

CL-14-COM-11
JOSEPH M. RUSNAK et al -vs- WILLIAM BRADLEY HOLDREN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK and *
CHRISTINE A. RUSNAK, his wife, * No. 01-1428-CJ
and MARK J. RUSNAK and VICKIE *
E. RUSNAK, his wife, *

Plaintiffs *

vs.

WILLIAM BRADLEY HOLDREN *

Defendant *

* TYPE OF CASE: Civil Action

* TYPE OF PLEADING: Praeclipe
* For Issuance of Writ of
* Summons

* FILED ON BEHALF OF:

* Plaintiffs

* COUNSEL OF RECORD FOR THIS
* PARTY:

* David C. Mason, Esquire
* Supreme Court I.D. 39180
* Attorney at Law
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

FILED

AUG 31 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No.
RUSNAK, his wife, *

Plaintiffs *

vs.

WILLIAM BRADLEY HOLDREN *

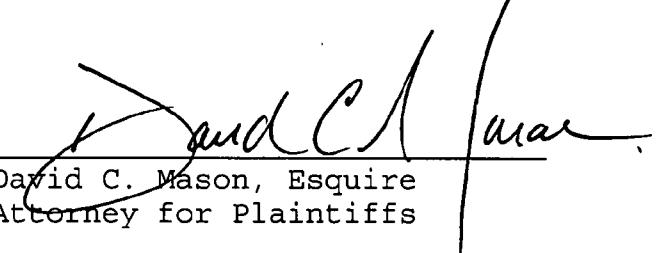
Defendant *

PRAECIPE FOR ISSUANCE OF

WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in the above captioned matter
to the Defendant above named.


David C. Mason, Esquire
Attorney for Plaintiffs

FILED Atty Mason
pd. \$0.00

6/11/01
AUG 3 1 2001

cc

2 cc - 2 wnts to

Atty
William A. Shaw
Probate

Atty Mason

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

COPY

SUMMONS

**Joseph M. Rusnak and
Christine A. Rusnak, his wife, and
Mark J. Rusnak and Vickie E. Rusnak, his wife**

Vs.

NO.: 2001-01428-CD

William Bradley Holdren

TO: **WILLIAM BRADLEY HOLDREN**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 08/31/2001

William A. Shaw
Prothonotary

Issuing Attorney:

David C. Mason
P.O. Box 28
Philipsburg, PA 16866

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

JOSEPH M. RUSNAK, and MARK J.
RUSNAK and VICKIE E. RUSNAK,
his wife,

Plaintiffs

vs.

WILLIAM BRADLEY HOLDREN,

Defendant

No. 2001-01428-CD

* TYPE OF CASE:
* Civil Division

* TYPE OF PLEADING:
* Praeclipe for Entry
* of Appearance

* FILED ON BEHALF OF:
* Defendant

* COUNSEL OF RECORD FOR
* THIS PARTY:
* David R. Thompson, Esquire
* Supreme Court I.D. No. 73053
* Attorney at Law
* P.O. Box 587
* 308 Walton Street, Suite 4
* Philipsburg PA 16866
* (814) 342-4100

FILED

JAN 31 2002

1/11/02 cc atty Thompson
William A. Shaw
Prothonotary *Reg*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J. *
RUSNAK and VICKIE E. RUSNAK, *
his wife, *
* Plaintiffs * No. 2001-01428-CD
*
* vs. *
*
* WILLIAM BRADLEY HOLDREN, *
*
* Defendant *

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance in the above-captioned matter on behalf of the
Defendant, **WILLIAM BRADLEY HOLDREN.**

Respectfully submitted,



David R. Thompson, Esquire

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

JOSEPH M. RUSNAK, and MARK J. RUSNAK,
and VICKI E. RUSNAK, his wife,
Plaintiffs

*
* No. 01-1428-CD
*

* TYPE OF CASE:
* Civil Division-Law
*

vs.

WILLIAM BRADLEY HOLDREN,

Defendant

*
* TYPE OF PLEADING:
* Certificate of Service
*

* FILED ON BEHALF OF:
* Defendant
*

* COUNSEL OF RECORD FOR
* THIS PARTY:
*

* David R. Thompson, Esquire
* Attorney at Law
* Supreme Court 73053
* P.O. Box 587
* 308 Walton Street, Suite 4
* Philipsburg PA 16866
* (814) 342-4100

FILED

FEB 12 2002

**William A. Shaw
Prothonotary**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of **PRAECIPE FOR ENTRY OF APPEARANCE**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

David C. Mason, Esquire
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866

DATE: February 4, 2002

BY: 
David R. Thompson, Esquire

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

JOSEPH M. RUSNAK, and MARK J. RUSNAK,
and VICKI E. RUSNAK, his wife,
Plaintiffs

vs.

WILLIAM BRADLEY HOLDREN,

Defendant

* No. 01-1428-CD

* TYPE OF CASE:
Civil Division-Law

* TYPE OF PLEADING:
Certificate of Service

* FILED ON BEHALF OF:
Defendant

* COUNSEL OF RECORD FOR
THIS PARTY:
* David R. Thompson, Esquire
* Attorney at Law
* Supreme Court 73053
* P.O. Box 587
* 308 Walton Street, Suite 4
* Philipsburg PA 16866
* (814) 342-4100

FILED

FEB 12 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J., *
RUSNAK and VICKI E. RUSNAK, * 01-1428-CD
his wife, *
Plaintiffs *
*
* vs. *
*
* WILLIAM BRADLEY HOLDREN, *
*
*
*
* Defendant *

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served one original and a true and correct copy of **ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO AID IN DRAFTING COMPLAINT**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

David C. Mason, Esquire
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866

DATE: February 6, 2002

BY: 

David R. Thompson, Esquire

FILED

FEB 12 2002
⑤ 3.00) cc att Thompson
William A. Shaw
Prothonotary
AFC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and

*

MARK J. RUSNAK and VICKIE E.
RUSNAK, his wife,

* No. 2001-01428-CD

*

*

*

Plaintiffs

*

*

*

vs.

*

*

*

WILLIAM BRADLEY HOLDREN

*

*

*

Defendant

*

* TYPE OF CASE: Civil Action

*

* TYPE OF PLEADING: Complaint

*

*

* FILED ON BEHALF OF:

* Plaintiffs

*

* COUNSEL OF RECORD FOR THIS
* PARTY:

* David C. Mason, Esquire

* Supreme Court I.D. 39180

* Attorney at Law

* P. O. Box 28

* Philipsburg, PA 16866

* (814) 342-2240

*

* COUNSEL OF RECORD FOR DEFENDANT:

* David R. Thompson, Esquire

* Supreme Court I.D. #73053

* Attorney at Law

* 308 Walton Street, Suite 4

* Philipsburg, PA 16866

* (814) 342-4100

FILED

JAN 22 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

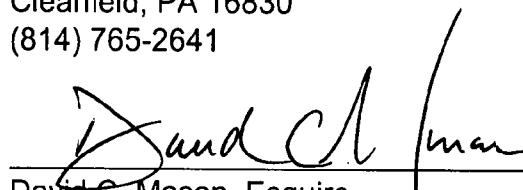
JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
	*
Plaintiffs	*
	*
	*
vs.	*
	*
	*
WILLIAM BRADLEY HOLDREN	*
	*
	*
Defendant	*

NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE AN 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
Clearfield, PA 16830
(814) 765-2641



David C. Mason, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
	*
Plaintiffs	*
	*
	*
vs.	*
	*
	*
WILLIAM BRADLEY HOLDREN	*
	*
	*
Defendant	*

COMPLAINT

1. Plaintiffs are:

A. Joseph M. Rusnak, currently of 339 N. Ninth Street, Philipsburg, Pennsylvania, 16866.

B. Mark J. Rusnak and Vickie E. Rusnak, his wife, currently of 486 Rusnak Lane, Philipsburg, Pennsylvania, 16866.

2. Defendant is William Bradley Holdren currently of R. R. #2, Box 18A, Curwensville, Pennsylvania, 16833.

3. Plaintiffs and Defendants are owners of adjoining parcels of land in Morris Township, Clearfield County, PA, and trace their titles to a common source.

4. At all times material hereto, Plaintiffs were the owners of certain real estate situate in the Township of Morris, County of Clearfield County, and State of Pennsylvania, as more particularly described below:

PLAINTIFF JOSEPH RUSNAK'S CHAIN OF TITLE

5. Plaintiff Joseph Rusnak is the owner of a tract of land identified on the tax maps of Clearfield County as 124-Q11-75. Plaintiff Joseph Rusnak's chain of title is as follows:

a. Andrew J. Chabala, Jr., & Kathleen A. Chabala, his wife, to Joseph M. Rusnak and Christine A. Rusnak, his wife, by a deed dated September 25, 1969, recorded in Records Book Volume 554 at Page 457.

b. John P. Donley to Andrew J. Chabala, Jr., by a Deed dated October 30, 1959, recorded in 480 at Page 205. This conveyance was to vest full title in Andrew J. Chabala which was previously held as Tenants in Common by John P. Donley and Andrew J. Chabala, Jr.

c. Jules Dinant and Evelyn Dinant, his wife, to Andrew Chabala, and John P. Donley, as Tenants in Common, by a Deed dated July 15, 1957, recorded in Record Book Volume 460 at Page 247.

d. William H. Wright and Rachel his wife to Jules Dinant and Evelyn Dinant, his wife, as Tenants by the Entireties, by a deed dated February 16, 1946 and recorded in Deed Book Volume 372 at page 31.

e. Valentine Legrand and Elizabeth Legrand, his wife, to William H. Wright and Rachel Wright, his wife, by deed dated August 24, 1944, and recorded in Deed Book Volume 362 at page 144.

f. Valentine Legrand and Elizabeth Legrand obtained titled to the subject premises in two different conveyances:

1. Philipsburg Coal and Land Company to Valentine Legrand and Elizabeth

Legrand, his wife, by Deed dated December 27, 1917, and recorded in Deed Book Volume 225 at Page 368 (purpart 1);

2. David Wright and Helen Wright, his wife, to Valentine Legrand and Elizabeth Legrand, his wife, by Deed dated October 28, 1918, and recorded in Deed Book Volume 232 at Page 86 (purport 2 and purpart 3).

g. Philipsburg Coal and Land Company sold purparts 2 and 3 to David Wright and Helen Wright, his wife, by Deed dated September 22, 1913, and recorded in Deed Book Volume 219 at Page 44.

6. Throughout these transfers and conveyances, the description of the premises currently owned by the Plaintiff Joseph Rusnak has remained unchanged and is as follows:

ALL those two (2) certain pieces, parcels or lots of land situate, lying and being in the Township of Morris, County of Clearfield, and State of Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post on the Southeastern side of an alley and which post is Two Hundred Sixty (260') feet Southwest from the Southern side of the Township Road leading from Philipsburg to Wallaceton; thence along the Southeastern side of said Alley South Forty-four (44°) degrees Fifty (50') minutes West, Four Hundred and Twenty-seven (427') feet to a post; thence along the land of the Philipsburg Coal and Land Company South Forty-five (45°) degrees Thirty-eight (38') minutes East, Three Hundred Three (303') feet to a post on the line of lands now or formerly of John Fetsenko; thence by lands now or formerly of John Fetsenko and lands of now or formerly of John Smozer North 44 degrees 30 minutes East, Four Hundred and ninety-four (494') feet to a post on the Southern side of Township Road; thence along the Southern side of said Township Road North Twenty-seven (27°) Fifty-eight (58') minutes West, Ninety six and four-tenths (96.4') feet to a post; thence by lands now or formerly of the Philipsburg Coal and Land Company South Forty-four (44°) degrees, Twenty-two (22') minutes West, ninety-four and nine-tenths (94.9') feet to a post; thence by the same North Forty-five (45°) degrees Thirty-eight (38') minutes West, Two Hundred Seven (207') feet to a post on the Southeastern side of an alley and place of beginning. **CONTAINING** three and fourteen hundredths (3.14) acres.

