

01-1846-CD
CYNTHIA M. PEACE "vs" RICHARD L. GEARHART et ux

Date: 06/14/2002

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 03:01 PM

ROA Report

Page 1 of 1

Case: 2001-01846-CD

Current Judge: John K. Reilly Jr.

Cynthia M. Peace vs. Richard L. Gearhart, Nicole D. Gearhart

Civil Other

Date	Judge
11/07/2001	Filing: Praecept for Writ of Summons Paid by: R. E. Valasek Law Offices No Judge Receipt number: 1833925 Dated: 11/07/2001 Amount: \$80.00 (Check) Two CC Sheriff with Writs
12/14/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm No Judge
03/11/2002	Complaint. Filed by s/Kenneth L. Nichols, Esquire Affidavit s/Cynthia M. Peace Certificate of Service no cc No Judge
03/19/2002	Preliminary Objections, filed by s/Dennis J. Stofko, Esq. No CC Entry of Appearance on behalf of Defendants s/Dennis J. Stofko, Esq. No CC No Judge Demand for Jury Trial, filed.
05/20/2002	Answer and Brief In Opposition to Defendants' Preliminary Objections. Filed by s/Kenneth L. Nichols, Esq. Affidavit s/Cynthia M. Peace no cc John K. Reilly Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,

Plaintiff

v.

RICHARD L. GEARHART and
NICOLE D. GEARHART, His Wife,

Defendants

CIVIL DIVISION

No. 01-1846-C

PRAECIPE FOR WRIT OF SUMMONS

Code:

Filed on behalf of:
CYNTHIA M. PEACE, Plaintiff

Counsel of Record for
this party:

KENNETH L. NICHOLS, ESQUIRE
Pa. I. D. No. 55848

R. E. VALASEK LAW OFFICES
Firm No. 596
3048 Leechburg Road
Lower Burrell, PA 15068

[724] 337-8811

FILED

NOV 07 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,	)	CIVIL DIVISION
)	
Plaintiff	)	No.
)	
v.)	
)	
RICHARD L. GEARHART and)	
NICOLE D. GEARHART, His Wife,)	
)	
Defendants)	

PRAECIPE FOR WRIT OF SUMMONS

TO: WILLIAM SHAW, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, Pennsylvania 16830

KINDLY issue a Writ of Summons in Trespass in the above-captioned matter for service on Defendants, pursuant to 42 Pa.R.C.P. #1007.

Respectfully submitted,

R. E. VALASEK LAW OFFICES

By



Kenneth L. Nichols, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,) CIVIL DIVISION
)
Plaintiff) No.
)
v.)
)
RICHARD L. GEARHART and)
NICOLE D. GEARHART, His Wife,)
)
Defendants)

CERTIFICATE OF SERVICE

I hereby certify, on this 5th day of November 2001 a true and correct copy of the within PRAECIPE FOR WRIT OF SUMMONS was delivered to the Sheriff of Clearfield County, Pennsylvania, for personal service on Defendants at the address indicated below:

SERVICE OF PROCESS BY
SHERIFF, CLEARFIELD COUNTY

RICHARD L. GEARHART
460 State Street, Apartment #6
Curwensville, Pennsylvania 16833

NICOLE D. GEARHART
460 State Street, Apartment #6
Curwensville, Pennsylvania 16833

Respectfully submitted,

R. E. VALASEK LAW OFFICES

By


Kenneth L. Nichols, Esquire
Attorney for Plaintiff

FILED Aug 80
800

NOV 12 2001 2 cc staff warrants issued

REC'D NOV 07 2001
William A. Shaw
Prothonotary

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

COPY

SUMMONS

Cynthia M. Peace

Vs.

NO.: 2001-01846-CD

**Richard L. Gearhart and
Nicole D. Gearhart, His Wife**

**TO: RICHARD L. GEARHART
NICOLE D. GEARHART**

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: 11/07/2001

William A. Shaw
Prothonotary

Issuing Attorney:
Kenneth L. Nichols, Esq.
R.E. Valasek Law Offices
3048 Leechburg Road
Lower Burrell, PA 15068
(724) 337-8811

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11733

PEACE, CYNTHIA M.

