ Sheriff Returns, served Rule to Show Cause, Motion for Preliminary Injunction & Permanent Injunction, Complaint Action to Quiet Title, on \ Homer L. Shaffer. So Answers, Chester A. Hawkins, by Marilyn Hamm \$52.54 Shff Hawkins paid by Attorney	John K. Reilly Jr.
⑥ Answer To Plaintiff's Complaint and New Matter. Filed by s/Jeffrey S. DuBois, Esq. Cert of Svc 1 cc atty Taladay	1 John K. Reilly Jr.
⑦ Answer To Defendant's New Matter. Filed by s/Ross F. Ferraro, Esq. 5 Verification, s/Donald H. Wells,Jr. s/Sarah J. Wells Cert of Svc 1 cc Atty Ferraro	John K. Reilly Jr.
⑧ Notice of Service of Answers to Plaintiffs' Request For Production of Documents. Filed by s/Jeffrey S. DuBois, Esq. no cc	2 John K. Reilly Jr.
⑨ Certificate of Readines, filed by Atty Ferraro Non-Jury Trial approx. (2) days and notice to all attorneys, 2 cert. to Atty. and copy to C/A	4 John K. Reilly Jr.
⑩ PRE-TRIAL ORDER, NOW, this 27th day of Aug. 2002, re: Trial w/o Jury to John K. Reilly Jr. be held Nov. 15, 2002, commencing at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Ferraro, Du Bois	1
⑪ ORDER, NOW, this 15th day of November, 2002, re: Counsel for Plaintiff to John K. Reilly Jr. file a Brief within 30 days from this date, and Defendant given 20 days thereafter to respond in kind. by the Court, s/JKR,JR.,P.J. 2 cc Atty Ferraro, DuBois	1
⑫ Opinion and Order/Order, NOW, this 13th day of January, 2003, following hearing, Order that judgment shall be and is hereby entered in favor of the Plaintiff and against the Defendant. BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Atty R. Edward Ferraro, Atty DuBois One CC D. Mikesell	3 John K. Reilly Jr.
⑬ Motion For Post-Trial Relief. filed by s/Jeffrey S. DuBois, Esquire 5	John K. Reilly Jr.
⑭ Certificate of Service 6 cc Atty DuBois	
⑮ Reply and Objections to Defendant's Motion For Post-Trial Relief. filed by s/Ross F. Ferraro, Esquire Certificate of Service 1 cc Judge Reilly, 1 cc Court Reporter --Per R. Ferraro's Request	John K. Reilly Jr.
⑯ Transcript of Proceedings, Nonjury Trial Held Before The Honorable John K. Reilly, Jr., President Judge on Friday, November 15, 2002. no cc	5/c John K. Reilly Jr.
⑰ OPINION AND ORDER, NOW, this 23rd day of June, 2003, upon consideration of Defendant's Motion for Post-Trial Relief, it is the ORDER of this Court that said Motion be and is hereby GRANTED in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Ferraro, DuBois, and Don Mikesell	2
⑱ Filing: Notice of Appeal to High Court Paid by: DuBois, Jeffrey S. (attorney for Schaffer, Homer L.) Receipt number: 1863400 Dated: 07/22/2003 Amount: \$45.00 (Cash) 6 CC Attorney DuBois One CC Superior Court with check #1010 in amount of \$60.00	4

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

DONALD H. WELLS, JR. and  
SARAH J. WELLS

-vs-

HOMER L. SCHAFFER

No. 01 - 1201 - CD

**OPINION AND ORDER**

The parties above-named are owners of two separate and distinct but contiguous tracts of land located in Bell Township, Clearfield County, Pennsylvania. By a pleading captioned Complaint/Action to Quiet Title filed on July 25, 2001, Plaintiff claimed ownership of 2.114 acres located immediately to the south of their property, record title to which is in the Defendant, based on the doctrine of consentable line.

Following hearing and briefs, this Court, on January 13, 2003, filed an Opinion and Order holding in favor of the Plaintiffs.

On January 21, 2003, Defendant filed a Motion for Post-Trial Relief alleging that this Court erred in finding that Plaintiffs' proved a line that was recognized by both parties and that each party claimed and occupied land on his side of the line.

Plaintiffs' claim rests upon the doctrine of consentable line and the theory of recognition and acquiescence that requires that the parties acknowledge and establish a "line". The elements therefor are: (1) a finding that each party has claimed the land on his side of the line; and (2) a finding that this occupation has occurred for the statutory period of 21 years.

See Jedlicka v. Clemmer, 677 A.2d 1232 Pa. Super (1996). Moreover, in Sorg v. Cunningham, 687 A.2d 846 Pa. Super. (1997) the Appellate Court held that the doctrine of consentable

**FILED**

JUN 23 2003

William A. Shaw  
Prothonotary

boundary does not require proof of actual possession of the entire parcel of land by the Plaintiffs.

In reviewing the testimony and briefs in this matter, however, it is clear to this Court that Plaintiffs are claiming ownership under the above doctrine to the edge of the woods to the East and West of the pond and a review of the map attached to Plaintiffs' Complaint as Exhibit C indicates this to be the proper boundary line to the East and West. To that extent, this Court will grant Defendant's Motion for Post-Trial Relief to set the boundaries of the subject premises as follows: On the North by the Southern line of property now or formerly of Plaintiffs; to the South by Laurel Run and to the East and West by the line of trees as set forth in said Exhibit C.

WHEREFORE, the Court enters the following:

**ORDER**

NOW, this 23<sup>rd</sup> day of June, 2003, upon consideration of Defendant's Motion for Post-Trial Relief, it is the ORDER of this Court that said Motion be and is hereby granted in accordance with the foregoing Opinion.

BY THE COURT:

*/s/ JOHN K. REILLY, JR.*

President Judge

\*\*\* TRANSMISSION REPORT \*\*\*

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01-1201-CD

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William A. Shaw  
Prothonotary/Clerk of Courts

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William A. Shaw  
Prothonotary/Clerk of Courts

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

DONALD H. WELLS, JR. and : No. 01-1201 C.D.  
SARAH J. WELLS, :  
Plaintiffs : Type of Pleading:  
Vs. : **PRAECIPE FOR ENTRY  
OF JUDGMENT**  
: Filed on Behalf of:  
HOMER L. SCHAFFER, : DEFENDANT  
Defendant : Counsel of Record for this Party:  
: Jeffrey S. DuBois  
: Supreme Court No. 62074  
: 190 West Park Avenue, Suite #5  
: DuBois, PA 15801  
: (814) 375-5598

**FILED**

APR 16 2004  
0/2:50 PMS *(RWS)*  
William A. Shaw  
Prothonotary  
46 CERT TO ATTY DUBOIS  
FAX. SER.

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

DONALD H. WELLS, JR. and	:	No. 01-1201 C.D.
SARAH J. WELLS,	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
HOMER L. SCHAFFER,	:	
Defendant	:	

**PRAECIPE FOR ENTRY OF JUDGMENT**

TO: WILLIAM A. SHAW, PROTHONOTARY

SIR:

Please enter judgment in favor of the Plaintiffs, DONALD H. WELLS, JR., and SARAH J. WELLS, and against Defendant, HOMER L. SCHAFFER, with respect to the decision of the Court dated and entered January 13, 2003, confirmed by Opinion and Order filed June 23, 2003, granting in part and denying in part timely Post-Trial Motions filed by Defendant.

Respectfully submitted,



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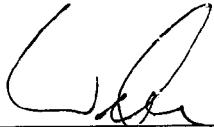
Jeffrey S. DuBois, Esquire  
Attorney for Defendant

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

DONALD H. WELLS, JR. and : No. 01-1201 C.D.  
SARAH J. WELLS, :  
Plaintiffs :  
: Vs. :  
: :  
HOMER L. SCHAFFER, :  
Defendant :  
:

**NOTICE OF ENTRY OF JUDGMENT**

AND NOW, this 16<sup>th</sup> day of April, 2004, judgment is entered in favor of the Plaintiffs, DONALD H. WELLS, JR., and SARAH J. WELLS and against the Defendant, HOMER L. SCHAFFER, on the Decision filed January 13, 2003.



\_\_\_\_\_  
Prothonotary

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

DONALD H. WELLS, JR. and	:	No. 01-1201 C.D.
SARAH J. WELLS,	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
HOMER L. SCHAFFER,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 16<sup>th</sup> day of April, 2004, I served a true and correct copy of the within Praeclipe for Entry of Judgment by first class mail, postage prepaid, on the following:

Hon. John K. Reilly, Jr.  
President Judge  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

Court Reporter  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

Court Administrator  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

R. Edward Ferraro, Esquire  
Ross F. Ferraro, Esquire  
690 Main Street  
Brockway, PA 15824

**The Superior Court of Pennsylvania  
Sitting at Pittsburgh**

1015 Grant Building  
Pittsburgh, Pennsylvania  
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND**

**under**

**PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:

**RECORD- 1 TRANSCRIPT WITH EXHIBITD ATTACHED TO TRANSCRIPT**

As remanded from said court in the following matter:  
**WELLS ET AL. V SCHAFFER-NO. 1380 WDA 2003**

**COURT OF COMMON PLEAS, CIVIL DIVISION-CLEARFIELD COUNTY  
NO. 01-1201 C.D.**

**FILED**

MAR 16 2005

*ml 12:05/c*  
**William A. Shaw  
Prothonotary**

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded MARCH 14, 2005

*Copy to Superior  
Court*

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

*Eleanor R. Valecko*

**DEPUTY PROTHONOTARY**

RECORD, ETC. RECEIVED:

DATE: March 16, 2005

*[Signature]*  
(Signature & Title)

*Prothonotary*

DONALD H. WELLS, JR. AND SARAH J. WELLS, Appellees : IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

HOMER L. SCHAFER, Appellant : No. 1380 WDA 2003

Appeal from the Order entered June 23, 2003  
In the Court of Common Pleas of Clearfield County  
Civil Division at No. 01-1201 C.D.

FILED

MAR 16 2005

12:05 PM  
William A. Shaw  
Prothonotary

BEFORE: JOYCE, BENDER and BOWES, JJ.

MEMORANDUM:

Filed: January 28, 2005

Appellant, Homer L. Schaffer, appeals from the June 23, 2003 Order<sup>1</sup> of the Court of Common Pleas of Venango County granting in part and denying in part his Motion for Post Trial Relief. For the following reasons, we affirm. The relevant facts and procedural history are as follows.

This case involves a property dispute between two adjoining landowners in Bell Township, Clearfield County, Pennsylvania. Each party claims ownership of approximately 2.2 acres of land located between their respective properties. Specifically, Appellant avers that the disputed

<sup>1</sup> Upon our review of the trial court docket, we find that judgment was not entered subsequent to the order denying the post-trial motions. "An appeal to this Court can only lie from judgments entered subsequent to the trial court's disposition of post-verdict motions, not from the order denying post-trial motions." *Fanning v. Davne*, 795 A.2d 388, 392 (Pa. Super. 2002), citing *Johnston the Florist, Inc. v. TEDCO Constr. Corp.*, 657 A.2d 511, 514 (1995); Pa.R.A.P. 301 (a), (c), and (d). However, in the interests of judicial economy, we will consider the appeal as being properly before this Court. *See id.*

property was part of approximately 122 acres they purchased in September of 2000. Appellees aver that for approximately 34 years, they and their predecessors claimed, occupied, and maintained the disputed property as their own, thereby acquiring ownership of the disputed property.

On July 25, 2001, Appellees instituted suit by filing a Complaint/Action to Quiet Title. Within their Complaint, Appellees alleged they acquired title to the disputed property either by adverse possession or consentable line. Complaint, Certified Record at 1. Furthermore, Appellees requested damages and attorneys fees. *Id.* On said date, Appellees also filed a Motion for Preliminary Injunction and Permanent Injunction.

Following a non-jury trial, the trial court entered judgment in favor of Appellees and against Appellant. Specifically, the trial court found that Appellees were entitled to the disputed land under the doctrine of acquiescence/consentable line. Trial Court Opinion and Order, 1/13/03, at 2-3.<sup>2</sup>

On January 21, 2003, Appellant filed a Motion for Post-Trial Relief and requested the trial court vacate its Opinion and Order and enter judgment in his favor. On June 23, 2003, the trial court granted Appellant's motion, insofar as to specifically set the boundaries of the disputed land. In all other respects, Appellees were still entitled to the property.

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<sup>2</sup> As a result, the trial court did not find it necessary to discuss Appellees' ownership claims under the doctrines of estoppel or adverse possession. *Id.* at 3.

Appellant filed a timely notice of appeal and raises the following issues for review:

Whether the trial court erred as a matter of law in awarding in favor of Appellees on the theory of boundary by acquiescence when the Appellees asked for permission to use the land and never claimed it as their own?

Whether the trial court erred as a matter of law in finding in favor of the Appellees on the theory of boundary by acquiescence when there was no marker or other line designating the boundary between the properties, the parties never claimed or acquiesced to a line which divides their properties, and the area in question is within a vast space of unenclosed woodland?

Brief for Appellant at 5.

Our standard of review in considering whether a directed verdict or JNOV was appropriate is as follows:

In reviewing a trial court's decision whether or not to grant judgment in favor of one of the parties, we must consider the evidence, together with all favorable inferences drawn therefrom, in a light most favorable to the verdict winner. Our standard of review when considering motions for a directed verdict and judgment notwithstanding the verdict are identical. We will reverse a trial court's grant or denial of a judgment notwithstanding the verdict only when we find an abuse of discretion or an error of law that controlled the outcome of the case. Further, the standard of review for an appellate court is the same as that for a trial court.

There are two bases upon which a judgment N.O.V. can be entered; one, the movant is entitled to judgment as a matter of law and/or two, the evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first, the court reviews the record and concludes that, even with all factual inferences decided adverse to the movant, the law nonetheless requires a verdict in his

favor. Whereas with the second, the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.

**Janis v. Amp, Incorporated**, 856 A.2d 140, 143-144 (Pa. Super. 2004); **Capital Care Corp. v. Hunt**, 847 A.2d 75, 81-82 (Pa. Super. 2004) citing **Goldberg v. Isdaner**, 780 A.2d 654, 659-660 (Pa. Super. 2001).

Furthermore,

when reviewing a trial court's decision regarding an action to quiet title, we are limited to determining whether the findings of fact that led to the trial court's conclusions of law are supported by competent evidence. "Ordinarily, an appellate court will not reverse a determination of the trial court in a quiet title action absent an error of law or capricious disregard of the evidence."