THE SECOND PURPORT THEREOF: BEGINNING at an iron plug corner of lands now or formerly of the Philipsburg Coal and Land Company and lands now or formerly of Nuttall Estate and which iron plug corner is Six Hundred Eighty-eight and six-tenths (688.6') feet Southwest from the public road leading from Philipsburg to Wallacetown, and which iron plug corner is the Southwestern corner of land sold heretofore to William Wright; thence by the lands now or formerly of William Wright South Forty-six (46°) degrees Thirty (30') minutes East, Five Hundred forty-five (545') feet to a post corner on the Northwestern side of an alley; thence along the Northwestern side of said alley South Forty-four (44°) degrees Fifty (50') minutes West, Two Hundred Fifty-Six (256') feet to a post; thence by lands now or formerly of the Philipsburg Coal and Land Company M. Forty-five (45°) degrees Thirty-eight (38') minutes West, Five Hundred Twenty and six-tenths (520.6') feet to a post on line of lands now or formerly of Nuttall Estate; thence by said lands now or formerly of Nuttall Estate North Thirty-nine (39°) degrees Twenty-nine (29') minutes East, Two Hundred Forty-Seven (247') feet to an iron plug corner and place of beginning. **CONTAINING** three and eleven hundredths (3.11) acres.

The aforesaid First and Second Parcels hereinabove described are allegedly more accurately described upon the basis of a survey made by Bernard Lucas Associates hereinafter reiterating by recent survey and description the two above noted tracts of land bounded and described as follows:

THE FIRST PURPART THEREOF: BEGINNING at a stake corner on the Southern line of a Twenty-foot alley and said stake corner being the Northwestern corner of W. L. Verbeck; thence along line of W. L. Verbeck South Forty-five degrees, Thirty-eight minutes East (S 45° 38' E) a distance of Two Hundred Seven and no hundredths (207.00') feet to a stake corner; thence still by same North Forty-four degrees Twenty-two minutes East (N 44° 22' E) a distance of Ninety-four and ninety-hundredths (94.90') feet to a stake corner on the Western right of way line of Township Road Number T-680; thence along the Western right-of-way line of said Township Road South Twenty-seven degrees, Fifty-eight minutes East (S 27° 58' E) a distance of Ninety-six and forty-hundredths (96.40') feet to a stake corner on line of now or formerly J. Smozer; thence along line of now or formerly J. Smozer and J. Fetsenko South Forty-four degrees Thirty minutes West (S 44° 30' W) a distance of Four Hundred Ninety-four and no hundredths (494.00') feet to a stake corner on line of Philipsburg Coal and Land Company; thence by line of the Philipsburg Coal and Land Company North Forty-five degrees, Thirty-eight minutes West (N 45° 38' W) a distance of Three Hundred Three and no hundredths (303.00') feet to a stake corner on the Southern line of a Twenty-foot alley; thence along the Southern line of said Twenty-foot alley North Forty-four degrees, Fifty minutes East (N 44° 50' E) a distance of Four Hundred Twenty-seven and no hundredths (427.00') feet to a stake corner, the place of beginning. **CONTAINING** 3.14 acres.

THE SECOND PURPART THEREOF: BEGINNING at an iron rail corner on line of the Nuttal Estate and Larry H. Fitzgerald; thence by line of Larry H. Fitzgerald South Forty-

six degrees, Thirty minutes East (S 46° 30' E) a distance of Five Hundred Forty-five and no hundredths (545.00') feet to a stake corner on the Northern line of a Twenty-foot alley; thence along the Northern line of the twenty-foot alley, South Forty-four degrees Fifty minutes West (S 44° 50' W) a distance of Two Hundred Fifty Six and no hundredths (256.00') feet to a stake corner on line of the Philipsburg Coal and Land Company; thence along line of Philipsburg Coal and Land Company North Forty-five degrees, Thirty-eight minutes West (N 45° 38' W) a distance of Five Hundred Twenty and no hundredths (520.00') feet to a stake corner on line of the Nuttal Estate; thence along line of the Nuttal Estate North Thirty-nine degrees Twenty-nine minutes East (N 39° 29' E) a distance of Two Hundred Forty-seven and no hundredths (247.00') feet to an iron rail corner, the place of beginning. **CONTAINING 3.11 acres.**

DEFENDANTS' CHAIN OF TITLE

7. Defendant William Bradley Holdren is the owner of a tract of land identified on the tax maps of Clearfield County as #124-Q11-077. The Defendant's chain of title is as follows:

- a. Marlene Verbeck, a widow, to William Bradley Holdren, a single individual, by a Deed dated June 1, 2001, and recorded June 6, 2001, as Instrument Number 200108481.
- b. Marlene Verbeck, Executrix of the Estate of Hilda M. Fitzgerald, to Marlene Verbeck, by a Deed dated November 1, 2000, and recorded November 2, 2000, as Instrument No. 200016373.
- c. Hilda M. Fitzgerald and Lawrence H. Fitzgerald, her husband, acquired the property from Susan Vail, a widow, by a Deed dated August 5, 1967, and recorded in Deed Book Volume 531 at Page 448. Thereafter, the said Lawrence H. Fitzgerald died the 22nd day of June, 1997, thereby vesting title to Hilda M. Fitzgerald as surviving tenant by the entirety.
- d. William E. Vail and Susan Vail, his wife, and Lawrence H. Fitzgerald and Hilda

M. Fitzgerald, his wife, acquired this property by Deed dated July 27, 1965, recorded in Deed Book 516 at Page 426. Thereafter the said William E. Vail died vesting his interest in his widow, Susan Vail, by virtue of survivorship.

e. Robert A. Dixon and Gertrude L. Dixon, his wife, to William E. Vail and Susan Vail, and Lawrence H. Fitzgerald by Deed dated June 19, 1964, and recorded in Deed Book Volume 513 at Page 611.

f. Mary M. Stratton and John L. Stratton, her husband, to Robert A. Dixon and Gertrude L. Dixon, his wife, by Deed dated August 12, 1946, and recorded in Deed Book Volume 378 at Page 24.

g. William H. Wright and Rachel Wright, his wife, to Mary Margaret Stratton and John L. Stratton, her husband, by Deed dated September 12, 1944, and recorded in Deed Book Volume 362 at Page 296.

h. Elizabeth Wright, a widow, sold to William H. Wright by Deed dated June 5, 1928, and recorded in Deed Book Volume 287 at Page 182.

i. Elizabeth Wright, a widow, sold to William H. Wright by Deed dated June 5, 1928, and recorded in Deed Book Volume 287 at Page 183.

j. Valentine Legrand and Elizabeth Legrand to William Wright and Elizabeth Wright, his wife, by Deed dated March 21, 1919, and recorded in Deed Book Volume 231 at Page 571.

j. Philipsburg Coal and Land to Valentine Legrand and Elizabeth Legrand, his wife, by Deed dated September 27, 1917, and recorded in Deed Book Volume 225 at Page 368.

8. The Defendant is the owner of two separately described parcels of land described

as follows:

ALL that certain piece of land situate, lying and being in Morris Township, Clearfield County, Pennsylvania, bounded and described as follows:

FIRST THEREOF: BEGINNING at an iron pipe at the corner of lands of the Philipsburg Coal and Land Company and the Nuttall Estate; thence by lands of the said Nuttall Estate South 58° 10' West, Two Hundred (200) feet to a post; thence through lands of the Philipsburg Coal and Land Company of which this is a part, South 46° 30' East, Four Hundred and Eighty (480) feet to a post on the Northern side of said road, North 44° 50' East, One Hundred and Eighty-six (186') feet to a post on the Western side of the Township Road; thence along the Western side of the said Township Road, North 8° West, One Hundred and Eight and one-tenth (108.1) feet to a post; thence by the same North 19° 25' West Two Hundred Eighty-seven (287') feet to a post; thence by lands of the Philipsburg Coal and Land Company South 69° West, Two Hundred and Eleven and six-tenths (211.6') feet to the iron pipe and place of beginning. **CONTAINING** two and ninety-five one hundredths (2.95) acres.

SECOND THEREOF: BEGINNING at a post on line of lands of the Nuttall Estate, and which post is the Southwestern corner of lands of now or formerly William Wright; thence along same South 46° 30' East, Four Hundred and Eighty (480') feet to a post; thence along lands of the Philipsburg Coal and Land Company, South 45° 10' West, Two Hundred and Sixty-Seven (267') feet to a post; thence still by same North 46° 30' West, Five Hundred and Forty-five (545') feet to a post on line of lands of the Nuttall Estate; thence along said lands North 57° 31' East Two Hundred and Seventy-seven and three-tenths (277.3') feet to a post and place of beginning. **CONTAINING** three and fifteen one-hundredths (3.15) acres.

9. An alleyway exists between the two aforementioned parcels of land for the benefit and enjoyment of the tracts of land owned by the Plaintiffs.
10. Defendant's predecessors in title erected a steel garage on their lands which

encroaches into the aforesaid alleyway.

11. The alleyway is twenty (20') feet in width and the encroachment is eleven and eight-tenths (11.8') feet into the alleyway.

12. Defendant and his predecessor in title had a survey conducted by Brian L. Ishman, Land Mapping Services, on March 21, 2001, entitled "Plan of Survey for Marlene Verbeck and Brad Holdren."

13. This survey clearly depicts the encroachment.

14. The Defendant Brad Holdren was aware of this encroachment prior to his purchase of the land on June 1, 2001.

15. Plaintiffs are entitled to the use, occupation and enjoyment of the twenty (20') foot alley for ingress, egress and regress to Plaintiffs' lands.

16. Defendant's garage exists on the right-of-way as disclosed by his survey, and prohibits the Plaintiffs from utilizing said right-of-way.

17. Plaintiffs are entitled to immediate possession and use of this twenty (20') foot right-of-way.

18. Despite Plaintiffs' repeated requests to remove the garage, Defendant has failed and refused to remove the same from the twenty (20') foot right-of-way.

WHEREFORE, Plaintiffs pray your Honorable Court for the entry of an Order:

1. Granting judgment in favor of Plaintiffs and against Defendant William Brad Holdren for possession of the twenty (20') foot alley described as follows:

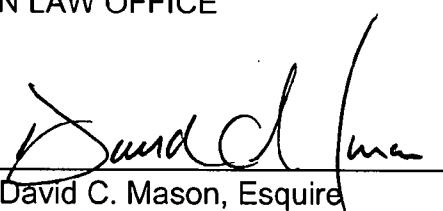
BEGINNING at an iron pin on the Westerly right-of-way line of Township Road 680; thence South 44° 50' 00" West, a distance of One Hundred Eighty-Six (186') feet to a pin; thence

South 44° 50' East, a distance of Two Hundred Sixty Seven (267') feet to a pin; thence South 46° 22' 26" East, a distance of twenty (20') feet; thence North 44° 50' East to a 5/8" rebar; thence North 44° 50' East, a distance of Two Hundred Sixty (260') feet to an iron pin on the Westerly right-of-way line of TR 680; thence along the Westerly line of TR 680, Thirty (30') feet, more or less, to a point and place of beginning.

2. That the Defendant shall remove any and all buildings, fencing, foundation or other obstruction from the aforesaid right-of-way.

Respectfully submitted,

MASON LAW OFFICE

By: 

David C. Mason, Esquire
I.D. #39180
Attorney for Plaintiffs

VERIFICATION

We, the Plaintiffs herein, verify that the statements made in the foregoing Complaint are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 PA. C.S. §4904 relating to unsworn falsification to authorities.



Joseph Rusnak



Mark J. Rusnak



Vickie E. Rusnak

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *
*
Plaintiffs *
*
vs. *
*
WILLIAM BRADLEY HOLDREN *
*
Defendant *
* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE
*
* FILED ON BEHALF OF:
* PLAINTIFFS
*
* ATTORNEY FOR PLAINTIFFS:
* David C. Mason, Esquire
* Supreme Court ID #39180
* MASON LAW OFFICE
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240
*
*
* COUNSEL OF RECORD FOR DEFENDANT:
* David R. Thompson, Esquire
* Supreme Court I.D. #73053
* Attorney at Law
* 308 Walton Street, Suite 4
* Philipsburg, PA 16866
* (814) 342-4100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
	*
Plaintiffs	*
	*
	*
vs.	*
	*
	*
WILLIAM BRADLEY HOLDREN	*
	*
	*
Defendant	*

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' COMPLAINT filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

William Bradley Holdren
%David R. Thompson, Esquire
308 Walton Street, Suite 4
Philipsburg, PA 16866

MASON LAW OFFICE

DATED: *January 22, 2003*

By: *David C. Mason*
David C. Mason, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J.
RUSNAK and VICKIE E. RUSNAK, his wife

*
*
*

Plaintiffs

* No. 01-1428-CD

*

vs.