01-1846-CD

VS.

GEARHART, RICHARD L. & NICOLE D.

PRAECIPE & WRIT OF SUMMONS

SHERIFF RETURNS

NOW NOVEMBER 15, 2001 AT 9:35 AM EST SERVED THE WITHIN PRAECIPE & SUMMONS ON NICOLE D. GEARHART, DEFENDANT AT SHERIFF'S OFFICE, MARKET ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO NICOLE D. GEARHART A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: SHULTZ

NOW NOVEMBER 15, 2001 AT 1:15 PM EST SERVED THE WITHIN PRAECIPE & SUMMONS ON RICHARD L. GEARHART, DEFENDANT AT SHERIFF'S OFFICE, MARKET ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RICHARD L. GEARHART A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: SHULTZ

Return Costs

Cost	Description
32.80	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY

FILED

DEC 14 2001
01/14 pm
William A. Shaw
Prothonotary
G
JES

Sworn to Before Me This

14th Day Of December 2001

William A. Shaw

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

So Answers,

Chester A. Hawkins
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,

CIVIL DIVISION

Plaintiff

No. 01-1846-CD

v.

COMPLAINT

RICHARD L. GEARHART and
NICOLE D. GEARHART, His Wife,

Code:

Defendants

Filed on behalf of:
CYNTHIA M. PEACE, Plaintiff

Counsel of Record for
this party:

KENNETH L. NICHOLS, ESQUIRE
Pa. I. D. No. 55848

R. E. VALASEK LAW OFFICES
Firm No. 596
3048 Leechburg Road
Lower Burrell, PA 15068

[724] 337-8811

FILED

MAR 11 2002

11:56 a.m.
William A. Shaw
Prothonotary

no cc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,	)	CIVIL DIVISION
)	
Plaintiff	)	No. 01-1846-CD
)	
v.)	
)	
RICHARD L. GEARHART and)	
NICOLE D. GEARHART, His Wife,)	
)	
Defendants)	

NOTICE TO DEFEND

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

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

DAVID S. MEHOLICK
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, Pennsylvania 16830
Phone [814]-765-2641, Extension-5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,	)	CIVIL DIVISION
)	
Plaintiff	)	No. 01-1846-CD
)	
v.)	
)	
RICHARD L. GEARHART and)	
NICOLE D. GEARHART, His Wife,)	
)	
Defendants)	

COMPLAINT

AND NOW, Comes Plaintiff, CYNTHIA M. PEACE, by and through her attorneys, KENNETH L. NICHOLS, ESQUIRE and R. E. VALASEK LAW OFFICES, and files this CIVIL COMPLAINT relative to a motor vehicle accident which occurred 20 November 1999, involving a vehicle driven by Defendant, RICHARD L. GEARHART, and owned by His Wife, Defendant, NICOLE D. GEARHART, and in support thereof avers as follows:

1. The Plaintiff, CYNTHIA M. PEACE, is an adult individual residing at 415 Frailey Road, Irvona, Clearfield County, Pennsylvania.

2. The Defendants, RICHARD L. GEARHART and NICOLE D. GEARHART, husband and wife, reside at 460 State Street, Apartment #6, Curwensville, Clearfield County, Pennsylvania.

3. On the evening of Saturday, November 20, 1999, the Parties named herein were present at a wedding reception held at the Glendale Sportsman's Club, located on S.R. 3014, approximately two [2] miles west of Irvona, Pennsylvania.

4. At about 10:00 P. M. the Defendant, RICHARD L. GEARHART became involved in an altercation in the reception hall. The altercation subsequently shifted to the parking lot of the Sportsman's Club.

5. Eventually Defendants entered their 1987 Dodge Colt preparing to leave the reception. The car was parked on a gravel parking lot facing the main entrance to the Sportsman's Club.

6. The Defendant, RICHARD L. GEARHART, ccntinued to argue with members of the wedding party through a side windcw after entering the driver's side of the vehicle. His wife, NICOLE D. GEARHART, was the registered owner of the vehicle and was seated in the passenger seat.