**Birdsboro Mun. Auth. v. Reading Co.**, 758 A.2d 222, 225 (Pa. Super. 2000) quoting **Moore v. Duran**, 687 A.2d 822, 827 (Pa. Super. 1996). Additionally, the question of what is a boundary line is a matter of law, but where a boundary line, or corner, is actually located is a matter for the trier of fact." **Plott v. Cole**, 547 A.2d 1216, 1219 (Pa. Super. 1988) quoting **Murrer v. American Oil Co.**, 359 A.2d 817, 819 (Pa. Super. 1976).

First, Appellant avers the trial court erred in finding that Appellees claimed ownership of the disputed property as their own because they only had "permissive use". Brief for Appellant at 12. In support, Appellant alleges that Appellees' predecessor in title requested permission to use the disputed property from an individual they mistakenly believed owned the property and have not taken any steps to gain title to the property. Upon

review, we find the trial court committed no error of law and supported its findings by competent evidence.

The establishment of a boundary line by acquiescence for the statutory period of twenty-one years has long been recognized in Pennsylvania. Two elements are prerequisites: 1) each party must have claimed and occupied the land on his side of the line as his own; and 2) such occupation must have continued for the statutory period of twenty-one years. As recognized by the Superior court and the common pleas court, the doctrine functions as a rule of repose to quiet title and discourage vexatious litigation.

***Zeglin v. Gahagen***, 812 A.2d 558, 561 (Pa. 2002) (internal citations omitted). Moreover, the "doctrinal roots of acquiescence are grounded in adverse possession theory; indeed, occupancy with open manifestations of ownership throughout the statutory period will generally satisfy the traditional elements of adverse possession." ***Id.*** at 562.

Instantly, the trial court concluded that Appellees satisfied the first element through evidence presented at trial. Specifically, the trial court found that since November of 1966, Appellees occupied, utilized and maintained the property by building a camp<sup>3</sup> and foundation thereon, constructing a brick lined pond and camp area, installing a septic system, and maintaining the lawns within the disputed property. Trial Court Opinion and Order 1/13/03, at 1. Moreover, the trial court found that Appellant

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<sup>3</sup> We note that upon review of the survey included within the certified record, the camp building is not entirely located within the disputed property. Rather, a small portion of the building encroaches in the disputed area.

acquiesced to the boundary line because there was no evidence indicating that Appellant or his predecessors objected to Appellees' use of the disputed property.

Although Appellant would like us to view the subjective intent of Appellees' predecessor as negating their physical claim of ownership over the disputed property, we decline to do so. As shown by the evidence, Appellees' predecessor never asked the true owner of the disputed property for permission to use the land. Even if Appellees' predecessor initially asked to use the property from someone other than the true owner, Appellees' visible act of hostility and construction of permanent structures on the land negates any inference contrary to them claiming ownership of the disputed land. Because Appellant and his predecessor acknowledged Appellees presence and maintenance of the property but failed to take any action and due to Appellees' visible claim of ownership since 1966, we find no trial court error.

Next, Appellant avers the trial court erred in applying the consentable line doctrine because the parties never agreed or acquiesced to a boundary, nor had a clear line been established to constitute a boundary. ***Id.*** at 13-15. Upon review, we disagree.

Under the doctrine of consentable line,

[i]f adjoining landowners occupy their respective premises up to a certain line which they mutually recognize and acquiesce in for the period of time prescribed by the statute of limitations, they are precluded from claiming

that the boundary line thus recognized and acquiesced in is not the true one.

**Plauchak v. Boling**, 653 A.2d 671, 675 (Pa. Super. 1995); quoting **Plott v. Cole**, 547 A.2d 1216, 1221 (Pa. Super. 1988). (internal citations omitted). Additionally, an express agreement is not required to recognize the boundary line. **See Niles v. Fall Creek Hunting Club, Inc.**, 545 A.2d 926 (Pa. Super. 1988); **Dimura v. Williams**, 286 A.2d 370 (Pa. 1972).

Appellant alleges the parties never recognized or acquiesced to a boundary line because there were never any discussions concerning the boundaries of the land. Brief for Appellant at 13-14. However, because an express agreement is not required, Appellant's argument is without merit. As discussed **supra**, the evidence at trial indicated that Appellant and his predecessors never objected to Appellees' presence on the land until after the statutory period of 21 years. Accordingly, Appellant's argument fails.

Furthermore, Appellant avers that there was no obvious presence of a boundary line between the two properties. Brief for Appellant at 15. In support, Appellant references several cases where a fence, hedgerow, markers, bushes or utility pole marked the boundary line. **Id.** at 14-15. Upon our review of the evidence, however, we find that the trial court correctly set the boundary line in accordance with the retracement survey presented at trial. The testimony and photographs presented at trial clearly show the boundary line marked by a creek, the edge of woods and areas

cleared by Appellees' and their predecessor. Accordingly, the trial court set the boundary line based upon credible evidence.

Based upon the foregoing, we find that the trial court supported his findings by competent evidence and committed no error of law. Accordingly, we deny Appellant's request for relief.

Order affirmed. Jurisdiction relinquished.

BENDER, J., Concurs in the Result.

BOWES, J., files Dissenting Memorandum.

Judgment Entered:

Eleanor R. Valecko  
Deputy Prothonotary

DATE: January 28, 2005

DONALD H. WELLS, JR. AND SARAH : IN THE SUPERIOR COURT OF  
J. WELLS, : PENNSYLVANIA  
Appellees :  
v. :  
HOMER L. SCHAFFER, :  
Appellant : No. 1380 WDA 2003

Appeal from the Order entered June 23, 2003  
In the Court of Common Pleas of Clearfield County  
Civil Division at No. 01-1201 C.D.

BEFORE: JOYCE, BENDER and BOWES, JJ.

DISSENTING MEMORANDUM BY BOWES, J.:

I respectfully dissent from the majority's application of the doctrine of boundary by acquiescence. Two elements must be present to establish a boundary line by acquiescence: "1) each party must have claimed and occupied the land on his side of the **line** as his own; and 2) such occupation must have continued for the statutory period of twenty-one years." **Zeglin v. Gahagen**, 571 Pa. 321, 326, 812 A.2d 558, 561 (2002) (emphasis added). The irrefutable key element in this legal lexicon is the existence of a clearly marked boundary line; there is none in this case.

Appellant correctly notes that every case to apply the boundary by acquiescence doctrine involves two adjacent property owners occupying land on either side of a **line** clearly demarcated by some object or series of objects such as a fence, row of trees, or row of bushes. **See, e.g., id.** (boundary line marked by row of bushes, utility pole, and fence); **Corbin v. Cowan**, 716 A.2d 614 (Pa.Super. 1998); (fence) **Schimp v. Allaman**, 659 A.2d

1032 (Pa.Super. 1995) (fence); ***Plauchak v. Boling***, 653 A.2d 671 (Pa.Super. 1995) (row of hedges); ***Niles v. Fall Creek Hunting Club, Inc.***, 545 A.2d 926 (Pa.Super. 1988) (doctrine was applicable when adjacent property owners in boundary dispute surveyed, painted yellow line consistent with survey, placed wire along survey line, and occupied land up to line).<sup>1</sup>

Indeed, in ***Zeglin***, the Court determined that privity of estate is not necessary to support tacking in the boundary by acquiescence setting because “a prospective purchaser will see the fence or similar marking; given its ‘obvious presence as apparent boundary,’ he is therefore put on notice to inquire about its origin, history, and function.” ***Zeglin, supra*** at 312 A.2d at 566.

In addition, application of the boundary by acquiescence doctrine depends upon either a compromise of a land dispute up to the property line or the mutual acquiescence in or acknowledgment of the mutual boundary line. ***Corbin v. Cowan, supra***; ***Inn Le'Daerda, Inc. v. Davis***, 360 A.2d 209 (Pa.Super. 1976). This element also is conspicuously absent in this case. No dispute and compromise occurred, and Appellant never acquiesced in the irregular borders established by the trial court by occupying and maintaining his property up to those parameters.

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<sup>1</sup> Appellees suggest that the instant case is analogous to ***Sorg v. Cunningham***, 687 A.2d 846 (Pa.Super. 1997). However, in ***Sorg***, the border line was demarcated by a row of pine trees.

Appellees sought title to over two acres of irregularly-shaped land. They claim ownership by having performed these actions: 1) building a camp with a foundation; 2) installing a septic system and brick pond; 3) constructing camping areas; and 4) maintaining a lawn. There was not a clearly marked boundary line between the two properties such that a purchaser would be put on notice to inquire about the border. As the majority clearly acknowledges, the parameters are not set by **any** marking device but include areas cleared by Appellees or their predecessors as well as the edge of a wooded area and a creek.

This matter is a simple case of adverse possession that has been improperly converted into a boundary by acquiescence case due to Appellee's apparent inability to tack their possession of the land onto their predecessor in title's possession. While the photographs unquestionably demonstrate that Appellees have invested time and money into improving the acreage, sympathy cannot be a governing judicial principle. Appellees' predecessor in interest knew that he did not own the property that he began to improve. We, as the appellate court, must apply the law to the facts, and these facts do not demonstrate that the doctrine of boundary line by acquiescence is applicable. As I conclude that the trial court committed an error of law in applying the doctrine of boundary by acquiescence, I dissent and would reverse and remand for the trial court to conduct an analysis of whether the doctrine of adverse possession grants title to Appellees.

**COPY**

September 3, 2003

Superior Court of Pennsylvania  
Office of the Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219

Re: Donald H. Wells, Jr. and Sarah J. Wells  
Vs.  
Homer L. Schaffer  
No. 01-1201-CD  
Superior Court No. 1380 WDA 2003

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Also, please find enclosed one transcript.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

CCPA

John K. Reilly, Jr., P.J.  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

R. Edward Ferraro  
Ferraro & Young  
690 Main Street  
Brockway, PA 15824

Jeffrey S. DuBois, Esq.  
498 Jeffers Street  
PO Box 487  
DuBois, PA 15801

Donald H. Wells, Jr. and Sarah J. Wells  
Vs.  
Homer L. Schaffer

Court No. 01-1201-CD; Superior Court No. 1380 WDA 2003

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on September 3, 2003.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

John K. Reilly, Jr., P.J.  
Court of Common Pleas  
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Homer L. Schaffer

Court No. 01-1201-CD; Superior Court No. 1380 WDA 2003

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on September 3, 2003.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW AND EQUITY

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**

Plaintiffs

v.

**HOMER L. SCHAFER,**  
Defendant

No. 1201 of 2001 C.D.

Type of Case: CIVIL -  
LAW AND EQUITY

Type of Pleading: **COMPLAINT /  
ACTION TO QUIET TITLE**

Filed on Behalf of: Donald H.  
Wells, Jr. and Sarah J. Wells,  
Plaintiffs

Counsel of Record for This Party:  
**R. EDWARD FERRARO, ESQUIRE**  
Supreme Court No. 05830  
**ROSS F. FERRARO, ESQUIRE**  
Supreme Court No. 79218

**FERRARO & YOUNG**  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824  
(814) 268-2202

1  
**FILED**

JUL 25 2001

William A. Shaw  
Prothonotary

(#1)

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW AND EQUITY

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**  
Plaintiffs

v.

No. \_\_\_\_\_ of 2001 C.D.

**HOMER L. SCHAFFER,**  
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 / Action to Quiet Title is served, by entering a written appearance personally or by an 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 / Action to Quiet Title or for any other claim or relief requested by the Plaintiffs. 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  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
Telephone: (814) 765-2641 Ext. 50-51**

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW AND EQUITY

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**  
Plaintiffs

v.

No. \_\_\_\_\_ of 2001 C.D.

**HOMER L. SCHAFFER,**  
Defendant

**COMPLAINT / ACTION TO QUIET TITLE**

AND NOW, come the Plaintiffs, by their attorneys, FERRARO & YOUNG, and file the within Complaint in and Action to Quiet Title and related claims, and in support thereof aver as follows:

1. The Plaintiffs, **DONALD H. WELLS, JR. and SARAH J. WELLS**, are adult individuals of full age and *sui juris*, who currently reside at 322 West Main Street, Reynoldsville, Jefferson County, Pennsylvania 15851.
2. The Defendant, **HOMER L. SCHAFFER**, is an adult individual of full age and *sui juris*, who currently or formerly resides at R.D. # 3, Box 363B, Punxsutawney, Jefferson County, Pennsylvania 15767.
3. The Plaintiffs, **DONALD H. WELLS, JR. and SARAH J. WELLS**, are the owners of a camp property in Bell Township, Clearfield County, Pennsylvania.
4. The Defendant, **HOMER L. SCHAFFER**, is the owner of a property located adjacent to the Plaintiffs' property, in Bell Township, Clearfield County, Pennsylvania, to which he recently acquired title on September 20, 2000.
5. The Plaintiffs and their predecessors in interest have legally occupied a portion of the area allegedly transferred to the Defendant in his Deed of September 20, 2000, despite the fact that the Plaintiffs and their predecessors

had lawfully occupied and possessed these areas for the past thirty-four (34) years, in erecting buildings, a septic system, and a pond, as well as maintaining a lawn area on the same for the past thirty-four (34) years.

#### COUNT I – ACTION TO QUIET TITLE

6. Plaintiffs hereby incorporate paragraphs 1 through 5 by reference thereto as though fully set forth at length herein.

7. The Plaintiffs, **DONALD H. WELLS, JR.** and **SARAH J. WELLS**, acquired title to a portion of their property containing approximately 1.211 acres, on or about June 17, 1991 by a Deed recorded in Deed Book 1410, Page 299, recorded in the Clearfield County Recorder's Office. Said Deed attached as Exhibit "A" and made a part hereof.

8. That the Plaintiffs, **DONALD H. WELLS, JR.** and **SARAH J. WELLS**, also have acquired title to an additional parcel of 2.114 acres, into the area now allegedly claimed in a recent Deed to **HOMER L. SCHAFFER** dated September 20, 2000, in that your Plaintiffs, **DONALD H. WELLS, JR.** and **SARAH J. WELLS**, and their predecessors in interest, acquired ownership and legal possession of the subject property, by adverse possession, or in the alternative, by consentable line, over the past thirty-four (34) years of possession and occupation of the said lands. See **Statement of Adverse Possession** attached as **Exhibit "B"**.

9. Throughout the past thirty-four (34) years, since November 1966, the Plaintiffs and their predecessors in interest, have occupied a 2.114 acre portion south of that which is already reflected on their Deed, and have erected a camp building on a foundation, as well as a septic system, a brick-lined pond, and also maintained a lawn area. See attached **Survey Map** marked **Exhibit "C"** herein and also **Statement of Adverse Possession** marked as **Exhibit "B"**.

10. On or about October 1, 2000, your Plaintiffs learned that Richard M. Tronoski and Sylvia R. Tronoski, his wife, had executed a Deed conveying a

parcel of land containing 122.58 acres to the Defendant, **HOMER L. SCHAFFER**, on September 20, 2000, allegedly transferring the 2.114 acre portion which your Plaintiffs have claimed and occupied over the past thirty-four (34) years.

