

02-224-CD
TIMOTHY EVERLY et al -vs- CHARLES D. KANOUTF et al

CA

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

NO. 2002-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Motion for Judicial Deed
Motion for Clarification

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Pa. Atty. No.: 87228
119 South Burrowes Street
State College, PA 16801
814/234-9070

FILED ^{ice}
JUN 10 2005
Att'y Fleming
(GR)

William A. Shaw
Prothonotary/Clerk of Courts

5. Plaintiffs request the assistance of the Court for clarification of the actual metes and bounds of the new boundary line and the ownership, care of, and access to the

hedges.

6. In addition, Plaintiffs request that a corrective judicial deed be issued by the Court for filing with the Records Office to reflect the boundary determination made by the Court.

Motion for Clarification

Plaintiffs request that the Court issue clarification of the its Order dated January 13, 2004, and that the Court direct the determination of the actual metes and bounds of the boundary line between the parties property and as grounds states:

7. As set forth above, the parties have become involved in a dispute over the ownership, care of, and access to the hedges that were identified by the Court as the marking the boundary of the property.

8. At trial, Plaintiffs presented uncontested evidence that Plaintiffs' predecessor had planted the hedges. In its Order, the Court neither affirmed or denied this fact, but found specifically that Plaintiffs and Plaintiffs' predecessors had performed the vast majority of maintenance of the hedges.

9. As to the actual new boundary line, the Court indicated that the hedges marked the boundary as a "line commencing at the eastern edge of their property and continuing to the end of the existing hedge... from the point of the western edge of the hedge to the western edge of the premises of the parties shall be as noted on the survey of Stephen W. Norfolk entered into evidence in these proceedings."

10. Defendants have taken actions such as cutting down and removing the hedges, preventing Plaintiffs from access to maintain the hedges, and other actions evidencing Defendants' apparent belief of ownership of the hedges.

11. Plaintiffs maintain that the Court determined that their property extends to the outside edge of the hedges which, as noted on the Stephen W. Norfolk survey, would be approximately 2 feet beyond the centerline of the hedges. Accordingly, Plaintiffs contend that they own the hedges and should be permitted access on the Defendants' side of the hedges to perform maintenance on the hedges.

12. As the parties are in dispute as to the exact boundary line and the ownership and control of the hedges, Plaintiffs request clarification from the Court on

these issues.

13. Plaintiffs request that the Court direct the determination of the actual metes and bounds by appointment of Stephen W. Norfolk for a description and setting of the boundary as determined by the Court.

WHEREFORE, Plaintiffs request clarification of the Court's Order dated January 13, 2004, and that the Court direct the determination of the actual metes and bounds of the boundary line between the parties property.

Motion for Corrective Judicial Deed

Plaintiffs request that the Court issue a corrective judicial deed for Plaintiffs' property reflecting the new boundary line as determined by this Court in its Order dated January 13, 2004 and as grounds state:

14. The current recorded deed to Plaintiffs' property does not reflect the boundary change as determined by this Court in this action in its Order of January 13, 2004.

15. The Court altered the boundary line of Plaintiffs property in this quiet title action.

16. Plaintiffs have requested that the Court direct the description of the metes and bounds of the new boundary line.

17. Plaintiffs request that the Court issue a corrective judicial deed to Plaintiffs' property to include the new boundary description.

WHEREFOE, Plaintiffs request that the Court issue a corrective judicial deed for Plaintiffs' property reflecting the new boundary line as determined by this Court in its Order dated January 13, 2004.

Eyerly v. Kanouff
Clearfield County Court Case Number: 2002-224 - CD
Plaintiffs' Motion for Clarification and Motion for Corrective Judicial Deed
Page 4 of 4

Respectfully submitted,

LAW OFFICES OF STEPHEN C. FLEMING

BY: 

Stephen C. Fleming, Esquire
Attorney for Plaintiffs

119 South Burrowes Street, Suite 601

State College, PA 16801

814/234-9070

Attorney I.D. No. 87228

Dated: 6/8/05

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

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NO. 2002-224 - CD

QUIET TITLE

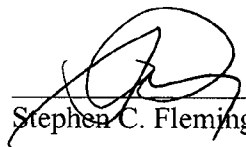
CLOSING STATEMENT

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2005, a true and correct copy of the within *Motion for Clarification* and *Motion for Corrective Judicial Deed* was served via U.S. Mail to the following:

Charles D. Kanouff
Karen T. Kanouff
RR #3
Box 1119
Morrisdale, PA 16858

Respectfully submitted,



Stephen C. Fleming, Esquire

FILED

JUN 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

Date: 06/17/2005

Clearfield County Court of Common Pleas

User: CROWLES

Time: 01:51 PM

ROA Report

Page 1 of 2

Case: 2002-00224-CD

Current Judge: John K. Reilly Jr.

Timothy Eyerly, Kim Eyerly vs. Charles D Kanouff, Karen T Kanouff

Civil Other

Date		Judge
02/15/2002	✓ Filing: Quiet Title Complaint Paid by: Masorti, Sullivan & Engle Receipt number: 1838323 Dated: 02/15/2002 Amount: \$80.00 (Check) 2 CC to Sheriff Property is located in Morrisdale, Morris Township, Clearfield County, PA.	No Judge
03/13/2002	✓ Answer and New Matter. Filed by s/Mary Ann Kresen, Esquire Verification s/Charles D. Kanouff Certificate of Service 1 cc Atty Kresen	No Judge
03/15/2002	✓ Notice to Plead, s/Mary Ann Kresen, Esq. One CC Attorney Delafield	No Judge
04/02/2002	✓ Plaintiffs' Reply to Defendants' New Matter. Filed by s/Stephen C. Fleming, Esq. Verification s/Timothy Eyerly s/Kim Eyerly Certificate of Service 1 cc Atty Fleming	No Judge
04/15/2002	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
07/05/2002	✓ Certificate of Service, Notice of Records Deposition, upon Stephen C. Fleming, Esq., filed by s/Mary Ann Kresen, Esq. No CC	No Judge
	✓ Certificate Prerequisite to Service of Subpoenas Pursuant to Rule 4009.22, filed by s/Mary Ann Kresen, Esq. No CC	No Judge
10/18/2002	✓ Certificate of Service, Defendant's Interrogatories for Answer by Plaintiffs upon STEPHEN C. FLEMING, ESQUIRE. s/Mary Ann Kresen, Esq. no cc	No Judge
05/08/2003	✓ Praecipe For Hearing on Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa. R.C.P. 1576. filed by s/Stephen C. Fleming, Esq. Verification s/Stephen C. Fleming, Esq. Certificate of Service 2 cc to Atty	No Judge
	✓ Motion for Hearing on Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa.R.C.P. 1576, filed by s/Stephen C. Fleming, Esq. Two CC Attorney	John K. Reilly Jr.
08/07/2003	✓ Plaintiffs' Praecipe to List for Trial, filed by s/Stephen C. Fleming One CC Attorney Fleming	No Judge
09/16/2003	✓ ORDER, NOW, this 15th day of September, 2003, re: Trial in the above-captioned Action to Quiet Title shall be had on Oct. 15, 2003, commencing at 9:00 a.m., pending the outcome of which both Plaintiffs and Defendants shall hereby be enjoined from interfering with the existing brush, trees and any other natural vegetation on the subject property line with the exception that each shall be permitted to mow the grass, etc. as it shall appear on each side of the subject line. by the Court, s/JKR,JR.,P.J. 1 cc Atty Kresen, S. Fleming	John K. Reilly Jr.
11/20/2003	✓ ORDER, NOW, this 19th day of November, 2003, re: Counsel for Plaintiff shall file a Brief with this Court within 15 days from this date, and Defendant is given 10 days thereafter to respond in kind. by the Court, s/JKR,JR.,P.J. 2 cc S. Fleming, Kresen	John K. Reilly Jr.
01/13/2004	✓ OPINION AND ORDER, NOW, this 12th day of January, 2004, following Hearing and Briefs into the above-captioned Complaint to Quiet Title, it is the ORDER of this Court that judgment shall be and is hereby entered in favor of the Plaintiffs as set forth in the foregoing Opinion. by the Court, s/JKR,JR., Senior Judge, Specially Presiding 2 cc Atty Fleming, Kresen, and D. Mikesell	John K. Reilly Jr.

Date: 06/17/2005

Clearfield County Court of Common Pleas

User: CROWLES

Time: 01:51 PM

ROA Report

Page 2 of 2

Case: 2002-00224-CD

Current Judge: John K. Reilly Jr.

Timothy Eyerly, Kim Eyerly vs. Charles D Kanouff, Karen T Kanouff

Civil Other

Date		Judge
02/11/2004	✓ Filing: Appeal to High Court Paid by: Fleming, Stephen C. (attorney for Eyerly, Timothy) Receipt number: 1873649 Dated: 02/11/2004 Amount: \$45.00 (Check) Notice of Appeal by TIMOTHY EYERLY and KIM EYERLY, Plaintiffs to the Superior Court of Pennsylvania. filed by, s/Stephen C. Fleming, Esquire 1 cc & Ck #1018 for \$60.00 to Superior Court 5 cc to Atty	John K. Reilly Jr.
02/26/2004	✓ ORDER, NOW, this 25th day of February, 2004, re; Counsel for Plaintiffs shall file with this Court a concise statement of matters complained of on appeal in accordance with Rule of Appellate Procedure. by the Court, s/JKR,JR., S.J., Specially Presiding 2 cc Atty Fleming, Kresen	John K. Reilly Jr.
03/08/2004	✓ Appeal Docket Sheet, Docket Number: 349 WDA 2004. filed.	John K. Reilly Jr.
03/10/2004	✓ Statement of Matters Complained of on Appeal, filed by s/Stephen C. Fleming, Esq. Four CC Attorney Fleming	John K. Reilly Jr.
03/25/2004	✓ Certified Mail Receipt #7002 3150 0000 7855 1314	John K. Reilly Jr.
03/29/2004	✓ Domestic Return Receipt, #7002 3150 0000 78551314	John K. Reilly Jr.
06/07/2004	✓ Transcript of Proceedings, Civil NonJury Trial before Honorable John K. Reilly, Jr., President Judge, November 19, 2003, filed.	John K. Reilly Jr.
06/08/2004	✓ Certified Mail Receipt, Transcript filed June 7, 2004, sent to Superior Court of PA, filed. #7002 3150 0000 7855 1390	John K. Reilly Jr.
06/14/2004	✓ Domestic Return Receipt, Transcript filed June 7, 2004 sent to Superior Court of PA, filed. #7002 3150 0000 7855 1390	John K. Reilly Jr.
03/11/2005	✓ Certificate of Contents of Remanded Record and Notice of Remand, filed	John K. Reilly Jr.
	✓ Memorandum, filed Superior Court.	John K. Reilly Jr.
	ORDER AFFIRMED.	
06/10/2005	Motion For Judicial Deed, Motion for Clarification, filed by s/ Stephen C. Fleming, Esquire. 1CC Atty Fleming	John K. Reilly Jr.

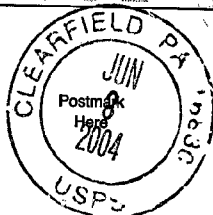
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02-224-CS Transcript

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City, State, ZIP+4: Pittsburgh PA 15219

PS Form 3800, June 2002 See Reverse for Instructions



02-224-CS

Transcript filed 6/7/04
mailed to Superior Court.

FILED

010:41:51
JUN 08 2004

William A. Shaw
Prothonotary/Clerk of Courts

COPY

June 8, 2004

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

Re: Timothy Eyerly and Kim Eyerly
Vs.
Charles D. Kanouff and Karen T. Kanouff
No. 02-224-CD
Superior Court No. 349 WDA 2004

Dear Prothonotary:

Enclosed you will find a transcript filed after the above reference record was transmitted to your office. Please attach to the original record.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Certified Mail #7002 3150 0000 7855 1390

02-224-CD

Transcript

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
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<p>1. Article Addressed to:</p> <p><i>Superior Court of Pennsylvania Office of Prothonotary 600 Grant Building Pittsburgh, PA 15219</i></p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Copy from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, July 1999</p>		<p>Domestic Return Receipt</p>	
		<p>7002 3150 0000 7855 1390</p>	
		<p>102595-00-M-0952</p>	

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JUN 14 2004

WAS
William A. Shaw
Prothonotary/Clerk of Courts

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- Attach this card to the back of the mailpiece, or on the front if space permits.

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Superior Court of PA Prothonotary
600 Grant Building
Pittsburgh, PA 15219

02-224-CD

2. Article Number (Copy from service label)

PS Form 3811, July 1999

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery
MAR 26 2004

C. Signature

X

[Signature]

☐ Agent

☐ Addressee

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☐ Yes

If YES, enter delivery address below:

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3. Service Type

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☐ C.O.D.

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☐ Yes

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02-224-CD

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MAR 29 2004

William A. Shaw
Prothonotary/Clerk of Courts

COPY

March 25, 2004

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

Re: Timothy Eyerly and Kim Eyerly
Vs.
Charles D. Kanouff and Karen T. Kanouff
No. 02-224-CD
Superior Court No. 349 WDA 2004

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

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

Stephen C. Fleming, Esq.
119 South Burrowes Street
State College, PA 16801

Mary Ann Kresen, Esq.
300 South Allen St., Ste. 300
State College, PA 16801

Timothy Eyerly and Kim Eyerly
Vs.
Charles D. Kanouff and Karen T. Kanouff

Superior Court No. 349 WDA 2004; Court No. 02-224-CD

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on March 25, 2004.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

John K. Reilly, Jr., Specially Presiding
Court of Common Pleas
230 E. Market Street
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Superior Court No. 349 WDA 2004; Court No. 02-224-CD

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Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAR 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

Feb

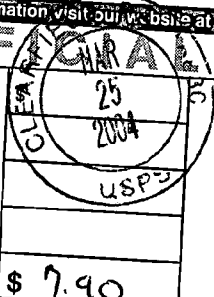
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Sent To: Superior Court of PA - Prothonotary 02-224-CD
Street, Apt. No., or PO Box No.: 1600 Grant Building J
City, State, ZIP+4: Pittsburgh, PA 15219

PS Form 3800, June 2002 See Reverse for Instructions

The Superior Court of Pennsylvania
Sitting at Pittsburgh

600 Grant Building
Pittsburgh, Pennsylvania
15219

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

under

PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

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

As remanded from said court in the following matter:

Timothy Eyerly, et ux v. Charles Kanouff, et ux

No. 349 WDA 2004

Court of Common Pleas Civil Division Clearfield County

No 2002-224-CD

File
FILED *no cc*
m/f: 25/01
MAR 11 2005

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

William A. Shaw
Prothonotary/Clerk of Courts

The date of which the record is remanded is: March 10, 2005

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

Eleanor R. Valecko

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: *3/11/05*

William A. Shaw
3rd

(Signature & Title)

WILLIAM A. SHAW
Prothonotary

My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

TIMOTHY EYERLY,
KIM EYERLY,

Appellants

v.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

02-224-CD

No. 349 WDA 2004

Appeal from the Order Entered January 13, 2004
In the Court of Common Pleas of Clearfield County
Civil at No(s): 2002-224-CD

FILED ^{cc}
MAR 11 2005
1:25 PM

BEFORE: ORIE MELVIN, BENDER AND POPOVICH, JJ.

William A. Shaw
Prothonotary/Clerk of Courts

MEMORANDUM:

FILED: JANUARY 27, 2005

Timothy and Kim Eyerly (Appellants) appeal from the judgment entered in their favor in part in their action to quiet title against their neighbors, Charles and Karen Kanouff (Appellees). Appellants claim that the trial court erred in not extending the border line of their property, which they established by acquiescence to a hedgerow as the boundary, the entire length of their property. For the following reasons, we affirm.

The trial court summarized the facts of this case as follows:

This matter comes before the Court on Plaintiffs' complaint to establish a consent and boundary line between the properties owned by the parties. Plaintiffs and Defendants own adjoining premises located in Morris Township, Clearfield County, Pennsylvania, and following hearing on the merits before this Court on November 19, 2003, the Court finds the following facts. Plaintiffs acquired their property by deed in 1991 from Plaintiff Timothy Eyerly's mother who, along with her deceased husband, had owned the premises since 1946. Defendants acquired the neighboring tract of land by deed in 1994. During the course of

ownership of the premises, Plaintiffs and their predecessors in title considered the property line between the parties to have been established by a hedgerow extending from the eastern property line of both parties west supposedly along the dividing line of the parties' premises to approximately the western edge of Plaintiffs' frame house. As a result of surveys performed by both parties, it became evident that said hedge was approximately three feet over the boundary line between the premises on Defendants' property. The properties of both parties continued for an extensive distance beyond the end of the hedge and Plaintiffs attempted to present evidence that the alleged consentable boundary line proceeded the entire distance to the western edge of both parties' premises. This Court further finds as a fact that, from at least 1946 when Plaintiff Timothy Eyerly's mother and deceased father acquired the premises, both they and the owners of Defendants' premises considered the hedge to be the property line demarcation and each party cared for the premises on their side of the hedge.

...

In addition, Plaintiffs and their predecessors performed the vast majority of maintaining the hedge. This Court finds as a fact that Plaintiffs have sustained their claim of boundary by consent for a line commencing at the eastern edge of their property and continuing to the end of the existing hedge and, therefore, finds in their favor for that portion of the common boundary line between the premises. However, from that point to the western edge of the two properties, the Court finds that Plaintiffs have not sustained their burden of proof and that the property line from the point of the western edge of the hedge to the western edge of the premises of the parties shall be as noted on the survey of Stephen W. Norfolk entered in evidence in these proceedings.

Trial Court Opinion (T.C.O.), 1/13/04, at 1-2, 4. Appellants then filed the instant appeal raising the following question for our review:

Did the Trial Court err in granting only a portion of Plaintiff-Appellants' claim of quiet title against Defendant-Appellees' property?

Brief and Reproduced Record for Plaintiff-Appellants at 4.

"When reviewing an equitable decree, our standard of review is limited. We will reverse only where the trial court was palpably erroneous, misapplied the law or committed a manifest abuse of discretion." **Nebesho v. Brown**, 846 A.2d 721, 725 (Pa. Super. 2004) (quotation marks omitted).

The function of this Court on an appeal from an adjudication in equity is not to substitute its view for that of the lower tribunal; our task is rather to determine whether a judicial mind, on due consideration of all the evidence, as a whole, could reasonably have reached the conclusion of that tribunal.

Hess v. Gebhard & Co. Inc., 808 A.2d 912, 920 (Pa. 2002) (quotation marks omitted). "Where there are any apparently reasonable grounds for the trial court's decision, we must affirm it." **Viener v. Jacobs**, 834 A.2d 546, 554 (Pa. Super. 2003).

Appellants brought their action to quiet title on the theory of a boundary line established by acquiescence.

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

FN 1. **See Reiter v. McJunkin**, 173 Pa. 82, 84, 33 A. 1012 (1896) ("After 21 years of occupancy up to a fence on each side as a line fence, it is not material to inquire whether the fence is on the right line or not."); **see also Dimura v. Williams**, 446 Pa. 316, 319, 286 A.2d 370, 371 (1972); **Brown v. McKinney**, 9 Watts 565, 567 (Pa. 1840); **Martz v. Hartley**, 4 Watts 261, 262-63 (Pa. 1835); **accord Schimp v. Allaman**, 442 Pa. Super. 365,

369, 659 A.2d 1032, 1034 (1995) ("a boundary line may be proved by a long-standing fence without proof of a dispute and its settlement or compromise" (citation omitted)).

Zeglin v. Gahagen, 812 A.2d 558, 561 (Pa. 2002) (citations omitted).

In this case, the trial court determined that since both sides had claimed and occupied their side of the hedge for a period of 21 years, the hedge established a new boundary line by acquiescence. However, the trial court also determined that Appellants did not introduce sufficient evidence to show that they claimed and occupied the disputed property from the end of the hedge to the western edge of the property. Thus, the court determined that this part of the boundary line would remain as it was described in the survey.

While it is not difficult to determine the existence of a boundary line by acquiescence in cases where the parties acquiesce to the existence of a fence or some other distinct physical boundary such as the hedgerow here, it is difficult to make such a determination where there is no such distinct physical boundary. Nonetheless, on appeal, Appellants argue that they met their burden by showing that they claimed and occupied the disputed land beyond the hedgerow by maintaining a flower bed and erecting an animal pen there. However, Appellee Karen Kanouff testified that the flower bed was not always in its present location, and that its encroachment only occurred after some underground utility work around 1998 or 1999. N.T., 11/29/03, at 59. And regarding the animal pen, Appellant Tim Eyerly

testified that it only existed for a period of about 11 years. ***Id.*** at 33. Accordingly, we find that there are reasonably apparent grounds for the trial court's conclusion that Appellants did not meet their burden in establishing a boundary line by acquiescence beyond the hedgerow.

Finally, we note that Appellants argue that "all the evidence presented at trial confirmed that the parties and their predecessors *operated under the mistaken belief* that the boundary line between the properties was the line formed by the hedgerow running straight from the front to the back of the properties." Brief and Reproduced Record for Plaintiff-Appellants at 11. Appellants have misconstrued their burden. It matters not what the parties *believed* was the boundary line. Rather, in order to prevail, Appellants needed to show that they *claimed and occupied* the land up to a boundary line and that Appellees acquiesced to it for a period of 21 years.

Order **AFFIRMED**.

Judgment Entered:

Eleanor R. Valecko

Deputy Prothonotary

DATE: JANUARY 27, 2005

CA

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

TIMOTHY EYERLY, KIM EYERLY

vs.

No. 02-224-CD

CHARLES D. KANOUFF,
KAREN T. KANOUFF

RULE

NOW, this 17 day of June, 2005, upon consideration of the attached Motion for Judicial Deed, Motion for Clarification, a Rule is hereby issued upon the Defendants to Show Cause why the Motion should not be granted. Rule Returnable the 8th day of July, 2005, for filing written response.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION OR MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

ATTORNEY FLEMING SHALL CAUSE A CERTIFIED COPY OF SAID MOTION, AS WELL AS THIS ORDER ON BOTH THE DEFENDANTS AND THEIR ATTORNEY, ROSADELE T. KAUFFMAN, ESQUIRE.

COURT ADMINISTRATOR
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 or 1301

FILED

JUN 17 2005

William A. Shaw

Prothonotary/Clerk of Courts

BY THE COURT:

Paul Gamm
Judge

4 CAN TO
ATL

10:41 A.M.

Appeal Docket Sheet

Docket Number: 349 WDA 2004

Page 1 of 3

March 4, 2004

02-224-CD

Superior Court of Pennsylvania



Timothy Eyerly,
Kim Eyerly, Appellants

v.

Charles D. Kanouff,
Karen T. Kanouff

Initiating Document: Appeal Allowed Nunc Pro Tunc

Case Status: Active

Case Processing Status: March 1, 2004

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Quiet Title

Consolidated Docket Nos.:

Related Docket Nos.:

1

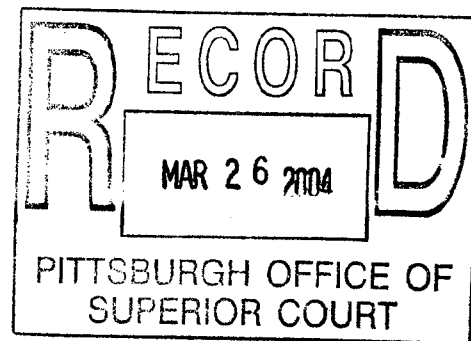
SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: March 18, 2004

Next Event Type: Original Record Received

Next Event Due Date: March 22, 2004



FILED

MAR 08 2004

William A. Shaw
Prothonotary

Appeal Docket Sheet**Docket Number: 349 WDA 2004****Page 2 of 3****March 4, 2004**

Superior Court of Pennsylvania

**COUNSEL INFORMATION**

Appellant Eyerly, Timothy
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Fleming, Stephen Charles
Bar No.: 87228 **Law Firm:**
Address: 119 South Burrowes Street
State College, PA 16801
Phone No.: (814)234-9070 **Fax No.:**
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellant Eyerly, Kim
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Fleming, Stephen Charles
Bar No.: 87228 **Law Firm:**
Address: 119 South Burrowes Street
State College, PA 16801
Phone No.: (814)234-9070 **Fax No.:**
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellee Kanouff, Charles D
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Kauffman, Rosadele T.
Bar No.: 50692 **Law Firm:** Delafield, McGee, Jones & Kauffman, L.L.P.
Address: 300 S Allen St Ste 300
State College, PA 16801-4841
Phone No.: (814)237-6278 **Fax No.:** (814)237-3660
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Kanouff, Karen T
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 349 WDA 2004**Page 3 of 3****March 4, 2004**

Attorney: Kauffman, Rosadele T.
 Bar No.: 50692 Law Firm: Delafield, McGee, Jones & Kauffman, L.L.P.
 Address: 300 S Allen St Ste 300
 State College, PA 16801-4841
 Phone No.: (814)237-6278 Fax No.: (814)237-3660
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
2/11/04	Notice of Appeal	60.00	60.00	2004SPRWD000256

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
 County: Clearfield Division: Civil
 Date of Order Appealed From: January 13, 2004 Judicial District: 46
 Date Documents Received: March 1, 2004 Date Notice of Appeal Filed: February 11, 2004
 Order Type: Order Entered OTN:
 Judge: Reilly, Jr., John K. Lower Court Docket No.: NO. 2002-224-CD
 Senior Judge

ORIGINAL RECORD CONTENTS

Original Record Item Filed Date Content/Description

Date of Remand of Record:**BRIEFS****DOCKET ENTRIES**

Filed Date	Docket Entry/Document Name	Party Type	Filed By
March 1, 2004	Notice of Appeal Nunc Pro Tunc	Appellant	Eyerly, Timothy
		Appellant	Eyerly, Kim
March 4, 2004	Docketing Statement Exited (Civil)		
			Western District Filing Office



Superior Court of Pennsylvania

David A. Szewczak, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

Western District

March 4, 2004

600 Grant Building
Pittsburgh, PA 15219
412-565-7592
www.superior.court.state.pa.us

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: 349 WDA 2004
Timothy Eyerly,
Kim Eyerly, Appellants
v.
Charles D. Kanouff,
Karen T. Kanouff

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

MLR

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

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

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

02-224-CD

**Timothy Eyerly and Kim Eyerly
VS.**

Charles D. Kanouff and Karen T. Kanouff

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

The documents comprising the record have been numbered from **No. 1 to No. 18**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is
MARCH 25, 2004.