*

WILLIAM BRADLEY HOLDREN,

*

Defendant

* TYPE OF CASE:

* Civil Action - Law

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J.
RUSNAK and VICKIE E. RUSNAK, his wife

Plaintiffs

No. 01-1428-CD

vs.

WILLIAM BRADLEY HOLDREN,

Defendant

NOTICE TO PLEAD

TO DAVID C. MASON, ATTORNEY FOR PLAINTIFF:

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a Default Judgment may be entered against you.

DATE: 2-21-03

By:


David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J.
RUSNAK and VICKIE E. RUSNAK, his wife

*

*

*

Plaintiffs

*

No. 01-1428-CD

*

*

*

vs.

*

*

*

WILLIAM BRADLEY HOLDREN,

*

*

*

Defendant

*

*

ANSWER CONTAINING NEW MATTER

AND NOW, comes the Defendant, William Bradley Holdren, by and through his attorney David R. Thompson, Esquire, and files the following Answer Containing New Matter to Plaintiff's Complaint:

1. A. Admitted.

B. Admitted

2. Denied. William Bradley Holdren currently resides at 119 Windsor Street, Philipsburg, Pennsylvania. 16866.

3. It is admitted that the Defendant is the owner of parcels of land in Morris Township, Clearfield County, Pennsylvania. Paragraph 3 is admitted to the extent as established by the certified public records of Clearfield County, Pennsylvania. As to all other averments in this paragraph, after reasonable investigation, Defendant is without

information to form a belief as to the truth or falsity of the averment. The same is therefore denied, and strict proof is demanded at the time of trial.

4. Admitted to the extent established by the certified public records of the Clearfield County, Pennsylvania.

5. Paragraph 5 a through g is admitted to the extent established by the certified public records of Clearfield County, Pennsylvania.

6. Admitted in part and denied in part. Paragraph 6 is admitted to the extent established by the certified public records of Clearfield County, Pennsylvania. As to whether or not a survey was made by Bernard Lucas and Associates describing Plaintiff's parcels differently, and to all other averments in this paragraph, after reasonable investigation, Defendant is without information sufficient to form a belief as to the truth or falsity of the averment. The same is therefore denied, and strict proof is demanded at the time of trial.

7. Paragraph 7 a through j admitted.

8. Admitted.

9. Denied. Paragraph 9 is a conclusion of law to which no response is necessary. The extent a response is deemed necessary, the same is denied and strict proof is demanded at the time of trial.

10. Admitted in part and denied in part. It is admitted that the Defendant's predecessors in title erected a steel garage upon Defendant's land. It is admitted that the said garage encroaches across Defendant's property line. It is denied that an alleyway exists.

11. Admitted in part and denied in part. It is admitted that said garage encroaches approximately 11.80 feet across Defendant's property line. It is specifically denied that the same encroaches upon an alleyway of any nature, or that an alleyway even exists.

12. Admitted.

13. Admitted in part and denied in part. It is admitted that the garage encroaches across Defendant's property line. Any allegation in Paragraph 13 regarding the existence of an alleyway is specifically denied.

14. Admitted.

15. Paragraph 15 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is denied, and strict proof is demanded at the time of trial.

16. Admitted in part and denied in part. It is admitted that if a right-of-way existed the garage would prohibit use of the same. It is denied that any right of way exists.

17. Paragraph 17 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is denied, and strict proof is demanded at the time of trial.

18. Admitted in part and denied in part. It is admitted that Defendant has failed and refused to remove his garage. It is specifically denied that repeated requests were made. It is further denied that any right-of-way exists.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter judgment in his favor and dismissing Plaintiff's Complaint with prejudice.

NEW MATTER

Paragraph 1 through 18 of Defendant's Answer are incorporated by reference as though the same were set forth at length herein.

19. Plaintiffs claim is barred by the applicable statute of limitations.

20. Plaintiffs claim is barred by virtue of Title 42 Pa.C.S. § 5530.

21. The garage in question was built and has existed in its present position for a period in excess of twenty-one years.

22. Defendant and his predecessors in title have continuously maintained and used the garage in its present position for a period in excess of twenty-one years, and have adversely possessed the real property beneath the garage.

23. Plaintiffs claim fails as Defendant, by virtue of his ownership and possession of the said real property in conjunction with that of his predecessors in title, now holds legal title to the encroached area of real property through the doctrine of adverse possession.

24. The alleged right-of-way suggested in Plaintiffs' complaint is not now and has never been opened or used as such.

25. Defendant does not consent to the opening of any alleged right-of-way or alleyway.

26. Plaintiffs had requested use of this strip of land in the past, which request was refused by prior owners in Defendant's chain of title.

27. Plaintiffs' claim is barred by the doctrine of laches.

28. Plaintiffs have failed to set forth a claim for which relief can be granted.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter an

order dismissing Plaintiff's Complaint with prejudice.

Respectfully submitted,



David R. Thompson, Esquire

VERIFICATION

Plaintiff verifies that the statements made in this ***ANSWER CONTAINING NEW MATTER*** are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

DATE: 2-21-03

William Bradley Holdren
William Bradley Holdren

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J.
RUSNAK and VICKIE E. RUSNAK, his wife

Plaintiffs * No. 01-1428-CD

VS. *

WILLIAM BRADLEY HOLDREN, *

Defendant *

* TYPE OF CASE:
* Civil Division

* TYPE OF PLEADING:
* Certificate of Service

* FILED ON BEHALF OF:
* Defendant

* COUNSEL OF RECORD FOR
* THIS PARTY:
* David R. Thompson, Esquire
* Attorney at Law
* Supreme Court 73053
* P.O. Box 587
* 308 Walton Street, Suite 4
* Philipsburg PA 16866
* (814) 342-4100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J.
RUSNAK and VICKIE E. RUSNAK, his wife

*

*

*

Plaintiffs

* No. 01-1428-CD

vs.

*

*

*

*

Defendant

*

*

*

*

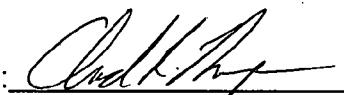
CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of the **ANSWER CONTAINING NEW MATTER**, in the above captioned matter by faxing and depositing the same in the U.S. First Class Mail, postage prepaid, on February 21, 2003, addressed as follows:

David C. Mason, Esquire
P.O. Box 28
Philipsburg PA 16866

DATE: 2-25-03

BY: 
David R. Thompson, Esquire

FILED

Feb 25 2003

WILLIAM A. SHAW
PROSECUTOR

2 cc to ALL CCB

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK and *
MARK J. RUSNAK and VICKIE * No. 2001-01428-CD
E. RUSNAK, his wife, *

PLAINTIFFS *

vs. *

WILLIAM BRADLEY HOLDREN *

DEFENDANT *

FILED

SEP 23 2003

William A. Shaw
Prothonotary/Clerk of Courts

NOTICE OF SERVICE OF INTERROGATORIES

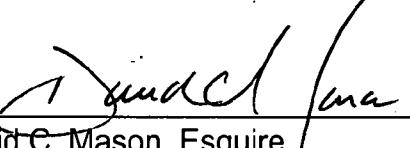
Notice is hereby given that on the 22 day of Sep, 2003, the Plaintiffs, JOSEPH M. RUSNAK, MARK J. RUSNAK and VICKIE E. RUSNAK, his wife, by and through their attorney, David C. Mason, served Plaintiff's Second Set of Interrogatories and Request for Production of Documents on the Defendant, WILLIAM BRADLEY HOLDREN, by mailing the original and two copies of the same via First Class United States Mail, postage prepaid, to the following address:

DAVID R. THOMPSON, ESQUIRE
308 WALTON STREET, SUITE 4
P.O. BOX 587
PHILIPSBURG, PA 16866

MASON LAW OFFICE

9-22-03

BY:


David C. Mason, Esquire
Attorney for Plaintiffs

FILED NO CC
M 10 5 2003
SEP 23 2003
Clerk

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

JOSEPH M. RUSNAK and MARK J. RUSNAK
and VICKIE E. RUSNAK, his wife,

* No. 01-1428-CD

*

*

Plaintiff

*

* TYPE OF CASE:

Civil Action - Law

*

WILLIAM BRADLEY HOLDREN,

*

*

Defendant

*

* TYPE OF PLEADING:

Certificate of Service

*

*

*

*

* FILED ON BEHALF OF:

Defendant

*

* COUNSEL OF RECORD FOR

THIS PARTY:

* David R. Thompson, Esquire

* Attorney at Law

* Supreme Court 73053

* P.O. Box 587

* 308 Walton Street, Suite 4

* Philipsburg PA 16866

* (814) 342-4100

FILED

NOV 17 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL DIVISION - LAW

JOSEPH M. RUSNAK and MARK J. RUSNAK and VICKIE E. RUSNAK, his wife,	*	No. 01-1428-CD
	*	
	*	
Plaintiff	*	
	*	
vs.	*	TYPE OF CASE:
	*	Civil Action - Law
	*	
WILLIAM BRADLEY HOLDREN,	*	
	*	
Defendant	*	

CERTIFICATE OF SERVICE

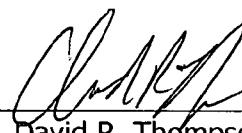
TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy
of **DEFENDANT'S ANSWER TO PLAINTIFF'S SECOND SET OF INTERROGATORIES**,
in the above captioned matter on the following by Prepaid, First Class, United States Mail:

David C. Mason, Esquire
MASON LAW OFFICE
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866

DATE: 11-13-03

BY:



David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and
MARK J. RUSNAK and VICKIE E.
RUSNAK, his wife,

*
* No. 2001-01428-CD
*

Plaintiffs

*

vs.

WILLIAM BRADLEY HOLDREN

*

Defendant

*

* TYPE OF CASE: Civil Action

*

* TYPE OF PLEADING: Praeclipe for Trial List

*

*

* FILED ON BEHALF OF:

* Plaintiffs

*

* COUNSEL OF RECORD FOR THIS
PARTY:

* David C. Mason, Esquire

* Supreme Court I.D. 39180

* Attorney at Law

* P. O. Box 28

* Philipsburg, PA 16866

* (814) 342-2240

*

* COUNSEL OF RECORD FOR DEFENDANT:

* David R. Thompson, Esquire

* Supreme Court I.D. #73053

* Attorney at Law

* 308 Walton Street, Suite 4

* Philipsburg, PA 16866

* (814) 342-4100

FILED

MAR 08 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *
*
Plaintiffs *
*
vs. *
*
WILLIAM BRADLEY HOLDREN *
*
Defendant *

PRAECIPE FOR TRIAL LIST

TO THE PROTHONOTARY OF SAID COURT:

Kindly list the above captioned matter on the Trial List. I certify that the pleadings are closed and there are no outstanding Discovery Motions and that all Discovery has been completed.

A copy of this Notice is, on this date, being served upon the attorney for the Defendant, David R. Thompson, Esquire.

DATED: 3-5-04

MASON LAW OFFICE



David C. Mason, Esquire
Attorney for Plaintiffs
Supreme Court No. 39180

FILED

IN 11-24-04 NO. 22

MAR 08 2004

CORR

CA

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and
MARK J. RUSNAK and VICKIE E.
RUSNAK, his wife,

*
* No. 2001-01428-CD
*
*

Plaintiffs

*

vs.