11. Defendant knew or should have known at the time of the conveyance of the property that the 2.114 acre portion just south of the lands of Plaintiff had been occupied by your Plaintiffs in that the camp building, pond, septic tank system, and mowed lawn area were already occupied by the Plaintiffs.

12. The conveyance of the subject 2.114 acre portion of property is not legally effective and cannot operate to transfer that portion of property to the Defendant, as the Plaintiffs have acquired title and ownership in the same through adverse possession, or in the alternative, under the doctrine of consentable line.

**WHEREFORE**, Plaintiffs respectfully request this Honorable Court to enter an Order:

- (a) Declaring that the Plaintiffs are the legal owners of the 2.114 acres premises as described in the Plaintiffs' Statement of Adverse Possession, and
- (b) Further ordering that the Defendant is barred from asserting any right, lien, title, or interest in the property on the basis of the Plaintiffs' ownership and possession by adverse possession, or in the alternative, under the doctrine of consentable line; and
- (c) That the Court enter a Judgment ordering the Recorder of Deeds to cancel the Defendant's Deed dated September 20, 2000, in regards to the 2.114 acre portion; and
- (d) Such other relief as the Court may deem just and equitable.

#### **COUNT II – DAMAGES**

13. Plaintiffs hereby incorporate Paragraphs 1 through 11 by reference thereto as though fully set forth at length herein.

14. That as a result of Defendant's unreasonable, threatening and harassing behavior, and in interfering with the Plaintiffs' lawful use of the subject properties, Plaintiffs have been forced to incur various costs and injuries.

15. That your Plaintiffs have suffered mental, psychological and emotional anguish, as well as physical affects and injuries, due to the continuing nature of the harassment, threats and interference towards the Plaintiffs and their use of the property, which has in particular affected the weakened health and heart condition of the Plaintiff, **DONALD H. WELLS, JR.**

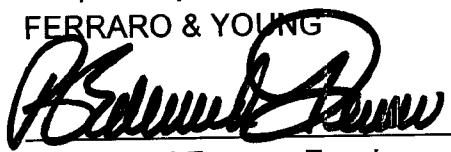
16. That in addition, Plaintiffs have been forced to file the within lawsuit, including an Action to Quiet Title and other claims, as well as a Petition for an Injunction, which have required Plaintiffs to some significant amounts of money for the costs of litigation, filing fees, expert fees, and attorneys fees.

17. That Plaintiffs are entitled to payment of their attorneys fees, in addition to all other costs, due to the dilatory, obdurate and vexatious conduct, in bad faith and arbitrary manner, of the Defendant in interfering with Plaintiffs' right to use their property, and in his continuous harassment and threatening behavior.

**WHEREFORE**, Plaintiffs respectfully request this Honorable Court to award them damages in an amount in excess of \$25,000.00, including damages for their emotional and physical distress, as well as costs of litigation and attorneys fees against the Defendant, and other such relief as the Court deems appropriate.

Respectfully submitted,

FERRARO & YOUNG



R. Edward Ferraro, Esquire  
Attorney for Plaintiffs

**VERIFICATION**

We, **DONALD H. WELLS, JR.** and **SARAH J. WELLS**, verify that the statements made in the within Complaint / Action to Quiet Title are true and correct. We understand false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 07/25/01

Donald H. Wells, Jr.  
Donald H. Wells, Jr.

Date: 07/25/01

Sarah J. Wells  
Sarah J. Wells

# This Deed

MADE THE 17th Day of June in the year  
of our Lord one thousand nine hundred ninety-one (1991)

BETWEEN ROBERT A. WELLS of R.D. #1, Box 1-A, Reynoldsville, Jefferson County, Pennsylvania,

Grantor

and DONALD H. WELLS, JR., of 332 West Main Street, Reynoldsville, Jefferson County, Pennsylvania, and SARAH J. WELLS, his wife,

Grantee

WITNESSETH, that in consideration of One and 00/100ths-----

-----(\$1.00)----- Dollars  
in hand paid, the receipt whereof is hereby acknowledged, the said grantor do es hereby grant and convey  
to the said grantee his heirs and assigns,

ALL of his undivided interest in the surface rights only in and to  
land situated in the Township of Bell, County of Clearfield and State of  
Pennsylvania, to-wit:

BEGINNING at a post on the North side of a public road; thence South  
1 perch to post; thence West along larger tract 35 perches to post; thence  
North along lands now or formerly of F.C. Deemer, 13 perches to a post on  
the North side of the public road; thence along said public road in a  
southeasterly course, 34 perches to place of beginning.

CONTAINING 1 acre and 85 perches.

BEING the same premises conveyed to Donald H. Wells, Jr. and Robert  
A. Wells, by their mother, Althea Wells, by Deed dated January 28, 1985  
and recorded in the Office of the Recorder of Deeds in and for Clearfield  
County, Pennsylvania, in Deed Book 994, Page 285.

ALSO BEING the subject premises conveyed to the former Grantor  
herein by Deed of Robert A. Wells, dated February 18, 1983 and recorded in  
the Office of the Recorder of Deeds of Clearfield County in Deed Book Volume  
875 on page 108.

nts

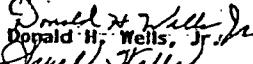
1410-300 Do Not Publish

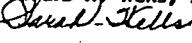
## NOTICE

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



  
Donald H. Wells

  
Donald H. Wells

This 8th day of July 1991

This document may not sell, convey, transfer, include or insure the title to the coal and the 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 of 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.)

AND, the said grantor, does hereby covenant and agree to and with the said grantee, that he, the grantor, his heirs, executors and administrators, shall and will warrant GENERALLY and forever defend the herein above described premises, with the hereditaments and appurtenances, unto the said grantee HIS heirs and assigns, against the said grantor, and against every other person lawfully claiming or who shall hereafter claim the same or any part thereof.

It is hereby certified in compliance with the Pennsylvania Realty Transfer Tax Act that the full, true and complete value of the premises herein conveyed is exempt as being a conveyance between brothers.

IN WITNESS WHEREOF, said grantor has hereunto set his hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

*Robert A. Wells*  
Robert A. Wells

SEAL

SEAL

SEAL

SEAL

## CERTIFICATE OF RESIDENCE

I do hereby certify that the precise residence and complete post office address of the within named grantee is

DONALD H. WELLS, JR.  
332 West Main Street  
Reynoldsville, PA 15851

July 8, 1991

*Frederick L. Dickey*  
Attorney for Grantee

State of Pennsylvania

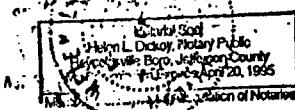
County of Jefferson

ss.

On this, the 17th day of June, 1991 before me, the undersigned officer, personally appeared ROBERT A. WELLS

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and of whom I find that he executed the same for the purposes therein contained.

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



*Helen L. Dickey* 

VOL 1410 PAGE 302

State of

County of

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the  
undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.  
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SEAL

Title of Officer.

De 107 P 302

No 744

Deed

ROBERT A. WELLS

DONALD H. WELLS, JR.

WARRANTY

CLEARFIELD COUNTY  
ENTERED OF RECORD  
TIME 9:40 A.M. 7-29-91  
BY R. EDWARD FERRARO  
FEES 13.50

Michael R. Lytle, Recorder

FERRARO & YOUNG  
ATTORNEYS AT LAW  
BROCKWAY, PA 15624  
PENNSYLVANIA, PA 15624



COMMONWEALTH OF PENNSYLVANIA  
CLEARFIELD

County of \_\_\_\_\_

Recorded on this 29th day of JULY

A. D. 1991 in the Recorder's Office of said County, in Deed Book

Vol. 1410 Page 299

My Commission Expires  
First Monday in January, 1992

Given under my hand and the seal of the said office, the date above written

Michael R. Lytle Recorder

Entered of Record JULY 29, 1991, 9:40 A.M. Michael R. Lytle, Recorder

## STATEMENT OF ADVERSE POSSESSION

We, **DONALD H. WELLS, JR.** and **SARAH J. WELLS**, of 322 West Main Street, Reynoldsville, Pennsylvania 15851, in the County of Jefferson and State of Pennsylvania, do hereby affirm and declare that we have acquired title and fee by twenty-one (21) years adverse possession to the following described land, situated in Bell Township, in the County of Clearfield, and Commonwealth of Pennsylvania:

All that land lying along Township Road T-345 near its southern most point in Bell Township, Clearfield County, Pennsylvania and being more particularly described as follows:

**BEGINNING** at a  $\frac{3}{4}$  inch rebar set on the southern line of Donald H. Wells, Jr., and Sarah J. Wells, as was conveyed by deed book 1410 page 299, said rebar being South 90 degrees 00 minutes 00 seconds West 90.11 feet from a  $\frac{3}{4}$  inch rebar set at the southeast corner of Donald H. Wells, Jr., and Sarah J. Wells, said rebar also being the northeast corner of the land herein conveyed and running:

thence North 90 degrees 00 minutes 00 seconds West a distance of 432.77 feet along Donald H. Wells, Jr., and Sarah J. Wells to a  $\frac{3}{4}$  inch rebar set;

thence South 23 degrees 01 minutes 52 seconds West a distance of 265.05 feet through land of Homer L. Schaffer, as was conveyed by instrument number 200014396, to a point in the centerline of Laurel Run, said line passing through a  $\frac{3}{4}$  inch rebar set back 25.90 feet from said centerline of Laurel Run;

thence along the centerline of Laurel Run the following courses and distances:

1. South 21 degrees 12 minutes 45 seconds East a distance of 46.65 feet
2. South 43 degrees 14 minutes 35 seconds East a distance of 25.62 feet
3. North 83 degrees 36 minutes 27 seconds East a distance of 58.87 feet
4. North 29 degrees 34 minutes 50 seconds East a distance of 41.70 feet
5. North 54 degrees 55 minutes 07 seconds East a distance of 58.38 feet

thence North 68 degrees 00 minutes 34 seconds East a distance of 69.01 feet through land of Homer L. Schaffer to a  $\frac{3}{4}$  inch rebar set;

thence North 71 degrees 31 minutes 10 seconds East a distance of 298.91 feet through land of the same to a  $\frac{3}{4}$  inch rebar set;

**EXHIBIT "B"**

thence North 14 degrees 14 minutes 12 seconds East a distance of 112.57 feet through land of the same to a  $\frac{3}{4}$  inch rebar set and place of beginning.

Together with and subject to covenants, easements, and restrictions of record.

Said property containing 2.114 acre as shown on map of retracement survey by Curry and Associates dated March 2, 2001. Being part of land conveyed to Homer L. Schaffer as described in instrument number 200014396.

Adverse entry was made upon the said land by me and my predecessors in interest on or about November 1966, and continued until present as follows:

Adverse entry was made upon said lands by Robert A. Wells on or about November 1966, who continued in possession until about February 18, 1983 and was succeeded therein by Althea Wells, widow, who continued in possession until about January 28, 1985, and was succeeded therein by me, Donald H. Wells, Jr. and my brother, Robert A. Wells, who continued in possession until about June 17, 1991 and was succeeded therein by me, Donald H. Wells, Jr. and Sarah J. Wells, my wife, who have continued in possession until this date. At the time of the said entry, Homer L. Schaffer, is claiming to be the owner or reputed owner of said land, and I claim adversely to him.

**WITNESS** my hand, this 25<sup>th</sup> day of July, 2001

Donald H. Wells Jr.  
**DONALD H. WELLS, JR.**

Sarah J. Wells  
**SARAH J. WELLS**

COMMONWEALTH OF PENNSYLVANIA :  
: SS:  
COUNTY OF JEFFERSON :  
:

Personally appeared before me, a Notary Public in and for the County and State aforesaid, **DONALD H. WELLS, JR.** and **SARAH J. WELLS**, his wife, who, being duly sworn according to law, deposes and states that the facts contained in the foregoing **STATEMENT OF ADVERSE POSSESSION** are true and correct to the best of their knowledge, information and belief.

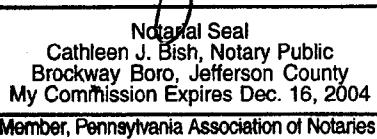
Donald H. Wells Jr.  
Donald H. Wells, Jr.

Sarah J. Wells  
Sarah J. Wells

Sworn to and subscribed before me

this 25<sup>th</sup> day of July, 2001

Cathleen J. Bish  
Notary Public





IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW AND EQUITY

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**

Plaintiffs

v.

**HOMER L. SCHAFFER,**  
Defendant

No. 120 of 2001 C.D.

Type of Case: CIVIL -  
LAW AND EQUITY

Type of Pleading: **MOTION FOR  
PRELIMINARY INJUNCTION  
AND PERMANENT INJUNCTION**

Filed on Behalf of: Donald H.  
Wells, Jr. and Sarah J. Wells,  
Plaintiffs

Counsel of Record for This Party:  
**R. EDWARD FERRARO, ESQUIRE**  
Supreme Court No. 05880  
**ROSS F. FERRARO, ESQUIRE**  
Supreme Court No. 79218

**FERRARO & YOUNG**  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824  
(814) 268-2202

**FILED**

JUL 25 2001

William A. Shaw  
Prothonotary

122

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW AND EQUITY

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**

Plaintiffs

v.

No. 1201 of 2001 C.D.

**HOMER L. SCHAFFER,**

Defendant

**MOTION FOR PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION**

**AND NOW**, come the Plaintiffs, by their attorneys, FERRARO & YOUNG, and move this Court for a Preliminary Injunction and a Permanent Injunction, pursuant to PA. R.C.P. No. 1531, enjoining the Defendant, **HOMER L. SCHAFFER**, his agents, assigns, servants, employees, attorneys and all persons in active concert with him, pending the final Hearing and determination of this Action, from interfering with the Plaintiffs' use and enjoyment of the property which they own and the property Plaintiffs have occupied and have claimed for the past thirty (30) years, and in support of the Motion avers as follows:

1. The Plaintiffs, **DONALD H. WELLS, JR. and SARAH J. WELLS**, are adults of full age and *sui juris*, who currently reside at 322 West Main Street, Reynoldsville, Pennsylvania 15851.

2. The Defendant, **HOMER L. SCHAFFER**, is an adult of full age and *sui juris*, who currently or formerly resides at R.D. # 3, Box 363B, Punxsutawney, Pennsylvania 15767.

3. The Plaintiffs, **DONALD H. WELLS, JR. and SARAH J. WELLS**, are the owners of a camp property in Bell Township, Clearfield County, Pennsylvania under Bell Township Map No. 102-A08-000-00008.