Prothonotary/Clerk of Courts

(seal)

Date: 03/11/2004

Time: 08:44 AM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2002-00224-CD

Current Judge: John K. Reilly Jr.

Timothy Eyerly, Kim Eyerly vs. Charles D. Kanouff, Karen T. Kanouff

Civil Other

Date		Judge
02/15/2002	Filing: Quiet Title Complaint Paid by: Masorti, Sullivan & Engle Receipt number: 1838323 Dated: 02/15/2002 Amount: \$80.00 (Check) 2 CC to Sheriff Property is located in Morrisdale, Morris Township, Clearfield County, PA.	No Judge
03/13/2002	Answer and New Matter. Filed by s/Mary Ann Kresen, Esquire Verification s/Charles D. Kanouff Certificate of Service 1 cc Atty Kresen	No Judge
03/15/2002	Notice to Plead, s/Mary Ann Kresen, Esq. One CC Attorney Delafield	No Judge
04/02/2002	Plaintiffs' Reply to Defendants' New Matter. Filed by s/Stephen C. Fleming, Esq. Verification s/Timothy Eyerly s/Kim Eyerly Certificate of Service 1 cc Atty Fleming	No Judge
04/15/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
07/05/2002	Certificate of Service, Notice of Records Deposition, upon Stephen C. Fleming, Esq., filed by s/Mary Ann Kresen, Esq. No CC	No Judge
	Certificate Prerequisite to Service of Subpoenas Pursuant to Rule 4009.22, filed by s/Mary Ann Kresen, Esq. No CC	No Judge
10/18/2002	Certificate of Service, Defendant's Interrogatories for Answer by Plaintiffs upon STEPHEN C. FLEMING, ESQUIRE. s/Mary Ann Kresen, Esq. pure no cc	No Judge
05/08/2003	Praecipe For Hearing on Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa. R.C.P. 1576. filed by s/Stephen C. Fleming, Esq. Verification s/Stephen C. Fleming, Esq. Certificate of Service 2 cc to Atty	No Judge
	Motion for Hearing on Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa.R.C.P. 1576, filed by s/Stephen C. Fleming, Esq. Two CC Attorney	John K. Reilly Jr.
08/07/2003	Plaintiffs' Praecipe to List for Trial, filed by s/Stephen C. Fleming One CC Attorney Fleming	No Judge
09/16/2003	ORDER, NOW, this 15th day of September, 2003, re: Trial in the above-captioned Action to Quiet Title shall be had on Oct. 15, 2003, commencing at 9:00 a.m., pending the outcome of which both Plaintiffs and Defendants shall hereby be enjoined from interfering with the existing brush, trees and any other natural vegetation on the subject property line with the exception that each shall be permitted to mow the grass, etc. as it shall appear on each side of the subject line. by the Court, s/JKR,JR.,P.J. 1 cc Atty Kresen, S. Fleming	John K. Reilly Jr.
11/20/2003	ORDER, NOW, this 19th day of November, 2003, re: Counsel for Plaintiff shall file a Brief with this Court within 15 days from this date, and Defendant is given 10 days thereafter to respond in kind. by the Court, s/JKR,JR.,P.J. 2 cc S. Fleming, Kresen	John K. Reilly Jr.
01/13/2004	OPINION AND ORDER, NOW, this 12th day of January, 2004, following Hearing and Briefs into the above-captioned Complaint to Quiet Title, it is the ORDER of this Court that judgment shall be and is hereby entered in favor of the Plaintiffs as set forth in the foregoing Opinion. by the Court, s/JKR,JR.,Senior Judge, Specially Presiding 2 cc Atty Fleming, Kresen, and D. Mikesell	John K. Reilly Jr.
02/11/2004	Filing: Appeal to High Court Paid by: Fleming, Stephen C. (attorney for Eyerly, Timothy) Receipt number: 1873649 Dated: 02/11/2004 Amount: \$45.00 (Check) Notice of Appeal by TIMOTHY EYERLY and KIM EYERLY, Plaintiffs to the Superior Court of Pennsylvania. filed by, s/Stephen C. Fleming, Esquire 1 cc & Ck #1018 for \$60.00 to Superior Court 5 cc to Atty	John K. Reilly Jr.

Date: 03/11/2004

Time: 08:44 AM

Page 2 of 2

Clarendon County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2002-00224-CD

Current Judge: John K. Reilly Jr.

Timothy Eyerly, Kim Eyerly vs. Charles D. Kanouff, Karen T. Kanouff

Civil Other

Date		Judge
02/26/2004	ORDER, NOW, this 25th day of February, 2004, re; Counsel for Plaintiffs shall file with this Court a concise statement of matters complained of on appeal in accordance with Rule of Appellate Procedure. by the Court, s/JKR, JR., S.J., Specially Presiding 2 cc Atty Fleming, Kresen	John K. Reilly Jr.
03/08/2004	Appeal Docket Sheet, Docket Number: 349 WDA 2004. filed.	John K. Reilly Jr.
03/10/2004	Statement of Matters Complained of on Appeal, filed by s/Stephen C. Fleming, Esq. Four CC Attorney Fleming	John K. Reilly Jr.

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

MAR 11 2004

Attest.

William B. Shaw
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 02-224-CD
Timothy Eyerly and Kim Eyerly
VS.
Charles D. Kanouff and Karen T. Kanouff

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	02/15/02	Complaint to Quiet Title	09
02	03/13/02	Answer and New Matter	16
03	03/15/02	Notice to Plead	03
04	04/02/02	Plaintiffs' Reply to Defendants' New Matter	05
05	04/15/02	Sheriff Return	01
06	07/05/02	Certificate of Service, Notice of Records Deposition	01
07	07/05/02	Certificate Prerequisite to Service of Subpoenas Pursuant to Rule 4009.22	01
08	10/18/02	Certificate of Service, Defendants' Interrogatories for Answer by Plaintiffs	02
09	05/08/03	Praecipe for Hearing on Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa.R.C.P. 1576	02
10	05/08/03	Motion for Hearing on Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa.R.C.P. 1576	05
11	08/07/03	Plaintiffs' Praecipe to List for Trial	03
12	09/16/03	Order, Re: Trial scheduled	01
13	11/20/03	Order, Re: Brief to be filed	01
14	01/13/04	Opinion and Order	04
15	02/11/04	Notice of Appeal by Plaintiffs to the Superior Court of Pennsylvania	05
16	02/26/04	Order, Re: filing of concise statement of matters complained of on appeal	01
17	03/08/04	Appeal Docket Sheet, Superior Court Number 349 WDA 2004	04
18	03/10/04	Statement of Matters Complained of on Appeal	04

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

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

Timothy Eyerly and Kim Eyerly

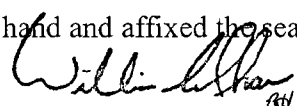
VS.

Charles D. Kanouff and Karen T. Kanouff

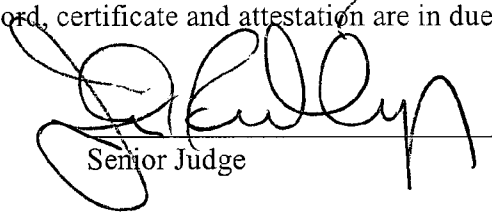
02-224-CD

So full and entire as the same remains of record before the said Court, at No. **02-224-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 11th Day of March, 2004.


Prothonotary/Clerk of Courts

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


Senior Judge

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

In Testimony Whereof, I have
hereunto set my hand and affixed
the seal of said Court, this 25
day of March, 2004


Prothonotary/Clerk of Courts

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No.: 02-224-CO

Type of Action:
Quiet Title

Type of Pleading:
Notice to Defend
Complaint

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Attorney Identification: 87228
MASORTI SULLIVAN & ENGLE, P.C.
1500 South Atherton Street
State College, PA 16801
ph: (814) 234-9500
fax: (814) 234-8870

FILED

FEB 15 2002

William A. Shaw
Prothonotary

MASORTI, SULLIVAN
& ENGLE, P.C.
ATTORNEYS AT LAW
1500 S. ATHERTON ST.
STATE COLLEGE, PA 16801

#1

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

TIMOTHY EYERLY,	:	
KIM EYERLY,	:	No.:
Plaintiffs,	:	
vs.	:	QUIET TITLE
CHARLES D. KANOUFF,	:	NOTICE TO DEFEND
KAREN T. KANOUFF,	:	
Defendants.	:	

NOTICE TO DEFEND

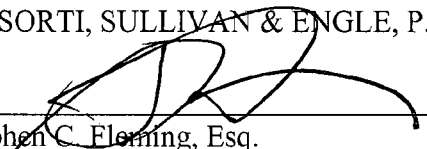
TO: CHARLES D. KANOUFF
KAREN T. KANOUFF

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

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

David S. Meholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 x 5982

MASORTI, SULLIVAN & ENGLE, P.C.

BY: 
Stephen C. Fleming, Esq.
Attorney for Plaintiffs
1500 South Atherton Street
State College, PA 16801
(814) 234-9500
Attorney I.D. #87228

MASORTI, SULLIVAN
& ENGLE, P.C.
ATTORNEYS AT LAW
1500 S. ATHERTON ST.
STATE COLLEGE, PA 16801

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

TIMOTHY EYERLY,	:	
KIM EYERLY,	:	No.:
Plaintiffs,	:	
vs.	:	QUIET TITLE
CHARLES D. KANOUFF,	:	COMPLAINT
KAREN T. KANOUFF,	:	
Defendants.	:	

COMPLAINT

COME NOW, Plaintiffs, Timothy Eyerly and Kim Eyerly, through counsel, MASORTI SULLIVAN & ENGLE, P.C., with their *Complaint* against Defendants Charles D. Kanouff and Karen T. Kanouff and state:

Parties

1. Plaintiffs are individuals residing in Morrisdale, Morris Township, Clearfield County, Pennsylvania, 16858.
2. Defendants are individuals residing in Morrisdale, Morris Township, Clearfield County, Pennsylvania, 16858.

Jurisdiction and Venue

3. This action concerns, in part, the rights of ownership to land situated in Clearfield County, Pennsylvania. In addition, Plaintiffs seek injunctive relief in the nature of enjoining actions of Defendant in use and alteration of the subject property pending final disposition of Plaintiffs' claims.
4. Jurisdiction is proper in Pennsylvania as the property at issue is located in the Commonwealth of Pennsylvania.
5. Venue is proper in Clearfield County pursuant to Pa.R.C.P. 1062 ("Action to Quiet Title – Venue") as the property at issue is located in Clearfield County.

Background

6. Plaintiffs are owners of a tract of land located in Morrisdale, Morris Township, Clearfield County, Pennsylvania, along State Route Number 2034 identified as tax parcel number Q10-568-02. *See Survey by Stephen W. Norfolk dated July 31, 2001*

attached and incorporated as Exhibit A.

7. Plaintiffs took title to the tract by deed in 1991 recorded with the Clearfield County Recorder's Office in Deed Book Volume 1465 at Page 248.

8. Plaintiffs' predecessor in title was Sara Jane Eyerly, Plaintiff Timothy Eyerly's mother and Plaintiff Kim Eyerly's mother-in-law, who held title from 1946 through 1991 pursuant to a deed recorded with the Clearfield County Recorder's Office in Deed Book Volume 379 at Page 486.

9. Defendants are owners of an adjacent tract of land identified as tax parcel number Q10-568-03. *See Exhibit A.*

10. Defendants took title to the tract by deed in 1994 recorded with the Clearfield County Recorder's Office in Volume 1620 at Page 258.

11. Defendants' predecessors in title were Leroy C. Williams and Margaret J. Williams who held title from 1983 through 1994 pursuant to a deed recorded with the Clearfield County Recorder's Office in Deed Book Volume 881 at Page 125.

12. In the early part of the 1950's, Plaintiffs' predecessor in title installed a hedgerow, landscaping, and other plantings along a line that was thought to be the boundary dividing Plaintiffs' and Defendants' properties. *See "hedge" identified near boundary line between the parties' property shown on Exhibit A.*

13. Both Plaintiffs and Plaintiffs' predecessor in title have operated under the notion that their property extended to the line established by the hedgerow and other landscaping installed at that time.

14. Accordingly, both Plaintiffs and Plaintiffs' predecessor in title have maintained the property up to that line, cared for the landscaping establishing that boundary, and, in all respects, acted as owners of the property up to the line established by the hedgerow and other landscaping since the early 1950's.

15. Both Defendants and Defendants' predecessor in title also operated under the notion that their property was constrained by the line established by the hedgerow and other landscaping since the early 1950's.

16. A dispute between the parties developed in the early part of 2001 regarding the hedgerow and landscaping which eventually lead the parties to survey the

exact boundary between their respective properties.

17. A lot survey performed for Plaintiffs by Stephen W. Norfolk dated July 31, 2001, revealed that the actual boundary line differed from the boundary established by the hedgerow and landscaping and as had been respected by the parties and their predecessors in title. *See Exhibit A.*

18. The Norfolk survey revealed that the boundary line used by the parties and their predecessors in title since the early 1950's is approximately three feet beyond Plaintiffs' property boundary as determined by the actual description of the property bounds. *See Exhibit A.*

19. Plaintiffs claim the right of ownership to that portion of Defendants' property from the northern boundary (the boundary between the parties' properties) extending approximately three feet into Defendants' lot being the same that is bounded by the line established by the hedgerow and landscaping and as had been respected by the parties and their predecessors in title.

20. Since the Norfolk survey was completed in July 2001, Defendants have begun to remove, destroy, and alter the hedgerow, landscaping, and structures along the line established by the hedgerow and landscaping and as had been respected by the parties and their predecessors in title.

Count I
Quiet Title pursuant to Pa.R.C.P. 1061 – 1067

21. Plaintiffs incorporate all previous paragraphs as if set out here in full.

22. Since the early 1950's, Plaintiffs and Plaintiffs' predecessor in title as well as Defendants and Defendants' predecessors in title have all operated under the notion that Plaintiffs property included the northern most three feet of Defendant's property.

23. Plaintiffs and Plaintiffs' predecessor in title have maintained the property up to that line, cared for the landscaping establishing that boundary, and, in all respects, acted as owners of the property up to the line established by the hedgerow and other landscaping since the early 1950's.

24. Prior to the Norfolk survey in July 2001, neither Defendants nor any of their predecessors in title asserted any claim to the northern most three feet of Defendants' parcel. In fact, Defendants and their predecessors in title operated under the

notion that their parcel was constrained to the line established by the hedgerow and landscaping .

25. Plaintiffs claim the right of ownership to that portion of Defendants' property from the northern boundary (the boundary between the parties' properties) extending approximately three feet into Defendants' lot being the same that is bounded by the line established by the hedgerow and landscaping and as had been respected by the parties and their predecessors in title under the theory of adverse possession.

26. An action in ejectment does not lie against Defendants as Plaintiffs are not title owners of the disputed tract and Defendants are not in actual possession of the disputed tract.

WHEREFORE, Plaintiffs request that this Honorable Court determine the rights of ownership of the northern most three-foot tract of Defendants' property; enter an Order granting Plaintiffs ownership of the disputed three-foot tract; enter an Order directing that the legal descriptions of the respective properties be amended to reflect Plaintiffs ownership of that portion of Defendants' property; and, enter an Order directing that deeds for the respective properties be drafted with such amended legal descriptions and filed with the real estate records of Clearfield County Recorder's Office. Alternatively, Plaintiffs request that this Honorable Court enter an Order to Compel Defendants to commence an Action in Ejectment within thirty days from entry of the Order or be forever barred from asserting a claim to that portion of Defendants' parcel.

Count II
Injunction pendente lite pursuant to Pa.R.C.P. 1576

27. Plaintiffs incorporate all previous paragraphs as if set out here in full.

28. Plaintiffs claim ownership to a portion of Defendants' parcel under a claim of adverse possession.

29. Since the Norfolk survey was completed in July 2001 and Defendants were made aware that they are title owners of a land previously believed to be that of Plaintiffs, Defendants have begun to remove, destroy, and alter the hedgerow, landscaping, and structures along the line established by the hedgerow and landscaping and as had been respected by the parties and their predecessors in title.

30. Plaintiffs are requesting that Defendants be enjoined from removing, destroying, or otherwise altering the hedgerow, landscaping, or structures along the line

established by the hedgerow and landscaping until a determination of the parties respective rights of ownership regarding that portion of Defendants' parcel is made by this Court.

WHEREFORE, Plaintiffs request that this Honorable Court enter an Order Pendente Lite pursuant to Pa.R.C.P. 1576 ("Actions to Prevent Waste – Remedies in Pending Actions") enjoining Defendants from destroying any of the vegetation, trees, shrubbery, or structures located within the disputed tract of land and from erecting structures, installing landscaping or otherwise altering the property within the disputed tract of land until the Court has issued an Order as to the ownership of the disputed tract.

Respectfully submitted,

MASORTI, SULLIVAN & ENGLE, P.C.

BY: 

Stephen C. Fleming, Esq.

Attorney for Plaintiffs

1500 South Atherton Street

State College, PA 16801

(814) 234-9500

Attorney I.D. #87228

Dated: 2/14/02

VERIFICATION

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, I verify that the averments of fact set forth in the foregoing are true and correct to the best of my knowledge, information, and belief.

1-3-02.

Date

Timothy Eyerly.
Timothy Eyerly

1-4-02

Date

Kim A Eyerly
Kim Eyerly

16' paved

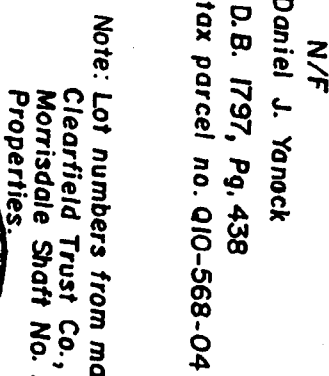



EXHIBIT "A"

Note: Lot numbers from map of

Morrisdale Shaft No. 2 Properties.


Dr. By: *Stephen W. Norfolk*
Dr. By: Stephen W. Norfolk
P.O. Box 102,
Moshannon, Pa. 168

Timothy W. and Kim A. Eyerly

Situated in

The Town of Morrisdale
Morris Township,
Scale: 1"=30'
Clearfield County, PA.
Date : July 31, 2001

Date : July 31, 2001

FILED

FEB 15 2002 \$80 pd by Atty.

11:26 p.m.
William A. Shaw
Prothonotary

2 cc to Sheriff *[Signature]*

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No. 02-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Answer and New Matter

Filed on Behalf of:
Charles D. Kanouff, Defendant
Karen T. Kanouff, Defendant

Counsel of Record:
Mary Ann Kresen, Esquire
Delafield, McGee, Jones &
Kauffman, L.L.P.
Attorney I.D. No.: 76348
300 S. Allen Street, Suite 300
State College, PA 16801
(814) 237-6278

FILED

MAR 13 2002

018:56/1ccatty Kresen
William A. Shaw
Prothonotary

1. Admitted upon information and belief.
2. Admitted.
3. This averment states a conclusion of law to which no response is deemed necessary.
4. This averment states a conclusion of law to which no response is deemed necessary.
5. This averment states a conclusion of law to which no response is deemed necessary.
6. Admitted upon information and belief.
7. Admitted upon information and belief.

8. Admitted upon information and belief.
9. It is admitted that Defendants are owners of land identified as tax parcel number Q10-568-03 which shares a common border with Plaintiffs' tax parcel number Q10-568-02.
10. Admitted.
11. Admitted.
12. Denied. To the contrary, Defendants are without knowledge or information sufficient to form a belief as to the truth of the stated averment and strict proof is demanded at the time of trial. The document referenced as Exhibit "A" to Plaintiffs' Complaint more fully and completely speaks for itself.
13. Denied. To the contrary, Defendants are without knowledge or information sufficient to form a belief as to what notions, if any, Plaintiffs and/or their predecessors in title operated under. To the extent they held such beliefs, they were without basis and unreasonable.
14. Denied. To the contrary, Defendants are without knowledge or information sufficient to form a belief as to the state of averment and strict proof is demanded at the time of trial.
15. Denied. To the contrary, Defendants were aware of the location of the common boundary between the Plaintiff and Defendant's property. Defendants were advised of the location of the property line by their predecessor in title prior to purchasing the property and further confirmed the location by having their property surveyed by Lawrence J. Marince,

P.L.S.

16. Admitted in part denied in part. It is admitted that at the referenced time, Plaintiffs complained when Defendants trimmed a portion of their hedge in order to increase their visibility for pulling onto Church Street (also known as S.R. 2034). It is denied that there was any dispute as to the ownership of the hedge which was known by Defendants to be within the boundary of their property. It is admitted that Defendants had their property surveyed to confirm the location of the common boundary with Plaintiffs' property.
17. Denied. To the contrary, the referenced document more fully and completely speaks for itself. It is specifically denied that Defendants ever considered the hedgerow and landscaping to be the boundary.
18. Denied. To the contrary, the referenced document more fully and completely speaks for itself. See preceding responses to paragraphs 15 - 17.
19. Admitted in part denied in part. It is admitted that Plaintiffs are claiming a right of ownership of a tract of land extending approximately 3 feet into Defendants' lot. It is denied that Plaintiffs have any legal basis to claim ownership. It is denied that the hedge landscaping are or ever were thought to be or "respected as" Defendants' property boundary. To the contrary, at all times since purchasing the property, Defendants have been aware of the location of their property boundary.
20. Denied. To the contrary, Defendants were unaware that Plaintiffs had the referenced survey completed until they learned of the same in Plaintiffs'

Complaint. It is also denied that Defendants ever believed that the hedgerow and/or landscaping were the boundary of their property as set forth more fully herein. It is admitted that the Defendants exercised their right to remove and alter the hedgerow and/or landscaping located within their property as part of routine maintenance as is their right as property owners.

COUNT I

21. Defendants hereby incorporate the responses to preceding paragraphs 1-20 as if set forth in full.
22. Denied. To the contrary, Defendants and their predecessors in title were fully aware of the proper location of the legal boundary of Defendants' property. Defendants are without knowledge or information sufficient to form a belief as to what, if anything, Plaintiff and/or their predecessors in title believed with respect to the location of the property boundary.
23. Denied. To the contrary, Defendants have solely and exclusively maintained their property including that portion currently being claimed by Plaintiffs since 1996.
24. Denied. To the contrary, Defendants and their predecessors in title were aware of the correct location of Defendants' common boundary line with Plaintiffs' property. Defendant controlled and maintained the property currently being sought by Plaintiffs. It is denied that there was any need or reason for Defendants to assert any claim to property which they knew

they owned and which was not challenged by any other parties including Plaintiffs.

25. This averment contains a conclusion of law to which no response is deemed required. To the extent that a response is required, it is denied that the hedgerow and/or landscaping were ever respected as the boundary line. It is specifically denied that Plaintiffs have any basis for recovery under the theory of adverse possession.
26. This averment states a conclusion of law to which no response is deemed required.

WHEREFORE, Defendants, Charles D. Kanouff and Karen T. Kanouff respectfully request this Honorable Court to enter judgment in favor of Defendants and against Plaintiffs and affirm the existing legal description of the respective properties.

COUNT II

27. Defendants hereby incorporate the responses to preceding paragraphs 1-26 as if set forth in full.
28. Admitted in part denied in part. It is admitted that Plaintiffs, by virtue of this suit, are seeking ownership of a portion of Defendants' parcel. It is denied that Plaintiffs are entitled to ownership of the property under a claim of adverse possession. See also response to paragraph 25.
29. Denied. To the contrary, Defendants have been fully aware of the proper location of the common boundary with Plaintiffs' property since their purchase of the same. It is denied that any action was taken based upon

the referenced survey of which Defendants were wholly unaware. To the extent that Defendants did alter, remove and/or maintain the hedgerow and/or landscaping which is on their property, they were within their legal rights to do so as the legal owners of the land.

30. Admitted in part denied in part. It is admitted that Plaintiffs are asking for certain relief. It is denied that it is appropriate or there is a legal basis for Plaintiffs to dictate how Defendants use or enjoy property which they legally and lawfully own.

WHEREFORE, Defendants, Charles D. Kanouff and Karen T. Kanouff respectfully request this Court deny Plaintiffs' request for an Order Pendente Lite pursuant to Pa. R.C.P. 1576 and, enter judgment in favor of Defendants to include the costs of this action and reasonable attorney's fees.

NEW MATTER

31. Defendants hereby incorporate the responses to preceding paragraphs 1-30 as if set forth in full.
32. There is an electric service pole adjacent to the hedgerow referenced in Plaintiff's Complaint.
33. The electric service pole was installed in its current location in approximately May of 1999.
34. In approximately May of 1999, Defendants were asked to grant an easement to the Pennsylvania Electric Company in order to permit

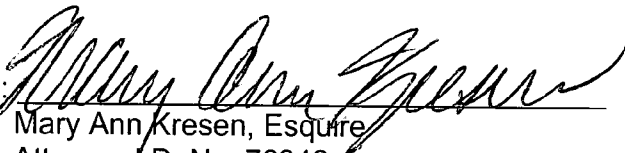
Plaintiffs to relocate utility services underground. A copy of the easement agreement is attached hereto as Exhibit "A".