*

WILLIAM BRADLEY HOLDREN

*

Defendant

*

* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE

*

* FILED ON BEHALF OF:
* Plaintiffs

*

* COUNSEL OF RECORD FOR THIS
* PARTY:

* David C. Mason, Esquire
* Supreme Court I.D. 39180
* Attorney at Law
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

*

* COUNSEL OF RECORD FOR DEFENDANT:

* David R. Thompson, Esquire
* Supreme Court I.D. #73053
* Attorney at Law
* 308 Walton Street, Suite 4
* Philipsburg, PA 16866
* (814) 342-4100

FILED

MAR 08 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *

Plaintiffs *

vs. *

WILLIAM BRADLEY HOLDREN *

Defendant *

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a copy of the Praeclipe for Trial List filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

David R. Thompson, Esquire
Attorney at Law
Po Box 587
Philipsburg, PA 16866

DATED: 3-5-04

MASON LAW OFFICE

By:



David C. Mason, Esquire
Attorney for Plaintiffs

FILED

1:22-cv-00002

MAR 08 2004

SPK

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *

Plaintiffs *

vs. *

WILLIAM BRADLEY HOLDREN *

Defendant *

* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE

*

* FILED ON BEHALF OF:
* PLAINTIFFS

*

* ATTORNEY FOR PLAINTIFFS:

* David C. Mason, Esquire
* Supreme Court ID #39180
* MASON LAW OFFICE
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

*

*

* COUNSEL OF RECORD FOR DEFENDANT:

* David R. Thompson, Esquire
* Supreme Court I.D. #73053
* Attorney at Law
* 308 Walton Street, Suite 4
* Philipsburg, PA 16866
* (814) 342-4100

FILED

MAR 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
Plaintiffs	*
vs.	*
WILLIAM BRADLEY HOLDREN	*
Defendant	*

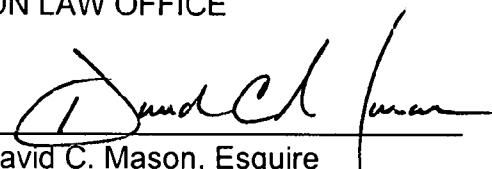
CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' REQUEST FOR ADMISSIONS OF FACT AND ACCOMPANYING INTERROGATORY DIRECTED BY PLAINTIFFS TO DEFENDANT WILLIAM BRADLEY HOLDREN filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

William Bradley Holdren
%David R. Thompson, Esquire
308 Walton Street, Suite 4
Philipsburg, PA 16866

MASON LAW OFFICE

DATED: 3-15-04

By: 
David C. Mason, Esquire
Attorney for Plaintiffs

FILED NO

MAR 16 2004
cc

William A. Shaw
Prothonotary/Clerk of Courts

WAS

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

JOSEPH M. RUSNAK and MARK J. *
RUSNAK and VICKIE E. RUSNAK, *
Plaintiffs *
*
vs. * NO. 2001-1428-C.D.
*
WILLIAM BRADLEY HOLDREN, *
Defendant *

O R D E R

NOW, this 1st day of April, 2004, following Civil Call, it is the ORDER of this Court that Civil Pre-Trial Conference with counsel for the parties as set forth above and the Court be and is hereby scheduled for Thursday, April 15, 2004 at 9:30 a.m. in President Judge Ammerman's Chambers, Clearfield County Courthouse, Second Floor, Clearfield, Pennsylvania.

By the Court,



FREDRIC J. AMMERMAN
PRESIDENT JUDGE

FILED

APR 06 2004

William A. Shaw
Prothonotary

FILED

10-20 100 2cc City Mason
2cc City Thompson
APR 06 2004

✓
Heck

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

FILED

APR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOSEPH M. RUSNAK, and MARK J.	*	No. 01-01428-CD
RUSNAK and VICKIE E. RUSNAK,	*	
his wife,	*	
Plaintiffs	*	
	*	
vs.	*	
	*	TYPE OF CASE:
WILLIAM BRADLEY HOLDREN,	*	Civil Action - Law
	*	
	*	
Defendant	*	
	*	

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of **PRE-TRIAL STATEMENT**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

David C. Mason, Esquire
407 North Front Street
Philipsburg, PA 16866

DATE:

BY: 

David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *
*
Plaintiffs *
*
*
vs. *
*
*
*
WILLIAM BRADLEY HOLDREN *
*
*
*
*
Defendant *
*
*
*
*
* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE
*
* FILED ON BEHALF OF:
* PLAINTIFFS
*
* ATTORNEY FOR PLAINTIFFS:
* David C. Mason, Esquire
* Supreme Court ID #39180
* MASON LAW OFFICE
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240
*
*
* COUNSEL OF RECORD FOR DEFENDANT:
* David R. Thompson, Esquire
* Supreme Court I.D. #73053
* Attorney at Law
* 308 Walton Street, Suite 4
* Philipsburg, PA 16866
* (814) 342-4100

FILED

APR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
	*
Plaintiffs	*
	*
vs.	*
	*
WILLIAM BRADLEY HOLDREN	*
	*
Defendant	*

CERTIFICATE OF SERVICE

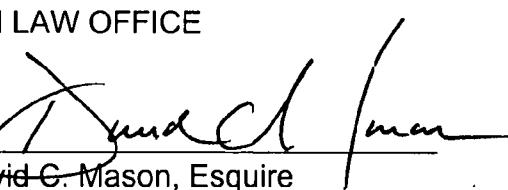
I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of a PRE-TRIAL STATEMENT filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

David R. Thompson, Esquire
308 Walton Street, Suite 4
P.O. Box 587
Philipsburg, PA 16866

MASON LAW OFFICE

DATED: 4-8-04

By:



David C. Mason, Esquire
Attorney for Plaintiffs

FILED

APR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

JOSEPH M. RUSNAK and MARK J. RUSNAK, and VICKIE E. RUSNAK, Plaintiffs vs. WILLIAM BRADLEY HOLDREN, Defendant

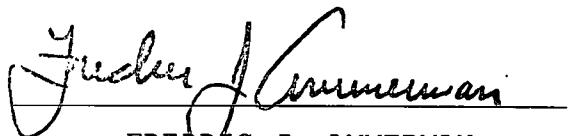
* * * * * NO. 2001-1428-C.D.

O R D E R

NOW, this 15th day of April, 2004, following Pre-Trial Conference with counsel for both parties and the Court, it is the ORDER of this Court as follows:

1. Non-Jury Trial be scheduled for one day, on the 25th day of April, 2004, beginning at 9:00 a.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

By the Court,



FREDRIC J. AMMERMAN
President Judge

FILED

APR 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

Joe A. Mason

04/15/2004

2 cc A. J. Thompson

APR 15 2004

Q

RE

William A. Shaw

Prothonotary/Clerk of Courts

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

JOSEPH M. RUSNAK, and MARK J. RUSNAK and VICKIE E. RUSNAK, his wife,	*	No. 01-01428-CD
Plaintiffs	*	*
	*	*
vs.	*	*
WILLIAM BRADLEY HOLDREN,	*	TYPE OF CASE:
	*	Civil Action - Law
	*	*
Defendant	*	*
	*	*
	*	TYPE OF PLEADING:
	*	Certificate of Service
	*	*
	*	*
	*	*
	*	FILED ON BEHALF OF:
	*	Defendant
	*	*
	*	COUNSEL OF RECORD FOR
	*	THIS PARTY:
	*	David R. Thompson, Esquire
	*	Attorney at Law
	*	Supreme Court 73053
	*	P.O. Box 587
	*	308 Walton Street, Suite 4
	*	Philipsburg PA 16866
	*	(814) 342-4100

FILED

APR 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOSEPH M. RUSNAK, and MARK J.	*	No. 01-01428-CD
RUSNAK and VICKIE E. RUSNAK,	*	
his wife,	*	
Plaintiffs	*	
	*	
vs.	*	
	*	TYPE OF CASE:
WILLIAM BRADLEY HOLDREN,	*	Civil Action - Law
	*	
	*	
Defendant	*	
	*	

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of **DEFENDANT'S ANSWER TO PLAINTIFF'S REQUEST FOR ADMISSIONS OF FACT AND ACCOMPANYING INTERROGATORY**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

David C. Mason, Esquire
407 North Front Street
Philipsburg, PA 16866

DATE: 4-15-04

BY: 

David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

FILED

APR 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J.	*	No. 01-01428-CD
RUSNAK and VICKIE E. RUSNAK,	*	
his wife,	*	
Plaintiffs	*	
	*	
vs.	*	
	*	
WILLIAM BRADLEY HOLDREN,	*	
	*	
	*	
Defendant	*	
	*	

***ANSWER TO REQUEST FOR ADMISSIONS OF FACT AND ACCOMPANYING
INTERROGATORY***

AND NOW, comes the Defendant, William Bradley Holdren, by and through his Attorney, David R. Thompson, Esquire and files the following Answer to Plaintiffs Request for Admissions of Fact and Accompanying Interrogatory:

ANSWER TO REQUEST FOR ADMISSIONS OF FACT

1. Admitted in part and denied in part. It is admitted that there exists a strip of land depicted on the plan of survey for Marlene Verbeck and Brad Holdren prepared by Land and Mapping Services Professional Land Surveyors dated March 21, 2001. It is denied that the same is a roadway.
2. Admitted in part and denied in part. It is admitted that there exists an encroachment by Defendant's garage unto the said strip of land. It is denied that the strip of land is a roadway.
3. Despite an effort being made to obtain said ariel photographs referred to

Request for Admission of Fact Number 3, Defendant has been unable to procure said photos. Therefore, it is denied. Defendant will continue to make a diligent effort of locating said ariel photographs and will supplement these Answers to Request for Admission obtain receipt of that information.

4. Despite a diligent effort, Defendant has not received or located said ariel photographs and therefore must deny this Request for Admission of Fact. Defendant will continue to attempt to obtain copies or duplicates of said photographs and will supplement these Request for Admissions of Fact accordingly.

5. Paragraph 5 is specifically denied.

6. Paragraph 6 is specifically denied.

ANSWER TO INTERROGATORY

Paragraphs 1 through 6 of Defendant's Answer are incorporated by reference as though the same were set forth at length herein.

1. a. Defendant has previously supplied the names and addresses of witnesses and a basis for information indicating that the said garage has been in existence for a period of twenty-one years or more.

b. Not applicable at this time.

c. This information has been previously provided to the Plaintiff.

d. This information has been previously provided to the Plaintiff.

e. In addition to witnesses, Defendant basis his denial on the existence of the tax

assessment records of Clearfield County. This information has been previously provided to the Plaintiff.

Respectfully submitted,

DATE: 4-15-04



David R. Thompson, Esquire
Attorney for Defendant

CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *
*
Plaintiffs *
*
vs. *
*
WILLIAM BRADLEY HOLDREN *
*
Defendant *
* TYPE OF CASE: Civil Action
*
* TYPE OF PLEADING: Motion to Determine
* Sufficiency of Answers to Request for
* Admissions of Fact
*
*
* FILED ON BEHALF OF:
* Plaintiffs
*
* COUNSEL OF RECORD FOR THIS
* PARTY:
* David C. Mason, Esquire
* Supreme Court I.D. 39180
* Attorney at Law
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240
*
* COUNSEL OF RECORD FOR DEFENDANT:
* David R. Thompson, Esquire
* Supreme Court I.D. #73053
* Attorney at Law
* 308 Walton Street, Suite 4
* Philipsburg, PA 16866
* (814) 342-4100

FILED

APR 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
	*
Plaintiffs	*
	*
	*
vs.	*
	*
	*
WILLIAM BRADLEY HOLDREN	*
	*
	*
Defendant	*

**MOTION TO DETERMINE SUFFICIENCY
OF ANSWERS TO REQUEST FOR
ADMISSIONS OF FACT**

AND NOW, come the Plaintiffs, by and through their counsel and file the following Motion to have the court determine the sufficiency of the Defendant's Answers to Admissions of Fact, and in support thereof aver as follows:

1. On March 15, 2004, Plaintiff propounded to the Defendant a Request for Admissions of Fact and accompanying Interrogatory directed by Plaintiffs to Defendant William Bradley Holdren. Attached as Exhibit "A" is a copy of such Request and a copy of the cover letter mailed to Attorney Thompson. Attached as Exhibit "B" is the Certificate of Service and accompanying cover letter to the Prothonotary indicating the date of service of said Request.