4. The Defendant, **HOMER L. SCHAFFER**, is the owner of a property located adjacent to the Plaintiffs' property, in Bell Township, Clearfield County, Pennsylvania, to which he acquired title on September 20, 2000.

5. The Plaintiffs and their predecessors in interest erected buildings, a septic/sewage system, and a pond, and have also occupied a portion of a lawn area and camp ground area in an area of approximately 2.114 acres, being part of the property that was allegedly transferred to the Defendant, **HOMER L. SCHAFFER**, on September 20, 2000 by a Deed, and the Plaintiffs are in rightful possession and occupation of these areas and have been in continuous possession for the past thirty-four (34) years. See **Statement of Adverse Possession** attached as **Exhibit "B"** to the Complaint / Action to Quiet Title herein and the **Survey Map** attached as **Exhibit "C"** to the Complaint / Action to Quiet Title.

6. Unless the Defendant is effectively and immediately enjoined and restrained from his improper conduct in interfering with the Plaintiffs' use and enjoyment of their property, in placing "No Trespassing" signs on trees and within five (5) feet of the Plaintiffs camp residence, and enjoined from his harassment and threats towards the Plaintiffs, Plaintiffs will suffer immediate, substantial, and irreparable harm in the following respects:

- (a) Plaintiffs rightful use and enjoyment of their property will be substantially affected by the continued interference and restraint placed on the Plaintiffs by Defendant not allowing them to come over to use their brick-lined pond, the septic tank area, and lawn of the Plaintiffs' camp, which they have occupied and peaceably used and enjoyed for more than thirty (30) years.
- (b) Plaintiffs will suffer impairment of their substantial investment of time, money, and energy in building up the property and maintaining the same over the past thirty (30) years, until the Defendant had purchased his property in September 2000.

- (c) Plaintiffs will be deprived of their peaceable use and enjoyment of the property for which they have reasonably grown accustomed to over the past thirty (30) years in their possession of said property; and
- (d) Plaintiffs' health has and will continue to be affected severely by the Defendant's actions in harassing and threatening them and coming in and interfering with their use of the property, as the Plaintiffs have heart problems and other mental, emotional and physical affects for which immediate injunction would be required to prevent immediate and irreparable harm or injury.

7. Defendant has never used or maintained the lands which have been occupied and possessed by the Plaintiffs over the past thirty (30) years, and it was not until Defendant had purchased a Deed for the adjacent property in September 2000 that he began to encroach upon and interfere with the Plaintiffs' rights to use the property and the related areas.

8. The issuance of a Preliminary Injunction will not cause undue inconvenience or loss to the Defendant but will prevent irreparable injury to the Plaintiffs in their use and enjoyment of the property, their pond, Camp building, and septic system, as well as preventing any physical or emotional harm that could be caused by Defendant's irrational and unreasonable actions, until there can be a full Hearing on the property claims between the parties.

9. Plaintiffs have no adequate remedy at law to redress the harm and injury that will continue to be caused by the Defendant's unlawful, unreasonable and interfering actions, while this matter is pending.

10. Plaintiffs have simultaneously filed a Complaint / Action to Quiet Title against the Defendant at this same term and number before the Court, for which they provide the basis of their rightful occupation and ownership of the subject property.

11. Plaintiffs are likely to succeed in proving at Trial that they have the right to use and enjoy the subject property and that the Defendant's activities are actionable and enjoinable by this Court.

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter an Order enjoining the Defendant, **HOMER L. SCHAFER**, his agents, servants, employees, attorneys, and assigns and all persons acting in concert with him from the following:

- (a) Interfering or blocking the Plaintiffs' use of their camp property, building and the lawn areas leading up to the pond and septic system areas at the subject camp properties;
- (b) Placing any obstructions or signs on the property which would interfere with the Plaintiffs' use of the property or be seen by the Plaintiffs in such a way that they could see the same and be emotionally upset by the same;
- (c) Harassing or threatening the Plaintiffs in their use and enjoyment of the lawn and pond areas and septic system areas and lawn beside the Plaintiffs' camp;
- (d) Exploiting the right and interest and use of any areas that the Plaintiffs have occupied near or around their camp, pond and septic system;
- (e) Communicating with the Plaintiffs by telephone, e-mail, or by written correspondence, without going through the parties' attorney for any communications relative to the subject properties.

Respectfully submitted,

FERRARO & YOUNG



R. Edward Ferraro, Esquire  
Attorney for Plaintiffs

**VERIFICATION**

We, **DONALD H. WELLS, JR.** and **SARAH J. WELLS**, verify that the statements made in the within Motion for Preliminary Injunction and Permanent Injunction are true and correct. We understand false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 07/25/01

Donald H. Wells, Jr.  
Donald H. Wells, Jr.

Date: 07/25/01

Sarah J. Wells  
Sarah J. Wells

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW AND EQUITY

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**

Plaintiffs

v.

No. 1201 of 2001 C.D.

**HOMER L. SCHAFER,**

Defendant

**RULE TO SHOW CAUSE**

AND NOW, this 25 day of July, 2001, upon consideration of the Plaintiffs' Motion for Preliminary Injunction, it is hereby Ordered that the Defendant shall show cause on the 1st day of August, 2001 at 9:00 o'clock A.M. at the Clearfield County Courthouse, why an Order should not be issued, pending determination of the issues in this Action, preliminarily enjoining Defendant from:

- (a) Interfering or blocking the Plaintiffs' use of their camp property and the lawn areas leading up to the pond and septic system areas at the subject camp properties;
- (b) Placing any obstructions or signs on the property which would interfere with the Plaintiffs' use of the property or be seen by the Plaintiffs in such a way that they could see the same and be emotionally upset by the same;
- (c) Harassing or threatening the Plaintiffs in their use and enjoyment of the lawn and pond areas and septic system areas and lawn beside the Plaintiffs' camp;

**FILED**

JUL 25 2001

William A. Shaw  
Prothonotary

#3

- (d) Exploiting the right and interest and use of any areas that the Plaintiffs have occupied near or around their camp, pond and septic system;
- (e) Communicating with the Plaintiffs by telephone, e-mail, or by written correspondence, without going through his attorney for any communications relative to the subject properties.

**IT IS FURTHER ORDERED** that Service of a copy of this Order and motion shall be made upon the Defendant forthwith.

BY THE COURT,



J.

for Judge John K. Reilly, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

DONALD H. WELLS, JR. and

:

SARAH J. WELLS

:

-vs-

No. 01 - 1201 - CD

HOMER L. SCHAFFER

**ORDER**

NOW, this 1<sup>st</sup> day of August, 2001, this being the day and date set for hearing into Plaintiffs' Motion for Temporary Injunction, upon agreement of the parties, it is the ORDER of this Court that said Motion be and is hereby granted and Defendant shall be and is hereby enjoined from the following:

- (a) Interfering or blocking the Plaintiffs' use of their camp property, building and the lawn areas leading up to the pond and septic system areas at the subject camp properties;
- (b) Placing any obstructions or signs on the property which would interfere with the Plaintiffs' use of the property or be seen by the Plaintiffs in such a way that they could see the same and be emotionally upset by the same;
- (c) Harassing or threatening the Plaintiffs in their use and enjoyment of the lawn and pond areas and septic system areas and lawn beside the Plaintiffs' camp;
- (d) Exploiting the right and interest and use of any areas that the Plaintiffs have occupied near or around their camp, pond and septic system;

**FILED**

AUG 01 2001

William A. Shaw  
Prothonotary

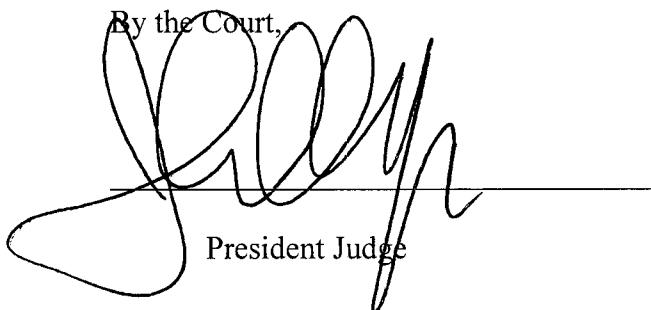
#4

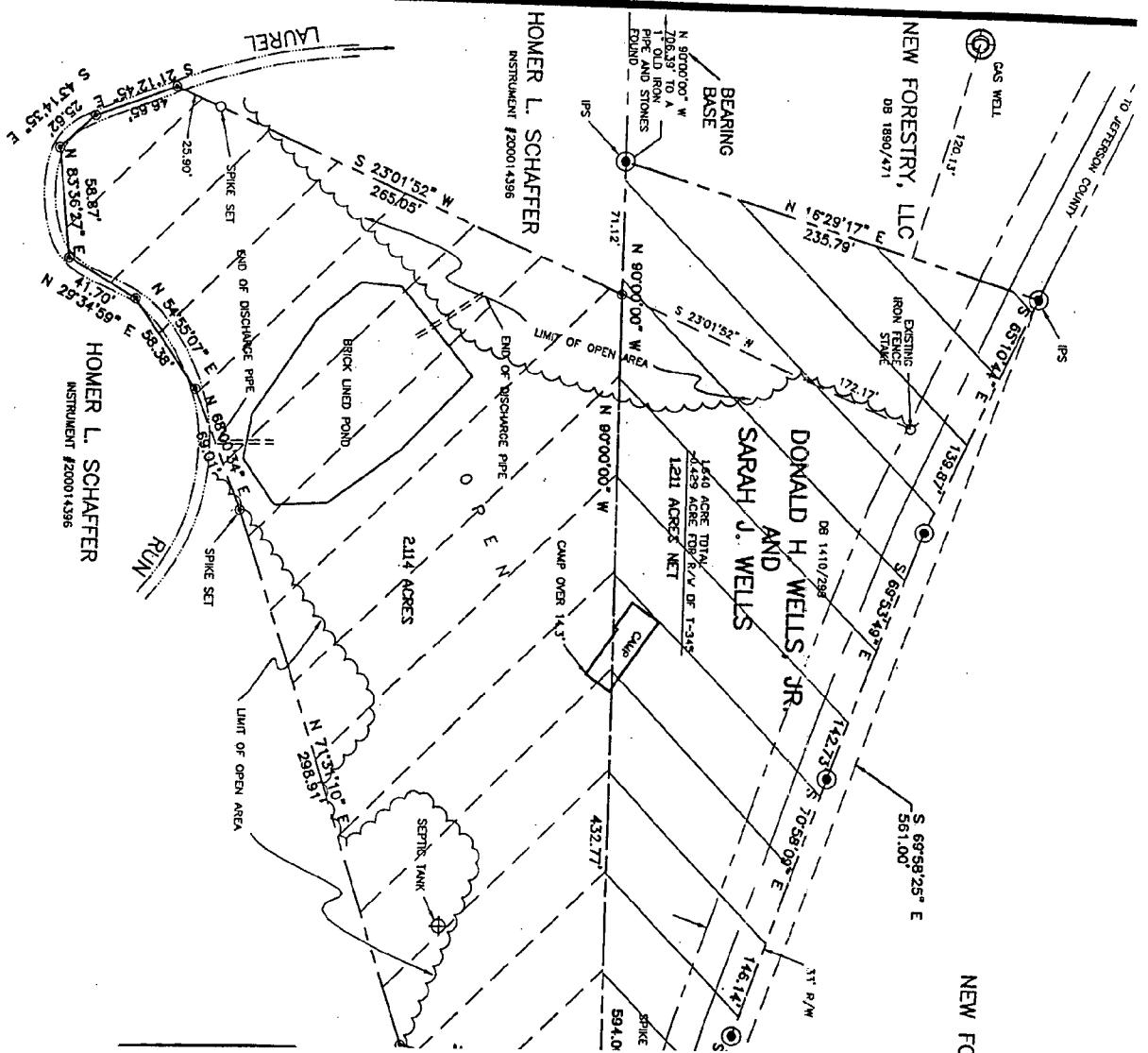
(e) Communicating with the Plaintiffs by telephone, e-mail, or by written correspondence, without going through the parties' attorney for any communications relative to the subject properties.

Said Order is granted upon the following conditions:

1. Plaintiffs shall hold Defendant harmless from any and all liability resulting or occurring on the property in dispute, including but not limited to, the pond/pool located on said property.
2. Plaintiffs agree to hold harmless and/or reimburse Defendant for any and all liability arising in the entire area in question.
3. A survey is attached hereto depicting the area in question.

Said injunction to remain in full force and effect pending resolution of Plaintiffs' quiet title action on the merits.

By the Court,  
  
President Judge



NEW FC

### LEGEND

HOMER L. SCHAFFER  
INSTRUMENT #200014396

INSTRUMENT #200014396

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3/4" REBAR SET WITH CAP  
DEED BOOK 123 PAGE 456  
RIGHT-OF-WAY

FILED

AUG 01 2001

8/1/2001 ICC City of Ferndale  
William A. Shaw  
Prothonotary

W.A.S. ICC City of Dubuque

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11300

WELLS, DONALD H. Jr. & SARAH J.

01-1201-CD

VS.

SCHAFFER, HOMER L.

**RULE TO SHOW CAUSE, MOTION/PRELIM. INJUNCTION; COMPLAINT ACTION TO QUIET TIT**

**SHERIFF RETURNS**

NOW AUGUST 1, 2001 AT 8:30 AM DST SERVED THE WITHIN RULE TO SHOW CAUSE; MOTION FOR PRELIMINARY INJUNCTION & PERMANENT INJUNCTION; COMPLAINT ACTION TO QUIET TITLE ON HOMER L. SCHAFFER, DEFENDANT AT CLEARFIELD COUNTY COURTHOUSE, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO HOMER SCHAFFER A TRUE AND ATTESTED COPY OF THE ORIGINAL RULE, MOTION, INJUNCTION AND COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: COUDRIET

**Return Costs**

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

**FILED**

AUG 02 2001  
102.39pm  
William A. Shaw  
Prothonotary

Sworn to Before Me This

2nd Day Of August 2001  


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

So Answers,



My Manly Happy  
Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

DONALD H. WELLS, JR., and  
SARAH J. WELLS,  
Plaintiffs

vs.

HOMER L. SCHAFFER,  
Defendant

*01*  
No. 00-1201-CD

Type of Pleading:

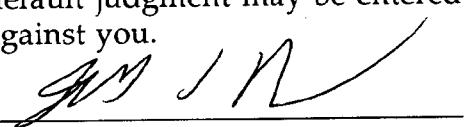
**ANSWER TO PLAINTIFF'S  
COMPLAINT AND NEW  
MATTER**

Filed on Behalf of:  
**DEFENDANT**

Counsel of Record for this Party:

Jeffrey S. DuBois, Esquire  
Supreme Court No. 62074  
Hanak, Guido and Taladay  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801  
(814) 371-7768

You are hereby notified to plead  
to the within pleading within  
twenty (20) days hereof or a  
default judgment may be entered  
against you.