35. The location of the existing electric service pole is indicated on the easement agreement.
36. It is believed and therefore averred that Plaintiffs were on notice that the area currently being sought by Plaintiffs was the lawful property of Defendants as early as May of 2001.
37. In late December of 2001 / early January of 2002, Plaintiffs erected a fence along the front portion of the common boundary line of Plaintiffs' and Defendants' property.
38. Plaintiffs' fence acknowledges and honors the actual boundary line of the parties.
39. In the past, Plaintiffs had a dog kennel and fenced area in their back yard which was located along the actual boundary line between the parties' properties.
40. The dog kennel and fenced run acknowledged and honored the actual boundary line of the parties.

WHEREFORE, Defendants, Charles D. Kanouff and Karen T. Kanouff respectfully request this Honorable Court to enter judgment in favor of Defendants and against Plaintiffs to include the costs and reasonable attorney's fees associated with this action.

Respectfully submitted,

DELAFIELD, McGEE, JONES & KAUFFMAN, L.L.P.

By: 
Mary Ann Kresen, Esquire
Attorney I.D. No. 76348
300 South Allen Street, Suite 300
State College PA 16801-4841
(814) 237-6278

Dated: March 12, 2002



EXHIBIT "A"



EASEMENT

Company Use Only

Document No. _____

Work Order No. 75564

Work Request 2200 8184

Grid No. 1865 N 279

The undersigned, CHARLES D. & KAREN J. KANUFF

HUSBAND & WIFE

of the TOWNSHIP of MORRIS, County of CLEARFIELD and State of PENNSYLVANIA
(the "Grantor"), is the owner of certain lands located in the TOWNSHIP of MORRIS, County of
CLEARFIELD State of PENNSYLVANIA, bounded and/or described as follows (the "Land"): [Include
information such as street address, subdivision plan name and number, lot number, recording data, tax parcel number and identification
of adjacent property owners]

NORTHERLY BY LAND NIF OF TIM EYERLY

SOUTHERLY BY LAND NIF OF DAVID YANOCK

EASTERLY BY SR 2034 CHURCH STREET

WESTERLY BY LAND NIF OF CLYDE ESTATE

☒ Pennsylvania Electric Company

Grantor, ☐ Metropolitan Edison Company, d/b/a GPU Energy, a Pennsylvania corporation, (the "Grantee") for valuable
consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, hereby grants and conveys to Grantee a
permanent easement and uninterrupted right, from time to time, to construct, reconstruct, operate, inspect, renew, replace, improve,
maintain, redesign, alter, relocate, extend and remove overhead, underground and ground level facilities described below (the
"Facilities") as may be deemed necessary or convenient by Grantee for electric, CATV and communication purposes for the use and
benefit of the Land and/or adjacent lands on, over, under and across the _____

portion of the Land. SAID ELECTRIC LINE ENTERS

GRANTOR'S LAND FROM CHURCH ST AND CONTINUES ACROSS GRANTOR'S LAND TO NEW POLE # F-20416
UNDERGROUND CONTINUES FROM NEW POLE # F-20416 ACROSS GRANTOR'S LAND TO SERVE CUSTOMER AND EYERLY
ALSO INCLUDED HAND HOLE # 18872

The Facilities may include, without limitation, poles (with or without crossarms), guy wires, guy stubs, anchors, street lights
and standards, transformers, transformer pads, switching compartments, conduits, conductors, ducts, wires, cables, fibers, pedestals,
terminal boxes, manholes, hand-holes and other related equipment and apparatus from time to time deemed necessary or convenient by
Grantee to accomplish the above purpose.

Grantor further grants and conveys to Grantee the right, from time to time, to trim, cut and/or remove such trees, tree
branches, shrubs, roots, vegetation, structures and/or other objects or obstructions which are within TEN (10)
feet of either side of the center line of the Facilities as installed, including the removal of such trees or tree branches which overhang or
endanger any of the Facilities. Further, Grantee shall have the right to make such excavations to accomplish the above purposes and to
enter upon the Land without notice for all the purposes hereof.

Grantor covenants not to construct, place, maintain or use structures of any kind, or plant shrubs or trees within TEN
(10) feet of either side of the center line of the Facilities, as installed; raise or lower the ground elevation of the Land
above or beneath the Facilities; grow beneath overhead Facilities any vegetation or trees, except farm crops or other compatible
species identified by Grantee; or obstruct access to, remove structural support from, divert or impound water to or on, or otherwise
interfere with, the Facilities.

The rights and obligations hereunder shall be binding upon and insure to the benefit of the Grantor and Grantee and their heirs,
executors, administrators, successors, assigns, licensees and lessees, as the case may be.

IN WITNESS WHEREOF, Grantor has duly executed this Easement this 28TH day of MAY, 1999

Witness/Attest:

Wayne S. Fox

Angela Carbonara

Charles D. Kanuff
Karen J. Kanuff

[SEAL]

[SEAL]

[SEAL]

[SEAL]

RIGHT-OF-WAY
Continuation Sheet

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

By and between CHARLES D KANDUFF

and the Commonwealth of Pennsylvania and Pennsylvania Electric Company (t.d.b.a. GPU Energy), a Pennsylvania Corporation.

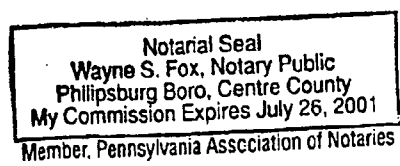
On this the 13TH day of MAY 1999 before me, the undersigned officer, personally appeared CHARLES D KANDUFF

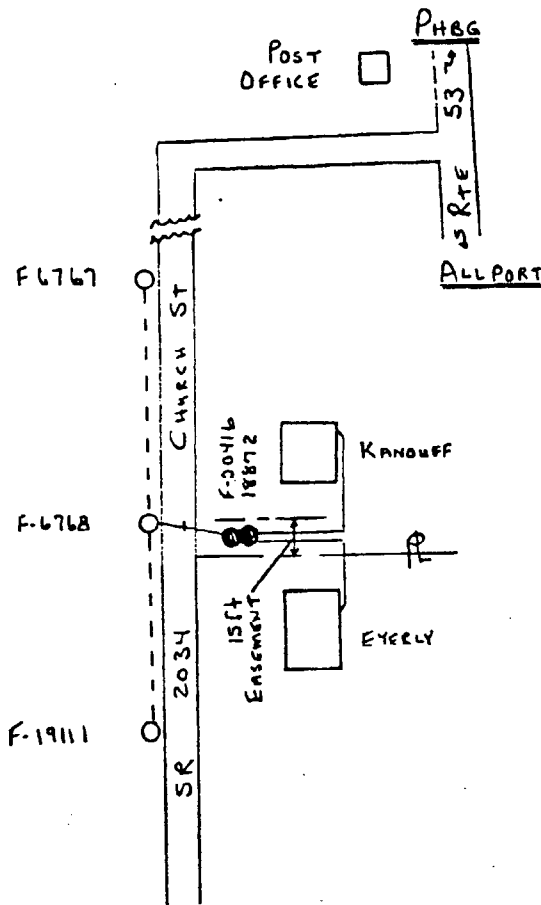
known to me (or satisfactorily proven) to be the person whose name is subscribed to the Right-of-Way instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I have hereunto set my hand and Notarial seal.

Wayne S Fox
Notary Public

My commission expires:





"MORRISDALE"

LEGEND

- EXISTING POLE
- EXISTING OH PRIMARY
- PROPOSED POLE
- PROPOSED HAND HOLE
- PROPOSED OVERHEAD SECONDARY
- PROPOSED 15ft UNDERGROUND EASEMENT

PN-000102
FILE # 75564

REVISIONS			PENNSYLVANIA ELECTRIC COMPANY		SCALE- NTS	
DATE	NAME	REMARKS			NAME	DATE
			SKETCH TO ACCOMPANY RIGHT-OF-WAY AGREEMENT BETWEEN GPU ENERGY AND CHARLES & KAREN KANDUFF		DRAWN	Wfox 6/7/99
					TRACED	
					CHECKED	
					APPROVED	
					NO.	22 E 1120
					DATE	7/7/99

WORK ORDER		
CO	LOC	SERIAL
41	PN	000102

WORK ORDER TITLE/DESCRIPTION LIMIT 50 CHARACTERS

KANOUFF CHARLES & EYERLY TIM MORRISDALE

DESCRIPTION, LOCATION, AND DETAILS OF WORK / REASON AND BENEFITS / SKETCH

MAP NO. 1865 N 279

CIV. DIV. MORRIS TOWNSHIP

COUNTY CLEARFIELD

WORK REQ. NO. I6707624

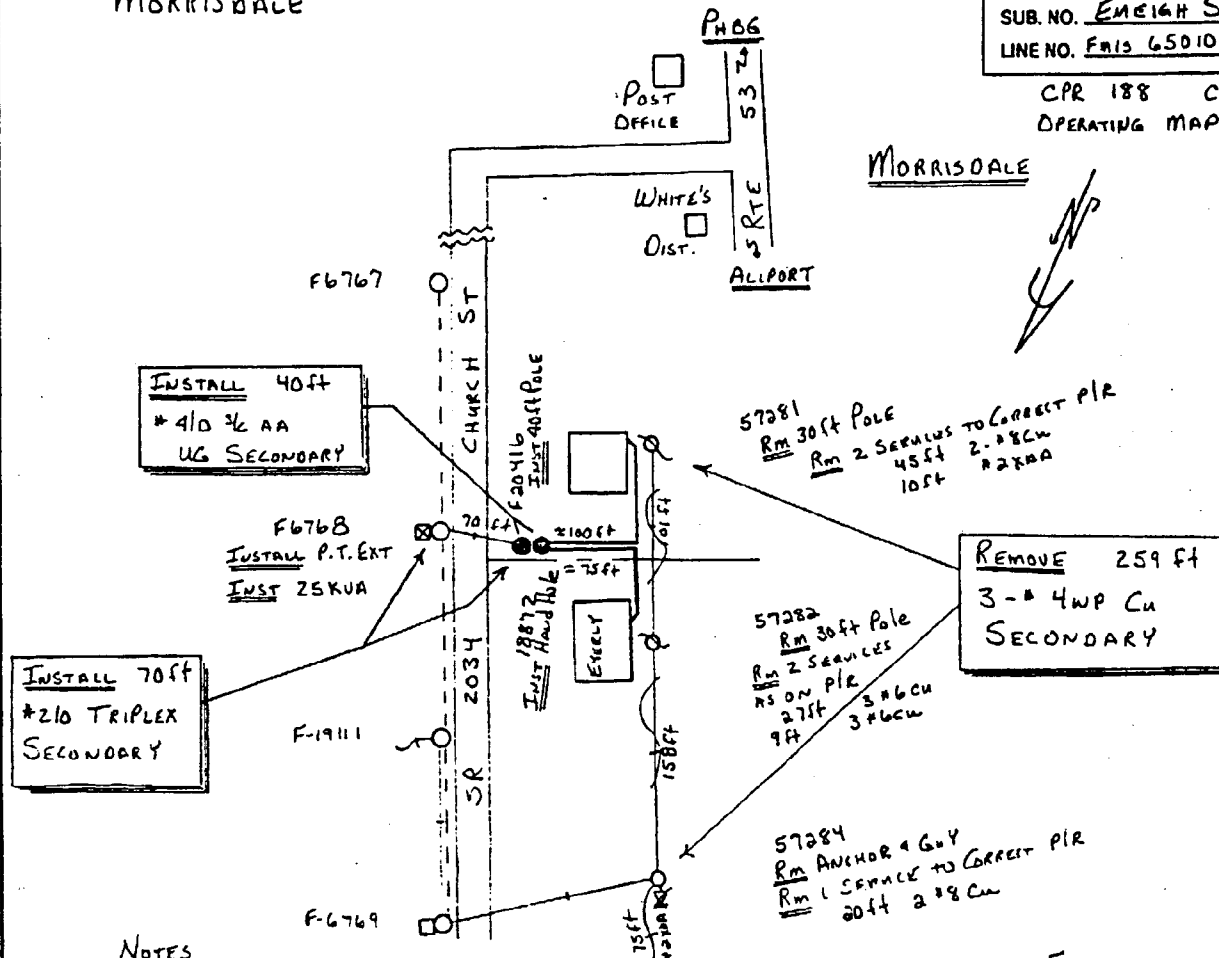
SUB. NO. EMEIGH SUB 12KV

LINE NO. FRI 65010 QLO 65010

CPR 188 CAS 187

OPERATING MAP # 24-1

REMOVE 2 DETERIORATED POLES & INSTALL 1 POLE
TO IMPROVE CONDITIONS ALONG CHURCH STREET
MORRISDALE



NOTES

(1) PURCHASE R/W FOR POLE HAND HOLE & UG SERVICE FROM CHARLES KANOUFF

(2) UG R/W SKETCH # 22E1120

(3) ASSET STRATEGY APPROVAL 5/18/99

FILE # 75564

SECURE R/W R/W SECURED 6/3/99 W FOX
TEL CO. WORK
PERMIT REQ'D
E.A. REV.
NEW LINE FEET 70ft
CODE 01

SOURCE OF FUNDS: FUNDED IN ORIGINAL BUDGET ☐ YES ☐ NO IF NO, INDICATE SOURCE OF FUNDS ON ATTACHMENT

AUTHORIZED EXPENDITURES

	CONSTRUCTION	MAINTENANCE	COST OF REMOVAL	SALVAGE	TOTAL
PRIOR YEARS					
CURRENT YEAR					
NEXT YEAR					
FUTURE YEARS					
TOTAL	\$ 1652	\$ 9	\$ 1062	-	\$ 2723

ESTIMATED ORIGINAL COST OF PROPERTY RETIRED

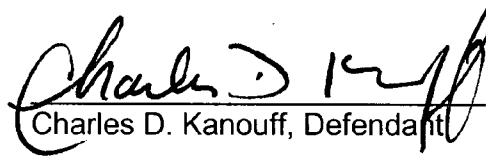
PREPARED BY	DATE	APPROVED BY	DATE
W FOX	5/13/99		
REVIEWED BY & DATE		MAPPING	PHYSICAL WORK COMPLETED
		W FOX 6/7/99	
		PLANT ACCOUNTING	OFFICE COMPLETED

TAILBOARD

VERIFICATION

Defendants verify that the statements made in the foregoing Answer and New Matter are true and correct. Defendants understand that false statements herein made are subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Dated: 3-8-02


Charles D. Kanouff, Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer and New Matter in the above-captioned matter was served within the custody of the United States Postal Service, first class, postage prepaid, on March 12, 2002, addressed to:

Stephen C. Fleming, Esquire
Masorti Sullivan & Engle, P.C.
1500 South Atherton Street
State College, PA 16801

Respectfully submitted,

DELAFIELD, McGEE, JONES & KAUFFMAN, L.L.P.

By:


Mary Ann Kresen, Esquire

Attorney J.D. No. 76348

300 South Allen Street, Suite 300

State College PA 16801-4841

(814) 237-6278

Dated: March 12, 2002

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No. 02-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Notice to Plead

Filed on Behalf of:
Charles D. Kanouff, Defendant
Karen T. Kanouff, Defendant

Counsel of Record:
Mary Ann Kresen, Esquire
Delafield, McGee, Jones &
Kauffman, L.L.P.
Attorney I.D. No.: 76348
300 S. Allen Street, Suite 300
State College, PA 16801
(814) 237-6278

FILED

MAR 15 2002

013211 cc atty Delafield
William A. Shaw
Prothonotary

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

)
) No. 02-224-CD
)
) QUIET TITLE ACTION
) ANSWER AND NEW MATTER
)
)
)
)

NOTICE TO PLEAD

TO THE ABOVE-NAMED PLAINTIFFS:

You are hereby notified to plead to the New Matter and Counterclaim within twenty (20) days from service hereof. Failure to respond may cause judgment by default to be entered against you.

DELAFIELD, McGEE, JONES & KAUFFMAN, L.L.P

By: 

Mary Ann Kresen, Esquire

Attorney for Defendants

Attorney I.D. No:

300 South Allen Street, Suite 300

State College, PA 16801

(814) 237-6278

Dated: March 14, 2002

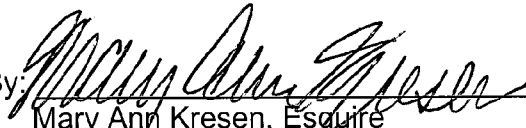
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice to Plead in the above-captioned matter was served within the custody of the United States Postal Service, first class, postage prepaid, on March 14, 2002, addressed to:

Stephen C. Fleming, Esquire
Masorti Sullivan & Engle, P.C.
1500 South Atherton Street
State College, PA 16801

Respectfully submitted,

DELAFIELD, McGEE, JONES & KAUFFMAN, L.L.P.

By: 
Mary Ann Kresen, Esquire
Attorney I.D. No. 76348
300 South Allen Street, Suite 300
State College PA 16801-4841
(814) 237-6278

Dated: March 14, 2002

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.
CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No.: 02-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Plaintiffs' Reply to Defendants' New
Matter

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Attorney Identification: 87228
MASORTI SULLIVAN & ENGLE, P.C.
1500 South Atherton Street
State College, PA 16801
ph: (814) 234-9500
fax: (814) 234-8870

FILED

APR 02 2002

01/37/KC atty Fleming
William A. Shaw
Prothonotary

MASORTI, SULLIVAN
& ENGLE, P.C.
ATTORNEYS AT LAW
1500 S. ATHERTON ST.
STATE COLLEGE, PA 16801

24

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

TIMOTHY EYERLY, :
KIM EYERLY, : No.: 02-224-CD
Plaintiffs, :
vs. : QUIET TITLE
CHARLES D. KANOUFF, :
KAREN T. KANOUFF, :
Defendants. :

PLAINTIFFS' REPLY TO DEFENDANTS' NEW MATTER

COME NOW, Plaintiffs, Timothy Eyerly and Kim Eyerly, through counsel,
MASORTI SULLIVAN & ENGLE, P.C., with their *Plaintiffs' Response to Defendants' New
Matter* and state:

New Matter

31. No responsive pleading is required.

32. Admitted.

33. Admitted.

34. Denied. After reasonable investigation Plaintiffs are without knowledge
or information sufficient to form a belief as to the truth of the averment in paragraph 34
of Defendants' *Answer and New Matter* and, therefore, deny the same.

35. Admitted in part and denied in part. Plaintiffs admit that Exhibit A of
Defendants' *Answer and New Matter* contains representations regarding electric service
on Defendants' property; however, Plaintiffs deny Defendants' averment regarding the
representations to the extent that the location of existing electric service is shown.
Further, Plaintiffs aver that any representations of Exhibit A are contained in the
document and speak for themselves. Accordingly, Plaintiffs deny the averments of
paragraph 35 of Defendants' *Answer and New Matter* not specifically admitted.

36. Denied. At all times prior to surveying that was completed in the late July
2001, the parties respected a boundary line between parties' properties as set forth in
Plaintiffs' *Complaint* which is approximately three feet into Defendants' property.

37. Admitted in part and denied in part. Plaintiffs admit that they had a fence
erected on the front portion of their property on the side facing Defendants' property.

Plaintiffs deny that the fence was erected along the common boundary line. To the contrary, Plaintiffs purposely constructed the fence well within the bounds of their own property to avoid trespassing on Defendants' property.

38. Denied.

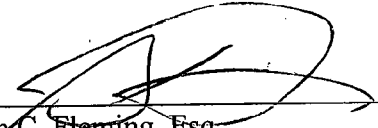
39. Admitted in part and denied in part. Plaintiffs admit that, at one time, they had a dog kennel and fenced area in their back yard. Plaintiffs deny that said structures were located along the actual boundary line between the parties' properties.

40. Denied.

WHEREFORE, Plaintiffs request that this Honorable Court enter an Order in their favor and against Defendants as set forth in their *Complaint*.

Respectfully submitted,

MASORTI, SULLIVAN & ENGLE, P.C.

BY: 
Stephen C. Fleming, Esq.
Attorney for Plaintiffs
1500 South Atherton Street
State College, PA 16801
(814) 234-9500
Attorney I.D. #87228

Dated: 3/29/02

VERIFICATION

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, I verify that the averments of fact set forth in the foregoing are true and correct to the best of my knowledge, information, and belief.

4-1-02
Date

Timothy M Eyerly
Timothy Eyerly

4-1-02
Date

Kim Q Eyerly
Kim Eyerly

CERTIFICATE OF SERVICE

I hereby certify that on ~~3/29/02~~ 4/1/02 a true and correct copy of the foregoing *Plaintiffs' Reply to Defendants' New Matter* was served pursuant to Pa.R.C.P. 440 by depositing the same in the United States Mail, postage pre-paid, and addressed as follows:

Mary Ann Kresen, Esquire
(Counsel for Defendants)
Delafield, McGee Jones & Kauffman, L.L.P.
300 South Allen Street, Site 300
State College, PA 16801-4841

MASORTI, SULLIVAN & ENGLE, P.C.

BY: 

Stephen C. Fleming, Esq.
Attorney for Plaintiffs
1500 South Atherton Street
State College, PA 16801
(814) 234-9500
Attorney I.D. #87228

Dated: 4/1/02
~~3/29/02~~

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket #

12090

EYERLY, TIMOTHY & KIM

02-224-CD

VS.

KANOUFF, CHARLES D. & KAREN T.

COMPLAINT ACTION TO QUIET TITLE

SHERIFF RETURNS

NOW FEBRUARY 26, 2002 AT 5:37 PM EST SERVED THE WITHIN COMPLAINT ACTION TO QUIET TITLE ON CHARLES D. KANOUFF, DEFENDANT AT RESIDENCE, MORRISDALE, MORRIS TWP., CLEARFIELD CO., PENNSYLVANIA BY HANDING TO CHARLES D. KANOUFF A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT ACTION TO QUIET TITLE AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING.

NOW FEBRUARY 26, 2002 AT 5:37 PM EST SERVED THE WITHIN COMPLAINT ACTION TO QUIET TITLE ON KAREN T. KANOUFF, DEFENDANT AT RESIDENCE, MORRISDALE, MORRIS TWP., CLEARFIELD CO., PENNSYLVANIA BY HANDING TO KAREN KANOUFF A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT ACTION TO QUIET TITLE AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NELVING.

Return Costs

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

FILED

APR 15 2002

01:49
William A. Shaw
Prothonotary

Sworn to Before Me This

15th Day Of April 2002

William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
by Marilyn Hamr
Chester A. Hawkins
Sheriff

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

)
) No. 02-224-CD
)
) QUIET TITLE ACTION
) ANSWER AND NEW MATTER
)
)
)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of Records Deposition
in the above-captioned matter was served within the custody of the United States Postal
Service, first class, postage prepaid, on July 3, 2002, addressed to:

Stephen C. Fleming, Esquire
Masorti Sullivan & Engle, P.C.
1500 South Atherton Street
State College, PA 16801

Respectfully submitted,

DELAFIELD, McGEE, JONES & KAUFFMAN, L.L.P.

By: Mary Ann Kresen
Mary Ann Kresen, Esquire
Attorney I.D. No. 76348
300 South Allen Street, Suite 300
State College PA 16801-4841
(814) 237-6278

Dated: July 3, 2002

FILED
JUL 05 2002
12:49 #1
no cc

William A. Shaw
Prothonotary

#6

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF and
KAREN T. KANOUFF,
Defendants.

No. 02-224-CD

CERTIFICATE PREREQUISITE TO SERVICE
OF SUBPOENAS PURSUANT TO RULE 4009.22

As a prerequisite to service of subpoenas for documents and things pursuant to Rule 4009.22, Defendants certify that:

- (1) a Notice of Intent to Serve the Subpoenas with a copy of the subpoenas attached thereto was mailed or delivered to each party at least 20 days prior to the date on which the subpoenas are sought to be served;
- (2) a copy of the Notice of Intent, including the proposed subpoenas, is attached to this Certificate;
- (3) no objections to the subpoenas have been received; and,
- (4) the subpoenas which will be served are identical to the subpoenas which are attached to the Notice of Intent to Serve the Subpoenas.



Mary Ann Kresen, Esquire
Attorney for Defendants
CHARLES D. and KAREN T. KANOUFF

Dated: July 3, 2002

FILED
mlb:40 NOCC
JUL 05 2002

William A. Shaw
Prothonotary

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No. 02-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Interrogatories

Filed on Behalf of:
Charles D. Kanouff, Defendant
Karen T. Kanouff, Defendant

Counsel of Record:
Mary Ann Kresen, Esquire
Delafield, McGee, Jones &
Kauffman, L.L.P.
Attorney I.D. No.: 76348
300 S. Allen Street, Suite 300
State College, PA 16801
(814) 237-6278

FILED

OCT 18 2002

William A. Shaw
Prothonotary

(18)

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

TIMOTHY EYERLY,)	
KIM EYERLY,)	No. 02-224-CD
Plaintiffs)	
)	QUIET TITLE ACTION
vs.)	
)	
CHARLES D. KANOUFF,)	
KAREN T. KANOUFF,)	
Defendants.)	

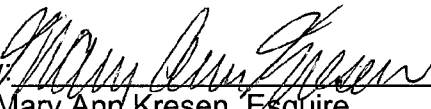
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's
Interrogatories for Answer by Plaintiffs in the above-captioned matter was served on
Defendants by depositing the same within the custody of the United States Postal
Service, first class, postage prepaid, on October 17, 2002, addressed to:

Stephen C. Fleming, Esquire
Masorti Sullivan & Engle, P.C.
1500 South Atherton Street
State College, PA 16801

Respectfully submitted,

DELAFIELD, McGEE, JONES & KAUFFMAN, L.L.P.