7. Defendant, RICHARD L. GEARHART, depressed the clutch, started the engine and shifted the car into forward drive while continuing to argue with wedding attendees outside the vehicle. Suddenly the vehicle lurched forward and to the right, knocking Plaintiff, CYNTHIA M. PEACE, to the ground and beneath the vehicle.

8. Defendants' vehicle rolled out of control to the right, passing over and dragging Plaintiff until it came to a stop on top of her body. The Defendant, RICHARD L. GEARHART, then accelerated the engine, spinning both front tires for several seconds until the automobile's engine stalled. At that time he exited the vehicle and left the scene of the accident.

9. Plaintiff, CYNTHIA M. PEACE, was pinned on her back with the 1987 Dodge Colt resting on her chest. Her right shoulder had been burned by the spinning right front tire. Plaintiff began to experience difficulty in breathing, her head being behind the right front wheel and her legs extended under the engine toward the left side of the vehicle.

10. When bystanders realized Plaintiff was trapped under the car, a number of people lifted the vehicle up until they were able to roll it off of Plaintiff and onto its right side. This required approximately twenty [20] to thirty [30] seconds.

11. Plaintiff shortly thereafter was removed by emergency medical services to Philipsburg General Hospital, Philipsburg, Pennsylvania. There she was treated by the emergency department and her condition stabilized. Early the morning of November 21, 1999 Plaintiff was life-flighted to Conemaugh Memorial Hospital, Johnstown,

Pennsylvania. There she underwent additional emergency testing and treatment for the injuries sustained and was admitted to orthopedics for treatment of multiple fractures to the pelvis and right hip.

12. As a result of the November 20, 1999 incident, Plaintiff incurred fractures of the pelvis, the right hip, punctures and chipping of the left elbow and knee, swelling of the right femur, a concussion, amnesia and numerous cuts, bruises and abrasions of the head, chin, chest and abdomen. These injuries initially were considered of a critical or life threatening nature. They were later downgraded to serious.

13. Plaintiff was treated at Conemaugh Memorial from November 21, 1999 to November 23, 1999. Following discharge, she was treated by her attending orthopedic physician at Conemaugh Hospital, Dr. Ian Katz. In January 2000 Katz transferred her care to Dr. Mark A. Piasio, DuBois, Pennsylvania. Plaintiff continues to treat with Dr. Piasio at this time.

14. After her release, Plaintiff experienced considerable pain and discomfort related to the healing of her back, hips, and arm. Following two [2] months of bed rest, Plaintiff was required to ambulate with a platform walker and use special appliances.

15. Plaintiff's recovery next involved intermittent rehabilitative therapy to regain normal use of her back, legs and arm. This continued through early 2001. Then Plaintiff treated regularly with a chiropractor for ongoing pain in the lower back, hips, neck and chronic headaches. Peace is employed as a pharmacy technician. Her occupation requires her to stand, walk and climb for extended periods up to eight [8] to ten [10] hours a day.

16. Plaintiff has been advised, by both orthopedic and chiropractic physicians, that the fractures to her pelvis and hip could involve regular and at times elevated pain on a permanent basis.

17. Due to the injuries of November 20, 1999, Plaintiff, CYNTHIA M. PEACE, incurred medical, therapeutic, chiropractic and prescription expenses which current exceeds \$18,000.00. In addition she experienced \$5,384.68. in wage losses due to inability to work from November 21, 1999 to February 27, 2000.

18. On February 22, 2000 the Defendant, RICHARD L. GEARHART, driver of the car which hit Plaintiff, plead guilty to the following criminal offenses: 1) driving under the influence of alcohol, 2) driving without a license while under suspension and 3) careless driving.

19. On 7 November 2001 a Writ of Summons was filed relative to this claim in Clearfield County, Pennsylvania, together with Service of Process on the Defendants herein.