  
Jeffrey S. DuBois  
Attorney for Defendant

**FILED**

**AUG 20 2001**

William A. Shaw  
Prothonotary

*#16*

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

DONALD H. WELLS, JR.,  
and SARAH J. WELLS,  
Plaintiffs

vs.

No. 01-1201- C.D.

HOMER L. SCHAFFER,  
Defendant

**ANSWER TO PLAINTIFFS'**  
**COMPLAINT AND NEW MATTER**

AND NOW, comes the Defendant, HOMER L. SCHAFFER, by and through his attorneys, HANAK, GUIDO AND TALADAY, who files this Answer to Complaint and New Matter, and in support thereof avers the following:

1. Admitted.
2. Admitted.
3. Admitted, only to the extent that Plaintiffs are owners of property consisting of 1.211 acres as reflected in Deed Book Vol. 1410, p. 299.
4. Admitted, Defendant's property consists of 122.58 acres.
5. Denied. It is specifically denied that Plaintiffs or their predecessors in interest have legally occupied a portion of the area in question, which was validly and legally transferred to Defendant and to which Defendant is clearly the record title holder, and it is further

denied that Plaintiffs have done any acts which would lawfully allow them to acquire any title to any property.

**COUNT I - ACTION TO QUIET TITLE**

6. No responsive pleading is required.
7. It is admitted that by Deed recorded in Deed Book Vol. 1410, p. 299, it appears that Plaintiffs acquired title to 1.211 acres on or about June 17, 1991. To the extent any implication by Plaintiffs that this is only a portion of the property allegedly owned by Plaintiffs, the same is denied as for reasons set forth herein.
8. Denied. It is specifically denied that Plaintiffs have acquired title to an additional parcel of 2.114 acres in the area which is clearly that of the Defendant, as Defendant and his predecessors in title have always exercised ownership and title to said property, and Plaintiffs and their predecessors in title have failed to do any acts by which they could acquire property, nor have Plaintiffs or their predecessors in title ever excluded anyone from said property or evidenced any ownership aspects.
9. Denied. It is specifically denied that Plaintiffs or their predecessors in title have done any acts on the aforementioned property which would constitute grounds for acquiring said title; and on the contrary, any said acts done by Plaintiffs or their predecessors in title have all been temporary in nature or by permission from the true owners or other representatives from the disputed area in question.

10. Defendant is without sufficient information to form a belief as to the truth or falsity of the averments contained in Paragraph 10 of Plaintiffs' Complaint and strict proof thereof is demanded at trial. As set forth above and herein, the disputed 2.114 acre area in question is clearly the property of Defendant, and Plaintiffs have done no acts in which they can legally acquire the same.

11. Denied. It is specifically denied that Defendant knew or should have known at the time of the conveyance the land had been occupied by the Plaintiffs, as in fact the land was not occupied by the Plaintiffs but had only done temporary acts which would not rise to the level of occupation, and any other acts done by Plaintiffs were done after Plaintiffs asked the permission of the true owners of the property or their representatives.

12. Denied. It is specifically denied that the conveyance of the 2.114 acre portion was not legally effective, and on the contrary, said transfer along with the entire 122.58 acre parcel was completely legally effective as Defendant is the record title holder of the property as was his predecessor in title who transferred the property to him. It is specifically denied that Plaintiffs have acquired title by adverse possession or consentable line for the reasons set forth herein.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter an Order:

- (a) Dismissing Plaintiff's Complaint with prejudice;
- (b) Declaring that Defendant is the legal owner of the disputed 2.114 acres;

(c) Such other relief as this Court deems just and equitable.

**COUNT II - DAMAGES**

13. No responsive pleading is required.

14. Denied. It is specifically denied that Defendant's conduct has been unreasonable, threatening or harassing, and on the contrary, Defendant's only conduct has been to assert his lawful right to the property to which he was deeded, which he owns, and to which he pays the taxes. Further any supposed costs or injuries incurred by Plaintiffs are denied and are as a result of Plaintiffs' own doing.

15. Denied. It is specifically denied that Plaintiffs have suffered any injuries whatsoever, and it is further denied that Defendant has harassed, made threats, or in any way interfered with Plaintiffs, and on the contrary, Defendant's only contact with Plaintiffs is for Defendant to assert his rightful and record title ownership of said property.

16. It is obviously admitted that Plaintiffs have filed the within lawsuit, but for Plaintiffs to request monies for said filing to include fees and costs is completely frivolous, not founded in any statute or other laws, and should be stricken.

17. Denied for the reasons set forth herein.

WHEREFORE, Defendant respectfully requests this Honorable Court to dismiss Plaintiffs' Complaint in its entirety with prejudice and award Defendant costs and attorney's fees for the frivolous actions filed by Plaintiff.

**NEW MATTER**

18. Paragraphs 1 through 17 inclusive, of Defendant's Answer are incorporated herein by reference as though fully set forth herein.

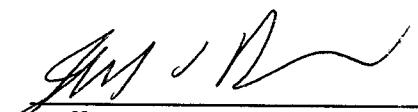
19. All of the factual averments as set forth in Plaintiffs' Complaint, even if admitted for purposes of argument only, fail to constitute a basis for which Plaintiffs' claim of adverse possession or consentable line.

20. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

21. Defendant, and his predecessors in title, have exercised and continue to exercise exclusive control of the subject property for the entire time period in question, and Plaintiffs have failed to exercise the exclusive control necessary during this particular period of time.

WHEREFORE, Defendant respectfully requests this Honorable Court to dismiss Plaintiffs' Complaint with prejudice and award Defendant costs and other fees.

Respectfully submitted,



---

Jeffrey S. DuBois  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 17<sup>th</sup> day of August, 2001, I mailed a copy of the within Answer to Plaintiff's Complaint and New Matter by first class mail, postage prepaid, to:

R. Edward Ferraro, Esq.  
Ferraro & Young  
690 Main Street  
Brockway, PA 15824

  
\_\_\_\_\_  
Jeffrey S. DuBois

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW AND EQUITY

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**

Plaintiffs

v.

**HOMER L. SCHAFFER,**  
Defendant

No. 01-1201 C.D.

Type of Pleading: **ANSWER TO  
DEFENDANT'S NEW MATTER**

Filed on Behalf of: **PLAINTIFFS,**  
Donald H. Wells, Jr. and Sarah J.  
Wells

Counsel of Record for This Party:  
**R. EDWARD FERRARO, ESQUIRE**  
Supreme Court No. 05880  
**ROSS F. FERRARO, ESQUIRE**  
Supreme Court No. 79218

**FERRARO & YOUNG**  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824  
(814) 268-2202

**FILED**

AUG 30 2001

William A. Shaw  
Prothonotary

1\*

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW AND EQUITY

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**

Plaintiffs

v.

No. 01-1201 C.D.

**HOMER L. SCHAFFER,**

Defendant

**ANSWER TO DEFENDANT'S NEW MATTER**

**AND NOW**, come the Plaintiffs, **DONALD H. WELLS, JR. and SARAH J. WELLS**, by and through their attorneys, FERRARO & YOUNG, and file the within Answer to Defendant's New Matter, and in support thereof aver as follows:

1-17. No responsive pleading is required, but to the extent that any response would be required by Plaintiffs, all allegations and responses in Defendant's Answer are Denied, and strict proof of the same is demanded at Trial.

18. No answer is required, but to the extent that any answer is required, all allegations in Paragraph 18 of Defendant's New Matter are Denied, and strict proof of the same is demanded at Trial.

19. **DENIED.** It is Denied that the factual averments set forth in Plaintiffs' Complaint fail to constitute a basis for which Plaintiffs' can bring a claim of adverse possession or consentable line regarding the subject property, and strict proof of said allegations is demanded at Trial. By way of further response and to the contrary, the factual averments and evidence to be set forth at Trial clearly constitute a basis for which the Plaintiffs have stated a claim of lawful possession by adverse possession or consentable line.

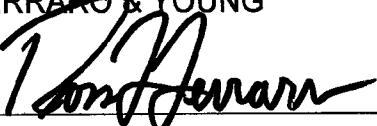
20. **DENIED.** It is Denied that Plaintiffs' Complaint fails to set forth a claim upon which relief can be granted, as alleged in Paragraph 20 of Defendant's New Matter, and all allegations of Paragraph 20 of Defendant's New Matter are Denied and strict proof of the same is demanded at Trial. By way of further response, the Plaintiffs' Complaint clearly sets forth a claim upon which relief can be granted by this Honorable Court.

21. **DENIED.** It is Denied that the Defendant, and his predecessors in title, have exercised or that they continue to exercise exclusive control of the subject property for the entire time period in question, and it is further Denied that the Plaintiffs have failed to exercise the exclusive control necessary during this particular time, as alleged in Defendant's New Matter, and strict proof of the same is demanded at Trial. By way of further response, Plaintiffs and their predecessors in title have in fact exercised and continue to exercise proper control and possession of the subject property for the entire time period in question, which supports their claim by use and adverse possession or consentable line.

**WHEREFORE**, Plaintiffs respectfully request this Honorable Court to grant the relief requested in Plaintiffs' Complaint, and to deny the Defendant's New Matter, and order that the Defendant pay the Plaintiffs' litigation costs, attorneys fees, and all such other relief as the Court deems appropriate.

Date: 8/27/01

Respectfully submitted,  
FERRARO & YOUNG

  
\_\_\_\_\_  
Ross F. Ferraro, Esquire  
Attorney for Plaintiffs, Donald H.  
Wells, Jr. and Sarah J. Wells

VERIFICATION

We, DONALD H. WELLS, JR. and SARAH J. WELLS, verify that the statements made in the within Answer to Defendant's New Matter are true and correct. We understand false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 8/27/01

Donald H. Wells Jr.  
Donald H. Wells, Jr.

Date: 8/27/01

Sarah J. Wells  
Sarah J. Wells

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW AND EQUITY

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**

Plaintiffs

v.

No. 01-1201 C.D.

**HOMER L. SCHAFFER,**

Defendant

**CERTIFICATE OF SERVICE**

I, ROSS F. FERRARO, ESQUIRE, do hereby certify that a true and correct copy of the Answer to Defendant's New Matter was served upon the Defendant, HOMER L. SCHAFFER, through his Attorney, JEFFREY S. DUBOIS, ESQUIRE, by mailing the same by U.S. First Class, postage prepaid, regular mail delivery to the following address:

Jeffrey S. DuBois, Esquire  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Date: 8/28/01

FERRARO & YOUNG

BY: Ross F. Ferraro

Ross F. Ferraro, Esquire  
Attorney for Plaintiffs, Donald H.  
Wells, Jr. and Sarah J. Wells

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

DONALD H. WELLS, JR., and  
SARAH J. WELLS,  
Plaintiffs

vs.

HOMER L. SCHAFFER,  
Defendant

: No. 01-1201-CD

Type of Pleading:

**NOTICE OF SERVICE OF  
ANSWERS TO PLAINTIFFS'  
REQUEST FOR PRODUCTION  
OF DOCUMENTS**

Filed on Behalf of:  
DEFENDANT

Counsel of Record for this Party:

Jeffrey S. DuBois, Esquire  
Supreme Court No. 62074  
Hanak, Guido and Taladay  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801  
(814) 371-7768

**FILED**

APR 01 2002  
m18:5/10/02  
William A. Shaw  
Prothonotary

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

DONALD H. WELLS, JR.,  
and SARAH J. WELLS,  
Plaintiffs

vs.

... No. 01-1201- C.D.

HOMER L. SCHAFFER,  
Defendant

**NOTICE OF SERVICE OF ANSWERS TO PLAINTIFFS'**  
**REQUEST FOR PRODUCTION OF DOCUMENTS**

This is to certify that on the 27th day of March, 2002, I mailed an original of Answers to Plaintiffs' Request for Production of Documents by first class mail, postage prepaid, to:

Ross F. Ferraro, Esq.  
690 Main Street  
Brockway, PA 15824



---

Jeffrey S. DuBois  
Attorney for Defendant

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

DONALD H. WELLS, JR. and  
SARAH J. WELLS,  
Plaintiffs

v.

HOMER L. SCHAFER,  
Defendant

No. 01-1201 C.D.

Type of Case: Action to Quiet Title

Type of Pleading:  
Certificate of Readiness

Filed on Behalf of: Plaintiffs,  
Donald H. Wells, Jr. and Sarah J.  
Wells

Counsel of Record for This Party:  
**R. EDWARD FERRARO, ESQUIRE**  
Supreme Court No. 05880  
**ROSS F. FERRARO, ESQUIRE**  
Supreme Court No. 79218

FERRARO & YOUNG  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824  
(814) 268-2202

**FILED**

JUL 05 2002  
m / 12:20 PM

William A. Shaw  
Prothonotary

2 WENT TO ATT'S  
COPY TO C/A

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

DONALD H. WELLS, JR. and  
SARAH J. WELLS, Plaintiffs  
v.  
HOMER L. SCHAFFER, Defendant  
Plaintiffs : No. 01-1201 C.D.  
Defendant : Action to Quiet Title

CERTIFICATE OF READINESS FOR TRIAL

**TO THE PROTHONOTARY:**

Pursuant to Clearfield County Local Rule 212.2, I hereby certify that the  
within matter is ready for Non-Jury Trial as:

1. The Pleadings are closed;
2. No Motions are outstanding and Discovery has been completed and  
the case is ready for Trial;
3. This Action does not yet appear on any Trial or Argument List;
4. Counsel who will actually try this Action are:
  - A. For Plaintiffs: R. Edward Ferraro, Esquire  
Ross F. Ferraro, Esquire  
Phone No. (814) 268-2202
  - B. For Defendants: Jeffrey S. DuBois, Esquire  
Phone No. (814) 371-7768
5. This case should be heard as a Non-Jury Trial and should last  
approximately two (2) days; and

6. Notice of this Certificate of Readiness has been given to all  
Attorneys of record.

Respectfully submitted,  
FERRARO & YOUNG

  
Ross F. Ferraro, Esquire  
Attorney for Plaintiffs, Donald H.  
Wells, Jr. and Sarah J. Wells

Date: 7/3/02

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

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**

Plaintiffs

No. 01-1201 C.D.

v.