2. Defense counsel filed his Answer to Request for Admissions of Fact on April 15, 2004. Attached as Exhibit "C" is a copy of Defendant's Answer to Request. Attached as

Exhibit "D" is a copy of the Certificate of Service.

3. Pennsylvania Rules of Civil Procedure §4014(c) permits the party who has requested the admissions of fact to move to determine the sufficiency of the answers.

4. Pursuant to Rule 4014(b), "[t]he" matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admissions an answer verified by the party or an objection, signed by the party or by the parties' attorney:

A. The request was served more than thirty (30) days prior to the date the Answer was filed.

B. The Answer was not verified as required by the Rule.

5. Request for Admissions of Fact #3 reads as follows:

"That Clearfield County maintains aerial photographs of lands within the County which photographs were taken in April of 1982."

Defense counsel maintains that he has made an effort to obtain the photographs but has been unable to procure them. The reply by defendant is not a direct response to the Request for Admissions in that Plaintiffs' request #3 asks only for an admission that such photographs are maintained.

6. Defendant's answer to Request for Admissions #3 and #4 both aver that Attorney Thompson has made a "diligent effort" to obtain these photographs.

7. Section 4014(b) requires the answering party to "admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so". No indication

by defense counsel was made regarding what attempts by him constituted a "diligent effort".

8. Request for Admission #5 & 6 allege that the garage which constitutes the encroachment was built after 1982. Defense counsel has filed a general denial to this 'Admission of Fact yet provides insufficient answers to the accompanying Interrogatory.

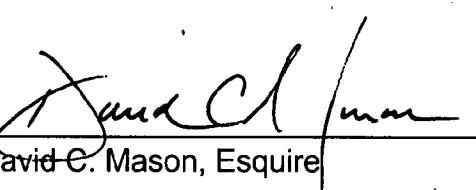
WHEREFORE, Plaintiffs pray your Honorable Court for the entry of an Order that Defendant's Answer to Plaintiffs' Request for Admissions of Fact is stricken for failure to file a verified answer within thirty (30) days of the date of service; or alternatively, that Request for Admissions of Fact #3, 4, 5 and 6 be conclusively admitted by the Defendant, as the result of Defendant's failure to comply with the Rules of Civil Procedure.

Respectfully submitted,

MASON LAW OFFICE

DATED: *April 20, 2004*

By:



David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *
*
Plaintiffs *
*
vs. *
*
WILLIAM BRADLEY HOLDREN *
*
Defendant *
* TYPE OF CASE: Civil Action
*
* TYPE OF PLEADING: Request for
* Admissions of Fact and Accompanying
* Interrogatory Directed by Plaintiffs to
* Defendant William Bradley Holdren
*
* FILED ON BEHALF OF:
* Plaintiffs
*
* COUNSEL OF RECORD FOR THIS
* PARTY:
* David C. Mason, Esquire
* Supreme Court I.D. 39180
* Attorney at Law
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240
*
* COUNSEL OF RECORD FOR DEFENDANT:
* David R. Thompson, Esquire
* Supreme Court I.D. #73053
* Attorney at Law
* 308 Walton Street, Suite 4
* Philipsburg, PA 16866
* (814) 342-4100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
	*
Plaintiffs	*
	*
vs.	*
	*
WILLIAM BRADLEY HOLDREN	*
	*
Defendant	*

**REQUEST FOR ADMISSIONS
OF FACT AND
ACCOMPANYING INTERROGATORY
DIRECTED BY PLAINTIFF TO
DEFENDANT WILLIAM BRADLEY HOLDREN**

Pursuant to Pa. R.C.P. No. 4014, Plaintiffs, **JOSEPH M. RUSNAK, MARK J. RUSNAK and VICKIE E. RUSNAK**, his wife, by and through David C. Mason, Esquire, their attorney, hereby request that Defendant makes the following admissions within thirty (30) days after service, for the purposes of this action only and subject to all pertinent objections as to relevancy which may be interposed at the trial of this case. In addition, pursuant to Pa. R. C. P. No. 4005, Plaintiffs hereby request that Defendant answer under oath the following interrogatory. Responses to these requests and interrogatory are to be served within thirty (30) days after service upon Plaintiffs' attorney.

INSTRUCTIONS

1. These requests for admissions and accompanying interrogatory are directed to

the Defendant, **WILLIAM BRADLEY HOLDREN**, his heirs and assigns, past and present, and unless privilege is claimed, each and every attorney, past and present, of each and every such individual or entity. As used herein, "defendant," "you" and "your" means the Defendant to which these requests for admissions and accompanying interrogatory are addressed, **WILLIAM BRADLEY HOLDREN**, his heirs and assigns, past and present, and each and every attorney, past and present, of each and every such individual or entity.

2. These requests for admissions and accompanying interrogatory encompass all information, documents and records that are in the possession, control, or custody of Defendant or any of his heirs and assigns, agents, servants, and attorneys.

3. If any objections are made to any request for admission or to any accompanying interrogatory, the reasons therefor shall be stated.

4. If there is any claim of privilege relating to any request to admit, or interrogatory, you shall set forth fully the basis for the claim of privilege, including the facts upon which you rely to support the claim of privilege in sufficient detail to permit the court to rule on the propriety of the privilege.

5. If your response to any request is not an unqualified admission, your answer shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter.

6. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the matter of which an admission is requested, you should specify so much of it as is true and qualify or deny the remainder.

7. You may not give lack of information or knowledge as a reason for failure to admit

or deny, unless you state that you have made reasonable inquiry and that the information known to you or readily obtainable by you is insufficient to enable you to admit or deny.

8. These requests for admission and interrogatory are continuous in nature and must be supplemented promptly if Defendant obtains or learns further or different information between the date of the response and the time of trial by which Defendant knows that a previous response was incorrect when made, or though correct when made, is then no longer true.

9. This request seeks the admission of the genuineness of various documents. In some cases, there are printed number and letter codes that run along the bottom of particular documents. In other cases, the word "evidence" and other identification marks may be affixed to the document. Such number, letters and identifying words were affixed during the accumulation and copying of the documents for this case and are not be considered part of the document itself, except for purposes of referencing the document. The request does not seek defendant's admission regarding the accuracy and genuineness of those numbers and letters, but only of the document on which those numbers and letters have been placed.

DEFINITIONS

1. All verbs are intended to include all tenses.
2. References to the singular are intended to include the plural and vice versa.
3. "Any" as well as "all" shall be construed to mean "each and every."

4. "And" as well as "or" shall be construed disjunctively as well as conjunctively, as necessary, in order to bring within the scope of these requests all information that might otherwise be construed to be outside their scope.

5. "Refer to" or "relate to" means constituting, defining, describing, discussing, involving, concerning, containing, embodying, reflecting, identifying, stating, analyzing, mentioning, responding to, referring to, dealing with, commenting upon, or in any way pertaining to.

REQUEST FOR ADMISSIONS OF FACT

1. That the roadway in question and described in plaintiffs' complaint is depicted on a plan of survey for Marlene Verbeck and Brad Holdren prepared by Land and Mapping Services, Professional Land Surveyors, on a drawing dated March 21, 2001.

2. That the said drawing and plan of survey of Land Mapping Services dated March 21, 2001, reveals the existence of the encroachment onto the subject roadway by 11.8 feet of a building labeled "garage", with the other portion of the building on lands of Marlene Verbeck (now owned by Bradley Holdren).

3. That Clearfield County maintains aerial photographs of lands within the County which photographs were taken in April of 1982.

4. That the aerial photograph maintained by Clearfield County taken in April of 1982 reveals that the garage, depicted on the plan of survey of Marlene Verbeck and Brad Holdren, as encroaching on the roadway, is not in existence in the photograph.

5. That the said garage was constructed on the roadway after April, 1982.

6. That there was no structure erected on the said roadway until after April, 1982.

INTERROGATORY

1. Plaintiff hereby requests that for each request for admission set forth above which you deny, in whole or part, state:

- a. all facts, information and matters, including relevant dates, times and places, upon which your denial is based;
- b. any statutory, regulatory provision(s) or other legal basis upon which your denial is based;
- c. the identity by name, address, phone number, and employment title of all persons with information or matters upon which your denial is based;
- d. a summary of the information or knowledge possessed by each such person; and
- e. the identity and description of all documents that refer or relate to the facts, information and matters upon which your denial is based.

DATED: 3-15-04

MASON LAW OFFICE

By: David C. Mason

David C. Mason, Esquire

DAVID C. MASON

Attorney at Law

409 NORTH FRONT STREET
P.O. Box 28
PHILIPSBURG, PENNSYLVANIA 16866
(814) 342-2240
FAX (814) 342-5318

March 15, 2004

William Bradley Holdren
%David R. Thompson, Esquire
308 Walton Street, Suite 4
Philipsburg, PA 16866

In Re: Rusnak v. Holdren
No. 2001-01428-CD

Dear Dave:

Enclosed please find an original and two copies of Plaintiffs' Request for Admission of Fact and Accompanying Interrogatory Directed by Plaintiffs to Defendant William Bradley Holdren. Also enclosed please find a photocopy of a Certificate of Service, the original of which has been forwarded to the Prothonotary for filing.

Very truly yours,

MASON LAW OFFICE



David C. Mason

DCM:blb
Enclosures
cc Mark J. Rusnak



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and
MARK J. RUSNAK and VICKIE E.
RUSNAK, his wife,

Plaintiffs

vs.

WILLIAM BRADLEY HOLDREN

Defendant

*
* No. 2001-01428-CD
*

*

*

*

*

*

*

* TYPE OF PLEADING: CERTIFICATE OF

* SERVICE

*

* FILED ON BEHALF OF:

* PLAINTIFFS

*

* ATTORNEY FOR PLAINTIFFS:

* David C. Mason, Esquire

* Supreme Court ID #39180

* MASON LAW OFFICE

* P.O. Box 28

* Philipsburg, PA 16866

* (814) 342-2240

*

*

* COUNSEL OF RECORD FOR DEFENDANT:

* David R. Thompson, Esquire

* Supreme Court I.D. #73053

* Attorney at Law

* 308 Walton Street, Suite 4

* Philipsburg, PA 16866

* (814) 342-4100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
Plaintiffs	*
vs.	*
WILLIAM BRADLEY HOLDREN	*
Defendant	*

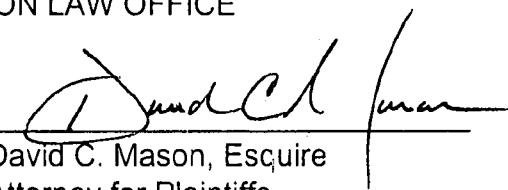
CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' REQUEST FOR ADMISSIONS OF FACT AND ACCOMPANYING INTERROGATORY DIRECTED BY PLAINTIFFS TO DEFENDANT WILLIAM BRADLEY HOLDREN filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

William Bradley Holdren
%David R. Thompson, Esquire
308 Walton Street, Suite 4
Philipsburg, PA 16866

MASON LAW OFFICE

DATED: 3-15-04

By: 
David C. Mason, Esquire
Attorney for Plaintiffs

DAVID C. MASON

Attorney at Law

409 NORTH FRONT STREET
P.O. Box 28
PHILIPSBURG, PENNSYLVANIA 16866
(814) 342-2240
FAX (814) 342-5318

March 15, 2004

William Shaw,
Prothonotary of Clearfield County
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

In RE: Rusnak v. Holdren
No. 2001-01428-CD

Dear Mr. Shaw:

Enclosed please find a Certificate of Service relative to the above captioned actions.

Would you kindly file this of record.

Thanks very much.