By 
Mary Ann Kresen, Esquire
Attorney for Defendants
Attorney I.D. No. 76348
300 South Allen Street, Suite 300
State College, PA 16801-4841
(814) 237-6278

FILED

M 11:33 ~~del~~
OCT 18 2002

William A. Shaw
Prothonotary

NO cc
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~~del~~

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No.: 02-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Praecipe for Hearing on Plaintiffs'
Request for Injunction Pendente Lite
pursuant to Pa.R.C.P. 1576

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Attorney Identification: 87228
MASORTI SULLIVAN & ENGLE, P.C.
1500 South Atherton Street
State College, PA 16801
ph: (814) 234-9500
fax: (814) 234-8870

FILED

MAY 08 2003

William A. Shaw
Prothonotary

MASORTI, SULLIVAN
& ENGLE, P.C.
ATTORNEYS AT LAW
1500 S. ATHERTON ST.
STATE COLLEGE, PA 16801

#9

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No.: 02-224-CD

QUIET TITLE

**PLAINTIFFS' PRAECIPE FOR HEARING FOR REQUEST FOR INJUNCTION
PENDENTE LITE PURSUANT TO PA.R.C.P. 1576**

COME NOW, Plaintiffs, Timothy Eyerly and Kim Eyerly, through counsel,
MASORTI SULLIVAN & ENGLE, P.C., with their *Praecipe for Request for
Injunction Pendente Lite Pursuant to Pa.R.C.P. 1576* and state:

TO THE PROTHONOTARY:

Kindly schedule this matter for hearing on Plaintiffs' Request for Injunction
Pendente Lite Pursuant to Pa.C.R.P. 1576.

Respectfully submitted,

MASORTI, SULLIVAN & ENGLE, P.C.

BY: 

Stephen C. Fleming, Esq.
Attorney for Plaintiffs
1500 South Atherton Street
State College, PA 16801
(814) 234-9500
Attorney I.D. #87228

Dated: 5/9/03

MASORTI, SULLIVAN
& ENGLE, P.C.
ATTORNEYS AT LAW
1500 S. ATHERTON ST.
STATE COLLEGE, PA 16801

FILED

200

MAY 21 2003

MAY 08 2003

Atty

[Signature]

William A. Shaw
Prothonotary

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No.: 02-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Motion for Hearing on Plaintiffs'
Request for Injunction Pendente Lite
pursuant to Pa.R.C.P. 1576

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Attorney Identification: 87228
MASORTI SULLIVAN & ENGLE, P.C.
1500 South Atherton Street
State College, PA 16801
ph: (814) 234-9500
fax: (814) 234-8870

FILED

MAY 08 2003

William A. Shaw
Prothonotary

MASORTI, SULLIVAN
& ENGLE, P.C.
ATTORNEYS AT LAW
1500 S. ATHERTON ST.
STATE COLLEGE, PA 16801

10

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No.: 02-224-CD

QUIET TITLE

**PLAINTIFFS' MOTION FOR HEARING FOR REQUEST FOR INJUNCTION
PENDENTE LITE PURSUANT TO PA.R.C.P. 1576**

COME NOW, Plaintiffs, Timothy Eyerly and Kim Eyerly, through counsel, MASORTI SULLIVAN & ENGLE, P.C., with their *Motion for Hearing for Request for Injunction Pendente Lite Pursuant to Pa.R.C.P. 1576* and state:

1. Plaintiffs filed a Complaint in this matter requesting quiet title and for an injunction pendente lite pursuant to Pa.R.C.P. 1576.

2. The nature of the action concerns the dispute over title to a strip of land approximately three feet wide running the length of the border between the adjoining property of the parties.

3. The Plaintiffs have a good faith claim to ownership to of the strip of land and a likelihood of success on the merit of their request to quiet title in their favor.

4. The strip of land contains trees, shrubbery, and other landscape features that would be difficult, if not impossible, to replace.

5. In discussions between the parties leading up the filing of this action, Defendants had threatened to destroy or alter the landscape features located on the disputed strip of property.

6. Accordingly, Plaintiffs requested, as part of their Complaint, a count to prohibit any alteration or destruction of the property or landscape features in the disputed strip of property.

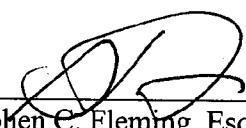
7. During the week of April 28, 2003, Defendants removed a mature tree located in the disputed strip of property.

8. Plaintiffs believe that Defendants will continue to destroy or alter the strip of property prior to a final resolution of this matter.

WHEREFORE, Plaintiffs request that this Honorable Court set this matter for hearing on the request for Injunction Pendente Lite as set forth in the Plaintiffs' Complaint.

Respectfully submitted,

MASORTI, SULLIVAN & ENGLE, P.C.

BY: 
Stephen C. Fleming, Esq.
Attorney for Plaintiffs
1500 South Atherton Street
State College, PA 16801
(814) 234-9500
Attorney I.D. #87228

Dated: 5/5/03

VERIFICATION

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, I verify that the averments of fact set forth in the foregoing are true and correct to the best of my knowledge, information, and belief.

Date

Timothy Eyerly

Date

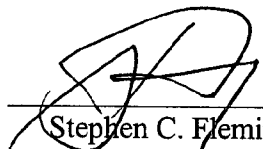
Kim Eyerly

VERIFICATION

I, Stephen C. Fleming, Esquire, do hereby verify that I am the Attorney for the Plaintiffs, that I am fully authorized to make this verification on their behalf and that Plaintiffs are unavailable to this make this verification and that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that the source of my information is from discussions with my clients and the documents provided.

I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. A. §4904 relating to unsworn falsification to authorities.

By: _____


Stephen C. Fleming, Esq. .
Attorney for Plaintiffs

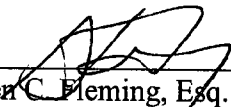
5/5/03

CERTIFICATE OF SERVICE

I hereby certify that on 5/5/03 a true and correct copy of the foregoing *Motion for Hearing for Request for Injunction Pendente Lite Pursuant to Pa.R.C.P. 1576* was served pursuant to Pa.R.C.P. 440 by depositing the same in the United States Mail, postage pre-paid, and addressed as follows:

Delafield, McGee Jones & Kauffman, L.L.P.
300 South Allen Street, Suite 300
State College, PA 16801-4841

MASORTI, SULLIVAN & ENGLE, P.C.

BY: 
Stephen C. Fleming, Esq.
Attorney for Plaintiffs
1500 South Atherton Street
State College, PA 16801
(814) 234-9500
Attorney I.D. #87228

Dated: 5/5/03

FILED

MAY 11 21 2003

William A. Shaw
Prothonotary

acc

Att'y

WAS

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No.: 02-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Praecipe to List for Trial

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Attorney Identification: 87228
MASORTI SULLIVAN & ENGLE, P.C.
1500 South Atherton Street
State College, PA 16801
ph: (814) 234-9500
fax: (814) 234-8870

FILED

AUG 07 2003

William A. Shaw
Prothonotary/Clerk of Courts

MASORTI, SULLIVAN
& ENGLE, P.C.
ATTORNEYS AT LAW
1500 S. ATHERTON ST.
STATE COLLEGE, PA 16801

#11

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

No.: 02-224-CD

QUIET TITLE

PLAINTIFFS' PRAECIPE TO LIST FOR TRIAL

TO THE PROTHONOTARY:

COME NOW, Plaintiffs, Timothy Eyerly and Kim Eyerly, through counsel,
MASORTI SULLIVAN & ENGLE, P.C., with their *Praecipe to List for Trial* pursuant to
Clearfield County Local Rules of Civil Procedure Rule 212.2 and state:

1. No Motions are outstanding.
2. Discovery is completed.
3. This matter is ready for Trial.
4. This matter is to be heard by a trial to the Bench.

WHEREFORE, Plaintiffs kindly request that the Prothonotary list this matter for a
non-jury trial to the Court.

Respectfully submitted,

MASORTI, SULLIVAN & ENGLE, P.C.

BY: 
Stephen C. Fleming, Esq.

Attorney for Plaintiffs
1500 South Atherton Street
State College, PA 16801
(814) 234-9500
Attorney I.D. #87228

Dated: 8/4/03

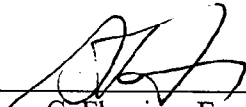
MASORTI, SULLIVAN
& ENGLE, P.C.
ATTORNEYS AT LAW
1500 S. ATHERTON ST.
STATE COLLEGE, PA 16801

CERTIFICATE OF SERVICE

I hereby certify that on 8/6/03 a true and correct copy of the foregoing *Motion Praecepto to List for Trial* was served pursuant to Pa.R.C.P. 440 by depositing the same in the United States Mail, postage pre-paid, and addressed as follows:

Delafield, McGee Jones & Kauffman, L.L.P.
300 South Allen Street, Suite 300
State College, PA 16801-4841

MASORTI, SULLIVAN & ENGLE, P.C.

BY: 
Stephen C. Fleming, Esq.
Attorney for Plaintiffs
1500 South Atherton Street
State College, PA 16801
(814) 234-9500
Attorney I.D. #87228

Dated: 8/6/03

FILED *ice*
019:55
AUG 07 2003
Aug Fleming
William A. Shaw
Prothonotary/Clerk of Courts
WAS

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

TIMOTHY EYERLY,

:

KIM EYERLY

:

-vs-

:

No. 02 - 224 - CD

CHARLES D. KANOUFF,

:

KAREN T. KANOUFF

:

ORDER

NOW, this 15th day of September, 2003, this being the day and date set for hearing into Plaintiffs' Motion for Injunction Pendente Lite, upon agreement of the parties it is the ORDER of this Court that trial in the above-captioned Action to Quiet Title shall be had on October 15, 2003, commencing at 9:00 a.m., pending the outcome of which both Plaintiffs and Defendants shall hereby be enjoined from interfering with the existing brush, trees and any other natural vegetation on the subject property line with the exception that each shall be permitted to mow the grass, etc. as it shall appear on each side of the subject line.

By the Court,

President Judge

FILED

SEP 16 2003

William A. Shaw
Prothonotary/Clerk of Courts

418

FILED

SEP 11 07 2003

William A. Shaw

Prothonotary/Clerk of Courts

ICC Atty Kresen

ICC Atty S. Fleming

[Signature]

CP

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

TIMOTHY EYERLY AND KIM EYERLY :

VS

: NO. 02-224-CD

CHARLES D. KANOUFF AND :

KAREN T. KANOUFF, :

O R D E R

NOW, this 19th day of November, 2003, following conclusion of non-jury trial in the above-captioned matter, it is the ORDER of this Court that counsel for Plaintiff file a brief with this Court within Fifteen (15) Days from this date, and Defendant is given Ten (10) Days thereafter to respond in kind.

BY THE COURT,



President Judge

FILED

NOV 20 2003

William A. Shaw
Prothonotary

#13

FILED

03:49 AM REC & Planning
cc atty Kneen

NOV 20 2003

⁶¹
KRB

William A. Shaw
Prothonotary

FILED

JAN 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

TIMOTHY EYERLY, KIM EYERLY :
VS. : NO. 02-224-CD
CHARLES D. KANOUFF, :
KAREN T. KANOUFF :

OPINION AND ORDER

This matter comes before the Court on Plaintiffs' complaint to establish a consent and boundary line between the properties owned by the parties. Plaintiffs and Defendants own adjoining premises located in Morris Township, Clearfield County, Pennsylvania, and following hearing on the merits before this Court on November 19, 2003, the Court finds the following facts. Plaintiffs acquired their property by deed in 1991 from Plaintiff Timothy Eyerly's mother who, along with her deceased husband, had owned the premises since 1946. Defendants acquired the neighboring tract of land by deed in 1994. During the course of ownership of the premises, Plaintiffs and their predecessors in title considered the property line between the parties to have been established by a hedgerow extending from the eastern property line of both parties west supposedly along the dividing line of the parties' premises to approximately the

#14

western edge of Plaintiffs' frame house. As a result of surveys performed by both parties, it became evident that said hedge was approximately three feet over the boundary line between the premises on Defendants' property. The properties of both parties continued for an extensive distance beyond the end of the hedge and Plaintiffs attempted to present evidence that the alleged consentable boundary line proceeded the entire distance to the western edge of both parties' premises. This Court further finds as a fact that, from at least 1946 when Plaintiff Timothy Eyerly's mother and deceased father acquired the premises, both they and the owners of Defendants' premises considered the hedge to be the property line demarcation and each party cared for the premises on their side of said hedge. In addition, Plaintiffs and their predecessors performed the vast majority of maintaining the hedge.

This Court notes that requirements of establishing a consentable boundary are not as stringent as those required to prove adverse possession. To establish a boundary line by acquiescence, Plaintiff need not prove hostility as, even if the line was recognized through inadvertence, ignorance or mistake, the burden has been met. See Zeglin v. Kahagen, 571 Pa. 321, 812 A.2d 558 (2002) and Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 545 A.2d 926 (1988). The claim of a consentable boundary is strengthened when it is based on visible markings on the premises such as, in this case, a hedge which

evidences acts of ownership. See Zeglin Supra.

To prevail, Plaintiff must prove that each party claimed and occupied the land on his side of the boundary and that such occupation continued for a period of 21 years. See Jedinka v. Clemer, 450 Pa. Super. 647, 677 A.2d 1232 (1996).

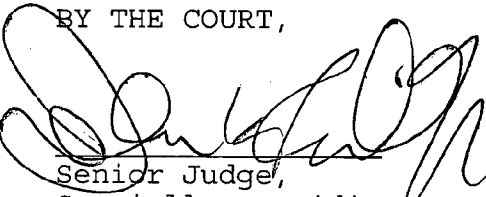
Further, unlike adverse possession, the 21-year period required may be shown by tacking based only on privity of possession rather than by privity of estate as acquired by adverse possession claims. See Zeglin Supra. This Court finds as a fact that Plaintiffs have sustained their claim of boundary by consent for a line commencing at the eastern edge of their property and continuing to the end of the existing hedge and, therefore, finds in their favor for that portion of the common boundary line between the premises. However, from that point to the western edge of the two properties, the Court finds that Plaintiffs have not sustained their burden of proof and that the property line from the point of the western edge of the hedge to the western edge of the premises of the parties shall be as noted on the survey of Stephen W. Norfolk entered in evidence in these proceedings. Wherefore, the Court enters the following

O R D E R

NOW this 12th day of January, 2004, following hearing and briefs into the above-captioned Complaint to Quiet Title, it is the ORDER of this Court that judgment shall be and

is hereby entered in favor of the Plaintiffs as set forth in the foregoing Opinion.

BY THE COURT,



Senior Judge,
Specially Presiding

FILED 2 CC Atty Fleming
of 1:47 PM 2 CC Atty Kresen
JAN 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

ICC @ D. Mikesell

[Handwritten signature]

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

NO. 2002-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Notice of Appeal

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Pa. Atty. No.: 87228
119 South Burrowes Street
Suite 601
State College, PA 16801
814/234-9070

FILED

FEB 11 2004

William A. Shaw
Prothonotary/Clerk of Courts

#15

Date: 02/11/2004

Time: 09:31 AM

Page 1 of 1

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2002-00224-CD

Current Judge: John K. Reilly Jr.

Timothy Eyerly, Kim Eyerly vs. Charles D. Kanouff, Karen T. Kanouff

Civil Other

Date	Judge
02/15/2002	No Judge
Filing: Quiet Title Complaint Paid by: Masorti, Sullivan & Engle Receipt number: 1838323 Dated: 02/15/2002 Amount: \$80.00 (Check) 2 CC to Sheriff Property is located in Morrisdale, Morris Township, Clearfield County, PA.	
03/13/2002	No Judge
Answer and New Matter. Filed by s/Mary Ann Kresen, Esquire Verification s/Charles D. Kanouff Certificate of Service 1 cc Atty Kresen	
03/15/2002	No Judge
Notice to Plead, s/Mary Ann Kresen, Esq. One CC Attorney Delafield	
04/02/2002	No Judge
Plaintiffs' Reply to Defendants' New Matter. Filed by s/Stephen C. Fleming, Esq. Verification s/Timothy Eyerly s/Kim Eyerly Certificate of Service 1 cc Atty Fleming	
04/15/2002	No Judge
Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	
07/05/2002	No Judge
Certificate of Service, Notice of Records Deposition, upon Stephen C. Fleming, Esq., filed by s/Mary Ann Kresen, Esq. No CC	
	No Judge
Certificate Prerequisite to Service of Subpoenas Pursuant to Rule 4009.22, filed by s/Mary Ann Kresen, Esq. No CC	
10/18/2002	No Judge
Certificate of Service, Defendant's Interrogatories for Answer by Plaintiffs upon STEPHEN C. FLEMING, ESQUIRE. s/Mary Ann Kresen, Esq. no cc	
05/08/2003	No Judge
Praecipe For Hearing on Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa. R.C.P. 1576. filed by s/Stephen C. Fleming, Esq. Verification s/Stephen C. Fleming, Esq. Certificate of Service 2 cc to Atty	
08/07/2003	No Judge
Plaintiffs' Praecipe to List for Trial, filed by s/Stephen C. Fleming One CC Attorney Fleming	
09/16/2003	John K. Reilly Jr.
ORDER, NOW, this 15th day of September, 2003, re: Trial in the above-captioned Action to Quiet Title shall be had on Oct. 15, 2003, commencing at 9:00 a.m., pending the outcome of which both Plaintiffs and Defendants shall hereby be enjoined from interfering with the existing brush, trees and any other natural vegetation on the subject property line with the exception that each shall be permitted to mow the grass, etc. as it shall appear on each side of the subject line. by the Court, s/JKR,JR.,P.J. 1 cc Atty Kresen, S. Fleming	
11/20/2003	John K. Reilly Jr.
ORDER, NOW, this 19th day of November, 2003, re: Counsel for Plaintiff shall file a Brief with this Court within 15 days from this date, and Defendant is given 10 days thereafter to respond in kind. by the Court, s/JKR,JR.,P.J. 2 cc S. Fleming, Kresen	
12/08/2003	John K. Reilly Jr.
Motion For Hearing On Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa R.C.P. 1576. filed by, s/Stephen C. Fleming, Esquire Verification s/Stephen C. Fleming, Esq. Certificate of Service 2 cc Atty	
01/13/2004	John K. Reilly Jr.
OPINION AND ORDER, NOW, this 12th day of January, 2004, follwing Hearing and Briefs into the above-captioned Complaint to Quiet Title, it is the ORDER of this Court that judgment shall be and is hereby entered in favor of the Plaintiffs as set forth in the foregoing Opinion. by the Court, s/JKR,JR.,Senior Judge, Specially Presiding 2 cc Atty Fleming, Kresen, and D. Mikesell	
I hereby certify this to be a true and attested copy of the original statement filed in this case.	

FEB 11 2004

Attest.

William D. Shaw
Prothonotary/
Clerk of Courts

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

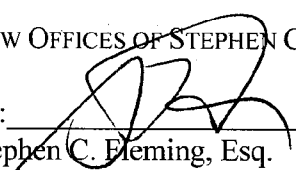
:
:
NO. 2002-224 - CD
:
:
QUIET TITLE
:
:
NOTICE OF APPEAL
:
:
:

REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter, the official court reporter is hereby ordered to produce, certify, and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

Respectfully submitted,

LAW OFFICES OF STEPHEN C. FLEMING

By: 
Stephen C. Fleming, Esq.
119 South Burrowes Street, Suite 601
State College, PA 16801
(814) 234-9070
Attorney I.D. # 87228

Date: 2/10/04

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

:
:
NO. 2002-224 - CD
:
:
QUIET TITLE
:
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NOTICE OF APPEAL
:
:
:

CERTIFICATE OF SERVICE

I hereby certify that on 2/10, 2004, a true and correct
copy of the within *Notice of Appeal* was served via U.S. Mail to the following:

Rosedale Kauffman, Esq.
Attorney for Defendants
Delafield, McGee, Jones, & Kauffman,
L.L.P.
300 South Allen Street
State College, PA 16801

The Honorable John K. Reilly, Jr.
Senior Judge, Specially Presiding
Clearfield County Court of Common
Pleas
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

William Shaw
Prothonotary
Clearfield County Court of Common
Pleas
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Court Reporter
Clearfield County Court of Common
Pleas
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Respectfully submitted,



Stephen C. Fleming, Esquire

FILED

Atty Fleming

19:44:01
FEB 11 2004

pd 45.80

WCC ACK #1018 for \$60.00

William A. Shaw
Prothonotary/Clerk of Courts to Superior Court

Sec Atty

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

TIMOTHY EYERLY and KIM
EYERLY

-VS-

CHARLES D. KANOUFF and
KAREN T. KANOUFF

:
:
:
:
:
:
:

No. 02-224-CD

O R D E R

NOW, this 25th day of February, 2004, it is the
ORDER of this Court that counsel for Plaintiffs above named
shall file with this Court a concise statement of matters
complained of on appeal in accordance with Rule of
Appellate Procedure 1925(b).

BY THE COURT,



THE HONORABLE JOHN K. REILLY, JR.
Senior Judge, Specially Presiding

FILED

FEB 26 2004

William A. Shaw
Prothonotary

#16

FILED

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FEB 26 2004
cc: all
see also Kinsman

[Handwritten signature]

William A. Shaw
Prothonotary

10:41 AM

02-224-CD

Appeal Docket Sheet

Docket Number: 349 WDA 2004

Page 1 of 3

March 4, 2004

Superior Court of Pennsylvania



Timothy Eyerly,
Kim Eyerly, Appellants
v.
Charles D. Kanouff,
Karen T. Kanouff

COPY

Initiating Document: Appeal Allowed Nunc Pro Tunc

Case Status: Active

Case Processing Status: March 1, 2004

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Quiet Title

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: March 18, 2004

Next Event Type: Original Record Received

Next Event Due Date: March 22, 2004

FILED

MAR 08 2004

William A. Shaw
Prothonotary

Appeal Docket Sheet

Docket Number: 349 WDA 2004

Page 2 of 3

March 4, 2004

Superior Court of Pennsylvania



COUNSEL INFORMATION

Appellant Eyerly, Timothy
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Fleming, Stephen Charles
Bar No.: 87228 **Law Firm:**
Address: 119 South Burrowes Street
State College, PA 16801
Phone No.: (814)234-9070 **Fax No.:**
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellant Eyerly, Kim
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Fleming, Stephen Charles
Bar No.: 87228 **Law Firm:**
Address: 119 South Burrowes Street
State College, PA 16801
Phone No.: (814)234-9070 **Fax No.:**
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellee Kanouff, Charles D
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Kauffman, Rosadele T.
Bar No.: 50692 **Law Firm:** Delafield, McGee, Jones & Kauffman, L.L.P.
Address: 300 S Allen St Ste 300
State College, PA 16801-4841
Phone No.: (814)237-6278 **Fax No.:** (814)237-3660
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Kanouff, Karen T
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Appeal Docket Sheet

Docket Number: 349 WDA 2004

Page 3 of 3

March 4, 2004

Superior Court of Pennsylvania



Attorney: Kauffman, Rosadele T.
 Bar No.: 50692 Law Firm: Delafield, McGee, Jones & Kauffman, L.L.P.
 Address: 300 S Allen St Ste 300
 State College, PA 16801-4841
 Phone No.: (814)237-6278 Fax No.: (814)237-3660
 Receive Mail: No
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 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
2/11/04	Notice of Appeal	60.00	60.00	2004SPRWD000256

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
 County: Clearfield Division: Civil
 Date of Order Appealed From: January 13, 2004 Judicial District: 46
 Date Documents Received: March 1, 2004 Date Notice of Appeal Filed: February 11, 2004
 Order Type: Order Entered OTN:
 Judge: Reilly, Jr., John K. Lower Court Docket No.: NO. 2002-224-CD
 Senior Judge

ORIGINAL RECORD CONTENTS

Original Record Item Filed Date Content/Description

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
March 1, 2004	Notice of Appeal Nunc Pro Tunc	Appellant	Eyerly, Timothy
		Appellant	Eyerly, Kim
March 4, 2004	Docketing Statement Exited (Civil)		
			Western District Filing Office



Superior Court of Pennsylvania

David A. Szewczak, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

Western District

March 4, 2004

600 Grant Building
Pittsburgh, PA 15219
412-565-7592
www.superior.court.state.pa.us

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: 349 WDA 2004
Timothy Eyerly,
Kim Eyerly, Appellants
v.
Charles D. Kanouff,
Karen T. Kanouff

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

MLR

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

NO. 2002-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Statement of Matters
Complained of on Appeal

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Pa. Atty. No.: 87228
119 South Burrowes Street
Suite 601
State College, PA 16801
814/234-9070

FILED

MAR 10 2004

0/3:50/uns
William A. Shaw
Prothonotary/Clerk of Courts

4 CENT. TO ATT

#18

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

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

:
:
:
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:
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:
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:
:

NO. 2002-224 - CD

QUIET TITLE

STATEMENT OF MATTERS
COMPLAINED OF ON
APPEAL

PLAINTIFFS' STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

COME NOW, Plaintiffs, TIMOTHY EYERLY and KIM EYERLY, through counsel the LAW OFFICES OF STEPHEN C. FLEMING, with their *Statement of Matters Complained of on Appeal* pursuant to Pa.R.A.P. 1925(b) and state:

Plaintiffs filed this quiet title action against Defendants relative to a dispute over the exact boundary of the adjoining properties owned by Plaintiffs and Defendants. At trial, the Plaintiffs were awarded title to a portion of Defendants' property based on the consentable line doctrine. In its decision, the Trial Court found that Plaintiffs' property boundary should extend over onto Defendants' property to include the hedgerow that had divided the parties' properties. However, the Trial Court did not extend that boundary line from where the hedgerow ended to the rear of the property. Instead, the Trial Court decided that the boundary from that point to the rear of the property would remain as described in the parties' deeds.