**HOMER L. SCHAFFER,**

Defendant

Action to Quiet Title

**CERTIFICATE OF SERVICE**

I, ROSS F. FERRARO, ESQUIRE, Attorney for Plaintiffs, do hereby certify that I have today sent a true and correct copy of the within Certificate of Readiness for Trial to Jeffrey S. DuBois, Esquire, Attorney for Defendant, Homer L. Schaffer, at Attorney DuBois' Office at:

Jeffrey S. DuBois, Esquire  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Date: 7/3/02

FERRARO & YOUNG

BY: Ross Ferraro

Ross F. Ferraro, Esquire  
Attorney for Plaintiffs, Donald H.  
Wells, Jr. and Sarah J. Wells

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

DONALD H. WELLS, JR. and :

SARAH J. WELLS :

-vs- : No. 01 - 1201 - CD

HOMER L. SCHAFFER :

**PRE-TRIAL ORDER**

NOW, this 27<sup>th</sup> day of August, 2002, following pre-trial conference in the above-captioned matter, it is the ORDER of this Court that trial without a jury shall be had on Friday, November 15, 2002, commencing at 9:00 a.m.

By the Court,

President Judge

**FILED**

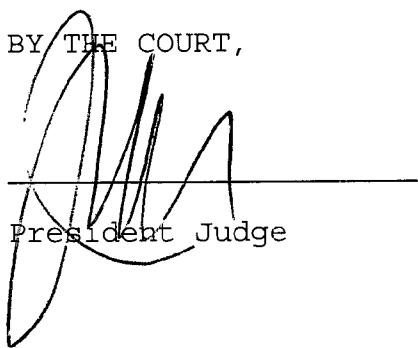
AUG 27 2002  
013404ccatty Ferraro  
William A. Shaw  
Prothonotary  
ccatty Dabal  
EJD  
#10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DONALD H. WELLS, JR. and :  
SARAH J. WELLS :  
VS. : NO. 01-1201-CD  
HOMER L. SCHAFFER :  
: O R D E R

NOW, this 15th day of November, 2002, following civil non-jury trial in the above-captioned matter, it is the ORDER of this Court that counsel for Plaintiff file a brief within thirty (30) days from this date, and Defendant given twenty (20) days thereafter to respond in kind.

BY THE COURT,  
  
President Judge

FILED

NOV 15 2002

William A. Shaw  
Prothonotary

#11

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

DONALD H. WELLS, JR. and  
SARAH J. WELLS

No. 01 - 1201 - CD

-vs-

HOMER L. SCHAFFER

FILED

JAN 13 2003

OPINION AND ORDER

William A. Shaw  
Prothonotary

The parties above-named are owners of two separate and distinct but contiguous tracts of land located in Bell Township, Clearfield County, Pennsylvania. Plaintiffs' property consists of 1.211 net acres and is located to the immediate North of property owned by the Defendant. Plaintiffs herein seek to obtain ownership of 2.114 acres located to the immediate South of their 1.211 acre tract, record title to which is in Defendant. Plaintiffs claim ownership under the theories of (1) Doctrine of Consentable Line; (2) Estoppel by Deed/Equitable Estoppel; and (3) Adverse Possession. In holding for the Plaintiffs, this Court will discuss only their claim under the Doctrine of Consentable Line or the establishment of a boundary line by acquiescence.

Following hearing on the merits on November 15, 2002, it is clear that the subject premises containing 2.114 acres has been occupied, utilized and maintained by the Plaintiffs since November of 1966. Their use of the premises include building a camp and foundation thereon, placing a septic system and a brick lined pond thereon and constructing camping areas. In addition, over said period the Plaintiffs maintained the lawns located therein.

In order to sustain their claim under the above theory, Plaintiffs must prove that each party claimed and occupied the land on his side of the line as his own and that the occupation must have continued for the statutory period of 21 years. In order to satisfy the first

#12

element, the Plaintiffs must prove that the Defendant, in effect, acquiesced to the establishment of the property lines claimed by the Plaintiff. In this regard, the Court notes that acquiescence in the context of disputed boundaries denotes passive conduct on the part of the record owner consisting of failure on his part to assert his paramount rights or interest against the hostile claims of the adverse user. See Zeglin v. Gahagen, W.L. 31840797 (only citation available). Here there is nothing in the record to indicate that the record owner of the disputed premises raised any objections whatsoever to Plaintiffs' open and obvious use thereof until well beyond the expiration of the necessary 21 years.

Defendant claims, however, that the 21 year requirement has not been met in that Plaintiffs cannot avail themselves of the doctrine of "tacking" because there is no privity of estate between Plaintiffs and prior owners. In holding in favor of the Plaintiffs on this issue, this Court relies on the decision of the Supreme Court of Pennsylvania in Zeglin v. Gahagen, supra. In Zeglin the Supreme Court distinguished the type of privity necessary to prevail in an action for adverse possession from that in an action involving the Doctrine of Acquiescence concluding that privity of estate is indeed necessary to successfully prosecute an adverse possession claim. Therein the Court held that privity of estate exists only where a specific and formal conveyance of the predecessor's interest in the disputed tract is transferred to the grantee. On the contrary, however, to succeed on a claim of acquiescence in a boundary only privity of possession is required and therefore succeeding owners of property are bound by the boundary lines that were accepted and recognized by former owners even without any other privity or formal transfer of the area possessed adversely. In light of the above, this Court holds that privity of possession indeed existed between Plaintiffs and the prior grantors in their chain of title and therefore, under the Doctrine of Acquiescence in a boundary they are entitled

of the above, this Court will not discuss their claim of ownership under the Doctrines of  
Estoppel and Adverse Possession.

WHEREFORE, the Court enters the following:

**ORDER**

NOW, this 13<sup>th</sup> day of January, 2003, following hearing into the above-  
captioned matter, it is the ORDER of this Court that judgment shall be and is hereby entered in  
favor of the Plaintiffs and against the Defendant.

By the Court,

President Judge

FILED

cc Aug R. Edward Ferraro  
0121681  
JAN 13 2003  
cc Augy Dubois  
cc L. Mikasek

William A. Shaw  
Secretary  
SAC

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

DONALD H. WELLS, JR., and  
SARAH J. WELLS,  
Plaintiffs

No. 01-1201-CD

vs.

HOMER L. SCHAFFER,  
Defendant

Type of Pleading:

**MOTION FOR POST-TRIAL  
RELIEF**

Filed on Behalf of:  
DEFENDANT

Counsel of Record for this Party:

Jeffrey S. DuBois, Esquire  
Supreme Court No. 62074  
Hanak, Guido and Taladay  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801  
(814) 371-7768

FILED

JAN 21 2003

William A. Shaw  
Prothonotary

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

DONALD H. WELLS, JR.,  
and SARAH J. WELLS,  
Plaintiffs

vs.

No. 01-1201- C.D.

HOMER L. SCHAFFER,  
Defendant

**MOTION FOR POST-TRIAL RELIEF  
AND REQUEST FOR RECORD TO BE  
TRANSCRIBED IN ACCORDANCE WITH  
PA. R.C.P. 227.3**

AND NOW, comes the Defendant, HOMER L. SCHAFFER, by and through his attorneys, HANAK, GUIDO AND TALADAY, who files this Motion for Post-Trial Relief to the Opinion and Order entered by this Honorable Court on January 13, 2003, pursuant to Pa.R.C.P. 227.1, and in support thereof avers the following:

1. The Learned Court erred as a matter of law in finding for Plaintiffs and against Defendant.
2. The Learned Court erred in its finding that the Plaintiffs proved their claim of consentable line.
3. The Learned Court erred in its finding that Plaintiffs proved that each party claimed and occupied land on his side of the line, as there was no evidence of the same presented at trial.
4. The Learned Court erred in its finding that Plaintiffs proved that a line was recognized by both parties, as there was no evidence at

trial of this element, nor has a line ever been recognized by the parties.

5. The Learned Court erred in its finding that Defendant acquiesced to an alleged line against hostile claims of an adverse user.

6. The Learned Court erred in its finding that Plaintiffs' claim could be considered "a hostile claim of an adverse user", when it was admitted by Plaintiffs that they asked for permission, from the person whom they believed to be the landowner to perform all their activities on Defendant's land. Thus, it was neither hostile nor adverse.

7. The Court erred as a matter of law in citing Zeglin v. Gahagen, W.L. 31840797, as authority to support Plaintiff's claim of consentable line solely on the issue of recognition and acquiescence.

8. The Learned Court erred as a matter of law in not discussing Defendant's assertion that Plaintiffs failed to prove at trial that any line had been acknowledged or recognized by the parties, and that Plaintiffs had failed to meet the elements and their burden of proof on the doctrine of consentable line.

9. The decision of the lower court is against the great weight and evidence in this case.

10. Based on the above, the Defendant respectfully requests this Honorable Court to direct an entry of judgment in favor of Defendant and against Plaintiffs.

11. The undersigned requests pursuant to Pa.R.C.P. 227.3 that the testimony taken in this non-jury trial be transcribed.

12. The Defendant reserves the right to file an amendment to this Motion after a review of the transcribed testimony requested herein.

WHEREFORE, the undersigned respectfully requests the following:

- (a) That the Court vacate its opinion and order entered January 13, 2003, and direct entry of judgment in favor of Defendant and against Plaintiffs;
- (b) That the testimony in this case be transcribed in accordance with Pa.R.C.P. 227.3;
- (c) Such other relief as this Court may deem just and equitable.

Respectfully submitted,



---

Jeffrey S. DuBois  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 21st day of January, 2003, I served a copy of the within Motion for Post-Trial Relief and Request for Record to be Transcribed in Accordance with Pa.C.R.P. 227.3, by hand delivery on the following:

Hon. John K. Reilly, Jr.  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

Court Reporter  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

and by first class mail, postage prepaid, on the following:

Ross F. Ferraro, Esq.  
Ferraro & Young  
690 Main Street  
Brockway, PA 15824



---

Jeffrey S. DuBois

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

DONALD H. WELLS, JR. and : No. 01-1201 C.D.  
SARAH J. WELLS, :  
Plaintiffs :  
v. :  
Type of Pleading:  
HOMER L. SCHAFFER, :  
Defendant :  
REPLY AND OBJECTIONS  
TO DEFENDANT'S MOTION  
FOR POST-TRIAL RELIEF  
Filed on Behalf of: PLAINTIFFS,  
Donald H. Wells, Jr. and Sarah J.  
Wells  
Counsel of Record for this Party:  
R. EDWARD FERRARO, ESQUIRE  
Supreme Court No. 05880  
ROSS F. FERRARO, ESQUIRE  
Supreme Court No. 79218  
FERRARO & YOUNG  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824  
(814) 268-2202

FILED

JAN 28 2003

William A. Shaw  
Prothonotary

#14

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

**DONALD H. WELLS, JR. and  
SARAH J. WELLS,**  
Plaintiffs

v.

No. 01-1201 C.D.

**HOMER L. SCHAFFER,**  
Defendant

**REPLY AND OBJECTIONS TO DEFENDANT'S MOTION  
FOR POST-TRIAL RELIEF**

AND NOW, come the Plaintiffs, **DONALD H. WELLS, JR. and SARAH J. WELLS**, by and through their Attorneys, FERRARO & YOUNG, and file the within Reply and Objections to Defendant's Motion for Post-Trial Relief in the above matter:

1. **DENIED.** It is Denied that the Learned Court erred as a matter of law in finding for Plaintiffs and against Defendant. To the contrary, the Court made a proper, fair and informed decision in finding for Plaintiffs.
2. **DENIED.** It is Denied that the Learned Court erred in its finding that the Plaintiffs proved their claim of consentable line. To the contrary, the Court properly found that the Plaintiffs proved their claim for consentable line by acquiescence.

3. **DENIED.** It is Denied that the Learned Court erred in its finding that Plaintiffs proved that each party claimed and occupied land on his side of the line, or that there was no evidence of the same presented at Trial. To the contrary, the Court properly found that the Plaintiffs proved through their testimony and evidence that each party claimed and occupied land on their side of the line, and that there was sufficient evidence of the same presented at Trial.

4. **DENIED.** It is Denied that the Learned Court erred in its finding that the Plaintiffs proved that a line was recognized by both parties, or that there was no evidence at Trial of this element of a line ever being recognized by the parties. To the contrary, the Court properly found that the Plaintiffs did in fact prove that a line was recognized by the parties and their predecessors, and there was clear evidence of recognition of the line by the parties and their predecessors.

5. **DENIED.** It is Denied that the Learned Court erred in its finding that Defendant acquiesced to an alleged line against hostile claims of an adverse user. To the contrary, the Court properly found that the Defendant and his predecessors acquiesced to the line between the properties, as decided.

6. **DENIED.** It is Denied that the Learned Court erred in its finding that Plaintiffs' claim could be considered "a hostile claim of an adverse user," when it was admitted by Plaintiffs that they asked for permission, from the person whom they believed to be the landowner to perform all their activities on Defendant's land, or that it was neither hostile or adverse. To the contrary, the Court properly found that the Plaintiffs' claim could be considered a hostile claim of an adverse user, when the testimony and evidence clearly showed that the Plaintiffs believed that they were the owners and lawful occupants of the disputed property areas, **adverse to any claims of Defendant and his predecessors.**

7. **DENIED.** It is Denied that the Court erred as a matter of law in citing Zeglin v. Gahagen, W.L. 31840797, as authority to support Plaintiffs' claim of consentable line solely on the issue of recognition and acquiescence. To the contrary, the Court properly cited the case of Zeglin v. Gahagen, W.L. 31840797, as authority to support Plaintiffs' claim of consentable line based on acquiescence.

8. **DENIED.** It is Denied that the Learned Court erred as a matter of law in not discussing Defendant's assertion that the Plaintiffs failed to prove at Trial that any line had been acknowledged or recognized by the parties, or that the Plaintiffs had failed to meet the elements and their burden of proof on the Doctrine of Consentable Line. To the contrary, the Court properly found that the Plaintiffs were entitled to possession and ownership of the disputed property areas above the boundary line, under the Theory of Acquiescence and Consentable Line, and any further assertions by Defendant are improper and unfounded.

9. **DENIED.** It is Denied that the decision of the lower court is against the great weight and evidence in this case. To the contrary, the great weight and evidence in this case clearly support a finding in favor of the Plaintiffs for ownership of the disputed property.

10. **OBJECTION.** The Plaintiffs Object to the request of the Defendant for the Court to change its decision or to enter any judgment in favor of the Defendant. To the contrary, the Plaintiffs respectfully request that this Honorable Court dismiss and deny the Defendant's Motion for Post-Trial Relief in its entirety, and to Affirm the decision in favor of Plaintiffs.

11. **OBJECTION.** The Plaintiffs Object to any request by the Defendant for the testimony taken in the non-jury trial to be transcribed, pursuant to Pa.R.C.P. 227.3, as the Court made the proper findings and decision in favor of the Plaintiffs.

12. **OBJECTION.** The Plaintiffs Object to any request by the Defendant to reserve the right to file an amendment to any Motion for Post-Trial Relief after review of transcribed testimony requested, as this Honorable Court clearly made the proper decision in this matter.