Very truly yours,

MASON LAW OFFICE



David C. Mason

DCM:blb
Enclosure
cc David R. Thompson, Esquire
Mark J. Rusnak

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

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

APR 15 2004

Attest,

William A. Brown
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J.	*	No. 01-01428-CD
RUSNAK and VICKIE E. RUSNAK,	*	
his wife,	*	
Plaintiffs	*	
	*	
vs.	*	
	*	
WILLIAM BRADLEY HOLDREN,	*	
	*	
	*	
Defendant	*	
	*	

***ANSWER TO REQUEST FOR ADMISSIONS OF FACT AND ACCOMPANYING
INTERROGATORY***

AND NOW, comes the Defendant, William Bradley Holdren, by and through his Attorney, David R. Thompson, Esquire and files the following Answer to Plaintiffs Request for Admissions of Fact and Accompanying Interrogatory:

ANSWER TO REQUEST FOR ADMISSIONS OF FACT

1. Admitted in part and denied in part. It is admitted that there exists a strip of land depicted on the plan of survey for Marlene Verbeck and Brad Holdren prepared by Land and Mapping Services Professional Land Surveyors dated March 21, 2001. It is denied that the same is a roadway.
2. Admitted in part and denied in part. It is admitted that there exists an encroachment by Defendant's garage unto the said strip of land. It is denied that the strip of land is a roadway.
3. Despite an effort being made to obtain said ariel photographs referred to

Request for Admission of Fact Number 3, Defendant has been unable to procure said photos. Therefore, it is denied. Defendant will continue to make a diligent effort of locating said ariel photographs and will supplement these Answers to Request for Admission obtain receipt of that information.

4. Despite a diligent effort, Defendant has not received or located said ariel photographs and therefore must deny this Request for Admission of Fact. Defendant will continue to attempt to obtain copies or duplicates of said photographs and will supplement these Request for Admissions of Fact accordingly.

5. Paragraph 5 is specifically denied.

6. Paragraph 6 is specifically denied.

ANSWER TO INTERROGATORY

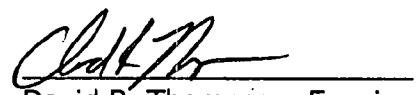
Paragraphs 1 through 6 of Defendant's Answer are incorporated by reference as though the same were set forth at length herein.

1. a. Defendant has previously supplied the names and addresses of witnesses and a basis for information indicating that the said garage has been in existence for a period of twenty-one years or more.
- b. Not applicable at this time.
- c. This information has been previously provided to the Plaintiff.
- d. This information has been previously provided to the Plaintiff.
- e. In addition to witnesses, Defendant basis his denial on the existence of the tax

assessment records of Clearfield County. This information has been previously provided to the Plaintiff.

Respectfully submitted,

DATE: 4-15-04



David R. Thompson, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

JOSEPH M. RUSNAK, and MARK J.
RUSNAK and VICKIE E. RUSNAK,
his wife,

Plaintiffs

vs.

WILLIAM BRADLEY HOLDREN,

Defendant

* No. 01-01428-CD

*

*

*

*

*

*

*

TYPE OF CASE:
Civil Action - Law

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOSEPH M. RUSNAK, and MARK J.	*	No. 01-01428-CD
RUSNAK and VICKIE E. RUSNAK,	*	
his wife,	*	
Plaintiffs	*	
	*	
VS.	*	
	*	TYPE OF CASE:
WILLIAM BRADLEY HOLDREN,	*	Civil Action - Law
	*	
Defendant	*	
	*	

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of **DEFENDANT'S ANSWER TO PLAINTIFF'S REQUEST FOR ADMISSIONS OF FACT AND ACCOMPANYING INTERROGATORY**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

David C. Mason, Esquire
407 North Front Street
Philipsburg, PA 16866

DATE: 4-15-04

BY: 

David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *
*
Plaintiffs *
*
*
*
vs. *
*
*
*
WILLIAM BRADLEY HOLDREN *
*
*
*
Defendant *

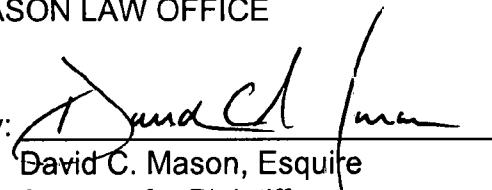
CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' MOTION TO DETERMINE SUFFICIENCY OF ANSWERS TO REQUEST FOR ADMISSIONS OF FACT filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

William Bradley Holdren
%David R. Thompson, Esquire
308 Walton Street, Suite 4
Philipsburg, PA 16866

MASON LAW OFFICE

DATED: 4-20-04

By: 

David C. Mason, Esquire
Attorney for Plaintiffs

CR

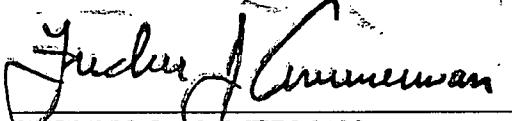
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. RUSNAK, and MARK :
J. RUSNAK and VICKIE E. :
RUSNAK, his wife :
:
vs. : No. 01-1428-CD
:
WILLIAM BRADLEY HOLDREN :

ORDER

NOW, this 22nd day of April, 2004, it is the ORDER of the Court that argument on Plaintiffs' Motion to Determine Sufficiency of Answers to Request for Admissions of Fact in the above matter has been scheduled for the 18 day of May, 2004, at 9:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

APR 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

2 cc w/memo

*Ab/9:46 AM
APR 23 2004*
Re: service to

William A. Shaw

WA

Attn: D. Mason

Prothonotary/Clerk of Courts

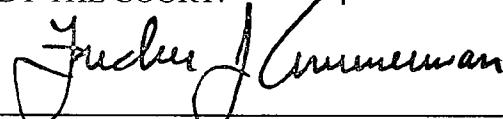
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. RUSNAK, and MARK :
J. RUSNAK and VICKIE E. :
RUSNAK, his wife :
vs. : No. 01-1428-CD
WILLIAM BRADLEY HOLDREN :
:

O R D E R

NOW, this 28th day of April, 2004, it is the ORDER of the
Court that argument on Plaintiffs' Motion to Determine Sufficiency of Answers to
Request for Admissions of Fact in the above matter has been rescheduled from May
18, 2004 to Wednesday, May 19, 2004 at 2:30 P.M. in Courtroom No. 1, Clearfield
County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

APR 29 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
APR 11 2004
APR 29 2004
100-10450
Argy's Mason, Thompson
William A. Shaw
Prothonotary/Clerk of Courts

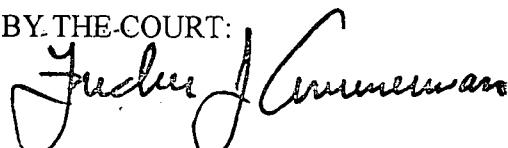
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. RUSNAK, and MARK :
J. RUSNAK and VICKIE E. :
RUSNAK, his wife :
vs. : No. 01-1428-CD
WILLIAM BRADLEY HOLDREN :

O R D E R

NOW, this 14th day of May, 2004, it is the ORDER of the Court
that argument on Plaintiffs' Motion to Determine Sufficiency of Answers to Request
for Admissions of Fact in the above matter has been rescheduled from May 19, 2004
to Wednesday, May 26, 2004 at 9:00 A.M. in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN

President Judge

FILED

MAY 14 2004

William A. Shaw
Prothonotary

FILED

O 3.46 am-see & Notice to attorney Thompson

MAY 14 2004 Q

KW

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *

Plaintiffs *

vs. *

WILLIAM BRADLEY HOLDREN *

Defendant *

FILED

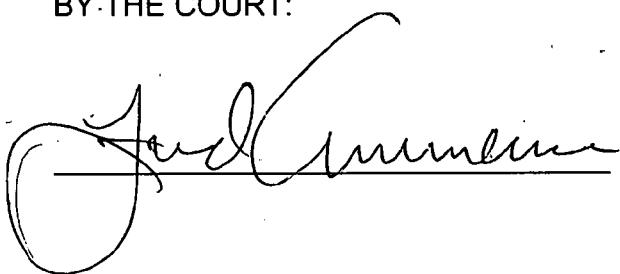
MAY 27 2004

William A. Shaw
Prothonotary

ORDER OF COURT

AND NOW, this 26th day of May, 2004, this being the day and date set for hearing into Plaintiffs' Motion to Determine Sufficiency of Answers to Request for Admissions of Fact, and defense counsel having failed to file a written answer to said Motion and failing to appear at the hearing to contest or object to Plaintiffs' prayer for relief, it is the Order of this Court that Defendant's Answer to Plaintiffs' Request for Admissions of Fact is stricken for failure to file a verified answer within thirty (30) days as required by the Pennsylvania Rules of Civil Procedure and for failure to provide sufficient answers as required by Pa. R.C.P. Rule 4014(b). The factual assertions contained in Plaintiffs' Request for Admissions of Fact are hereby determined to be conclusively admitted by Defendant.

BY THE COURT:



FILED

0 10:00 AM 3rd to City Mason

MAY 27 2004

EKA

William A. Shaw
Prothonotary

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

JOSEPH M. RUSNAK AND MARK J. RUSNAK *
AND VICKIE E. RUSNAK, his wife *
* 01-01428-CD
Plaintiff *
*
* Type of Case:
* Civil
*
*
* WILLIAM BRADLEY HOLDREN,
*
*
* Defendant *
* Type of Pleading:
* Motion for Judgment on the
* Pleadings
*
*
* FILED ON BEHALF OF:
* Defendants
*
* COUNSEL OF RECORD FOR
* THIS PARTY:
* David R. Thompson, Esq.
* Attorney at Law
* Supreme Court I.D. 73053
* P.O. Box 587
* 308 Walton Street, Suite 4
* Philipsburg PA 16866
* (814) 342-4100

FILED

JUN 03 2004

William A. Shaw
Prothonotary/Clerk of Courts

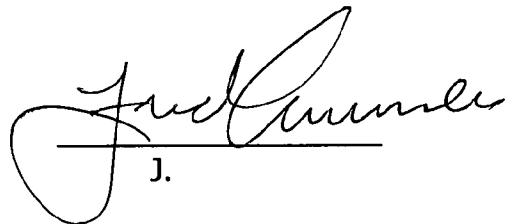
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.
CIVIL ACTION - LAW

JOSEPH M. RUSNAK AND MARK J. RUSNAK *
AND VICKIE E. RUSNAK, his wife *
Plaintiff * 01-01428-CD
*
* Type of Case:
* Civil
*
WILLIAM BRADLEY HOLDREN, *
Defendant *

ORDER

AND NOW, this 4 day of June, 2004, upon consideration of the Motion for Judgment on the Pleading filed by Defendant in the matter, it is hereby ORDERED that Argument on the Motion is scheduled for the 16 day of June, 2004, at 1:30 o'clock ~~a.m.~~/p.m. in Courtroom No. 1 of the Clearfield County Courthouse, to hear cause as to why said Motion should not be granted.

BY THE COURT:



J. L. Kunkle
J.

FILED

JUN 07 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

JOSEPH M. RUSNAK AND MARK J. RUSNAK AND VICKIE E. RUSNAK, his wife	*
	*
	*
Plaintiff	01-01428-CD
	*
	*
	*
	Type of Case:
	*
	Civil
	*
WILLIAM BRADLEY HOLDREN,	*
	*
	*
Defendant	*

ORDER

AND NOW, this _____ day of _____, 2004, upon consideration of the Motion for Judgment on the Pleading filed by Defendant in the matter, it is hereby ORDERED and DECREED that judgment is found in favor of Defendant and against the Plaintiffs and the Complaint is hereby dismissed with prejudice.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and MARK J.	*	No. 01-01428-CD
RUSNAK and VICKIE E. RUSNAK,	*	
his wife,	*	
Plaintiffs	*	
	*	
vs.	*	
	*	
WILLIAM BRADLEY HOLDREN,	*	
	*	
	*	
Defendant	*	
	*	

MOTION FOR JUDGMENT ON THE PLEADINGS

AND NOW, comes the Defendant, by and through his attorney David R. Thompson, Esquire, and files the following Motion For Judgement on the Pleadings to which the following is alleged in support thereof:

1. The Movant is the Defendant, Bradley Holdren, who has a residential address of 119 Windsor Street, Philipsburg, Centre County, Pennsylvania, 16866.
2. The Respondents are the Plaintiffs, Mark J. Rusnak and Vickie Rusnak, who have a residential address of 486 Rusnak Lane, Philipsburg, Clearfield County, Pennsylvania 16866; and Joseph M. Rusnak, who has a residential address of 339 N. Ninth Street, Philipsburg, Pennsylvania 16866.
3. Plaintiff filed a Complaint in equity alleging the right to the use of a certain strip of real property located adjacent to Defendant's real property located in Morris Township, Clearfield County, Pennsylvania.