On appeal, Plaintiffs contend that the consented boundary between the parties' properties began at the front of the property and extended in a straight line to the rear of the property along the line formed by the hedgerow. Plaintiffs contend that if the Trial Court found Plaintiffs' evidence credible as to the hedgerow portion of the property, then it must follow that the consented to boundary line extended along the same line to the rear of the property. The evidence found to be credible by the Court regarding the use of property supports Plaintiffs' contention that Plaintiffs had maintained, and treated as their own, the property up to the line that was formed by the hedgerow extending all the way to the back edge of the property. This line ran from the hedgerow along the outside edge of a planter box thought to be on Plaintiffs' property (See Plaintiffs' Exhibit 12), through a tree that had been removed at some point in the 1990's (see Plaintiffs' Exhibit 11 - marking of "old stump") and onto the rear of the property. This line was located approximately three feet onto Defendants' property at the front expanding to approximately four feet at the rear.

Plaintiffs contend that if the Trial Court found their evidence credible as to the hedgerow portion of the property, it must find that the same evidence supported the continuation of the same boundary line to the rear of the property.

Respectfully submitted,

LAW OFFICES OF STEPHEN C. FLEMING

BY: 

Stephen C. Fleming, Esquire

Attorney for Plaintiffs


119 South Burrowes Street

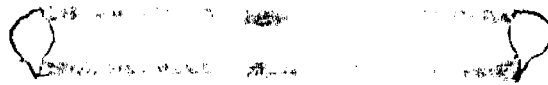
State College, PA 16801

814/234-9070

Attorney I.D. No. 87228

Dated: ~~2~~ 3/10/04


Stephen C. Fleming, Esquire



FILED

MAR 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA



Superior Court of Pennsylvania

Western District

March 4, 2004

COPY

David A. Szewczak, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

600 Grant Building
Pittsburgh, PA 15219
412-565-7592
www.superior.court.state.pa.us

The Honorable John K. Reilly, Jr.
Senior Judge
Court of Common Pleas of Clearfield County
Clearfield County Courthouse, 230 East Market Street
Clearfield, PA 16830

Re: 349 WDA 2004
Timothy Eyerly,
Kim Eyerly, Appellants,
v.
Charles D. Kanouff,
Karen T. Kanouff

Dear Judge Reilly:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

MLR

Appeal Docket Sheet**Superior Court of Pennsylvania****Docket Number: 349 WDA 2004****Page 1 of 3****March 4, 2004**Timothy Eyerly,
Kim Eyerly, Appellants

v.

Charles D. Kanouff,
Karen T. Kanouff

Initiating Document: Appeal Allowed Nunc Pro Tunc

Case Status: Active

Case Processing Status: March 1, 2004 ✓

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Quiet Title

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Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 349 WDA 2004**Page 2 of 3****March 4, 2004**

COUNSEL INFORMATION

Appellant Eyerly, Timothy
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Fleming, Stephen Charles
Bar No.: 87228 **Law Firm:**
Address: 119 South Burrowes Street
State College, PA 16801
Phone No.: (814)234-9070 **Fax No.:**
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellant Eyerly, Kim
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Fleming, Stephen Charles
Bar No.: 87228 **Law Firm:**
Address: 119 South Burrowes Street
State College, PA 16801
Phone No.: (814)234-9070 **Fax No.:**
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Receive E-Mail: No

Appellee Kanouff, Charles D
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Kauffman, Rosadele T.
Bar No.: 50692 **Law Firm:** Delafield, McGee, Jones & Kauffman, L.L.P.
Address: 300 S Allen St Ste 300
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E-Mail Address:
Receive E-Mail: No

Appellee Kanouff, Karen T
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Appeal Docket Sheet**Superior Court of Pennsylvania****Docket Number: 349 WDA 2004****Page 3 of 3****March 4, 2004**

Attorney: Kauffman, Rosadele T.
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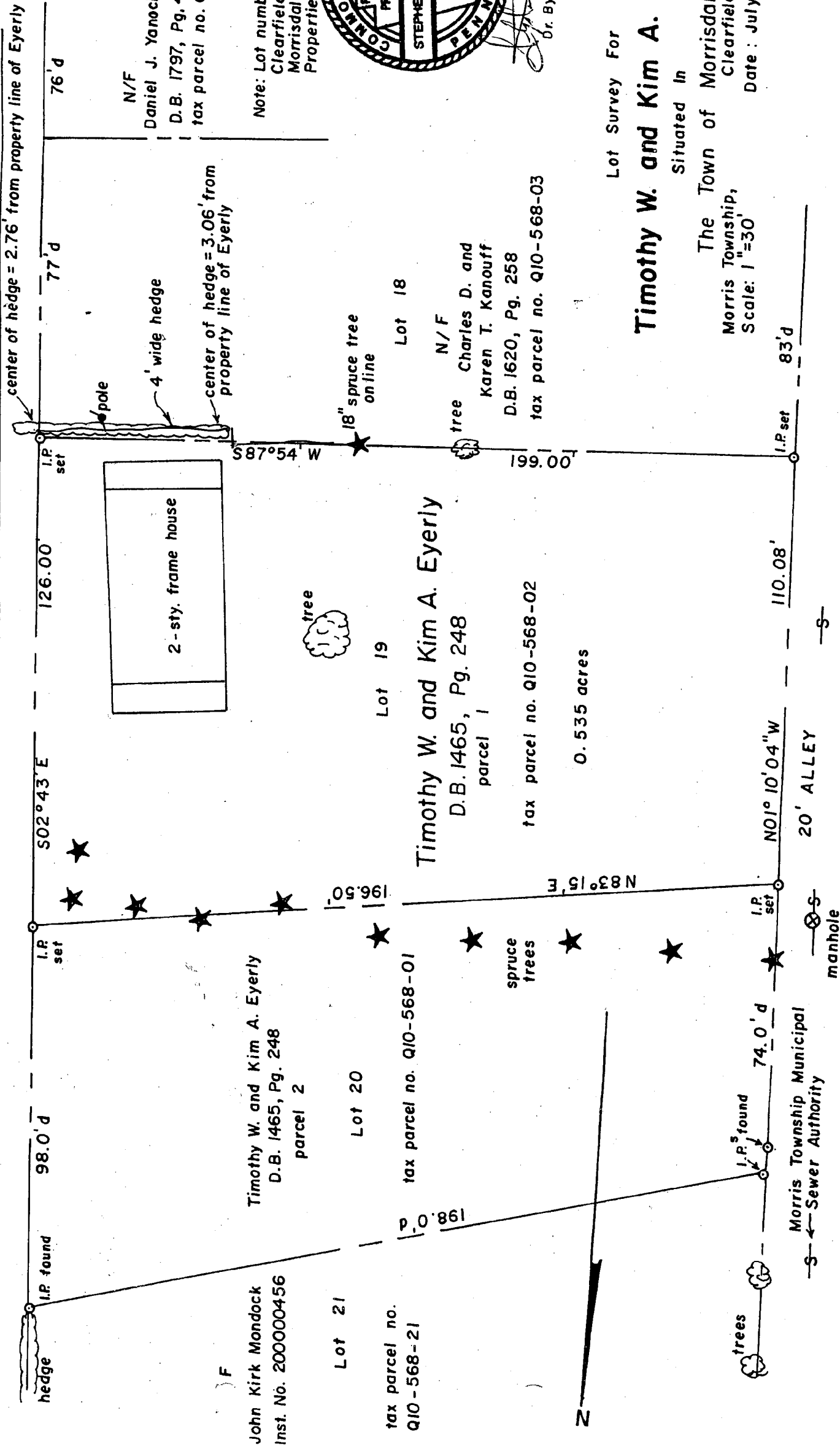
Date of Remand of Record:**BRIEFS****DOCKET ENTRIES**

Filed Date	Docket Entry/Document Name	Party Type	Filed By
March 1, 2004	Notice of Appeal Nunc Pro Tunc	Appellant	Eyerly, Timothy
		Appellant	Eyerly, Kim
March 4, 2004	Docketing Statement Exited (Civil)		Western District Filing Office

State Route No. S.R. 2034

16' paved

33' R/W



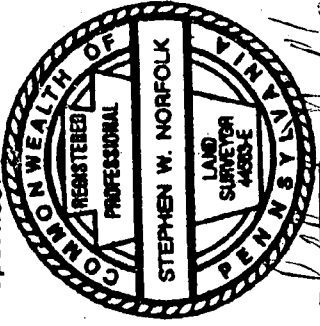
N/F

Daniel J. Yanock

D.B. 1797, Pg. 438

tax parcel no. Q10-568-04

Note: Lot numbers from map of
Clearfield Trust Co.,
Morrisdale Shaft No. 2
Properties



Dr. By: Stephen W. Norfolk
P.O. Box 102,
Moshannon, PA 168

Lot Survey For

Timothy W. and Kim A. Eyerly

Situated In

The Town of Morrisdale
Clearfield County, PA.
Date: July 31, 2001

Morris Township,
Scale: 1"=30'



Eye

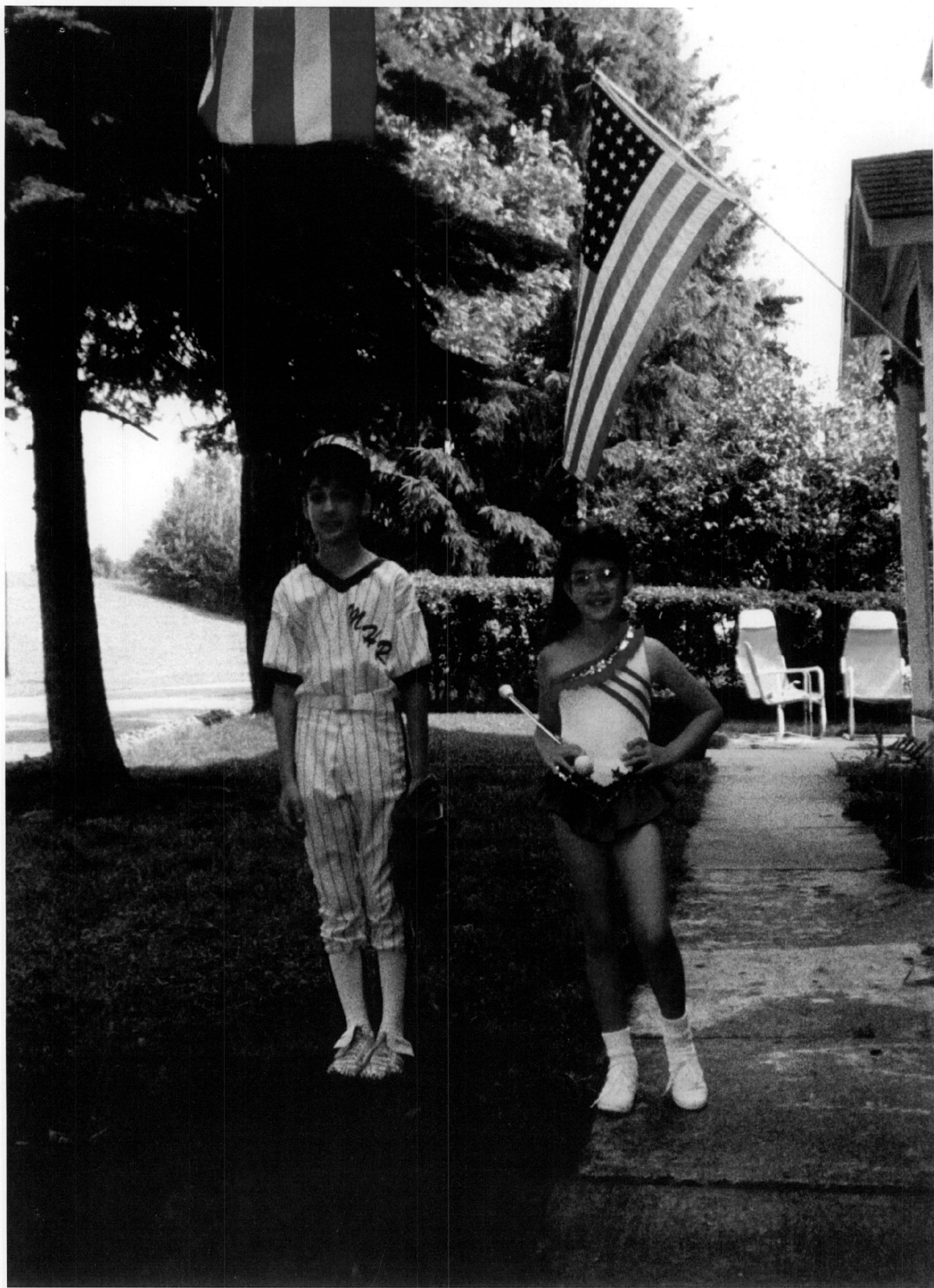






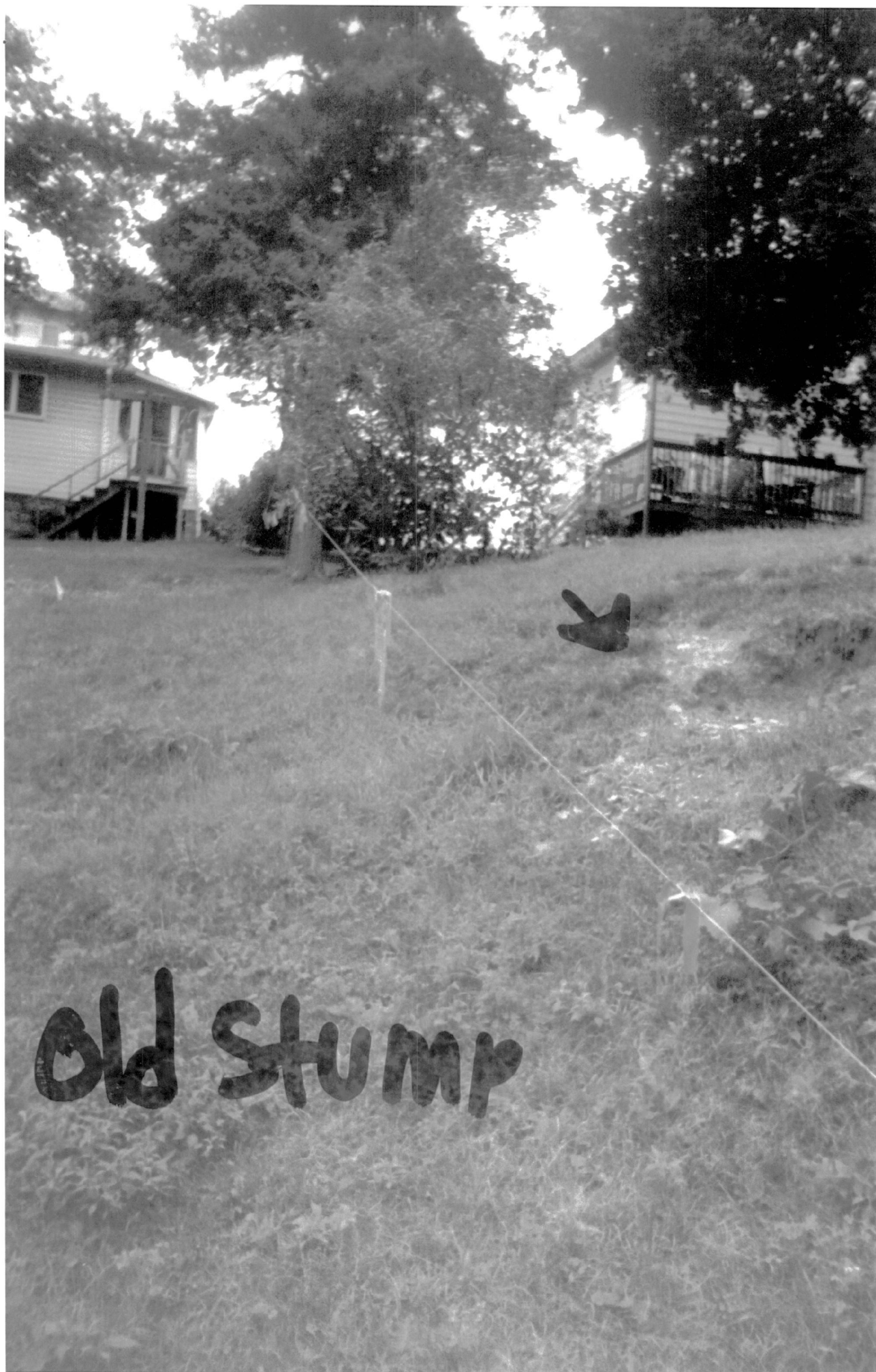


















IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

NO. 2002-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Closing Statement

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Pa. Atty. No.: 87228
119 South Burrowes Street
State College, PA 16801
814/234-9070

RECEIVED

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**COURT ADMINISTRATOR'S
OFFICE**

At some point in the 1950's, Plaintiff Tim Eyerly's parents had installed a cinder block line along the front of Plaintiffs' property that terminated at the line thought to be

the boundary between Plaintiffs' and Defendants' properties. See photograph of front of property, Plaintiffs' Exhibit 3. At about that same time, a hedge row was planted by Plaintiff Tim Eyerly's father on the line believed to divide Plaintiffs' and Defendants' properties. The hedgerow began at the front corner and ran towards the back of the property ending approximately even with the back edge of the home on Plaintiffs' property. See Norfolk Survey, Plaintiffs' Exhibit 1, and various photographs, Plaintiffs' Exhibits 4 – 9. Plaintiffs had maintained, and treated as their own, the property up to the line that was formed by the hedgerow extending all the way to the back edge of the property. This line ran from the hedgerow along the outside edge of a planter box thought to be on Plaintiffs' property (See Plaintiffs' Exhibit 12), through a tree that had been removed at some point in the 1990's (see Plaintiffs' Exhibit 11 – marking of "old stump") and onto the rear of the property. As noted above, this line was located approximately three feet onto Defendants' property at the front expanding to approximately four feet at the rear.

Plaintiff Tim Eyerly testified that the line demarcated by the hedgerow, planter box, and tree had been treated as the boundary of the property by his parents and all other owners/occupants of both properties, including Defendants, since his earliest childhood memories in the 1950's. The care of the hedges and property up to the mistaken boundary line had always been performed by Plaintiffs' family. At various points over the years, animal pens and gardens/plantings were placed by Plaintiffs' family up to that same line as if the property were included in the bounds of their property. It was not until the surveys of 2001 that Plaintiff Tim Eyerly or anyone else realized that the three to four foot strip of property was not actually part of Plaintiffs' property.

Nancy Hummel testified that she had rented and lived in one half of the duplex on Plaintiffs' property from 1960 through 1973. She recalled the hedgerow and testified that, while she resided on the property, it had been cared for by Plaintiff Tim Eyerly's father. She also recalled plantings by Plaintiff Tim Eyerly's father up to the edge of the mistaken boundary line. Ms. Hummel also recalled that, for the time she resided on the property, a short cinder block wall ran along the front of Plaintiffs' property terminating at the corner where the hedgerow began. Ms. Hummel also indicated that the then owner/occupant of Defendants' property, a Ms. Price, also treated the mistaken boundary line as the true boundary between the properties.

Darlene Gallaher testified that she owned Defendants' property from 1977 through 1981. She testified that, while she owned and resided at Defendants' property, the line formed by the hedgerow and continuing to the back of the property was treated as the boundary between of the properties. She recalled that Plaintiff Tim Eyerly's father took

care of the hedges (on both sides) as well as the property on his side of the mistaken boundary line.

Defendant Karen Kanouff testified that when she purchased the property in 1994, she was shown what she believed to be the true corner of her property which would have placed the hedgerow on Defendants' property. Nonetheless, she testified that, with the exception of one time in approximately 2000, the Eyerlys took care of the hedges over the years. Further, she testified that neither she nor her husband, Defendant Charles Kanouff, ever went onto the Plaintiffs' side of the hedgerow nor cut the grass on the Plaintiffs' side of the hedgerow.

Heather Marks testified that she was a tenant of Plaintiffs and resided in one half of the duplex on Plaintiffs' property. Although she testified that Defendant Charles Kanouff had cut the hedges one time at some time in approximately 2000, it was Plaintiffs that cared for the hedges as well as the rest of the property up to the mistaken boundary line formed by the hedgerow.

Although Defendant Karen Kanouff offered some testimony that she always believed the hedgerow was well onto her property and that the true boundary was not the mistaken boundary line, the great weight of the evidence presented at trial corroborated Plaintiffs' assertion that the line formed by the hedgerow had been treated as the property boundary since at least the 1950's. Further, both Plaintiffs and their predecessors in title cared for the property up to the mistaken boundary as if it were part of Plaintiffs' parcel. The prior owners of Defendants' property as well as the Defendants themselves had also treated the mistaken line as the true boundary.

Argument

Plaintiffs' encroachment onto Defendants' property in this case has matured to ownership under the doctrine of consentable boundary or what may be more broadly called acquiescence in a boundary.¹

Although the underpinnings of the consentable boundary lie in adverse possession, the elements necessary to establish a claim under consentable boundary have been streamlined. Most notable, the element of hostility has been removed or, better stated, is implied in cases of inadvertence, ignorance, or mistake as to a boundary. Zeglin

¹ See Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002), for an excellent treatment of the theoretical precepts for consentable boundaries/acquiescence.

v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002) citing with approval Tamburo v. Miller, 203 Md. 329, 100 A.2d 818 (Md. 1953). Unlike adverse possession, a consentable line claimant may base his claim on a mistaken belief as to the location of property lines. Niles v. Fall Creek Hunting Club, Inc., 376 Pa.Super. 260, 545 A.2d 926 (1988); Schlagel v. Lombardi, 337 Pa.Super. 83, 486 A.2d 491 (1984); Reiter v. McJunkin, 173 Pa. 892, 33 A. 1012 (1896).

Essentially, consentable boundary/acquiescence cases proceed on more flexible rules than adverse possession. Zeglin. The doctrine functions as a rule of repose to quiet title and discourage vexatious litigation. Plott v. Cole, 377 Pa. Super. 585, 547 A.2d 1216 (1988). This is especially so when the claim is based on a mistaken boundary marked by a fence, similar marking, or other action by the claimant evidencing acts of ownership even though he is ultimately mistaken as to the true bounds. Zeglin.

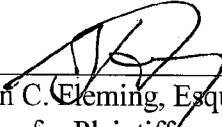
The elements of constable boundary/acquiescence have been narrowed to essentially two requirements: (1) each party must have claimed and occupied the land on his side of the boundary, and (2) such occupation must have continued for the statutory period of twenty-one years. Jedicka v. Clemmer, 450 Pa.Super. 647, 677 A.2d 1232 (1996); Plott v. Cole, 377 Pa. Super. 585, 547 A.2d 1216 (1988). Further, unlike a true adverse possession claim, the twenty-one year period may be shown by tacking based only on privity of *possession*. Zeglin. The more rigid doctrine of tacking by privity of *estate* would eliminate many consentable boundary/acquiescence claims as the land in question would not usually be found within the metes and bounds description of the claimant's deed. Zeglin.

Here, Plaintiffs have acted as the owner of the encroachment onto Defendants' property throughout their ownership since 1991 and since some point in the 1950's by tacking the ownership of Plaintiff Timothy Eyerly's parents. By planting and maintenance of the hedgerow since the 1950's and continued use of the property up to the line formed by the hedgerow since the 1950's, Plaintiffs have met both the requirements for consentable boundary/acquiescence.

Accordingly, title to the strip of land beginning approximately three feet onto Defendants' property at the front of the property continuing to the back of the property along the line formed by the hedgerow (growing to approximately four feet over onto Defendants property at the rear) has vested in Plaintiffs. Plaintiffs respectfully request that this Court quiet title to the disputed tract to Plaintiffs.

Respectfully submitted,

LAW OFFICES OF STEPHEN C. FLEMING

BY: 
Stephen C. Fleming, Esquire
Attorney for Plaintiffs
119 South Burrowes Street
State College, PA 16801
814/234-9070
Attorney I.D. No. 87228

Dated: Dec 22, 2003

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

:
:
NO. 2002-224 - CD
:
:
QUIET TITLE
:
:
CLOSING STATEMENT
:
:
:

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2003, a true and correct copy of the within *Closing Statement* was served via U.S. Mail to the following:

Rosedale Kauffman, Esq.
Attorney for Defendants
Delafield, McGee, Jones, & Kauffman, L.L.P.
300 South Allen Street
State College, PA 16801

Respectfully submitted,



Stephen C. Fleming, Esquire

**[J-123-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

FRANK A. ZEGLIN, JR., AND TAMMY LEE ZEGLIN,	:	No. 94 WAP 2001
	:	
	:	
Appellants	:	Appeal from the Order of the Superior Court entered on April 30, 2001, at No. 1616WDA2000 reversing the Decree of the Court of Common Pleas of Somerset County, entered on August 31, 2000, at No. 369Civil1999.
v.	:	
SEAN E. GAHAGEN AND KIMBERLEE H. GAHAGEN,	:	
	:	
	:	
Appellees	:	ARGUED: September 10, 2002

OPINION

MR. JUSTICE SAYLOR

DECIDED: DECEMBER 19, 2002

In this appeal involving a boundary dispute, the question presented is whether privity of estate between succeeding landowners is required to support tacking periods of ownership to form the requisite twenty-one-year period under acquiescence theory.

Appellants, Frank and Tammy Zeglin, and Appellees, Sean and Kimberlee Gahagen, own adjoining properties in Windber, Paint Township, Somerset County. The Zeglins purchased in 1977 from Cora Murphy, who, together with her late husband, had owned the property since 1937. The Gahagens bought from Margaret Swincinski in 1989, who had acquired the parcel in 1979 from the previous owners since 1972.