20. Demand for restitution of damages has been made by Plaintiff to Defendants in the above.

COUNT I - NEGLIGENCE
[Cynthia M. Peace v. Richard L. Gearhart]

21. Paragraphs 1 to 20 of the Complaint are incorporated herewith as though more fully set forth at length.

22. Conduct of the Defendant, RICHARD L. GEARHART, constitutes criminal negligence, negligence per se and negligence by failure to exercise reasonable care, specifically as follows:

- a) By entering a vehicle, starting the engine, shifting the car into gear and depressing the accelerator while continuing to argue or threaten individuals around the vehicle; and
- b) By excessive use of alcoholic spirits and attempting to drive a motor vehicle in a condition in which his judgment, perception and responses were substantially impaired; and
- c) By attempting to drive a motor vehicle without a valid Pennsylvania driver's license, while under suspension for previous DUI related offenses; and
- d) By operating a vehicle in a reckless manner with open disregard for the physical safety and well being of bystanders immediately next to and in front of the vehicle; and

- e) By failing to warn bystanders of his intent to move the vehicle forward and to the right suddenly, thereby endangering their safety and physical well being; and
- f) By failure to keep a parked or stopped vehicle under control at all times as driver of the vehicle, given the circumstances; and
- g) By failure to heed warnings that the Defendant was visibly intoxicated and unable to drive a vehicle at the time of the accident; and
- h) By failure to properly operate and/or maintain the vehicle's parking and/or service braking system and drive; and
- i) By failure to stop the vehicle after it had struck Plaintiff, exit the vehicle and render assistance on her behalf; and
- j) By violating Sections 1543, 1786, 3333, 3361, 3714, 3731, 3742.1, 3744 and 4502 of the PA Motor Vehicle Code, resulting in substantial harm and permanent injury of the Plaintiff.

23. As the direct and proximate result of Defendant's conduct, Plaintiff, CYNTHIA M. PEACE, sustained serious personal injuries, including but not limited to the following:

- a) fractures of the pelvis;
- b. fracture of the right hip;
- c. swelling of the right femur;
- d. chipping of left elbow and knee;
- e. concussion followed by amnesia;
- f. cuts, abrasions and contusions of the head, chin, chest, arms and abdomen;
- g. ongoing back, neck and headache pain ranging from discomfort to debilitating.

WHEREFORE, for reasons set forth above Plaintiff, CYNTHIA M. PEACE, requests that Judgment be entered in her favor and against that of the Defendant, RICHARD L. GEARHART, in an amount to exceed ONE HUNDRED THOUSAND DOLLARS [\$100,000.00].

COUNT II- RECKLESSNESS
[Cynthia M. Peace v. Richard L. Gearhart]

24. Paragraphs 1 to 23 of the Complaint are incorporated herewith as though more fully set forth at length.

25. The conduct of Defendant, RICHARD L. GEARHART, constituted a reckless and wanton disregard for the safety and well being of other persons, without heed for the foreseeable consequences of such conduct, specifically as follows:

- a) By entering a vehicle, starting the engine, shifting the car into gear and depressing the accelerator while continuing to argue or threaten individuals around the vehicle; and
- b) By excessive use of alcoholic spirits and attempting to drive a motor vehicle in a condition in which his judgment, perception and responses were substantially impaired; and
- c) By attempting to drive a motor vehicle without a valid Pennsylvania driver's license, while under suspension for previous DUI related offenses; and
- d) By operating a vehicle in a reckless manner with open disregard for the physical safety and well being of bystanders immediately next to and in front of the vehicle; and

- e) By failing to warn bystanders of his intent to move the vehicle forward and to the right suddenly, thereby endangering their safety and physical well being; and
- f) By failure to keep a parked or stopped vehicle under control at all times as driver of the vehicle, given the circumstances; and
- g) By failure to heed warnings that the Defendant was visibly intoxicated and unable to drive a vehicle at the time of the accident; and
- h) By failure to properly operate and/or maintain the vehicle's parking and/or service braking system and drive; and
- i) By failure to stop the vehicle after it had struck Plaintiff, exit the vehicle and render assistance on her behalf; and
- j) By violating Sections 1543, 1786, 3333, 3361, 3714, 3731, 3742.1, 3744 and 4502 of the PA Motor Vehicle Code, resulting in substantial harm and permanent injury of the Plaintiff.

26. As the direct and proximate result of Defendant's conduct, the Plaintiff, CYNTHIA M. PEACE, sustained serious personal injuries including the following:

- a) fractures of the pelvis;
- b) fracture of the right hip;
- c) swelling of the right femur;
- d) chipping of left elbow and knee;
- e) concussion followed by amnesia;
- f) cuts, abrasions and contusions of the head, chin, chest, arms and abdomen;
- g) ongoing back, neck and headache pain ranging from discomfort to debilitating.