**WHEREFORE**, the undersigned respectfully requests that the Court deny and dismiss Defendant's Motion for Post-Trial Relief in its entirety, and ask that the Judge issue a final Order Affirming the Opinion and Decision of January 13, 2003 in favor of Plaintiffs.

Date: 1/27/03

Respectfully submitted,  
FERRARO & YOUNG



Ross F. Ferraro, Esquire  
Attorney for Plaintiffs, Donald H.  
Wells, Jr. and Sarah J. Wells

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 27th day of January, 2003, I served a copy of the within Reply and Objections to Defendant's Motion for Post-Trial Relief by first class mail, postage prepaid, on the following:

Hon. John K. Reilly, Jr.  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

Court Reporter  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

Jeffrey S. DuBois, Esq.  
HANAK, GUIDO AND TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801



Ross F. Ferraro

RECEIVED  
U.S. DISTRICT COURT  
MAY 10 1968  
JAN 28 1968  
FBI

1cc Judge Kelly  
1cc Court Reporter > per R. Ferraro's  
request

William A. Shaw  
Prothonotary

Date: 09/03/2003  
Time: 09:53 AM  
Page 1 of 2

Clearfield County Court of Common Pleas  
ROA Report  
Case: 2001-01201-CD  
Current Judge: John K. Reilly Jr.  
Donald H. Wells Jr., Sarah J. Wells vs. Homer L. Schaffer  
Civil Other

Date	Judge
07/25/2001	No Judge
	Filing: Complaint/Action to Quiet Title Paid by: Ferraro, R. Edward (attorney for Wells, Donald) Receipt number: 1828862 Dated: 07/25/2001 Amount: \$90.00 (Check) Three CC Attorney (Property is located in Bell Township, Clearfield County, PA.) Motion for Preliminary Injunction and Permanent Injunction, filed by s/R. Edward Ferraro, Esq. Three CC Attorney
	No Judge
	Rule to Show Cause, filed. AND NOW, this 25 day of July, 2001, re: Plaintiff's Motion for Preliminary Injunction, Defendant shall show cause the 1st day of August, 2001, at 9:00a.m. BY THE COURT: /s/Fredric J. Ammerman, Judge, for Judge John K. Reilly, Jr., P.J. Three CC Attorney
08/01/2001	John K. Reilly Jr.
	ORDER, NOW, this 1st day of August, 2001, re: Hearing into Plaintiff's Motion for Temporary Injunction, Motion GRANTED. by the Court, s/JKR,JR.,P.J. 1 cc atty Ferraro, DuBois
08/02/2001	John K. Reilly Jr.
	Sheriff Returns, served Rule to Show Cause, Motion for Preliminary Injunction & Permanent Injunction, Complaint Action to Quiet Title, on Homer L. Shaffer. So Answers, Chester A. Hawkins, by Marilyn Hamm \$52.54 Shff Hawkins paid by Attorney
08/20/2001	John K. Reilly Jr.
	Answer To Plaintiff's Complaint and New Matter. Filed by s/Jeffrey S. DuBois, Esq. Cert of Svc 1 cc atty Taladay
08/30/2001	John K. Reilly Jr.
	Answer To Defendant's New Matter. Filed by s/Ross F. Ferraro, Esq. Verification, s/Donald H. Wells,Jr. s/Sarah J. Wells Cert of Svc 1 cc Atty Ferraro
04/01/2002	John K. Reilly Jr.
	Notice of Service of Answers to Plaintiffs' Request For Production of Documents. Filed by s/Jeffrey S. DuBois, Esq. no cc
07/05/2002	John K. Reilly Jr.
	Certificate of Readiness, filed by Atty Ferraro Non-Jury Trial approx. (2) days and notice to all attorneys. 2 cert. to Atty. and copy to C/A
08/27/2002	John K. Reilly Jr.
	PRE-TRIAL ORDER, NOW, this 27th day of Aug. 2002, re: Trial w/o Jury to John K. Reilly Jr. be held Nov. 15, 2002, commencing at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Ferraro, Du Bois
11/15/2002	John K. Reilly Jr.
	ORDER, NOW, this 15th day of November, 2002, re: Counsel for Plaintiff to John K. Reilly Jr. file a Brief within 30 days from this date, and Defendant given 20 days thereafter to respond in kind. by the Court, s/JKR,JR.,P.J. 2 cc Atty Ferraro, DuBois
01/13/2003	John K. Reilly Jr.
	Opinion and Order/Order, NOW, this 13th day of January, 2003, following hearing, Order that judgment shall be and is hereby entered in favor of the Plaintiff and against the Defendant. BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Atty R. Edward Ferraro, Atty DuBois One CC D. Mikesell
01/21/2003	John K. Reilly Jr.
	Motion For Post-Trial Relief. filed by s/Jeffrey S. DuBois, Esquire
01/28/2003	John K. Reilly Jr.
	Certificate of Service 6 cc Atty DuBois Reply and Objections to Defendant's Motion For Post-Trial Relief. filed by s/Ross F. Ferraro, Esquire Certificate of Service 1 cc Judge Reilly, 1 cc Court Reporter --Per R. Ferraro's Request
03/12/2003	John K. Reilly Jr.
	Transcript of Proceedings, Nonjury Trial Held Before The Honorable John K. Reilly, Jr., President Judge on Friday, November 15, 2002. no cc
06/23/2003	John K. Reilly Jr.
	OPINION AND ORDER, NOW, this 23rd day of June, 2003, upon consideration of Defendant's Motion for Post-Trial Relief, it is the ORDER of this Court that said Motion be and is hereby GRANTED in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Ferraro, DuBois, and Don Mikesell
07/22/2003	John K. Reilly Jr.
	Filing: Notice of Appeal to High Court Paid by: DuBois, Jeffrey S. (attorney John K. Reilly Jr. for Schaffer, Homer L.) Receipt number: 1863400 Dated: 07/22/2003 Amount: \$45.00 (Cash) 6 CC Attorney DuBois One CC Superior Court with check #1010 in amount of \$60.00

Date: 09/03/2003

Time: 09:53 AM

Page 2 of 2

Clerk of Court County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2001-01201-CD

Current Judge: John K. Reilly Jr.

Donald H. Wells Jr., Sarah J. Wells vs. Homer L. Schaffer

Civil Other

Date	Judge
07/25/2003	ORDER, NOW, this 2nd day of July, 2003, the Court having been notified of John K. Reilly Jr. Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Jeffrey S. DuBois, Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/JKR,JR.,P.J. 2 cc Atty R. Edward Ferraro, 1 cc Atty DuBois
08/04/2003	Appeal Docket Sheet, filed. Docket Number: #1380 WDA 2003 John K. Reilly Jr.
08/15/2003	Concise Statement of Matters Complained of on Appeal. filed by s/Jeffrey S. DuBois, Esquire Certificate of Service 5 cc to Atty

I hereby certify this to be a true and attested copy of the original statement filed in this case.

SEP 03 2003

Attest.

*William J. Hudson*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 01-1201-CD  
Donald H. Wells, Jr. and Sarah J. Wells  
VS.  
Homer L. Schaffer

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	07/25/01	Complaint	15
02	07/25/01	Motion for Preliminary Injunction and Permanent Injunction	06
03	07/25/01	Rule to Show Cause, Re: Plaintiff's Motion for Preliminary Injunction	02
04	08/01/01	Order, Re: Hearing into Plaintiff's Motion for Temporary Injunction	03
05	08/02/01	Sheriff Return	01
06	08/20/01	Answer to Plaintiff's Complaint and New Matter	07
07	08/30/01	Answer to Defendant's New Matter	05
08	04/01/02	Notice of Service of Answers to Plaintiffs' Request for Production of Documents	02
09	07/05/02	Certificate of Readiness	04
10	08/27/02	Pre-Trial Order	01
11	11/15/02	Order, Re: Counsel to file briefs	01
12	01/13/03	Opinion and Order	03
13	01/21/03	Motion for Post-Trial Relief	05
14	01/28/03	Reply to Objections to Defendant's Motion for Post-Trial Relief	06
15	03/12/03	Transcript of Proceedings, Non Jury Trial held before the Honorable John K. Reilly, Jr., P.J., on Friday, November 15, 2002	Separate Cover
16	06/23/03	Opinion and Order	02
17	07/22/03	Notice of Appeal to Higher Court	04
18	07/25/03	Order, Re: Council for Defendant to file concise statement	01
19	08/04/03	Appeal Docket Sheet, Docket Number 1380 WDA 2003	03
20	08/15/03	Concise Statement of Matters Complained of on Appeal	04

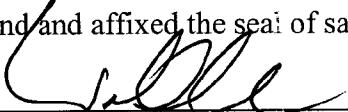
COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

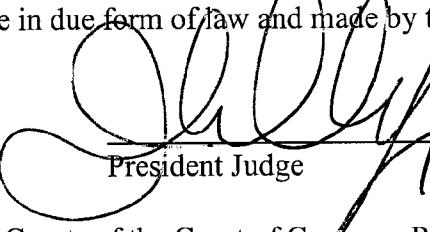
**Donald H. Wells, Jr. and Sarah J. Wells**  
VS.  
**Homer L. Schaffer**  
**01-1201-CD**

So full and entire as the same remains of record before the said Court, at **No. 01-1201-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 27 Day of August, 2003.

  
Prothonotary/Clerk of Courts

I, **John K. Reilly, Jr.**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

  
President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **John K. Reilly, Jr.**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 3 day of SEPT., 2003.

  
Prothonotary/Clerk of Courts

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

DONALD H. WELLS, JR. and :  
SARAH J. WELLS :  
: No. 01 - 1201 - CD  
-vs- :  
: HOMER L. SCHAFFER :

**OPINION AND ORDER**

The parties above-named are owners of two separate and distinct but contiguous tracts of land located in Bell Township, Clearfield County, Pennsylvania. By a pleading captioned Complaint/Action to Quiet Title filed on July 25, 2001, Plaintiff claimed ownership of 2.114 acres located immediately to the south of their property, record title to which is in the Defendant, based on the doctrine of consentable line.

Following hearing and briefs, this Court, on January 13, 2003, filed an Opinion and Order holding in favor of the Plaintiffs.

On January 21, 2003, Defendant filed a Motion for Post-Trial Relief alleging that this Court erred in finding that Plaintiffs' proved a line that was recognized by both parties and that each party claimed and occupied land on his side of the line.

Plaintiffs' claim rests upon the doctrine of consentable line and the theory of recognition and acquiescence that requires that the parties acknowledge and establish a "line". The elements therefor are: (1) a finding that each party has claimed the land on his side of the line; and (2) a finding that this occupation has occurred for the statutory period of 21 years.

See Jedlicka v. Clemmer, 677 A.2d 1232 Pa. Super (1996). Moreover, in Sorg v. Cunningham, 687 A.2d 846 Pa. Super. (1997) the Appellate Court held that the doctrine of consentable

**FILED**

JUN 23 2003

William A. Shaw  
Prothonotary



boundary does not require proof of actual possession of the entire parcel of land by the Plaintiffs.

In reviewing the testimony and briefs in this matter, however, it is clear to this Court that Plaintiffs are claiming ownership under the above doctrine to the edge of the woods to the East and West of the pond and a review of the map attached to Plaintiffs' Complaint as Exhibit C indicates this to be the proper boundary line to the East and West. To that extent, this Court will grant Defendant's Motion for Post-Trial Relief to set the boundaries of the subject premises as follows: On the North by the Southern line of property now or formerly of Plaintiffs; to the South by Laurel Run and to the East and West by the line of trees as set forth in said Exhibit C.

WHEREFORE, the Court enters the following:

**ORDER**

NOW, this 23<sup>rd</sup> day of June, 2003, upon consideration of Defendant's Motion for Post-Trial Relief, it is the ORDER of this Court that said Motion be and is hereby granted in accordance with the foregoing Opinion.

By the Court,  
\_\_\_\_\_  
President Judge

FILED  
0 3:29 PM  
JUN 23 2003  
William A. Shaw  
Prothonotary

1cc to Amy Ferraro  
1cc to Amy D'bois  
1cc Bon Nihuele

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

DONALD H. WELLS, JR. and : No. 01-1201 C.D.  
SARAH J. WELLS, :  
Plaintiffs : Type of Pleading:  
Vs. : **NOTICE OF APPEAL**  
: Filed on Behalf of:  
HOMER L. SCHAFFER, : DEFENDANT  
Defendant : Counsel of Record for this Party:  
: Jeffrey S. DuBois  
: Supreme Court No. 62074  
: 190 West Park Avenue, Suite #5  
: DuBois, PA 15801  
: (814) 375-5598

FILED

JUL 22 2003

William A. Shaw  
Prothonotary

#17

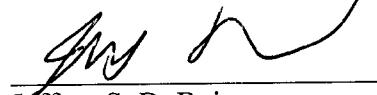
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DONALD H. WELLS, JR. and	:	No. 01-1201 C.D.
SARAH J. WELLS,	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
HOMER L. SCHAFFER,	:	
Defendant	:	

**NOTICE OF APPEAL**

Notice is hereby given that Homer L. Schaeffer, Defendant above named, hereby appeals to the Superior Court of Pennsylvania from the order entered in this matter on the 23<sup>rd</sup> day of June, 2003. This order has been entered in the docket as evidence by the attached copy of the docket entry. The undersigned requests a copy of the transcript pursuant to Rule 1911.

Respectfully Submitted,



Jeffrey S. DuBois  
Attorney for Defendant

Date: 07/22/2003

Time: 02:23 PM

Page 1 of 1

## Clefield County Court of Common Pleas

ROA Report

Case: 2001-01201-CD

Current Judge: John K. Reilly Jr.

Donald H. Wells Jr., Sarah J. Wells vs. Homer L. Schaffer  
Civil Other

User: BHUDSON

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 22 2003

Attest.