In 1995, the Gahagens employed a professional to survey their property and learned that their deed described a boundary on the Zeglins' side of a line marked by a

row of bushes, utility pole, and fence that had been added by the Zeglins. The surveyor therefore concluded that the Gahagens' property extended over such visible line, and this was confirmed in a subsequent survey commissioned by the Zeglins. The Gahagens notified the Zeglins that a portion of their driveway encroached on their land, removed the bushes, and constructed a retaining wall adjacent to the surveyed boundary. The Zeglins responded by filing a complaint against the Gahagens sounding in ejectment and trespass and claiming ownership up to the line previously demarcated by the bushes, utility pole, and fence. In furtherance of this position, the Zeglins relied, inter alia, on the doctrine of acquiescence in a boundary, alleging that their occupancy and possession, together with that of their predecessors in title, for a period of more than twenty-one years established the visible line as the legal boundary. The Gahagens filed an answer and counterclaim.

In March of 2000, following a non-jury trial, the common pleas court issued a decree nisi in favor of the Zeglins, which it later made final. In accompanying opinions, the court summarized the acquiescence doctrine as follows:

an occupation up to a fence on each side by a party or two parties for more than 21 years, each party claiming the land on his side as his own, gives to each an incontestable right up to the fence, whether the fence is precisely on the right line or not; and this is so although the parties may not have consented specifically to the fence in question.

Zeglin v. Gahagen, No. 369 Civ. 1999, slip op. at 4 (C.P. Somerset Feb. 10, 2000) (Gibson, J.) ("Common Pleas Court Opinion") (quoting Berzonski v. Holsopple, 28 Som. Leg. J. 342, 358 (1973) (Coffroth, P.J.)). The court identified as the basis for the principle public policy favoring peace and the repose of titles. It reasoned that, for a period of more than twenty-one years, the Zeglins, the Gahagens, and their predecessors in interest had recognized and acquiesced in a boundary line demarcated by the hedgerow (and also highlighted by the fence maintained by the Zeglins through a

portion of that time period). Although the Zeglins had occupied the property for only eighteen years prior to the Gahagens' actions, the court permitted them to tack the period of ownership by the Murphys, despite the fact that Cora Murphy had not specifically and formally conveyed her purported interest in the disputed tract to the Zeglins in the written deed. As pertains to tacking under the doctrine of adverse possession, the court recognized the requirement in Pennsylvania of privity of estate, namely, a higher degree of relation than that of mere grantor and grantee of a main parcel, generally comprised of specific and formal conveyance of the predecessor's interest in the disputed tract where the transfer is between unrelated parties. See Common Pleas Court Opinion, slip op. at 15 (quoting Baylor v. Soska, 540 Pa. 435, 438-39, 658 A.2d 743, 744-45 (1995)). The common pleas court found, however, that Pennsylvania courts had distinguished acquiescence in a boundary by applying the less rigorous requirement of privity of possession to claims predicated on such theory. See id. at 5 ("Pennsylvania courts have adopted the view that succeeding owners of property are bound by the fences that were accepted and recognized by former owners even without any other privity or formal transfer of the area possessed adversely." (citing Berzonski, 28 Som. Leg. J. at 358)).

On the Gahagens' appeal, the Superior Court reversed in a published decision. See Zeglin v. Gahagen, 774 A.2d 781 (Pa. Super. 2001). At the outset, it acknowledged the limitations on appellate review pertaining to matters of equity. See id. at 783 ("Our scope [and standard] of review in matters of equity [are] narrow and limited to determining whether the findings of fact are supported by competent evidence, whether an error of law has been committed or whether there has been a manifest abuse of discretion" (citation omitted; interlineations in original)). The court determined, however, that, just as in the case of adverse possession, privity of estate is

an essential prerequisite to employment of tacking to perfect a claim under acquiescence theory. See id. at 784-85 (citing Plott v. Cole, 377 Pa. Super. 585, 596, 547 A.2d 1216, 1222 (1988)). Accordingly, the Superior Court held that the common pleas court erred by permitting the Zeglins to tack the period of the Murphys' ownership based on privity of possession alone. See id.

Presently, the Zeglins argue that privity of estate as a prerequisite to tacking is inappropriate to, and contrary to the doctrine of, acquiescence in a boundary, since an underlying premise of such theory is that the evidence of longstanding acquiescence in a physical boundary by adjoining property owners will control over contrary deed calls. The Zeglins distinguish Plott v. Cole, cited by the Superior Court, as allowing for creation of privity by "other acts," and not solely by references culled from a deed. The Gahagens concede that the privity of estate requirement has not expressly been attached by Pennsylvania courts in acquiescence cases, but contend that such a requirement would alleviate confusion among landowners.

The establishment of a boundary line by acquiescence for the statutory period of twenty-one years has long been recognized in Pennsylvania.¹ Two elements are prerequisites: 1) each party must have claimed and occupied the land on his side of the line as his own; and 2) such occupation must have continued for the statutory period of twenty-one years. See Jedlicka v. Clemmer, 450 Pa. Super. 647, 654, 677 A.2d 1232,

¹ See Reiter v. McJunkin, 173 Pa. 82, 84, 33 A. 1011, 1012 (1896) ("After 21 years of occupancy up to a fence on each side as a line fence, it is not material to inquire whether the fence is on the right line or not."); see also Dimura v. Williams, 446 Pa. 316, 319, 286 A.2d 370, 371 (1972); Brown v. McKinney, 9 Watts 565, 567 (Pa. 1840); Martz v. Hartley, 4 Watts 261, 262-63 (Pa. 1835); accord Schimp v. Allaman, 442 Pa. Super. 365, 369, 659 A.2d 1032, 1034 (1995) ("a boundary line may be proved by a long-standing fence without proof of a dispute and its settlement or compromise" (citation omitted)).

1235 (1996); Plott, 377 Pa. Super. at 594, 547 A.2d at 1221. As recognized by the Superior Court and the common pleas court, the doctrine functions as a rule of repose to quiet title and discourage vexatious litigation. See id. at 592, 547 A.2d at 1220.

Although the elements are simply stated, courts have had difficulty tracing the theoretical underpinnings of the acquiescence precept.² In Pennsylvania, courts frequently have distinguished the doctrine from adverse possession, see, e.g., Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 267, 545 A.2d 926, 930 (1988); Inn Le-Daerda, Inc. v. Davis, 241 Pa. Super. 150, 163 n.7, 360 A.2d 209, 215 n.7 (1976), and in recent cases have categorized it, under the umbrella of "consentable boundaries," with a separate theory premised on dispute and compromise.³ An

² See generally HERBERT THORNDIKE TIFFANY, THE LAW OF REAL PROPERTY §1159 (1975 & Supp. 2001) ("The decisions of a particular court [concerning acquiescence in boundaries] are not infrequently lacking in entire consistency, one with another, and occasionally the judicial discussion of the subject is such as to leave us somewhat in doubt as to the exact position of the court on the question."); Annotation, Fence as a Factor in Fixing Location of Boundary Lines -- Modern Cases, 7 A.L.R.4th 53, 59 (1981 & Supp. 2002) ("It has been said that the doctrine of boundary by acquiescence is in chaotic condition." (citation omitted)).

³ See also Corbin v. Cowan, 716 A.2d 614, 617 (Pa. Super. 1998); Sorg v. Cunningham, 455 Pa. Super. 171, 178, 687 A.2d 846, 849 (1997); Plauchak v. Boling, 439 Pa. Super. 156, 165, 653 A.2d 671, 675 (1995).

The earlier decisions generally reserved the terms "consentable line" and "consentable boundary" for the dispute and agreement paradigm. See Culver v. Hazlett, 13 Pa. Super. 323, 328 (1900) (describing "consentable line" as "a technical term, the basis of which is a dispute between adjoining owners and the compromise of such a dispute by a line agreed upon between them" (citing Perkins v. Gay, 3 Serg. & Rawle 327 (Pa. 1817))); accord Beals v. Allison, 161 Pa. Super. 125, 129, 54 A.2d 84, 86 (1947); Ross v. Golden, 146 Pa. Super. 417, 423, 22 A.2d 310, 313 (1941); Miles v. Pennsylvania Coal Co., 245 Pa. 94, 95, 91 A. 211, 212 (1914); Newton v. Smith, 40 Pa. Super. 615, 619 (1909). Nevertheless, despite the distinction between acquiescence and consentable line theories, courts used the term "consent" loosely in acquiescence cases, see, e.g., Dimura, 446 Pa. at 319, 286 A.2d at 370-71, and ultimately the (continued...)

examination of the decisional law demonstrates, however, that the doctrinal roots of acquiescence are grounded in adverse possession theory;⁴ indeed, occupancy with open manifestations of ownership throughout the statutory period will generally satisfy the traditional elements of adverse possession.⁵ Decisions involving acquiescence are

(...continued)

"consentable boundaries" rubric emerged to cover both theories, apparently in Niles, 376 Pa. Super. at 267, 545 A.2d at 930.

⁴ See, e.g., Reiter, 173 Pa. at 84, 33 A. at 1012 ("The maintenance of a line fence between owners of adjoining lands by their acts, up to which each claims and occupies, is a concession by each of the open, adverse possession by the other of that which is on his side of such division fence, which after twenty-one years will give title, though subsequent surveys may show that the fence was not exactly upon the surveyed line."); Brown, 9 Watts. at 567 ("A possession claim[ed] as [one's] own is in law and reason adverse to all the world -- and as much so as if he has never heard of an adverse claim as if he had always known of it."); Adams v. Tamaqua Underwear Co., 105 Pa. Super. 339, 342, 161 A. 416, 417 (1932); Culver, 13 Pa. Super. at 328-29 (noting that adverse possession is the foundation for recognized or "claim-to" line theories); accord Penn v. Ivey, 615 P.2d 1, 4 n.4 (Alaska 1980) ("It is well recognized that a fence, as a matter of law, is 'one of the strongest indications of adverse possession.'" (citing cases)).

⁵ See generally Baylor, 540 Pa. at 438, 658 A.2d at 744 (delineating the elements of adverse possession as actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the land for twenty-one years). Notably, hostility, as a requirement of adverse possession, does not denote ill will, but rather, the intent to hold the property against the record title holder. See Vlachos v. Witherow, 383 Pa. 174, 176, 118 A.2d 174, 177 (1955); accord William Sternberg, The Element of Hostility in Adverse Possession, 6 TEMPLE L.Q. 207, 208 (1932) (stating that "a person is in hostile possession when he acts with reference to the land in the same way that the owner would act"). Moreover, "acquiescence" in the context of disputed boundaries "denotes passive conduct on the part of the lawful owner consisting of failure on his part to assert his paramount rights or interests against the hostile claims of the adverse user." Edward G. Mascolo, A Primer On Adverse Possession, 66 CONN. B.J. 303, 312-13 (Aug. 1992); see also id. at 313 (noting that, "in the case of acquiescence, the use or occupancy of the premises is hostile to and against the interests of the title owner"); accord Cremer v. Cremer Rodeo Land and Livestock Co., 627 P.2d 1199, 1201 (Mont. 1981) (distinguishing acquiescence from permission).

frequently distinguishable from adverse possession cases only in that possession in the former are often based on a mistake as to the location of property lines. See generally Annotation, Adverse Possession Involving Ignorance or Mistake as to Boundaries -- Modern Views, 80 A.L.R.2d 1171, 1173 (1961 & Supp. 2002).⁶

This confluence between acquiescence and adverse possession principles militates against the Zeglins' position, in light of this Court's determination, presently recognized by both the Superior Court and the common pleas court, that privity of estate is a prerequisite to tacking under adverse possession theory. See Baylor, 540 Pa. at 441, 658 A.2d at 746 (holding that "the only method by which an adverse possessor may convey the title asserted by adverse possession is to describe in the instrument of conveyance by means minimally acceptable for conveyancing of realty that which is intended to be conveyed").

Even so, the contrary analysis reflected in the Somerset County decisions is noteworthy and merits further consideration. Prior to Baylor, in the decision presently

⁶ Mistake, however, does not in and of itself negate application of adverse possession in Pennsylvania. See Schlagel v. Lombardi, 337 Pa. Super. 83, 486 A.2d 491, 494 (1984) (noting that "most jurisdictions 'deem the animus of the possessor irrelevant'[:] . . . Pennsylvania follows the majority view" (quoting Lyons v. Andrews, 226 Pa. Super. 351, 351-60, 313 A.2d 313, 316-17 (1973))). In this regard, the Maryland Court of Appeals has elaborated as follows:

The modern trend and the better rule is that where the visible boundaries have existed for the period set forth in the Statute of Limitations, title will vest in the adverse possessor where there is evidence of unequivocal acts of ownership. In this view it is immaterial that the holder supposed the visible boundary to be correct or, in other words, the fact that the possession was due to inadvertence, ignorance, or mistake, is entirely immaterial.

Tamburo v. Miller, 100 A.2d 818, 821 (Md. 1953).

relied upon by the common pleas court, President Judge Coffroth made the case that the lesser standard of privity of possession should govern tacking successive periods of adverse possession, at least in boundary controversies. He reasoned that:

[t]he circumstances of unified use, and physical transfer of possession of the disputed tract, and continued adverse use thereof and of the conveyed tract as an incorporated and unified whole, show that the parties intended to transfer not only the title to the conveyed tract, but also the possession to the disputed area whose use was integrated with the conveyed tract, notwithstanding the omission from the deed of any mention of the disputed area.

Berzonski, 28 Som Leg. J. at 370. Further, he described privity of possession as "the almost universal rule" supporting tacking in the boundary dispute context. See id. at 367 (citing 3 AM. JUR. 2D ADVERSE POSSESSION §80 (Supp. 2002)).^{7, 8} With regard to

⁷ The citations to secondary authorities employed by President Judge Coffroth are updated here.

⁸ As summarized by one commentator:

At the present time, making allowance for contrary rulings still apparently adhered to in a few jurisdictions, the cases, especially the later ones, run generally to the effect that in order to permit the tacking of successive adverse possessions of vendor and purchaser of an area not within the premises as described in the deed or contract but contiguous thereto, the composite fact to be established is the intended and actual transfer or delivery of possession of such area to the grantee or vendee as successor in ownership or claim.

Annotation, Tacking Adverse Possession of Area Not Within Description of Deed or Contract, 17 A.L.R.2d 1128, 1131-32 (2002); see also HERBERT T. TIFFANY AND BASIL JONES, TIFFANY REAL PROPERTY §1207 (3d ed. 2002) ("There is sufficient privity for this purpose, it would seem, when the use[] is exercised, for the benefit of neighboring land, by successive owners or possessors of such land, between whom there exists some legal relation other than that of disseisor and disseisee."); id. at §1146 ("This privity may be based upon contract, estate, or blood relationship, or upon any connecting (continued...)")

Pennsylvania, President Judge Coffroth observed that both this Court's decision in Scheetz v. Fitzwater, 5 Pa. 126 (1847), and the Superior Court's in Stark v. Ladin, 133 Pa. Super. 96 (1938), approved tacking on such terms, where there was no valid written transfer of the grantor's adverse possession of the disputed area to the subsequent owner. See Berzonski, 28 Som. Leg. J. at 369;⁹ accord Lenihan v. Davis, 152 Pa. Super. 47, 49-50, 31 A.2d 434, 435 (1943).

Berzonski nonetheless acknowledged a contrary line of Superior Court authority, exemplified by Masters v. Local Union No. 472, United Mine Workers, 146 Pa. Super. 143, 22 A.2d 70 (1941), which implemented a requirement of privity of estate to support tacking without mention of Scheetz or Stark. The court, however, criticized Masters' reasoning as predicated on the erroneous assumption that landowners would generally lay claim to only part of the land that they possess or occupy,¹⁰ and observed that in

(...continued)

relationship which will prevent a break in the adverse possessions and refer the several possessions to the original entry, and for this purpose no written transfer or agreement is necessary[.] [o]f course, there must be a transfer of a possessory right initially, in order that the transferee be entitled to claim a tacking of the transferor's possession."); 3 AM. JUR. 2D ADVERSE POSSESSION §79 (2002) (stating that "if one adverse claimant, by agreement, surrenders possession to another, and the acts of the parties are such that the two possessions actually connect, leaving no interval for the constructive possession of the true owner to intervene, the two possessions are blended into one, and the running of the limitation period on the right of the true owner to reclaim the land is continued").

⁹ In Scheetz, 5 Pa. at 132, the Court specifically indicated that "possession may be passed without title" and "[a] proprietor who occupies his neighbour's land as a part of his farm, may certainly transfer his possession of the whole by a conveyance of the farm."

¹⁰ The Masters reasoning has been similarly criticized in the commentary, as, for example, in the following passage from an annotation:

(continued...)

another line of cases, the Superior Court persisted in the idea that an intent to convey more than the premises actually described in a deed could be inferred from acts or circumstances apart from the deed itself. See Berzonski, 28 Som. Leg. J. at 372-73 (citing Gerhart v. Hilsenbeck, 164 Pa. Super. 85, 89, 63 A.2d 124, 126-27 (1949)). Based on these latter decisions, President Judge Coffroth concluded that "Pennsylvania

(...continued)

In Masters v. Local Union No. 472, . . . it was held that "the insurmountable difficulty" confronting defendant in making out title by adverse possession to the area on which the buildings stood was that in title by adverse possession to the area on which the buildings stood was that in neither "the deed" to the association nor in the deed from the latter's trustee in bankruptcy to the defendant was there "any conveyance" of the rights acquired by the grantor by possession The court quoted as controlling the language of Schrack v. Zubler, (a case not on its facts within the scope of this annotation, nor at all similar to the ones here dealt with) to the effect that "each succeeding occupant must show title under his predecessor, so as to preserve a unity of possession," a statement which it seems would be erroneously construed to mean that such "title" must be transferred by a deed, or by a deed describing the land subsequently in controversy. In fact, somewhat strangely, because not supporting the position taken by the court in the Masters Case, the court therein quoted from the opinion rendered in the Schrack Case, in the subsequent appeal in 46 Pa. 67, that "an adverse possession begun and continued for a time, in order to be available to a successor, must be transferred to such successor in some lawful manner. This is true as that property can only be rightfully acquired with the assent of its owner, or vested by operation of law." The latter language, it will be observed, is clearly open to the construction that the "adverse possession" need not be transferred by a deed describing the premises held adversely, but simply "in some lawful manner."

Annotation, Tacking Adverse Possession, 17 A.L.R.2d at 1178-79.

has joined or rejoined the main stream of authority and validates . . . that privity may be established by oral agreement." Id. at 374.

Subsequent Pennsylvania cases generally followed Masters without reference to the view of a majority of jurisdictions as embodied in the reasoning of President Judge Coffroth. See Glenn v. Shuey, 407 Pa. Super. 213, 225, 595 A.2d 606, 612 (1991); Wittig v. Carlacchi, 370 Pa. Super. 584, 589-90, 537 A.2d 29, 32 (1988); Plott, 377 Pa. Super. at 596, 547 A.2d at 1222; Castronuovo v. Sordoni, 357 Pa. Super. 187, 193-94, 515 A.2d 927, 930-31 (1986). Nevertheless, prior to Baylor, courts continued to note an "other circumstances exception" based on Scheetz and Stark. See, e.g., Glen, 407 Pa. Super. at 226 n.6, 595 A.2d at 613 n.6; Wittig, 370 Pa. Super. at 589-90, 537 A.2d at 32; Castronuovo, 357 Pa. Super. at 193, 515 A.2d at 931.¹¹ In Baylor, however, this Court dismissed the portion of the privity rules permitting the tacking based on acts or circumstances extrinsic to written deeds, reasoning that:

[i]nterested parties have a right to discern from the record the state of the title of any parcel of land. If tacking were to be permitted because of vague, undefined "circumstances," there could and most likely would be no way for one not a party to the conveyance to know this. But the law mandates that a person asserting a claim of adverse possession make this assertion openly and notoriously to all the world. There must be no secret that the adverse possessor is asserting a claim to the land in question. If the adverse possessor's claim is to be passed on to a successor in title, therefore, there must be some objective indicia of record by which it can be discerned with some degree of certainty that a claim of title by adverse possession is being made and that the

¹¹ Part of the confusion in the cases results from the fact that courts have employed the definition of privity of possession, see 3 AM. JUR. 2D ADVERSE POSSESSION §79 ("Privity of possession is a succession of relationship to the same thing, whether created by deed or by other act, or by operation of law."), in defining privity of estate. See, e.g., Baylor, 540 Pa. at 438-39, 658 A.2d at 734 (citations omitted); see also supra note 10.

duration of this claim has been passed on to a successor in title.

Id. at 440, 658 A.2d at 745-46 (citation omitted).

Although Baylor was a boundary case, it proceeded on the theory of adverse possession, as opposed to acquiescence. While we recognize that this is a fine basis for distinction given the relatedness of these doctrines, strict application of Baylor's holding in the acquiescence paradigm would eliminate tacking in cases involving successive owners and mistaken boundaries, which would appear to be the prevailing set of circumstances in this line of decisions. See Annotation, Tacking Adverse Possession, 17 A.L.R.2d at 1131. Indeed, perhaps for this reason, Pennsylvania and other courts have previously suggested the application of more flexible rules in the acquiescence paradigm.¹²

As President Judge Coffroth aptly observed, the reason why privity of estate should not be deemed necessary to support tacking in this setting is, simply, because a prospective purchaser will see the fence or similar marking; given its "obvious presence

¹² See, e.g., Plauchak, 439 Pa. Super. at 170, 653 A.2d at 677-78; Mayor and Town Council of New Market v. Armstrong, 400 A.2d 425, 433-34 (Md. App. 1979) (indicating that "color of title [is] not necessary for tacking to provide continuity of possession of land, provided the land in question [is] contiguous to that described in a deed, and that lands both titled and untitled were part of a close, apparent by reason of physical boundaries such as fences or hedges." (citations omitted)); accord 11 C.J.S. BOUNDARIES §86 (Aug. 2002) ("Recognition and acquiescence of one owner may be tacked to that of a succeeding one, and privity of estate between successive owners is not necessary to permit of a technical tacking of their periods of holding to make out the statutory period." (footnotes omitted)); cf. Howard v. Kunto, 477 P.2d 210, 215 (Wash. App. 1970) (characterizing the requirement of privity as merely "a judicial recognition of the need for some reasonable connection between successive occupants so as to raise their claim of right above status of the wrongdoer or the trespasser"), overruled on other grounds, Chaplin v. Sanders, 676 P.2d 431 (Wash. 1984).

as apparent boundary," he is therefore put on notice to inquire about its origin, history, and function. See Berzonski, 28 Som. Leg. J. at 361 ("After 21 years, the chips will be allowed to fall where they may, for reasons of equity and peace.").

Accordingly, we find the majority view (requiring only privity of possession) better suited to claims brought under a theory of acquiescence in a boundary. We hold, therefore, that tacking is permitted in such context upon sufficient and credible proof of delivery of possession of land not within (but contiguous to) property described by deed of conveyance, which was previously claimed and occupied by the grantor and is taken by the grantee as successor in such interest.

The order of the Superior Court is reversed, and the case is remanded for reinstatement of the final decree of the common pleas court.

DELAFIELD, McGEE, JONES & KAUFFMAN, L.L.P.

ATTORNEYS AT LAW
300 SOUTH ALLEN STREET, SUITE 300
STATE COLLEGE, PA 16801-4841

GARY A. DELAFIELD
DANIEL McGEE
ALFRED JONES, JR.
ROSADELE KAUFFMAN
DENISE M. BIERLY

E-MAIL
dmjklaw@aol.com

TELEPHONE
(814) 237-6278

FACSIMILE
(814) 237-3660
(814) 237-2094

December 31, 2003

Honorable Judge John K. Reilly, Jr.
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Timothy Eyerly and Kim Eyerly v. Charles and Karen Kanouff
Clearfield County No.: 02-224-CD

Dear Judge Reilly:

Enclosed please find Defendants' Trial Brief in the above-captioned action.

Sincerely,


Rosadele Kauffman, Esq.

RK/lps

Enclosure

cc Stephen C. Fleming, Esq.
Charles and Karen Kanouff

received
01/05/04

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

TIMOTHY EYERLY,
KIM EYERLY,

Plaintiffs

No. 02-224-CD

v.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,

Defendants

DEFENDANTS' TRIAL BRIEF

Counter Statement of the Facts

Defendants acquired their property adjoining that of Plaintiffs in 1994 by deed from Leroy C. Williams Jr. and Margaret J. Williams, who had purchased the property in 1983. At the time of the purchase, Defendant Karen Kanouff testified that the seller had walked them around the edges of the property, pointing out the corners and indicating that the hedge which is the focal point of Plaintiffs' claim was on the Williams/Kanouff property and enjoyed by both Williams/Kanouff and Eyerly. Although Mr. Eyerly's father had been an avid gardener and had made numerous plantings around the area, at the time that the Kanouffs purchased their property the hedge and area between the Williams/Kanouff and Eyerly properties was overgrown and appeared not to be maintained.

Contrary to the assertions in Plaintiffs' brief, both Ms. Kanouff and Heather Marks, the current tenant of the Eyerly's, testified that Mr. Kanouff had trimmed the hedge at various times since moving in. Mary Jo Steinkemp testified that she had loaned the Kanouffs her hedge clippers shortly after they moved in and they had continued to use them.

Both Ms. Kanouff and Mr. Eyerly testified that they each mowed around the pine [spruce] tree depicted in Plaintiff's Exhibits K and L and Defendants' Exhibits. This tree

is depicted in Plaintiffs' Exhibit A, the lot survey, as being on the property line between the Plaintiffs' and Defendants' properties. Furthermore, each party mowed, cleaned and raked the area without specific regard to whether their efforts were on their own or the adjoining property.

The evidence also indicates that other features along the parties' common border have shifted over the years. Ms. Kanouff testified that the existing flower bed depicted in Defendants' exhibits had been abandoned when they purchased their property. It was enlarged by Eyerlys toward the Kanouff property when it was excavated in 1999 to allow underground utilities to be put in on Kanouff's property for the benefit of both properties. The Eyerlys had a dog pen along the common boundary, depicted on Plaintiffs' Exhibit M as it appeared in 1989-1990, which clearly indicates a location respecting the true boundary line.