WHEREFORE, for reasons set forth above Plaintiff, CYNTHIA M. PEACE, requests that Judgment be entered in her favor and against that of the Defendant, RICHARD L. GEARHART, in an amount to exceed ONE HUNDRED THOUSAND DOLLARS [\$100,000.00].

COUNT III- RECKLESSNESS
[Cynthia M. Peace v. Nicole D. Gearhart]

27. Paragraphs 1 to 26 of the Complaint are incorporated herewith as though more fully set forth at length.

28. Defendant, NICOLE D. GEARHART, wife of Defendant, RICHARD L. GEARHART, was the sole owner of the 1987 Dodge Dart, License No. BAT-7988, Title No. 40311542 at the time of the accident November 20, 1999.

29. Defendant, RICHARD L. GEARHART, used the subject vehicle to drop-off and pick-up his wife, NICOLE D. GEARHART, several times during the course of the wedding reception at the Glendale Sportsman's Club on that date.

30. Use of the subject vehicle by the Defendant, RICHARD L. GEARHART, was at all times relevant hereto with the implied and/or expressed consent and participation of his wife, NICOLE D. GEARHART, owner of the vehicle.

31. Civil Rule 42 Pa.R.C.P. #2227 concerning Compulsory Joinder provides as follows:

- (a) Persons having a joint interest in the subject matter of an action must be joined on the same side as Plaintiffs or Defendants.

32. As Tenants by Entirety, Defendants, RICHARD L. GEARHART and NICOLE D. GEARHART, husband and wife, have joint and several interests relative to liability issues and damages to Plaintiff in this matter.

33. Civil Rule 42 Pa.R.C.P. #2229 concerning Permissive Joinder provides as follows:

- (b) A Plaintiff may join as Defendant(s) persons against whom the Plaintiff asserts any right to relief joint, severally, separately or in the alternative, in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, if any common question of law or fact effecting the liabilities of such persons will arise during the action.
- (c) Parties may join or be joined in the alternative, although the cause of action asserted by or against any one or more of them is inconsistent with the cause of action asserted by or against any of the others so joined.

34. NICOLE D. GEARHART is named herein as a Defendant in this action, both as to issues of liability and damages herein, for reasons set forth above.

WHEREFORE, for reasons set forth above Plaintiff, CYNTHIA M. PEACE, requests that Judgment be entered in her favor and against that of the Defendant, NICOLE D. GEARHART, in an amount to exceed ONE HUNDRED THOUSAND DOLLARS [\$100,000.00].

Respectfully submitted,

R. E. VALASEK LAW OFFICES

By


Kenneth L. Nichols, Esquire

Attorney for Plaintiff

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF WESTMORELAND)

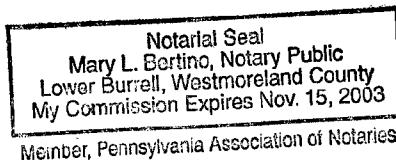
BEFORE ME, the undersigned authority, a Notary Public,
personally appeared Cynthia M. Peace, who, being duly sworn
according to law, deposes and says that the facts contained in the
foregoing Complaint are true and correct to the best
of her knowledge, information, and belief.

Cynthia M. Price

SWORN TO and subscribed
before me on this 8th
day of March,
2002.

Mary S. Bestino
Notary Public

My Commission Expires:



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,	)	CIVIL DIVISION
)	
Plaintiff	)	No. 01-1846-CD
)	
v.)	
)	
RICHARD L. GEARHART and)	
NICOLE D. GEARHART, His Wife,)	
)	
Defendants)	

CERTIFICATE OF SERVICE

I hereby certify, on this 8th day of March 2002 a true and correct copy of the within CIVIL COMPLAINT was delivered to following parties, in the manner indicated below, and addressed as follows:

CERTIFIED MAIL
[Return Receipt Requested]

RICHARD L. GEARHART
460 State Street, Apartment #6
Curwensville, Pennsylvania 16833