4. Defendant has filed an Answer Containing New Matter to the Complaint denying Plaintiffs' claim. By way of further pleading, the Answer Containing New Matter was endorsed with a Notice to Plead and filed on February 25, 2003.

5. Plaintiffs never filed a responsive pleading to the New Matter. Therefore, pursuant to Pa. R. C. P. Rule 1029 (b), all averments in Defendant's New Matter to which a responsive pleading is required are deemed to be admitted. (A true and correct copy of the docket for the case is attached hereto and marked as Exhibit "A").

6. The pleadings are closed, and Defendant brings forth this Motion pursuant to Pa.R.C.P. Rule 1034.

7. A bench trial is scheduled in this matter for June 25, 2004, and Defendant avers that this Motion will not unreasonably delay said trial of this matter.

8. By virtue of the pleadings, it is deemed to be admitted by Plaintiffs that the garage in question was built and has existed in its present position for a period in excess of twenty-one years.

9. By virtue of the pleadings, it is deemed to be admitted by Plaintiffs that Defendant and his predecessors in title have continuously maintained and used the garage in its present position for a period in excess of twenty-one years.

10. By virtue of the pleadings, it is deemed to be admitted by Plaintiffs that the alleged right-of-way is not now and has never been opened or used as such.

11. By virtue of the pleadings, it is deemed to be admitted by Plaintiffs that they had requested use of this strip of land in the past, which request was refused by prior owners in Defendant's chain of title.

12. Plaintiffs' action lies in ejectment, as they are requesting removal of the Defendant's garage from a certain strip of real property.

13. In order for Plaintiffs to prevail in an action in ejectment, they must plead and prove that they are owners of or are entitled to immediate and exclusive possession of the real property in question.

14. Plaintiffs have not pleaded ownership and title to the real property in question.

15. Plaintiffs have pleaded the right to the use of a strip of land and do not claim ownership of the same. By way of further pleading, Plaintiffs have claimed a right to an easement in the strip of real property.

16. Plaintiffs have not pleaded that they have been granted an express easement within the relevant chains of title, nor have Plaintiffs pleaded that an express easement exists.

17. Plaintiffs have not pleaded that an easement is reasonably necessary to access their properties.

18. Plaintiffs have not pleaded that they have continuously used the strip of real property in an adverse, exclusive, notorious, distinct, visible and hostile manner for a period of twenty-one years or more. By way of further pleading, Plaintiffs admit that the strip of land has never been open or used as an easement.

19. Plaintiffs have not pleaded the existence of any plat plan, recorded or otherwise, that established the strip of land as an easement of any type, nor do any of the deeds stated in the Complaint refer to a plat plan or map of any kind.

20. Plaintiffs have not pleaded facts establishing that, before the separation took

place, the use, giving rise to the alleged easement, was so long continued and so obvious or manifest as to show that it was meant to be permanent.

21. Plaintiffs are requesting the Court to order Defendant to move his garage from the strip of land. In order for Plaintiffs to have standing to request such an ejectment, Plaintiffs must establish a right to the use of the strip of land.

22. Plaintiffs have failed to state a cause of action for which relief can be granted.

23. Plaintiffs have not pleaded sufficient facts to establish a right to the use of the said strip of real property.

24. On the face of the pleadings, Plaintiffs have failed to plead facts sufficient to establish an express easement in the said strip of real property.

25. On the face of the pleadings, Plaintiffs have failed to plead facts sufficient to establish an easement by necessity in the said strip of real property.

26. On the face of the pleadings, Plaintiffs have failed to plead facts sufficient to establish an easement by prescription in the said strip of real property.

27. On the face of the pleadings, Plaintiffs have failed to plead facts sufficient to establish an easement by implication in the said strip of real property.

28. Plaintiffs have had knowledge of this strip of land in the past and have specifically requested use of this from prior owners in the Defendant's chain of title, but did nothing to pursue said use.

29. Plaintiffs claim is barred by the doctrine of laches.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter judgment in his favor and against the Plaintiffs, dismissing the Complaint with prejudice.

Respectfully submitted,



THOMPSON LAW OFFICE
David R. Thompson, Esquire
Attorney for Defendant

Date: 05/27/2004

Clearfield County Court of Common Pleas

User: ACCESS

Time: 03:20 PM

ROA Report

Page 1 of 2

Case: 2001-01428-CD

Current Judge: Fredric Joseph Ammerman

Joseph M. Rusnak, Christine A. Rusnak, Mark J. Rusnak, Vickie E. Rusnak vs. William Bradley Holdren

Civil Other

Date		Judge
08/31/2001	Filing: Praeclipe for Writ of Summons Paid by: Mason, David C. (attorney for Rusnak, Christine A.) Receipt number: 1830562 Dated: 08/31/2001 Amount: \$80.00 (Check) Two CC and 2 Writs to Attorney Mason	No Judge
01/31/2002	Praeclipe For Entry of Appearance on behalf of Defendant, WILLIAM BRADLEY HOLDREN, filed by s/David R. Thompson, Esq. 2 cc Atty Thompson	No Judge
02/12/2002	Certificate of Service, Praeclipe For Entry of Appearance upon David C. Mason, Esq. Filed by s/David R. Thompson, Esq. 2 cc Atty Thompson	No Judge
02/13/2002	Certificate of Service, Answer to Plaintiff's First Set of Interrogatories and Request For Production of Documents to Aid in Drafting Complaint, upon David C. Mason, Esq. Filed by s/David R. Thompson, Esq. 2 cc Atty Thompson	No Judge
01/22/2003	Complaint, filed by Atty. Mason 4 Cert. to Atty.	No Judge
02/25/2003	Answer Containing New Matter. filed by s/David R. Thompson, Esquire Verification s/William Bradley Holdren Certificate of Service 2 cc to Atty	No Judge
09/23/2003	Notice of Service of Interrogatories upon: DAVID R. THOMPSON, ESQ. filed by s/David C. Mason, Esquire no cc	No Judge
11/17/2003	Certificate of Service, Defendant's Answer To Plaintiff's Second Set of Interrogatories upon: DAVID C. MASON, ESQUIRE filed by, s/David R. Thompson, Esquire 2 cc Atty Thompson	No Judge
03/08/2004	Praeclipe For Trial List. s/David C. Mason, Esquire copy to cc	No Judge
	Certificate of Service, Praeclipe For Trial List upon David R. Thompson, Esquire. filed by, s/David C. Mason, Esquire no cc	No Judge
03/16/2004	Certificate of Service, Plaintiffs' Request For Admissions Of Fact and Accompanying Interrogatory Directed By Plaintiffs To Defendant William Bradley Holdren upon, David R. Thompson, Esquire. filed by, s/David C. Mason, Esquire no cc	No Judge
04/06/2004	ORDER, NOW, this 1st day of April, 2004, re: Pre-trial Conference scheduled for Thursday, April 15, 2004, at 9:30 a.m. in President Judge Ammerman's Chambers. by the Court, s/FJA, P.J. 2 cc Atty Mason, Thompson	Fredric Joseph Ammerman
04/12/2004	Certificate of Service, Pre-Trial Statement upon: David C. Mason, Esquire filed by, s/David R. Thompson, Esquire 2 cc to Atty	Fredric Joseph Ammerman
	Certificate of Service, Pre-Trial Statement upon David R. Thompson, Esquire filed by, s/David C. Mason, Esquire no cc	Fredric Joseph Ammerman
04/14/2004	Certificate of Service, Defendant's Answer to Plaintiff's Request For Admissions Of Fact And Accompanying Interrogatories upon David C. Mason, Esquire. filed by, s/David R. Thompson, Esquire 2 cc Atty Thompson	Fredric Joseph Ammerman
	Answer To Request For Admissions Of Fact and Accompanying Interrogatory. filed by, s/David R. Thompson, Esquire 2 cc to Atty	Fredric Joseph Ammerman
04/15/2004	ORDER, NOW, this 15th day of April, 2004, re: Non-Jury Trial scheduled for one day, on the 25th day of June, 2004, beginning at 9:00 a.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Mason, Thompson	Fredric Joseph Ammerman
04/21/2004	Motion to Determine Sufficiency of Answers to Request for Admissions of Fact. filed by, s/David C. Mason, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Plaintiffs' Motion To Determine Sufficiency of Answers to Request for Admissions of Fact upon David R. Thompson, Esquire no cc	Fredric Joseph Ammerman

Date: 05/27/2004

Clearfield County Court of Common Pleas

User: ACCESS

Time: 03:20 PM

ROA Report

Page 2 of 2

Case: 2001-01428-CD

Current Judge: Fredric Joseph Ammerman

Joseph M. Rusnak, Christine A. Rusnak, Mark J. Rusnak, Vickie E. Rusnak vs. William Bradley Holdren

Civil Other

Date	Judge
04/23/2004	ORDER, NOW, this 22nd day of April, 2004, re: Argument on Plaintiffs' Motion to Determine Sufficiency of Answers to Requests for Admissions of Fact scheduled for the 18th day of May, 2004, at 9:00 a.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc w/memo re: Service to Atty D. Mason
04/29/2004	ORDER, NOW, this 28th day of April, 2004, re: Argument on Plaintiffs' Motion to Determine Sufficiency of Answers to Requests for Admissions of Fact has been RESCHEDULED from May 18, 2004 to Wednesday, May 19, 2004 at 2:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 1 cc Atty's Mason, Thompson
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Argument on Plaintiffs' Motion to Determine Sufficiency of Answers to Requests for Admissions of Fact RESCHEDULED from May 19, 2004 to Wednesday, May 26, 2004 at 9:00 a.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc & Notice to Attorney Thompson
05/27/2004	ORDER OF COURT, AND NOW, this 26th day of May, 2004, re: Defendant's Answer to Plaintiffs' Request for Admissions of Fact is stricken for failure to file a verified answer within 30 days as required by the Pennsylvania Rules of Civil Procedure and for failure to provide sufficient answers as required by Pa. R.C.P. Rule 4014(b). The factual assertions contained in Plaintiffs' Request for Admissions of Fact are hereby determined to be conclusively admitted by Defendant. by the Court, s/FJA, P.J. 3 cc to Atty Mason

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and
MARK J. RUSNAK and VICKIE E.
RUSNAK, his wife,

*
* No. 2001-01428-CD

Plaintiffs

*

vs.

WILLIAM BRADLEY HOLDREN

Defendant

* TYPE OF CASE: Civil Action

* TYPE OF PLEADING: Plaintiffs' Reply
* To Defendant's New Matter

* FILED ON BEHALF OF:

* Plaintiffs

* COUNSEL OF RECORD FOR THIS

* PARTY:

* David C. Mason, Esquire
* Supreme Court I.D. 39180
* Attorney at Law
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

* COUNSEL OF RECORD FOR DEFENDANT:

* David R. Thompson, Esquire
* Supreme Court I.D. #73053
* Attorney at Law
* 308 Walton Street, Suite 4
* Philipsburg, PA 16866
* (814) 342-4100

FILED

JUN 09 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
	*
Plaintiffs	*
	*
vs.	*
	*
WILLIAM BRADLEY HOLDREN	*
	*
Defendant	*

**PLAINTIFFS' REPLY TO
DEFENDANT'S NEW MATTER**

AND NOW, come the Plaintiffs, Joseph M. Rusnak; Mark J. Rusnak and Vickie E. Rusnak, his wife, by and through their attorney David C. Mason, Esquire, and files the following Reply to Defendant's New Matter.

19 -20. No response is necessary or required.

21. DENIED. It is denied that the garage in question was built and existed in its current location for a period in excess of twenty-one (21) years. Aerial photographs maintained by Clearfield County, taken in April of 1982, reveal that the garage which encroaches upon Plaintiffs' access easement was not in existence in April of 1982.

22. DENIED. It is denied that the Defendant and his predecessors in title have maintained and used the garage in its present position for a period of twenty-one (21) years, and it is further denied that they have adversely possessed the real property beneath the garage. Strict proof of these averments is demanded at the time of trial. By

way of further answer Plaintiffs incorporate herein their answer to paragraph 21.