Argument

There is no basis for Plaintiffs' assertion that they have encroached on Defendants' property in such a manner as to cause an acquiescence in the boundary to shift the actual property line 3 feet into Defendants' property.

First, the cases relied upon by Plaintiffs to delineate the doctrine of consentable lines or acquiescence in a boundary and those discussed by the court in Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002) all presuppose a clear boundary, marked by a fence or other similar marking. And, "where such a line has been clearly established and the parties on each side take possession or surrender possession already held up to that line, it becomes binding, under the application of the doctrine of estoppel." Newton v Smith, 40 Pa. Super. 615, 616 (1909)(emphasis added).

In this case, there is no fence or clearly marked boundary which has continued for a period of 21 years and in which both parties and their predecessors in interest have

acquiesced. To the contrary, Plaintiff's reliance on the hedge at one end of the mutual boundary as marking a clear line of acquiescence is misplaced. This hedge is approximately 50 feet long, out of a total 200 foot border which Plaintiffs request be moved three feet into Defendants' lot. The remainder of the border, as can be seen in Defendants' Exhibits and in Plaintiffs' Exhibit M, is not clearly established, consisting of open space dotted with random small plantings on both parties' lots. In fact, both parties' exhibits clearly indicate fencing constructed by Plaintiffs respecting the actual surveyed property line between the two lots.

Second, Plaintiffs did not meet their burden to show by a preponderance of the evidence that such a line was recognized and acquiesced in by both adjoining landowners for the requisite 21 years. See Miles v Pennsylvania Coal Co., 245 Pa. 94, 91 A. 211 (1914). With respect to acquiescence by Defendants' predecessor, Plaintiffs presented only the owner from 1977 to 1981, Darlene Gallaher, who testified that "Mr. Eyerly [Plaintiff Timothy Eyerly's father] was always planting something", "Mr. Eyerly [Plaintiff Timothy Eyerly's father] always took care of [the hedge]" and "To me, I thought [the hedge] was a boundary." Plaintiff Karen Kanouff testified that in 1994 when she purchased the property, sellers Leroy and Margaret Williams, who owned the property from 1983 to 1994, pointed out the actual corners, indicating that the hedge in question was on Plaintiffs' property, never indicating that there was either an agreement or acquiescence by Plaintiffs' and Defendants' predecessors in interest that the true property line would be shifted to place the hedge on Plaintiffs' property. Plaintiff Tim Eyerly admitted that his "Father bought [the property] and it was surveyed [at that time]." The hedge was planted before he was born, so he would have no idea if there was any agreement or understanding between the then owners of the two properties as to its placement.

From the time of Defendants' purchase in 1994 to the present both they and

Plaintiffs trimmed the hedge, grassy areas between the properties and flower bed. Notably, both parties testified that they mowed "around" the spruce tree which is shown on Defendants' Exhibit A to lie on the actual property line. Plaintiffs' various witnesses "understood" the spruce tree to be on the property line. Plaintiff Tim Eyerly, in describing the line between the adjoining properties, testified that the "pine [sic] tree is pretty much in line with the hedges." A review of Defendants' exhibits shows that, until Plaintiffs erected a fence in 2001, there was no discernible line beyond the rear of Plaintiffs' house to indicate with certainty where the property line lay in the relatively minute difference of three feet between the true property line and that which Plaintiffs would have the court decree.

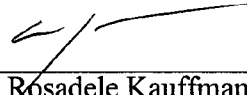
Plaintiffs have not met their burden to prove that (1) each party has claimed and occupied the land on his side of a clearly marked boundary and that (2) such occupation has continued for 21 years. See Jedicka v Clemmer, 450 Pa. Super. 647, 677 A.2d 1232 (1996). This court must dismiss Plaintiffs' action to quiet title.

Respectfully submitted,

DELAFIELD, McGEE, JONES &
KAUFFMAN, L.L.P.

Dated: 12/31/03

By



Rosadele Kauffman, Esq.
Attorney for Defendant
Attorney I.D. No. 50692
300 South Allen Street, Suite 300
State College, PA 16801-4841
(814) 237-6278

(F)

~~#12403~~
D-12-15-03

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

TIMOTHY EYERLY AND KIM EYERLY :

VS : NO. 02-224-CD

CHARLES D. KANOUFF AND :

KAREN T. KANOUFF, :

O R D E R

NOW, this 19th day of November, 2003, following conclusion of non-jury trial in the above-captioned matter, it is the ORDER of this Court that counsel for Plaintiff file a brief with this Court within Fifteen (15) Days from this date, and Defendant is given Ten (10) Days thereafter to respond in kind.

BY THE COURT,

President Judge

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

NO. 2002-224-CD

Type of Action:
Quiet Title

Type of Pleading:
Closing Statement

Filed on Behalf of:
Timothy Eyerly, Plaintiff
Kim Eyerly, Plaintiff

Counsel of Record:
Stephen C. Fleming, Esq.
Pa. Atty. No.: 87228
119 South Burrowes Street
State College, PA 16801
814/234-9070

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

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NO. 2002-224 - CD

QUIET TITLE

CLOSING STATEMENT

PLAINTIFFS' BRIEF IN SUPPORT OF CLOSING STATEMENT

COME NOW, Plaintiffs, TIMOTHY EYERLY and KIM EYERLY, through counsel Stephen C. Fleming, Esquire, with their *Closing Statement* and state:

Statement of the Case

Plaintiffs filed this quiet title action against Defendants relative to a dispute over the boundary of the adjoining properties owned by Plaintiffs and Defendants on February 15, 2002. A bench trial was held on the merits on November 19, 2003. This Closing Statement is provided in support of the Plaintiffs' case to aid the Court in its decision.

Statement of the Facts

Plaintiffs and Defendants are owners of adjacent property in Morrisdale, Morris Township, Clearfield County. Plaintiffs acquired their property by deed in 1991 from Plaintiff Tim Eyerly's mother who had held title to the property along with her then deceased husband since 1946. Plaintiff Tim Eyerly was born and raised in the home (a duplex) on Plaintiffs' property and has resided in one half of the duplex home since his marriage to Defendant Kim Eyerly. Essentially, Plaintiff Tim Eyerly has resided at the property for his entire life.

Defendants acquired the neighboring property by deed in 1994. What began as a complaint by Defendants that Plaintiffs' hedges blocked Defendants' view when exiting their driveway ended in both parties having surveys performed and the discovery that the line that had been treated as the boundary between the properties was actually some three to four feet over onto Defendants' property. The surveys were performed in the summer of 2001. See Norfolk Survey, Plaintiffs' Exhibit 1.

At some point in the 1950's, Plaintiff Tim Eyerly's parents had installed a cinder block line along the front of Plaintiffs' property that terminated at the line thought to be

the boundary between Plaintiffs' and Defendants' properties. See photograph of front of property, Plaintiffs' Exhibit 3. At about that same time, a hedge row was planted by Plaintiff Tim Eyerly's father on the line believed to divide Plaintiffs' and Defendants' properties. The hedgerow began at the front corner and ran towards the back of the property ending approximately even with the back edge of the home on Plaintiffs' property. See Norfolk Survey, Plaintiffs' Exhibit 1, and various photographs, Plaintiffs' Exhibits 4 – 9. Plaintiffs had maintained, and treated as their own, the property up to the line that was formed by the hedgerow extending all the way to the back edge of the property. This line ran from the hedgerow along the outside edge of a planter box thought to be on Plaintiffs' property (See Plaintiffs' Exhibit 12), through a tree that had been removed at some point in the 1990's (see Plaintiffs' Exhibit 11 – marking of "old stump") and onto the rear of the property. As noted above, this line was located approximately three feet onto Defendants' property at the front expanding to approximately four feet at the rear.

Plaintiff Tim Eyerly testified that the line demarcated by the hedgerow, planter box, and tree had been treated as the boundary of the property by his parents and all other owners/occupants of both properties, including Defendants, since his earliest childhood memories in the 1950's. The care of the hedges and property up to the mistaken boundary line had always been performed by Plaintiffs' family. At various points over the years, animal pens and gardens/plantings were placed by Plaintiffs' family up to that same line as if the property were included in the bounds of their property. It was not until the surveys of 2001 that Plaintiff Tim Eyerly or anyone else realized that the three to four foot strip of property was not actually part of Plaintiffs' property.

Nancy Hummel testified that she had rented and lived in one half of the duplex on Plaintiffs' property from 1960 through 1973. She recalled the hedgerow and testified that, while she resided on the property, it had been cared for by Plaintiff Tim Eyerly's father. She also recalled plantings by Plaintiff Tim Eyerly's father up to the edge of the mistaken boundary line. Ms. Hummel also recalled that, for the time she resided on the property, a short cinder block wall ran along the front of Plaintiffs' property terminating at the corner where the hedgerow began. Ms. Hummel also indicated that the then owner/occupant of Defendants' property, a Ms. Price, also treated the mistaken boundary line as the true boundary between the properties.

Darlene Gallaher testified that she owned Defendants' property from 1977 through 1981. She testified that, while she owned and resided at Defendants' property, the line formed by the hedgerow and continuing to the back of the property was treated as the boundary between of the properties. She recalled that Plaintiff Tim Eyerly's father took

care of the hedges (on both sides) as well as the property on his side of the mistaken boundary line.

Defendant Karen Kanouff testified that when she purchased the property in 1994, she was shown what she believed to be the true corner of her property which would have placed the hedgerow on Defendants' property. Nonetheless, she testified that, with the exception of one time in approximately 2000, the Eyerlys took care of the hedges over the years. Further, she testified that neither she nor her husband, Defendant Charles Kanouff, ever went onto the Plaintiffs' side of the hedgerow nor cut the grass on the Plaintiffs' side of the hedgerow.

Heather Marks testified that she was a tenant of Plaintiffs and resided in one half of the duplex on Plaintiffs' property. Although she testified that Defendant Charles Kanouff had cut the hedges one time at some time in approximately 2000, it was Plaintiffs that cared for the hedges as well as the rest of the property up to the mistaken boundary line formed by the hedgerow.

Although Defendant Karen Kanouff offered some testimony that she always believed the hedgerow was well onto her property and that the true boundary was not the mistaken boundary line, the great weight of the evidence presented at trial corroborated Plaintiffs' assertion that the line formed by the hedgerow had been treated as the property boundary since at least the 1950's. Further, both Plaintiffs and their predecessors in title cared for the property up to the mistaken boundary as if it were part of Plaintiffs' parcel. The prior owners of Defendants' property as well as the Defendants themselves had also treated the mistaken line as the true boundary.

Argument

Plaintiffs' encroachment onto Defendants' property in this case has matured to ownership under the doctrine of consentable boundary or what may be more broadly called acquiescence in a boundary.¹

Although the underpinnings of the consentable boundary lie in adverse possession, the elements necessary to establish a claim under consentable boundary have been streamlined. Most notable, the element of hostility has been removed or, better stated, is implied in cases of inadvertence, ignorance, or mistake as to a boundary. Zeglin

¹ See Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002), for an excellent treatment of the theoretical precepts for consentable boundaries/acquiescence.

v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002) citing with approval Tamburo v. Miller, 203 Md. 329, 100 A.2d 818 (Md. 1953). Unlike adverse possession, a consentable line claimant may base his claim on a mistaken belief as to the location of property lines. Niles v. Fall Creek Hunting Club, Inc., 376 Pa.Super. 260, 545 A.2d 926 (1988); Schlagel v. Lombardi, 337 Pa.Super. 83, 486 A.2d 491 (1984); Reiter v. McJunkin, 173 Pa. 892, 33 A. 1012 (1896).

Essentially, consentable boundary/acquiescence cases proceed on more flexible rules than adverse possession. Zeglin. The doctrine functions as a rule of repose to quiet title and discourage vexatious litigation. Plott v. Cole, 377 Pa. Super. 585, 547 A.2d 1216 (1988). This is especially so when the claim is based on a mistaken boundary marked by a fence, similar marking, or other action by the claimant evidencing acts of ownership even though he is ultimately mistaken as to the true bounds. Zeglin.

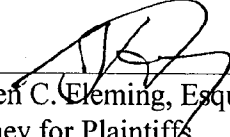
The elements of constable boundary/acquiescence have been narrowed to essentially two requirements: (1) each party must have claimed and occupied the land on his side of the boundary, and (2) such occupation must have continued for the statutory period of twenty-one years. Jedicka v. Clemmer, 450 Pa.Super. 647, 677 A.2d 1232 (1996); Plott v. Cole, 377 Pa. Super. 585, 547 A.2d 1216 (1988). Further, unlike a true adverse possession claim, the twenty-one year period may be shown by tacking based only on privity of *possession*. Zeglin. The more rigid doctrine of tacking by privity of *estate* would eliminate many consentable boundary/acquiescence claims as the land in question would not usually be found within the metes and bounds description of the claimant's deed. Zeglin.

Here, Plaintiffs have acted as the owner of the encroachment onto Defendants' property throughout their ownership since 1991 and since some point in the 1950's by tacking the ownership of Plaintiff Timothy Eyerly's parents. By planting and maintenance of the hedgerow since the 1950's and continued use of the property up to the line formed by the hedgerow since the 1950's, Plaintiffs have met both the requirements for consentable boundary/acquiescence.

Accordingly, title to the strip of land beginning approximately three feet onto Defendants' property at the front of the property continuing to the back of the property along the line formed by the hedgerow (growing to approximately four feet over onto Defendants property at the rear) has vested in Plaintiffs. Plaintiffs respectfully request that this Court quiet title to the disputed tract to Plaintiffs.

Respectfully submitted,

LAW OFFICES OF STEPHEN C. FLEMING

BY: 
Stephen C. Fleming, Esquire
Attorney for Plaintiffs
119 South Burrowes Street
State College, PA 16801
814/234-9070
Attorney I.D. No. 87228

Dated: Dec 22, 2003

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

TIMOTHY EYERLY,
KIM EYERLY,
Plaintiffs,

vs.

CHARLES D. KANOUFF,
KAREN T. KANOUFF,
Defendants.

NO. 2002-224 - CD

QUIET TITLE

CLOSING STATEMENT

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2003, a true and correct copy of the within *Closing Statement* was served via U.S. Mail to the following:

Rosedale Kauffman, Esq.
Attorney for Defendants
Delafield, McGee, Jones, & Kauffman, L.L.P.
300 South Allen Street
State College, PA 16801

Respectfully submitted,



Stephen C. Fleming, Esquire

[J-123-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

FRANK A. ZEGLIN, JR., AND TAMMY LEE ZEGLIN,	:	No. 94 WAP 2001
	:	
	:	
Appellants	:	Appeal from the Order of the Superior
	:	Court entered on April 30, 2001, at No.
	:	1616WDA2000 reversing the Decree of
v.	:	the Court of Common Pleas of Somerset
	:	County, entered on August 31, 2000, at
	:	No. 369Civil1999.
SEAN E. GAHAGEN AND KIMBERLEE H. GAHAGEN,	:	
	:	
	:	
Appellees	:	ARGUED: September 10, 2002

OPINION

MR. JUSTICE SAYLOR

DECIDED: DECEMBER 19, 2002

In this appeal involving a boundary dispute, the question presented is whether privity of estate between succeeding landowners is required to support tacking periods of ownership to form the requisite twenty-one-year period under acquiescence theory.

Appellants, Frank and Tammy Zeglin, and Appellees, Sean and Kimberlee Gahagen, own adjoining properties in Windber, Paint Township, Somerset County. The Zeglins purchased in 1977 from Cora Murphy, who, together with her late husband, had owned the property since 1937. The Gahagens bought from Margaret Swincinski in 1989, who had acquired the parcel in 1979 from the previous owners since 1972.

In 1995, the Gahagens employed a professional to survey their property and learned that their deed described a boundary on the Zeglins' side of a line marked by a

row of bushes, utility pole, and fence that had been added by the Zeglins. The surveyor therefore concluded that the Gahagens' property extended over such visible line, and this was confirmed in a subsequent survey commissioned by the Zeglins. The Gahagens notified the Zeglins that a portion of their driveway encroached on their land, removed the bushes, and constructed a retaining wall adjacent to the surveyed boundary. The Zeglins responded by filing a complaint against the Gahagens sounding in ejectment and trespass and claiming ownership up to the line previously demarcated by the bushes, utility pole, and fence. In furtherance of this position, the Zeglins relied, inter alia, on the doctrine of acquiescence in a boundary, alleging that their occupancy and possession, together with that of their predecessors in title, for a period of more than twenty-one years established the visible line as the legal boundary. The Gahagens filed an answer and counterclaim.

In March of 2000, following a non-jury trial, the common pleas court issued a decree nisi in favor of the Zeglins, which it later made final. In accompanying opinions, the court summarized the acquiescence doctrine as follows:

an occupation up to a fence on each side by a party or two parties for more than 21 years, each party claiming the land on his side as his own, gives to each an incontestable right up to the fence, whether the fence is precisely on the right line or not; and this is so although the parties may not have consented specifically to the fence in question.

Zeglin v. Gahagen, No. 369 Civ. 1999, slip op. at 4 (C.P. Somerset Feb. 10, 2000) (Gibson, J.) ("Common Pleas Court Opinion") (quoting Berzonski v. Holsopple, 28 Som. Leg. J. 342, 358 (1973) (Coffroth, P.J.)). The court identified as the basis for the principle public policy favoring peace and the repose of titles. It reasoned that, for a period of more than twenty-one years, the Zeglins, the Gahagens, and their predecessors in interest had recognized and acquiesced in a boundary line demarcated by the hedgerow (and also highlighted by the fence maintained by the Zeglins through a

portion of that time period). Although the Zeglins had occupied the property for only eighteen years prior to the Gahagens' actions, the court permitted them to tack the period of ownership by the Murphys, despite the fact that Cora Murphy had not specifically and formally conveyed her purported interest in the disputed tract to the Zeglins in the written deed. As pertains to tacking under the doctrine of adverse possession, the court recognized the requirement in Pennsylvania of privity of estate, namely, a higher degree of relation than that of mere grantor and grantee of a main parcel, generally comprised of specific and formal conveyance of the predecessor's interest in the disputed tract where the transfer is between unrelated parties. See Common Pleas Court Opinion, slip op. at 15 (quoting Baylor v. Soska, 540 Pa. 435, 438-39, 658 A.2d 743, 744-45 (1995)). The common pleas court found, however, that Pennsylvania courts had distinguished acquiescence in a boundary by applying the less rigorous requirement of privity of possession to claims predicated on such theory. See id. at 5 ("Pennsylvania courts have adopted the view that succeeding owners of property are bound by the fences that were accepted and recognized by former owners even without any other privity or formal transfer of the area possessed adversely." (citing Berzonski, 28 Som. Leg. J. at 358)).

On the Gahagens' appeal, the Superior Court reversed in a published decision. See Zeglin v. Gahagen, 774 A.2d 781 (Pa. Super. 2001). At the outset, it acknowledged the limitations on appellate review pertaining to matters of equity. See id. at 783 ("Our scope [and standard] of review in matters of equity [are] narrow and limited to determining whether the findings of fact are supported by competent evidence, whether an error of law has been committed or whether there has been a manifest abuse of discretion" (citation omitted; interlineations in original)). The court determined, however, that, just as in the case of adverse possession, privity of estate is

an essential prerequisite to employment of tacking to perfect a claim under acquiescence theory. See id. at 784-85 (citing Plott v. Cole, 377 Pa. Super. 585, 596, 547 A.2d 1216, 1222 (1988)). Accordingly, the Superior Court held that the common pleas court erred by permitting the Zeglins to tack the period of the Murphys' ownership based on privity of possession alone. See id.

Presently, the Zeglins argue that privity of estate as a prerequisite to tacking is inappropriate to, and contrary to the doctrine of, acquiescence in a boundary, since an underlying premise of such theory is that the evidence of longstanding acquiescence in a physical boundary by adjoining property owners will control over contrary deed calls. The Zeglins distinguish Plott v. Cole, cited by the Superior Court, as allowing for creation of privity by "other acts," and not solely by references culled from a deed. The Gahagens concede that the privity of estate requirement has not expressly been attached by Pennsylvania courts in acquiescence cases, but contend that such a requirement would alleviate confusion among landowners.

The establishment of a boundary line by acquiescence for the statutory period of twenty-one years has long been recognized in Pennsylvania.¹ Two elements are prerequisites: 1) each party must have claimed and occupied the land on his side of the line as his own; and 2) such occupation must have continued for the statutory period of twenty-one years. See Jedlicka v. Clemmer, 450 Pa. Super. 647, 654, 677 A.2d 1232,

¹ See Reiter v. McJunkin, 173 Pa. 82, 84, 33 A. 1011, 1012 (1896) ("After 21 years of occupancy up to a fence on each side as a line fence, it is not material to inquire whether the fence is on the right line or not."); see also Dimura v. Williams, 446 Pa. 316, 319, 286 A.2d 370, 371 (1972); Brown v. McKinney, 9 Watts 565, 567 (Pa. 1840); Martz v. Hartley, 4 Watts 261, 262-63 (Pa. 1835); accord Schimp v. Allaman, 442 Pa. Super. 365, 369, 659 A.2d 1032, 1034 (1995) ("a boundary line may be proved by a long-standing fence without proof of a dispute and its settlement or compromise" (citation omitted)).

1235 (1996); Plott, 377 Pa. Super. at 594, 547 A.2d at 1221. As recognized by the Superior Court and the common pleas court, the doctrine functions as a rule of repose to quiet title and discourage vexatious litigation. See id. at 592, 547 A.2d at 1220.

Although the elements are simply stated, courts have had difficulty tracing the theoretical underpinnings of the acquiescence precept.² In Pennsylvania, courts frequently have distinguished the doctrine from adverse possession, see, e.g., Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 267, 545 A.2d 926, 930 (1988); Inn Le-Daerda, Inc. v. Davis, 241 Pa. Super. 150, 163 n.7, 360 A.2d 209, 215 n.7 (1976), and in recent cases have categorized it, under the umbrella of "consentable boundaries," with a separate theory premised on dispute and compromise.³ An

² See generally HERBERT THORNDIKE TIFFANY, THE LAW OF REAL PROPERTY §1159 (1975 & Supp. 2001) ("The decisions of a particular court [concerning acquiescence in boundaries] are not infrequently lacking in entire consistency, one with another, and occasionally the judicial discussion of the subject is such as to leave us somewhat in doubt as to the exact position of the court on the question."); Annotation, Fence as a Factor in Fixing Location of Boundary Lines -- Modern Cases, 7 A.L.R.4th 53, 59 (1981 & Supp. 2002) ("It has been said that the doctrine of boundary by acquiescence is in chaotic condition." (citation omitted)).

³ See also Corbin v. Cowan, 716 A.2d 614, 617 (Pa. Super. 1998); Sorg v. Cunningham, 455 Pa. Super. 171, 178, 687 A.2d 846, 849 (1997); Plauchak v. Boling, 439 Pa. Super. 156, 165, 653 A.2d 671, 675 (1995).

The earlier decisions generally reserved the terms "consentable line" and "consentable boundary" for the dispute and agreement paradigm. See Culver v. Hazlett, 13 Pa. Super. 323, 328 (1900) (describing "consentable line" as "a technical term, the basis of which is a dispute between adjoining owners and the compromise of such a dispute by a line agreed upon between them" (citing Perkins v. Gay, 3 Serg. & Rawle 327 (Pa. 1817))); accord Beals v. Allison, 161 Pa. Super. 125, 129, 54 A.2d 84, 86 (1947); Ross v. Golden, 146 Pa. Super. 417, 423, 22 A.2d 310, 313 (1941); Miles v. Pennsylvania Coal Co., 245 Pa. 94, 95, 91 A. 211, 212 (1914); Newton v. Smith, 40 Pa. Super. 615, 619 (1909). Nevertheless, despite the distinction between acquiescence and consentable line theories, courts used the term "consent" loosely in acquiescence cases, see, e.g., Dimura, 446 Pa. at 319, 286 A.2d at 370-71 and ultimately the (continued...)

examination of the decisional law demonstrates, however, that the doctrinal roots of acquiescence are grounded in adverse possession theory;⁴ indeed, occupancy with open manifestations of ownership throughout the statutory period will generally satisfy the traditional elements of adverse possession.⁵ Decisions involving acquiescence are

(...continued)

"consentable boundaries" rubric emerged to cover both theories, apparently in Niles, 376 Pa. Super. at 267, 545 A.2d at 930.

⁴ See, e.g., Reiter, 173 Pa. at 84, 33 A. at 1012 ("The maintenance of a line fence between owners of adjoining lands by their acts, up to which each claims and occupies, is a concession by each of the open, adverse possession by the other of that which is on his side of such division fence, which after twenty-one years will give title, though subsequent surveys may show that the fence was not exactly upon the surveyed line."); Brown, 9 Watts. at 567 ("A possession claim[ed] as [one's] own is in law and reason adverse to all the world -- and as much so as if he has never heard of an adverse claim as if he had always known of it."); Adams v. Tamaqua Underwear Co., 105 Pa. Super. 339, 342, 161 A. 416, 417 (1932); Culver, 13 Pa. Super. at 328-29 (noting that adverse possession is the foundation for recognized or "claim-to" line theories); accord Penn v. Ivey, 615 P.2d 1, 4 n.4 (Alaska 1980) ("It is well recognized that a fence, as a matter of law, is 'one of the strongest indications of adverse possession.'" (citing cases)).