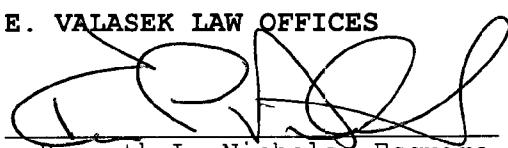
NICOLE D. GEARHART
460 State Street, Apartment #6
Curwensville, Pennsylvania 16833

CHARLES COWFER
Nationwide Assurance, Claims
999 N. Loyalsock Avenue, Suite #3
Montoursville, Pennsylvania 17754

Respectfully submitted,

R. E. VALASEK LAW OFFICES

By


Kenneth L. Nichols, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CYNTHIA M. PEACE,

Plaintiff

vs.

No. 01-1846 CD

RICHARD L. GEARHART and
NICOLE D. GEARHART, his wife,

Defendants

ENTRY OF APPEARANCE

Please enter my appearance for Defendants in the above matter. Papers
may be served at the address listed below.

DEMAND FOR JURY TRIAL

Pursuant to Rule 1007.1 of the Pennsylvania Rules of Civil Procedure, as
amended, a Jury Trial is demanded on all issues raised by the pleadings in this
action.

I certify this Entry of Appearance and Demand for Jury Trial shall be
served forthwith by ordinary mail upon all parties.


DENNIS J. STOFKO, ESQUIRE
P.O. Box 5500
Johnstown, Pa. 15904
814 262-0064
ID 27638

FILED

MAR 19 2002


m11251ncc
William A. Shaw
Prothonotary

CX

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CYNTHIA M. PEACE,

Plaintiff

vs.

No. 01-1846 CD

RICHARD L. GEARHART and
NICOLE D. GEARHART, his wife,

Defendants

PRELIMINARY OBJECTIONS
Counsel of record for this party:
Dennis J. Stofko, Esquire
P.O. Box 5500
Johnstown, Pa. 15904
814 262-0064
ID 27638

FILED

MAR 19 2002

11:25noc
William A. Shaw
Prothonotary

PRELIMINARY OBJECTIONS

NOW COME the Defendants by and through counsel, Dennis J. Stofko and files the following Preliminary Objections pursuant to Pa. R.C.P. 1028(a)(4).

DEMUR AS TO COUNT III OF PLAINTIFF'S COMPLAINT

1. This case involves a vehicle pedestrian accident that occurred on or about November 20, 1999.

2. The complaint alleges that Richard L. Gearhart was operating a vehicle and struck the plaintiff, Cynthia M. Peace.

3. At the time of the accident, the defendant, Nicole D. Gearhart, was the wife of the defendant, Richard L. Gearhart, and owner of the vehicle involved in this accident.

4. Count III of Plaintiff's Complaint alleges a cause of action against Nicole D. Gearhart for allowing the defendant, Richard L. Gearhart to use the vehicle.

5. Paragraph 30 provides as follows:

"Use of the subject vehicle by the Defendant, Richard L. Gearhart, was at all times relevant hereto with the implied and/or expressed consent and participation of his wife, Nichole D. Gearhart, owner of the vehicle."

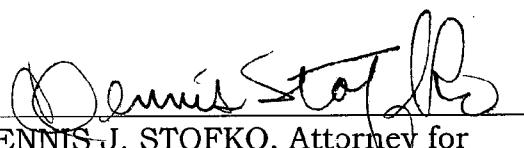
6. Furthermore Plaintiff alleges that Nicole D. Gearhart is liable for the injuries sustained by the plaintiff by mere virtue of the husband/wife relationship as stated in paragraph 32 as follows:

"As Tenants by entirety, Defendants, Richard L. Gearhart and Nicole D. Gearhart, husband and wife, have joint and several interests relative to liability issues and damages to Plaintiff in this matter."

7. The Defendant demurs to Count III of Plaintiff's Complaint in that pursuant to Pennsylvania law mere ownership of a vehicle does not constitute a cause of action for negligence when that vehicle is operated by another individual.

8. Furthermore Pennsylvania does not recognize tenants by entirety vicarious liability. To the contrary, there must be an independent showing of negligence against the owner of a vehicle to hold the owner responsible for the negligence of another driver.