23. No response is necessary.

24. ADMITTED IN PART, DENIED IN PART. It is admitted that the alleged Right of Way claimed by Plaintiffs is not now "open" as the result of the encroachment. It is denied that the said Right of Way or access easement has never been open and strict proof, to the extent deemed relevant, is demanded at the time of trial.

25. ADMITTED. By way of further answer, Defendant purchased his premises described by and bounded by this alley; had a survey of the premises completed prior to his purchase which revealed the existence and location of the alley or access easement as well as the encroachment of the garage onto the same and Defendant's counsel was personally advised of the encroachment and Plaintiffs' intention to open the alley.

26. DENIED. It is specifically denied that Plaintiffs had requested use of this strip of land in the past and/or that this request was refused by a prior owner in Defendant's chain of title.

27 - 28. No response is necessary.

WHEREFORE, Plaintiffs pray your Honorable Court for the entry of an Order granting relief requested in Plaintiffs' Complaint.

DATED: *June 7, 2004*

MASON LAW OFFICE

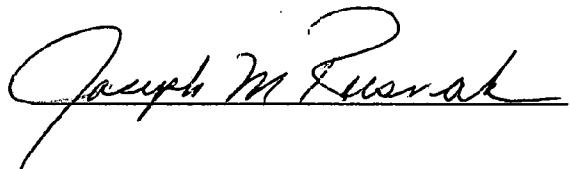
By: *David C. Mason*

David C. Mason, Esquire

VERIFICATION

I, JOSEPH M. RUSNAK do hereby verify that the facts set forth in the foregoing PLAINTIFFS' REPLY TO DEFENDANT'S NEW MATTER are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 6/7/04

A handwritten signature in black ink that reads "Joseph M. Rusnak". The signature is fluid and cursive, with "Joseph" and "Rusnak" being the most prominent parts.

FILED

0 11:25 AM

JUN 09 2000 PCL

~~EST~~

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *
*
Plaintiffs *
*
* vs. *
*
*
WILLIAM BRADLEY HOLDREN *
*
*
Defendant *
* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE
*
* FILED ON BEHALF OF:
* PLAINTIFFS
*
* ATTORNEY FOR PLAINTIFFS:
* David C. Mason, Esquire
* Supreme Court ID #39180
* MASON LAW OFFICE
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240
*
*
* COUNSEL OF RECORD FOR DEFENDANT:
* David R. Thompson, Esquire
* Supreme Court I.D. #73053
* Attorney at Law
* 308 Walton Street, Suite 4
* Philipsburg, PA 16866
* (814) 342-4100

FILED

JUN 09 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and *
MARK J. RUSNAK and VICKIE E. * No. 2001-01428-CD
RUSNAK, his wife, *

Plaintiffs *

vs. *

WILLIAM BRADLEY HOLDREN *

Defendant *

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' REPLY TO DEFENDANT'S NEW MATTER filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

William Bradley Holdren
%David R. Thompson, Esquire
308 Walton Street, Suite 4
Philipsburg, PA 16866

MASON LAW OFFICE

DATED: 6-7-04

By: 
David C. Mason, Esquire
Attorney for Plaintiffs

FILED

JUN 09 2004
0 11:25 AM
2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and
MARK J. RUSNAK and VICKIE E.
RUSNAK, his wife,

*
* No. 2001-01428-CD
*
*
*

Plaintiffs

*

VS.

*

WILLIAM BRADLEY HOLDREN

*

Defendant

*

* TYPE OF PLEADING: AMENDED
* CERTIFICATE OF SERVICE

*

* FILED ON BEHALF OF:
* PLAINTIFFS

*

* ATTORNEY FOR PLAINTIFFS:
* David C. Mason, Esquire
* Supreme Court ID #39180
* MASON LAW OFFICE
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

*

* COUNSEL OF RECORD FOR DEFENDANT:
* David R. Thompson, Esquire
* Supreme Court I.D. #73053
* Attorney at Law
* 308 Walton Street, Suite 4
* Philipsburg, PA 16866
* (814) 342-4100

FILED

JUN 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

JOSEPH M. RUSNAK, and	*
MARK J. RUSNAK and VICKIE E.	* No. 2001-01428-CD
RUSNAK, his wife,	*
Plaintiffs	*
	*
vs.	*
	*
WILLIAM BRADLEY HOLDREN	*
	*
Defendant	*

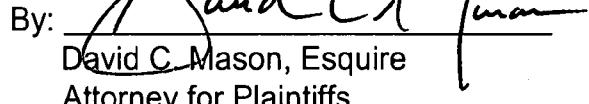
AMENDED CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' REPLY TO DEFENDANT'S NEW MATTER filed to the above captioned action, by faxing the same to Defendant's counsel, David R. Thompson, Esquire, at 814-342-7081, and by placing the same in the United States mail, postage prepaid and addressed as follows:

William Bradley Holdren
%David R. Thompson, Esquire
308 Walton Street, Suite 4
Philipsburg, PA 16866

MASON LAW OFFICE

DATED: 6/10/2004

By: 

David C. Mason, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

FILED

JUN 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

JOSEPH M. RUSNAK AND MARK J.	*	No. 01-1428-CD
RUSNAK AND VICKIE E. RUSNAK,	*	
his wife,	*	
Plaintiffs	*	
	*	
VS.	*	
	*	TYPE OF CASE:
WILLIAM BRADLEY HOLDREN,	*	Civil Action - Law
	*	
	*	
	*	
Defendant	*	

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of **MOTION FOR JUDGMENT ON THE PLEADINGS**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

David C. Mason, Esquire
P.O. Box 28
Philipsburg, PA 16866

DATE: 6-4-04

BY: 

David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

JOSEPH M. RUSNAK AND MARK J.
RUSNAK AND VICKIE E. RUSNAK,
his wife,

**Plaintiffs
vs.**

WILLIAM BRADLEY HOLDREN,

Defendant

*
* No. 01-1428-CD

TYPE OF CASE:
Civil Division - Law

TYPE OF PLEADING:
Certificate of Service

FILED ON BEHALF OF:
Plaintiff

**COUNSEL OF RECORD FOR
THIS PARTY:**

* David R. Thompson, Esquire
* Attorney at Law
* Supreme Court 73053
* P.O. Box 587
* 308 Walton Street, Suite 4
* Philipsburg PA 16866
* (814) 342-4100

FILED

JUN 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

JOSEPH M. RUSNAK AND MARK J.	*	
RUSNAK AND VICKIE E. RUSNAK,	*	No. 01-1428-CD
his wife,	*	
	*	
Plaintiffs	*	
vs.	*	
	*	
WILLIAM BRADLEY HOLDREN,	*	
	*	
	*	
	*	
Defendant	*	

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy an Order scheduling a Hearing for June 16, 2004 in Courtroom Number 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

David C. Mason, Esquire
407 North Front Street
Philipsburg, PA 16866

DATE: June 9, 2004

BY:



David R. Thompson, Esquire

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

JOSEPH M. RUSNAK, et al. :

-VS- : No. 01-1428-CD

WILLIAM BRADLEY HOLDREN

ORDER

NOW, this 16th day of June, 2004, this being the date set for argument on the Defendant's Motion for Judgment on the Pleadings, with the Court noting that nonjury trial is scheduled for June 25, 2004; the Court noting that insufficient time exists for the Court to adequately review the said Motion and the Court not wishing to delay trial, it is the ORDER of this Court that the said Motion for Judgment on the Pleadings be and is hereby dismissed.

BY THE COURT,

Frederick J. Zimmerman

President Judge

FILED

JUN 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
Clerk
JUN 18 2004
Autumn Mason, Thompson
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA **FILED**

CIVIL DIVISION

JUL 01 2004

JOSEPH M. RUSNAK, and MARK	:	William A. Shaw
J. RUSNAK and VICKIE E.	:	Prothonotary/Clerk of Courts
RUSNAK, his wife	:	
-vs-		No. 2001-1428-CD
WILLIAM BRADLEY HOLDREN	:	

O R D E R

NOW, this 25th day of June, 2004, this being the day and date set for nonjury trial before The Honorable Fredric J. Ammerman; the parties have reached the following agreement with respect to the issues contained in the pleadings:

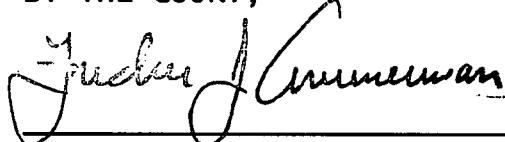
1. Defendant, William Bradley Holdren, shall, within sixty (60) days from the date hereof, remove the portion of the encroaching structure from the twenty (20) foot right-of-way described in the prayer for relief in Plaintiffs' complaint. Plaintiff shall assist with this removal in the following way: Following Defendant's severance of the portion of the building to be removed, Plaintiff will destroy and dispose of the waste, at their expense. Plaintiff shall not be liable or responsible to the Defendant in any way for injury or damage to the remaining structure resulting from these activities, with the exception of willful destruction or damage of the

remainder.

2. Within thirty (30) days following the removal of the structure encroaching on the right-of-way, Plaintiffs shall construct a mud-free, crushed stone cartway within the aforesaid twenty (20) foot right-of-way.

3. Within the same time period above, the parties agree to enter into and record a declaration of existing right-of-way for the aforesaid twenty (20) foot right-of-way.

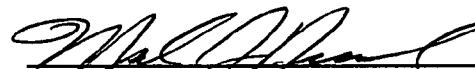
BY THE COURT,



President Judge

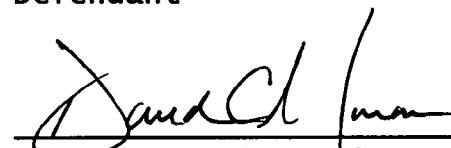
we, the undersigned, hereby consent to the entry
of the above order


JOSEPH M. RUSNAK
Plaintiff


MARK J. RUSNAK
Plaintiff

VICKIE E. RUSNAK
Plaintiff


WILLIAM BRADLEY HOLDREN
Defendant

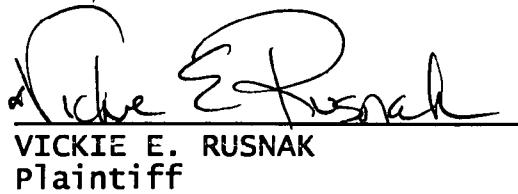

DAVID C. MASON, ESQUIRE
Attorney for Plaintiffs

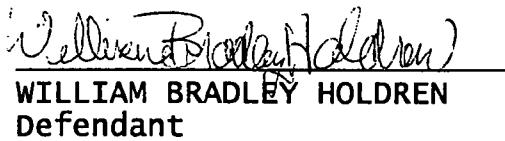

DAVID R. THOMPSON, ESQUIRE
Attorney for Defendant

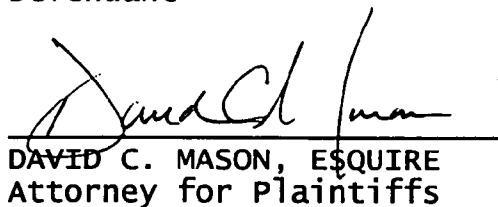
We, the undersigned, hereby consent to the entry
of the above order

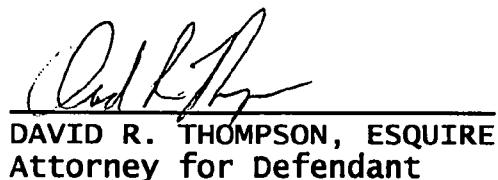

JOSEPH M. RUSNAK
Plaintiff


MARK J. RUSNAK
Plaintiff


VICKIE E. RUSNAK
Plaintiff


WILLIAM BRADLEY HOLDREN
Defendant


DAVID C. MASON, ESQUIRE
Attorney for Plaintiffs


DAVID R. THOMPSON, ESQUIRE
Attorney for Defendant

FILED
03-43881
JUL 01 2004
cc Amy Mason
cc Amy Thompson

W.A. Shaw
Prothonotary/Clerk of Courts