⁵ See generally Baylor, 540 Pa. at 438, 658 A.2d at 744 (delineating the elements of adverse possession as actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the land for twenty-one years). Notably, hostility, as a requirement of adverse possession, does not denote ill will, but rather, the intent to hold the property against the record title holder. See Vlachos v. Witherow, 383 Pa. 174, 176, 118 A.2d 174, 177 (1955); accord William Sternberg, The Element of Hostility in Adverse Possession, 6 TEMPLE L.Q. 207, 208 (1932) (stating that "a person is in hostile possession when he acts with reference to the land in the same way that the owner would act"). Moreover, "acquiescence" in the context of disputed boundaries "denotes passive conduct on the part of the lawful owner consisting of failure on his part to assert his paramount rights or interests against the hostile claims of the adverse user." Edward G. Mascolo, A Primer On Adverse Possession, 66 CONN. B.J. 303, 312-13 (Aug. 1992); see also id. at 313 (noting that, "in the case of acquiescence, the use or occupancy of the premises is hostile to and against the interests of the title owner"); accord Cremer v. Cremer Rodeo Land and Livestock Co., 627 P.2d 1199, 1201 (Mont. 1981) (distinguishing acquiescence from permission).

frequently distinguishable from adverse possession cases only in that possession in the former are often based on a mistake as to the location of property lines. See generally Annotation, Adverse Possession Involving Ignorance or Mistake as to Boundaries -- Modern Views, 80 A.L.R.2d 1171, 1173 (1961 & Supp. 2002).⁶

This confluence between acquiescence and adverse possession principles militates against the Zeglins' position, in light of this Court's determination, presently recognized by both the Superior Court and the common pleas court, that privity of estate is a prerequisite to tacking under adverse possession theory. See Baylor, 540 Pa. at 441, 658 A.2d at 746 (holding that "the only method by which an adverse possessor may convey the title asserted by adverse possession is to describe in the instrument of conveyance by means minimally acceptable for conveyancing of realty that which is intended to be conveyed").

Even so, the contrary analysis reflected in the Somerset County decisions is noteworthy and merits further consideration. Prior to Baylor, in the decision presently

⁶ Mistake, however, does not in and of itself negate application of adverse possession in Pennsylvania. See Schlagel v. Lombardi, 337 Pa. Super. 83, 486 A.2d 491, 494 (1984) (noting that "most jurisdictions 'deem the animus of the possessor irrelevant'[:]; . . . Pennsylvania follows the majority view" (quoting Lyons v. Andrews, 226 Pa. Super. 351, 351-60, 313 A.2d 313, 316-17 (1973))). In this regard, the Maryland Court of Appeals has elaborated as follows:

The modern trend and the better rule is that where the visible boundaries have existed for the period set forth in the Statute of Limitations, title will vest in the adverse possessor where there is evidence of unequivocal acts of ownership. In this view it is immaterial that the holder supposed the visible boundary to be correct or, in other words, the fact that the possession was due to inadvertence, ignorance, or mistake, is entirely immaterial.

Tamburo v. Miller, 100 A.2d 818, 821 (Md. 1953).

relied upon by the common pleas court, President Judge Coffroth made the case that the lesser standard of privity of possession should govern tacking successive periods of adverse possession, at least in boundary controversies. He reasoned that:

[t]he circumstances of unified use, and physical transfer of possession of the disputed tract, and continued adverse use thereof and of the conveyed tract as an incorporated and unified whole, show that the parties intended to transfer not only the title to the conveyed tract, but also the possession to the disputed area whose use was integrated with the conveyed tract, notwithstanding the omission from the deed of any mention of the disputed area.

Berzonski, 28 Som Leg. J. at 370. Further, he described privity of possession as "the almost universal rule" supporting tacking in the boundary dispute context. See id. at 367 (citing 3 AM. JUR. 2D ADVERSE POSSESSION §80 (Supp. 2002)).^{7, 8} With regard to

⁷ The citations to secondary authorities employed by President Judge Coffroth are updated here.

⁸ As summarized by one commentator:

At the present time, making allowance for contrary rulings still apparently adhered to in a few jurisdictions, the cases, especially the later ones, run generally to the effect that in order to permit the tacking of successive adverse possessions of vendor and purchaser of an area not within the premises as described in the deed or contract but contiguous thereto, the composite fact to be established is the intended and actual transfer or delivery of possession of such area to the grantee or vendee as successor in ownership or claim.

Annotation, Tacking Adverse Possession of Area Not Within Description of Deed or Contract, 17 A.L.R.2d 1128, 1131-32 (2002); see also HERBERT T. TIFFANY AND BASIL JONES, TIFFANY REAL PROPERTY §1207 (3d ed. 2002) ("There is sufficient privity for this purpose, it would seem, when the use[] is exercised, for the benefit of neighboring land, by successive owners or possessors of such land, between whom there exists some legal relation other than that of disseisor and disseisee."); id. at §1146 ("This privity may be based upon contract, estate, or blood relationship, or upon any connecting (continued...)")

Pennsylvania, President Judge Coffroth observed that both this Court's decision in Scheetz v. Fitzwater, 5 Pa. 126 (1847), and the Superior Court's in Stark v. Ladin, 133 Pa. Super. 96 (1938), approved tacking on such terms, where there was no valid written transfer of the grantor's adverse possession of the disputed area to the subsequent owner. See Berzonski, 28 Som. Leg. J. at 369;⁹ accord Lenihan v. Davis, 152 Pa. Super. 47, 49-50, 31 A.2d 434, 435 (1943).

Berzonski nonetheless acknowledged a contrary line of Superior Court authority, exemplified by Masters v. Local Union No. 472, United Mine Workers, 146 Pa. Super. 143, 22 A.2d 70 (1941), which implemented a requirement of privity of estate to support tacking without mention of Scheetz or Stark. The court, however, criticized Masters' reasoning as predicated on the erroneous assumption that landowners would generally lay claim to only part of the land that they possess or occupy,¹⁰ and observed that in

(...continued)

relationship which will prevent a break in the adverse possessions and refer the several possessions to the original entry, and for this purpose no written transfer or agreement is necessary[;] [o]f course, there must be a transfer of a possessory right initially, in order that the transferee be entitled to claim a tacking of the transferor's possession."); 3 AM. JUR. 2D ADVERSE POSSESSION §79 (2002) (stating that "if one adverse claimant, by agreement, surrenders possession to another, and the acts of the parties are such that the two possessions actually connect, leaving no interval for the constructive possession of the true owner to intervene, the two possessions are blended into one, and the running of the limitation period on the right of the true owner to reclaim the land is continued").

⁹ In Scheetz, 5 Pa. at 132, the Court specifically indicated that "possession may be passed without title" and "[a] proprietor who occupies his neighbour's land as a part of his farm, may certainly transfer his possession of the whole by a conveyance of the farm."

¹⁰ The Masters reasoning has been similarly criticized in the commentary, as, for example, in the following passage from an annotation:

(continued...)

another line of cases, the Superior Court persisted in the idea that an intent to convey more than the premises actually described in a deed could be inferred from acts or circumstances apart from the deed itself. See Berzonski, 28 Som. Leg. J. at 372-73 (citing Gerhart v. Hilsenbeck, 164 Pa. Super. 85, 89, 63 A.2d 124, 126-27 (1949)). Based on these latter decisions, President Judge Coffroth concluded that "Pennsylvania

(...continued)

In Masters v. Local Union No. 472, . . . it was held that "the insurmountable difficulty" confronting defendant in making out title by adverse possession to the area on which the buildings stood was that in title by adverse possession to the area on which the buildings stood was that in neither "the deed" to the association nor in the deed from the latter's trustee in bankruptcy to the defendant was there "any conveyance" of the rights acquired by the grantor by possession The court quoted as controlling the language of Schrack v. Zubler, (a case not on its facts within the scope of this annotation, nor at all similar to the ones here dealt with) to the effect that "each succeeding occupant must show title under his predecessor, so as to preserve a unity of possession," a statement which it seems would be erroneously construed to mean that such "title" must be transferred by a deed, or by a deed describing the land subsequently in controversy. In fact, somewhat strangely, because not supporting the position taken by the court in the Masters Case, the court therein quoted from the opinion rendered in the Schrack Case, in the subsequent appeal in 46 Pa. 67, that "an adverse possession begun and continued for a time, in order to be available to a successor, must be transferred to such successor in some lawful manner. This is true as that property can only be rightfully acquired with the assent of its owner, or vested by operation of law." The latter language, it will be observed, is clearly open to the construction that the "adverse possession" need not be transferred by a deed describing the premises held adversely, but simply "in some lawful manner."

Annotation, Tacking Adverse Possession, 17 A.L.R.2d at 1178-79.

has joined or rejoined the main stream of authority and validates . . . that privity may be established by oral agreement." Id. at 374.

Subsequent Pennsylvania cases generally followed Masters without reference to the view of a majority of jurisdictions as embodied in the reasoning of President Judge Coffroth. See Glenn v. Shuey, 407 Pa. Super. 213, 225, 595 A.2d 606, 612 (1991); Wittig v. Caracci, 370 Pa. Super. 584, 589-90, 537 A.2d 29, 32 (1988); Plott, 377 Pa. Super. at 596, 547 A.2d at 1222; Castronuovo v. Sordoni, 357 Pa. Super. 187, 193-94, 515 A.2d 927, 930-31 (1986). Nevertheless, prior to Baylor, courts continued to note an "other circumstances exception" based on Scheetz and Stark. See, e.g., Glen, 407 Pa. Super. at 226 n.6, 595 A.2d at 613 n.6; Wittig, 370 Pa. Super. at 589-90, 537 A.2d at 32; Castronuovo, 357 Pa. Super. at 193, 515 A.2d at 931.¹¹ In Baylor, however, this Court dismissed the portion of the privity rules permitting the tacking based on acts or circumstances extrinsic to written deeds, reasoning that:

[i]nterested parties have a right to discern from the record the state of the title of any parcel of land. If tacking were to be permitted because of vague, undefined "circumstances," there could and most likely would be no way for one not a party to the conveyance to know this. But the law mandates that a person asserting a claim of adverse possession make this assertion openly and notoriously to all the world. There must be no secret that the adverse possessor is asserting a claim to the land in question. If the adverse possessor's claim is to be passed on to a successor in title, therefore, there must be some objective indicia of record by which it can be discerned with some degree of certainty that a claim of title by adverse possession is being made and that the

¹¹ Part of the confusion in the cases results from the fact that courts have employed the definition of privity of possession, see 3 AM. JUR. 2D ADVERSE POSSESSION §79 ("Privity of possession is a succession of relationship to the same thing, whether created by deed or by other act, or by operation of law."), in defining privity of estate. See, e.g., Baylor, 540 Pa. at 438-39, 658 A.2d at 734 (citations omitted); see also supra note 10.

duration of this claim has been passed on to a successor in title.

Id. at 440, 658 A.2d at 745-46 (citation omitted).

Although Baylor was a boundary case, it proceeded on the theory of adverse possession, as opposed to acquiescence. While we recognize that this is a fine basis for distinction given the relatedness of these doctrines, strict application of Baylor's holding in the acquiescence paradigm would eliminate tacking in cases involving successive owners and mistaken boundaries, which would appear to be the prevailing set of circumstances in this line of decisions. See Annotation, Tacking Adverse Possession, 17 A.L.R.2d at 1131. Indeed, perhaps for this reason, Pennsylvania and other courts have previously suggested the application of more flexible rules in the acquiescence paradigm.¹²

As President Judge Coffroth aptly observed, the reason why privity of estate should not be deemed necessary to support tacking in this setting is, simply, because a prospective purchaser will see the fence or similar marking; given its "obvious presence

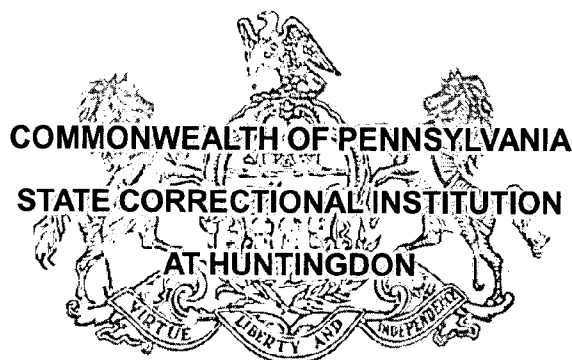
¹² See, e.g., Plauchak, 439 Pa. Super. at 170, 653 A.2d at 677-78; Mayor and Town Council of New Market v. Armstrong, 400 A.2d 425, 433-34 (Md. App. 1979) (indicating that "color of title [is] not necessary for tacking to provide continuity of possession of land, provided the land in question [is] contiguous to that described in a deed, and that lands both titled and untitled were part of a close, apparent by reason of physical boundaries such as fences or hedges." (citations omitted)); accord 11 C.J.S. BOUNDARIES §86 (Aug. 2002) ("Recognition and acquiescence of one owner may be tacked to that of a succeeding one, and privity of estate between successive owners is not necessary to permit of a technical tacking of their periods of holding to make out the statutory period." (footnotes omitted)); cf. Howard v. Kunto, 477 P.2d 210, 215 (Wash. App. 1970) (characterizing the requirement of privity as merely "a judicial recognition of the need for some reasonable connection between successive occupants so as to raise their claim of right above status of the wrongdoer or the trespasser"), overruled on other grounds, Chaplin v. Sanders, 676 P.2d 431 (Wash. 1984).

as apparent boundary," he is therefore put on notice to inquire about its origin, history, and function. See Berzonski, 28 Som. Leg. J. at 361 ("After 21 years, the chips will be allowed to fall where they may, for reasons of equity and peace.").

Accordingly, we find the majority view (requiring only privity of possession) better suited to claims brought under a theory of acquiescence in a boundary. We hold, therefore, that tacking is permitted in such context upon sufficient and credible proof of delivery of possession of land not within (but contiguous to) property described by deed of conveyance, which was previously claimed and occupied by the grantor and is taken by the grantee as successor in such interest.

The order of the Superior Court is reversed, and the case is remanded for reinstatement of the final decree of the common pleas court.

JEFFREY A. BEARD, Ph.D.
SECRETARY
DEPARTMENT OF CORRECTIONS



1100 Pike Street
Huntingdon, PA 16654-1112
Phone: 814-643-2400

KENNETH D. KYLER
SUPERINTENDENT

Address All Replies
To Superintendent

December 31, 2003

Judge John K. Reilly, Jr.
Court of Common Pleas of Clearfield Co.
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

REG: Marcus A. DAVIS
DOC# FM9879
INDICTMENT # CR-298/03
Committing Co.: Blair

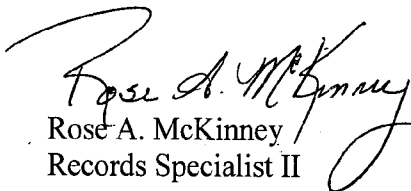
Dear Sir:

On 12-04-2003 you modified the sentence on the above individual. Commitment orders indicate Inmate Davis is to receive 56 days credit. Department of Corrections policy mandates we must use dates when issuing credit. Could you please provide the dates for which you wish credit to be issued.

I have checked with Blair County Prison regarding incarceration dates. Inmate Davis was incarcerated in the Blair County Prison from 08-26-2003 to 09-25-2003.

Thank you for your assistance in this matter.

Regards,


Rose A. McKinney
Records Specialist II

January 3, 2004
page 1 of 2

Dear Honorable Judge Reilly,
My name is Patti Jo Miller. I am currently incarcerated at Blair County Prison. I went before you on December 15, 2003 for a parole violation. You sentenced me to 45 days consecutive to my 11 1/2 to 23 months I must serve here. At my sentencing I asked you to lift my detainer because I have court approved work release in Blair county. You said you would if I got a job here and they would attach my wages. Now I find myself in a "catch 22", so to speak. Blair county won't let me get a job as long as you have a detainer on me.

Your Honor, I have 3 children and alot of costs and fines. I sincerely want to get my life together. Coming to jail probably saved my life. I do regret the things I've done in the past, but I have no regret for being in jail as I have learned alot.

If I could work while I'm incarcerated I could possibly get a head start for a change in

my life style and have my costs and fines paid off so I can devote my income to raising my children when I'm released. Please work with me on this matter. Tell me what I need to do to get this detainer lifted so I can utilize my time in a positive way.

Thank you for your time and consideration.

Sincerely,
Patti Jo Miller #
Blair county Prison
419 Market Square alley
Hollidaysburg, Pa.
76698

LAW OFFICES
GREENFIELD & KAY
GREENFIELD COURT
1035 FIFTH AVENUE
PITTSBURGH, PENNSYLVANIA 15219-6201

STANLEY W. GREENFIELD
PAUL G. KAY
DANIEL J. KRAUT

TELEPHONE (412) 261-4466
FAX (412) 261-4408
E-MAIL: gbandklaw@aol.com
WEBSITE: www.lawyers.com/gbk

January 5, 2004

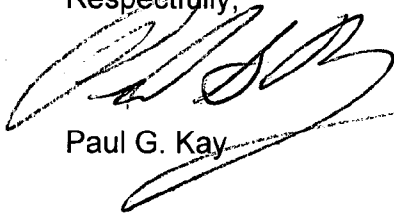
The Honorable John K. Reilly, Jr.
President Judge
Forty-Sixth Judicial District of Pennsylvania
Clearfield County
Clearfield, PA 16830

In Re: Commonwealth of Pennsylvania
v. Shlomo Dotan / 97CR373-375 – Blair County

Dear Judge Reilly:

The Commonwealth requested a postponement of the Evidentiary Hearing in this matter originally scheduled for December 3, 2003. To date, we have not received notice of a new date from the Court Administrator of Blair County. Petitioner respectfully requests that a new Evidentiary Hearing be scheduled as soon as possible.

Respectfully,



Paul G. Kay

PGK/ge

cc: Andrea McKenna, Esquire

COUNTY of BLAIR



MICHAEL D. REIGHARD
ADMINISTRATOR

PATRICIA M. GILDEA
ASST. ADMINISTRATOR

OFFICE OF COURT ADMINISTRATOR
423 ALLEGHENY STREET, SUITE 239
HOLLIDAYSBURG, PA. 16648

TELEPHONE
(814) 693-3030

FAX
(814) 693-3289

FAX TRANSMISSION SHEET

+ Schedule

NO. OF PAGES (including this page): 6

DATE: 12/31/03

SENDING TO: JUDGE JOHN K. REILLY, JR. JUDGE, CLEARFIELD CO.

FAX NO.: 765-7649

FROM: PAT GILDEA, ASST. COURT ADM., BLAIR CO.

RE: BOWERS, DONALD W. CONN. OF PA / COSTS & FINES DEPT

DOCKET NO.: 1985-273, 274, 283, ET AL

MESSAGE: SHOULD WE SCHEDULE (JAN 20-23 2004)
WHEN YOU ARE COMING BACK TO BLAIR COUNTY?
SHOULD WE BRING HIM TO HEARING - ONCE
✓ For ALL?

IF YOU ARE NOT RECEIVING A CLEAR COPY OR ALL THE PAGES ARE
NOT INCLUDED, PLEASE NOTIFY US AS SOON AS POSSIBLE.

Gerald M. Nelson, Esquire

Edward E. Zang, Esquire

Nelson & Zang
Attorneys At Law, PC
326 Allegheny Street
Hollidaysburg, PA 16648
(814) 695-2814
Fax (814) 695-2821

January 5, 2004

Honorable John K. Reilly, Jr.
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

In Re: Dotan v. Reva Schulman and Despoy & Nelson
No. 2003 GN 1512

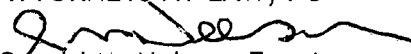
Dear Judge Reilly:

As you'll recall the undersigned was before you on December 3, 2003 on preliminary objections. You granted preliminary objections to Plaintiff's Amended Complaint as to Counts I, II and III. As to Counts IV, V, VI and VII you provided Plaintiff twenty (20) days to provide such exhibits as would form a foundation for his allegations that the Defendant, Reva Schulman, did not remove herself from the premises in a timely fashion in accordance with the agreement (enclosed for your convenience are copies of both Orders entered that day). As of this date, no such exhibits have been forthcoming. The twenty (20) days expired on or about December 23, 2003.

Due to the Plaintiff's failure to act in a timely manner, I ask that the remaining counts IV through VII be dismissed with prejudice. Should you need anything, please contact the undersigned at your convenience.

Sincerely,

NELSON & ZANG,
ATTORNEYS AT LAW, PC


Gerald M. Nelson, Esquire

GMN/wm
Enclosures

cc: Reva Schulman
cc: Shlomo Dotan
cc: Terry W. Despoy, Esquire

Law Offices of Stephen C. Fleming

Attorney at Law

119 South Burrowes Street
State College, PA 16801
tel: 814/234-9070
fax: 814/238-0482
scfleming@adelphia.net

December 22, 2003

Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

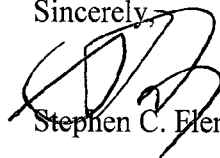
Re: Eyerly v. Kanouff
Clearfield County Court Case Number: 2002-224-CD

Dear Prothonotary,

Please find enclosed for filing an original and a copy of Plaintiffs' *Closing Statement*.

Thank you for your assistance in this matter.

Sincerely,



Stephen C. Fleming, Esq.

SCF/lmc

Encl.

cc: Rosedale Kauffman, Esq.
Timothy and Kim Eyerly

RECEIVED

DEC 26 2003

**COURT ADMINISTRATOR'S
OFFICE**

Date: 02/18/2004

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:36 AM

ROA Report

Page 1 of 2

Case: 2002-00224-CD

Current Judge: John K. Reilly Jr.

Timothy Eyerly, Kim Eyerly vs. Charles D. Kanouff, Karen T. Kanouff

Civil Other

Date	Judge
02/15/2002	No Judge
① Filing: Quiet Title Complaint Paid by: Masorti, Sullivan & Engle Receipt number: 1838323 Dated: 02/15/2002 Amount: \$80.00 (Check) 2 CC to Sheriff Property is located in Morrisdale, Morris Township, Clearfield County, PA.	
03/13/2002	No Judge
② Answer and New Matter. Filed by s/Mary Ann Kresen, Esquire Verification s/Charles D. Kanouff Certificate of Service 1 cc Atty Kresen	
03/15/2002	No Judge
③ Notice to Plead, s/Mary Ann Kresen, Esq. One CC Attorney Delafield	
04/02/2002	No Judge
④ Plaintiffs' Reply to Defendants' New Matter. Filed by s/Stephen C. Fleming, Esq. Verification s/Timothy Eyerly s/Kim Eyerly Certificate of Service 1 cc Atty Fleming	
04/15/2002	No Judge
⑤ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	
07/05/2002	No Judge
⑥ Certificate of Service, Notice of Records Deposition, upon Stephen C. Fleming, Esq., filed by s/Mary Ann Kresen, Esq. No CC	
	No Judge
⑦ Certificate Prerequisite to Service of Subpoenas Pursuant to Rule 4009.22, filed by s/Mary Ann Kresen, Esq. No CC	
10/18/2002	No Judge
⑧ Certificate of Service, Defendant's Interrogatories for Answer by Plaintiffs upon STEPHEN C. FLEMING, ESQUIRE. s/Mary Ann Kresen, Esquire no cc	
05/08/2003	No Judge
⑨ Praecipe For Hearing on Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa. R.C.P. 1576. filed by s/Stephen C. Fleming, Esq. Verification s/Stephen C. Fleming, Esq. Certificate of Service 2 cc to Atty	
	John K. Reilly Jr.
⑩ Motion for Hearing on Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa.R.C.P. 1576, filed by s/Stephen C. Fleming, Esq. Two CC Attorney	
08/07/2003	No Judge
⑪ Plaintiffs' Praecipe to List for Trial, filed by s/Stephen C. Fleming One CC Attorney Fleming	
09/16/2003	John K. Reilly Jr.
⑫ ORDER, NOW, this 15th day of September, 2003, re: Trial in the above-captioned Action to Quiet Title shall be had on Oct. 15, 2003, commencing at 9:00 a.m., pending the outcome of which both Plaintiffs and Defendants shall hereby be enjoined from interfering with the existing brush, trees and any other natural vegetation on the subject property line with the exception that each shall be permitted to mow the grass, etc. as it shall appear on each side of the subject line. by the Court, s/JKR,JR.,P.J. 1 cc Atty Kresen, S. Fleming	
11/20/2003	John K. Reilly Jr.
⑬ ORDER, NOW, this 19th day of November, 2003, re: Counsel for Plaintiff shall file a Brief with this Court within 15 days from this date, and Defendant is given 10 days thereafter to respond in kind. by the Court, s/JKR,JR.,P.J. 2 cc S. Fleming, Kresen	
12/08/2003	John K. Reilly Jr.
⑭ Motion For Hearing On Plaintiffs' Request for Injunction Pendente Lite pursuant to Pa R.C.P. 1576. filed by, s/Stephen C. Fleming, Esquire Verification s/Stephen C. Fleming, Esq. Certificate of Service 2 cc Atty	
01/13/2004	John K. Reilly Jr.
⑮ OPINION AND ORDER, NOW, this 12th day of January, 2004, follwing Hearing and Briefs into the above-captioned Complaint to Quiet Title, it is the ORDER of this Court that judgment shall be and is hereby entered in favor of the Plaintiffs as set forth in the foregoing Opinion. by the Court, s/JKR,JR., Senior Judge, Specially Presiding 2 cc Atty Fleming, Kresen, and D. Mikesell	
02/11/2004	John K. Reilly Jr.
⑯ Filing: Appeal to High Court Paid by: Fleming, Stephen C. (attorney for Eyerly, Timothy) Receipt number: 1873649 Dated: 02/11/2004 Amount: \$45.00 (Check)	

Date: 02/18/2004

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:36 AM

ROA Report

Page 2 of 2

Case: 2002-00224-CD

Current Judge: John K. Reilly Jr.

Timothy Eyerly, Kim Eyerly vs. Charles D. Kanouff, Karen T. Kanouff

Civil Other

Date

Judge

02/11/2004

Notice of Appeal by TIMOTHY EYERLY and KIM EYERLY, Plaintiffs to the Superior Court of Pennsylvania. filed by, s/Stephen C. Fleming, Esquire
1 cc & Ck #1018 for \$60.00 to Superior Court 5 cc to Atty

(combine
w/ above)