*William H. Hudson*  
Prothonotary/  
Clerk of Courts

Date		Judge
07/25/2001	Filing: Complaint/Action to Quiet Title Paid by: Ferraro, R. Edward (attorney for Wells, Donald) Receipt number: 1828862 Dated: 07/25/2001 Amount: \$90.00 (Check) Three CC Attorney (Property is located in Bell Township, Clearfield County, PA.) Motion for Preliminary Injunction and Permanent Injunction, filed by s/R. Edward Ferraro, Esq. Three CC Attorney Rule to Show Cause, filed. AND NOW, this 25 day of July, 2001, re: Plaintiff's Motion for Preliminary Injunction, Defendant shall show cause the 1st day of August, 2001, at 9:00a.m. BY THE COURT: /s/Fredric J. Ammerman, Judge, for Judge John K. Reilly, Jr., P.J. Three CC Attorney	No Judge
08/01/2001	ORDERM, NOW, this 1st day of August, 2001, re: Hearing into Plaintiff's Motion for Temporary Injunction, Motion GRANTED. by the Court, s/JKR,JR.,P.J. 1 cc atty Ferraro, DuBois	John K. Reilly Jr.
08/02/2001	Sheriff Returns, served Rule to Show Cause, Motion for Preliminary Injunction & Permanent Injunction, Complaint Action to Quiet Title, on Homer L. Shaffer. So Answers, Chester A. Hawkins, by Marilyn Hamm \$52.54 Shff Hawkins paid by Attorney	John K. Reilly Jr.
08/20/2001	Answer To Plaintiff's Complaint and New Matter. Filed by s/Jeffrey S. DuBois, Esq. Cert of Svc 1 cc atty Taladay	John K. Reilly Jr.
08/30/2001	Answer To Defendant's New Matter. Filed by s/Ross F. Ferraro, Esq. Verification, s/Donald H. Wells,Jr. s/Sarah J. Wells Cert of Svc 1 cc Atty Ferraro	John K. Reilly Jr.
04/01/2002	Notice of Service of Answers to Plaintiffs' Request For Production of Documents. Filed by s/Jeffrey S. DuBois, Esq. no cc	John K. Reilly Jr.
07/05/2002	Certificate of Readines, filed by Atty Ferraro Non-Jury Trial approx. (2) days and notice to all attorneys. 2 cert. to Atty. and copy to C/A	John K. Reilly Jr.
08/27/2002	PRE-TRIAL ORDER, NOW, this 27th day of Aug. 2002, re: Trial w/o Jury to John K. Reilly Jr. be held Nov. 15, 2002, commencing at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Ferraro, Du Bois	
11/15/2002	ORDER, NOW, this 15th day of November, 2002, re: Counsel for Plaintiff to John K. Reilly Jr. file a Brief within 30 days from this date, and Defendant given 20 days thereafter to respond in kind. by the Court, s/JKR,JR.,P.J. 2 cc Atty Ferraro, DuBois	
01/13/2003	Opinion and Order/Order, NOW, this 13th day of January, 2003, following hearing, Order that judgment shall be and is hereby entered in favor of the Plaintiff and against the Defendant. BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Atty R. Edward Ferraro, Atty DuBois One CC D. Mikesell	John K. Reilly Jr.
01/21/2003	Motion For Post-Trial Relief. filed by s/Jeffrey S. DuBois, Esquire Certificate of Service 6 cc Atty DuBois	John K. Reilly Jr.
01/28/2003	Reply and Objections to Defendant's Motion For Post-Trial Relief. filed by s/Ross F. Ferraro, Esquire Certificate of Service 1 cc Judge Reilly, 1 cc Court Reporter --Per R. Ferraro's Request	John K. Reilly Jr.
03/12/2003	Trabscript of Proceedings, Nonjury Trial Held Before The Honorable John K. Reilly, Jr., President Judge on Friday, November 15, 2002. no cc	John K. Reilly Jr.
06/23/2003	OPINION AND ORDER, NOW, this 23rd day of June, 2003, upon consideration of Defendant's Motion for Post-Trial Relief, it is the ORDER of this Court that said Motion be and is hereby GRANTED in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Ferraro, DuBois, and Don Mikesell	John K. Reilly Jr.

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

DONALD H. WELLS, JR. and	:	No. 01-1201 C.D.
SARAH J. WELLS,	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
HOMER L. SCHAFFER,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 22<sup>nd</sup> day of July 2003, I served a true and correct copy of the within Notice of Appeal by first class mail, postage prepaid, on the following:

Hon. John K. Reilly, Jr.  
President Judge  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

Court Administrator  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

Court Reporter  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

R. Edward Ferraro, Esquire  
Ross F. Ferraro, Esquire  
690 Main Street  
Brockway, PA 15824

cc Amy Dubois  
of 237th 100 Superior Court  
JUL 22 2003  
will check # 1010  
William A. Shaw  
Dow Fritchman

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

DONALD H. WELLS, JR. and

:

SARAH J. WELLS

:

-vs-

: No. 01 - 1201 - CD

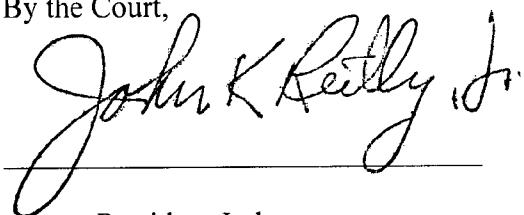
HOMER L. SCHAFFER

:

**ORDER**

NOW, this 23<sup>rd</sup> day of July, 2003, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Jeffrey S. DuBois, Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

By the Court,



President Judge

**FILED**

JUL 25 2003

William A. Shaw  
Prothonotary/Clerk of Courts

#18

FILED

2 cc Atty R. Edward Ferraro

07/14/03  
JUL 25 2003

1 cc Atty Dubois

William A. Shaw  
Prothonotary/Clerk of Courts

ESB

## Appeal Docket Sheet

Docket Number: 1380 WDA 2003

Page 1 of 3

August 1, 2003

Superior Court of Pennsylvania



Donald H. Wells, Jr., and

Sarah J. Wells,

V.

Homer L Schaffer, Appellant

01-1201-CD

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: July 29, 2003

Awaiting Original Record

Journal Number:

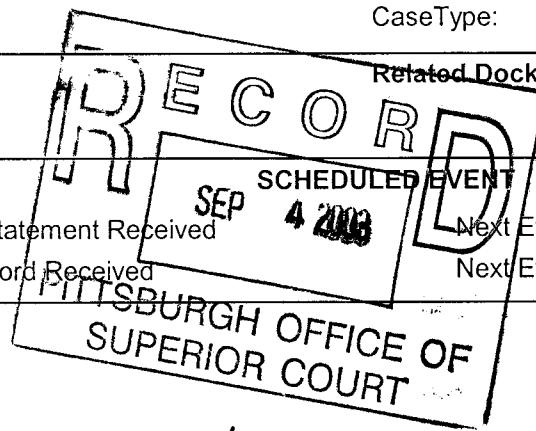
Case Category: Civil

Case Type:

Quiet Title

Consolidated Docket Nos.:

Related Docket Nos.:



Next Event Type: Docketing Statement Received

Next Event Due Date: August 15, 2003

Next Event Type: Original Record Received

Next Event Due Date: September 2, 2003

Record - Transcripts  
 exhibits attached  
 to transcript

FILED NO CC  
 10:38 AM  
 AUG 04 2003

William A. Shaw  
 Prothonotary/Clerk of Courts

## Appeal Docket Sheet

Docket Number: 1380 WDA 2003

Page 2 of 3

August 1, 2003

Superior Court of Pennsylvania



## COUNSEL INFORMATION

**Appellant** Schaffer, Homer L  
 Pro Se: Appoint Counsel Status:

IPP Status: No

**Appellant Attorney Information:**

Attorney: DuBois, Jeffrey S.

Bar No.: 62074 Law Firm:

Address: 498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Phone No.: (814)371-7768 Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Wells Jr., Donald H.  
 Pro Se: Appoint Counsel Status:

IPP Status: No

**Appellee Attorney Information:**

Attorney: Ferraro, R. Edward

Bar No.: 05880 Law Firm: Ferraro &amp; Young

Address: Ferraro & Young  
690 Main Street  
Brockway, PA 15824-1610

Phone No.: (814)268-2202 Fax No.: (814)265-8740

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Wells, Sarah J.  
 Pro Se: Appoint Counsel Status:

IPP Status: No

**Appellee Attorney Information:**

Attorney: Ferraro, R. Edward

Bar No.: 5880 Law Firm: Ferraro &amp; Young

Address: Ferraro & Young  
690 Main Street  
Brockway, PA 15824-1610

Phone No.: (814)268-2202 Fax No.: (814)265-8740

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

## FEE INFORMATION

## Appeal Docket Sheet

Docket Number: 1380 WDA 2003

Page 3 of 3

August 1, 2003

Superior Court of Pennsylvania



Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
7/22/03	Notice of Appeal	60.00	60.00	2003SPRWD000979

## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of OrderAppealed From: June 23, 2003

Judicial District: 46

Date Documents Received: July 29, 2003

Date Notice of Appeal Filed: July 22, 2003

Order Type: Order Entered

OTN:

Judge: Reilly, Jr., John K.

Lower Court Docket No.: No. 01-1201 C. D.

President Judge

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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## Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
July 29, 2003	Notice of Appeal Filed	Appellant	Schaffer, Homer L
August 1, 2003	Docketing Statement Exited (Civil)		Western District Filing Office

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(C)

---

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

**01-1201-CD**

**Donald H. Wells, Jr. and Sarah J. Wells**  
**VS.**  
**Homer L. Schaffer**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 20**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is  
September 3, 2003.

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

(seal)

10:32 A.M.

## Appeal Docket Sheet

Docket Number: 1380 WDA 2003

Page 1 of 3

August 1, 2003

Superior Court of Pennsylvania



01-1201-01

Donald H. Wells, Jr., and  
Sarah J. Wells,  
V.

Homer L Schaffer, Appellant

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: July 29, 2003

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Quiet Title

Consolidated Docket Nos.:

Related Docket Nos.:

### SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: August 15, 2003

Next Event Type: Original Record Received

Next Event Due Date: September 2, 2003

FILED NO  
m 10:38 AM  
AUG 04 2003  
cc

William A. Shaw  
Prothonotary/Clerk of Courts

## Appeal Docket Sheet

Docket Number: 1380 WDA 2003

Page 2 of 3

August 1, 2003

## Superior Court of Pennsylvania



## COUNSEL INFORMATION

Appellant Schaffer, Homer L  
 Pro Se: Appoint Counsel Status:

IFP Status: No

## Appellant Attorney Information:

Attorney: DuBois, Jeffrey S.  
 Bar No.: 62074 Law Firm:  
 Address: 498 Jeffers Street  
 P.O. Box 487  
 DuBois, PA 15801

Phone No.: (814)371-7768 Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Wells Jr., Donald H.  
 Pro Se: Appoint Counsel Status:

IFP Status: No

## Appellee Attorney Information:

Attorney: Ferraro, R. Edward  
 Bar No.: 05880 Law Firm: Ferraro & Young  
 Address: Ferraro & Young  
 690 Main Street  
 Brockway, PA 15824-1610

Phone No.: (814)268-2202 Fax No.: (814)265-8740

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Wells, Sarah J.  
 Pro Se: Appoint Counsel Status:

IFP Status: No

## Appellee Attorney Information:

Attorney: Ferraro, R. Edward  
 Bar No.: 5880 Law Firm: Ferraro & Young  
 Address: Ferraro & Young  
 690 Main Street  
 Brockway, PA 15824-1610

Phone No.: (814)268-2202 Fax No.: (814)265-8740

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

## FEE INFORMATION

## Appeal Docket Sheet

Docket Number: 1380 WDA 2003

Page 3 of 3

August 1, 2003

Superior Court of Pennsylvania



Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
7/22/03	Notice of Appeal	60.00	60.00	2003SPRWD000979

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President Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: July 22, 2003

OTN:

Lower Court Docket No.: No. 01-1201 C. D.

## ORIGINAL RECORD CONTENTS

Original Record Item

Filed Date

Content/Description

Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
July 29, 2003	Notice of Appeal Filed	Appellant	Schaffer, Homer L
August 1, 2003	Docketing Statement Exited (Civil)		Western District: Filing Office

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

DONALD H. WELLS, JR. and : No. 01 - 1201 - CD  
SARAH J. WELLS, :  
Plaintiff : Type of Pleading:  
Vs. : **CONCISE STATEMENT OF**  
: **MATTERS COMPLAINED OF ON**  
: **APPEAL**  
HOMER L. SCHAFFER, :  
Defendant : Filed on Behalf of:  
: DEFENDANT  
: Counsel of record for this Party:  
: Jeffrey S. DuBois  
: Supreme Court No. 62074  
: 190 West Park Avenue, Suite #5  
: DuBois, PA 15801  
: (814) 375-5598

**FILED**

AUG 15 2003  
S/11:55 (L)  
William A. Shaw  
Prothonotary

5 cent to ATTN

620

#20

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

DONALD H. WELLS, JR. and	:	No. 01 - 1201 - CD
SARAH J. WELLS,	:	
Plaintiff	:	
	:	
Vs.	:	
	:	
HOMER L. SCHAFFER,	:	
Defendant	:	

**CONCISE STATEMENT OF MATTERS COMPLAINED OF ON APPEAL**

AND NOW, comes the Appellant, Homer L. Schaffer, by and through his attorney, Jeffrey S. DuBois, Esquire, who files this Concise Statement of Matters Complained of on Appeal as follows:

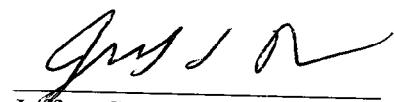
I. Appellant, Homer L. Schaffer, contends that the Trial Court erred as a matter of law in granting judgment in favor of Appellees', Donald and Sarah Wells, as well as granting in part and denying in part Appellant's Motion for Post Trial Relief, in that the Honorable Trial Court ruled in favor of the Appellees' on the theory of consentable line when the elements of consentable line had not been met by Appellees' and were not present in this case, in particular, there was never a line which was set out so as to mark or designate the boundary between the respective two properties, nor was a line ever agreed to or acquiesced to between the Parties, nor was there ever a line recognized by

either of the Parties, and as such the doctrine of consentable line was not present in this case.

Therefore, because of the fact that the doctrine of consentable line was not applicable in this case, judgment should have been entered in favor of Appellant.

II. As was admitted to by Appellees' at trial, prior to them using what is by record title clearly Appellant's property, Appellees' asked permission from a person other than Appellant to use the property, and consequently because Appellees' asked permission for use knowing the property was not theirs, the theory of consentable line would not be applicable in this case and judgment should be entered in favor of Appellant.

Respectfully submitted,



Jeffrey S. DuBois  
Attorney for Appellant's

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

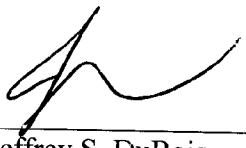
DONALD H. WELLS, JR. and	:	No. 01 - 1201 - CD
SARAH J. WELLS,	:	
Plaintiff	:	
	:	
Vs.	:	
	:	
HOMER L. SCHAFFER,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 15<sup>th</sup> day of August, 2003, I served a true and correct copy of the within Concise Statement of Matters Complained of on Appeal by first class mail, postage prepaid, on the following:

Honorable John K. Reilly, Jr.  
President Judge  
Clearfield County Courthouse  
Clearfield, PA 16830

Ross Ferraro, Esquire  
690 Main Street  
Brockway, PA 15824



Jeffrey S. DuBois