WHEREFORE, Defendants respectfully request your Honorable Court to dismiss the Complaint as against Nicole D. Gearhart.



DENNIS J. STOKO, Attorney for
Defendants

R.E. VALASEK LAW OFFICES

3048 Leechburg Road
Lower Burrell, PA 15068

(724) 337-8811

FAX (724) 337-8885

Certified Copy

R.E. Valasek

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,

Plaintiff

CIVIL DIVISION

No. 01-1846-CD

v.

RICHARD L. GEARHART and
NICOLE D. GEARHART, His Wife,

Defendants

**ANSWER AND BRIEF IN
OPPOSITION TO DEFENDANTS'
PRELIMINARY OBJECTIONS**

Filed on behalf of:
CYNTHIA M. PEACE, Plaintiff

Counsel of Record for
this party:

KENNETH L. NICHOLS, ESQUIRE
Pa. I. D. No. 55848

R. E. VALASEK LAW OFFICES
Firm No. 596
3048 Leechburg Road
Lower Burrell, PA 15068

[724] 337-8811

FILED

MAY 20 2002

ma321nocc
William A. Shaw
Prothonotary

8
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,)	CIVIL DIVISION
)	
Plaintiff	)	No. 01-1846-CD
)	
V.)	
)	
RICHARD L. GEARHART and)	
NICOLE D. GEARHART, His Wife,)	
)	
Defendants)	

**ANSWER AND BRIEF IN OPPOSITION TO
DEFENDANTS' PRELIMINARY OBJECTIONS**

AND NOW, Comes Plaintiff, CYNTHIA M. PEACE, by and through her attorneys, KENNETH L. NICHOLS, ESQUIRE and R. E. VALASEK LAW OFFICES, and files this ANSWER AND BRIEF IN OPPOSITION TO PRELIMINARY OBJECTIONS of Defendants, RICHARD L. GEARHART and NICOLE D. GEARHART, and in support thereof avers as follows:

I. - ANSWER TO PRELIMINARY OBJECTIONS

1. Admitted. This involves a vehicle-pedestrian accident which occurred 20 November 1999.
2. Admitted. The Complaint alleges Defendant, Richard L.

Gearhart, was operating a vehicle which struck and ran over the Plaintiff, Cynthia M. Peace.

3. Admitted. At the time of the accident Defendant, Nicole D. Gearhart, wife of Richard L. Gearhart, was the owner of the vehicle involved in the accident.

4. Admitted. Count III of the Complaint alleges a cause of action in negligence and recklessness against Defendant, Nicole D. Gearhart, as jointly liable for the accident predicated on consensual use of her vehicle for her benefit by Defendant, Richard L. Gearhart.

5. Admitted. Paragraph 30 is admitted as stated.

6. Admitted. Paragraph 32 is admitted as stated.

7. Whether ownership of a vehicle constitutes a cause of action in negligence when operated by another individual is a Conclusion of Law, based on the circumstances to which no response is required at this time. To the extent a response is required, use of a vehicle by a spouse without driving privileges, who is legally intoxicated, for the purpose of transporting his wife to activities which she alone is involved is negligence per se. Proof to the contrary is demanded at trial.

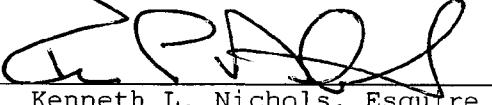
8. Whether Pennsylvania Law recognizes vicarious liability relative to ownership and consensual use of a motor vehicle by tenants in entirety is a Conclusion of Law, to which no response is required at this time.

WHEREFORE, Plaintiff, CYNTHIA M. PEACE, respectfully request that Defendants, RICHARD L. GEARHART's and NICOLE D. GEARHART's, Preliminary Objection to Count III of the Complaint naming NICOLE D. GEARHART as a Party Defendant be denied, for reasons set forth above.

Respectfully submitted,

R. E. VALASEK LAW OFFICES

By



Kenneth L. Nichols, Esquire
Attorney for Plaintiff

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF WESTMORELAND)
)

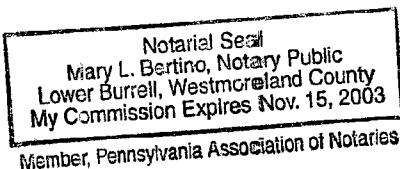
BEFORE ME, the undersigned authority, a Notary Public, personally appeared Cynthia M. Peace, who, being duly sworn according to law, deposes and says that the facts contained in the foregoing Answer & Brief in Opposition to Defendants' Preliminary Objections are true and correct to the best of her knowledge, information, and belief.

Agatha M. Peace

SWORN TO and subscribed
before me on this 16th
day of May,
2002.

Mary J. Bestino
Notary Public

My Commission Expires:



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,

Plaintiff

CIVIL DIVISION

No. 01-1846-CD

v.

**PREACIPE TO SETTLE
AND DISCONTINUE**

RICHARD L. GEARHART and
NICOLE D. GEARHART, His Wife,

Defendants

Filed on behalf of:
CYNTHIA M. PEACE, Plaintiff

Counsel of Record for
this party:

KENNETH L. NICHOLS, ESQUIRE
Pa. I. D. No. 55848

R. E. VALASEK LAW OFFICES
Firm No. 596
3048 Leechburg Road
Lower Burrell, PA 15068

[724] 337-8811

FILED

SEP 06 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,) CIVIL DIVISION
)
Plaintiff) No. 01-1846-CD
)
v.)
)
RICHARD L. GEARHART and)
NICOLE D. GEARHART, His Wife,)
)
Defendants)

PRAECIPE TO SETTLE AND DISCONTINUE

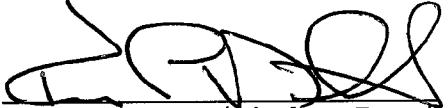
TO: WILLIAM SHAW, PROTHONOTARY

Kindly mark the above-captioned matter as Settled and Discontinued.

Respectfully submitted,

R. E. VALASEK LAW OFFICES

By

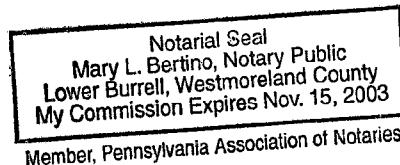

Kenneth L. Nichols, Esquire
Attorney for Plaintiff

I certify that the foregoing is a true and correct statement of the above case. This statement is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

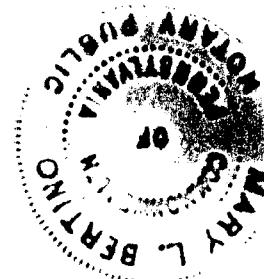
SWORN to and subscribed
before me on this 11th
day of September,
2002.

Mary L. Bertino
Notary Public

My Commission Expires:



Member, Pennsylvania Association of Notaries



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA M. PEACE,	)	CIVIL DIVISION
)	
Plaintiff	)	No. 01-1846-CD
)	
v.)	
)	
RICHARD L. GEARHART and)	
NICOLE D. GEARHART, His Wife,)	
)	
Defendants)	

CERTIFICATE OF SERVICE

I hereby certify, on this 4th September 2002 a true and correct copy of the within PRAECIPE TO SETTLE and DISCONTINUE was delivered to following parties in the manner indicated below and addressed as follows:

FIRST CLASS MAIL

MS. GINNY STEARLEY
Allstate Insurance Company
#4 Sheraton Drive
Altoona, Pennsylvania 16601

DENNIS J. STOFKO, ESQUIRE
P. O. Box 5500
Johnstown, Pennsylvania 15904
Attorney for Defendants

MR. CHARLES COWFER
Nationwide Assurance
999 N. Loyal Stock Avenue
Suite #3
Montoursville, Pennsylvania 17754

Respectfully submitted,

R. E. VALASEK LAW OFFICES

By


Kenneth L. Nichols, Esquire
Attorney for Plaintiff

FILED NO
M 12 18 2002
SEP 06 2002 Certificate to Atty Nichols

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CCFY

Cynthia M. Peace

Vs.

No. 2001-01846-CD

Richard L. Gearhart
Nicole D. Gearhart

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 6, 2002 marked:

Settled and Discontinued

Record costs in the sum of \$132.80 have been paid in full by Kenneth L. Nichols, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 6th day of September A.D. 2002.

William A. Shaw, Prothonotary