

02-659-CD

EDGAR L. ENGLISH -vs- ST. SEVERINE CATHOLIC CHURCH

Date: 12/29/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 10:26 AM

ROA Report














Page 1 of 1

Case: 2002-00659-CD

Current Judge: Paul E. Cherry

Edgar L. English vs. St. Severin Catholic Church

Civil Other

Date		Judge
04/25/2002	Filing: Complaint in Ejectment Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1841568 Dated: 04/25/2002 Amount: \$80.00 (Check) Two CC Attorney Property is located in Cooper Township, Clearfield County, PA.	No Judge/ 
05/09/2002	Sheriff Returns, April 30, 2002, served Complaint on Defendant, So Answers Chester A. Hawkins by s/Marilyn Hamm \$38.74 paid by attorney No CC	No Judge 
08/01/2002	Answer to Complaint in Ejectment and New Matter. Filed by s/Barbara J. Hugney-Shope, Esquire Certificate of Service 3 cc Atty Shope	No Judge 
08/05/2002	Praeipce To Amend Caption. Please amend the above caption such that the Defendant should Read "ST. SEVERIN CATHOLIC CHURCH". filed by s/R. Denning Gearhart, Esq. no cc	No Judge 
08/19/2002	Answer to New Matter. filed by s/R. Denning Gearhart, Esq. 2 cc Atty Gearhart	No Judge 
	Certificate of Service, Answer to New Matter upon BARBARA J. HUGNEY-SHOPE, ESQ. filed by s/R. Denning Gearhart, Esq. no cc	No Judge 
11/04/2002	Motion For Summary Judgment. filed by s/R. Denning Gearhart, Esq. 2 cc Atty Gearhart	No Judge 
11/05/2002	Certificate of Service, Motion for Summary Judgment, together w/Brief in Support of Motion for Summary Judgment upon Barbara J. Hugney-Shope, Esquire s/R. Denning Gearhart, Esq. no cc	No Judge 
12/04/2002	Defendant's Response To Motion For Summary Judgment. filed by s/Barbara J. Hugney-Shope, Esq. 3 cc Atty Shope	John K. Reilly Jr. 
12/11/2002	ORDER, NOW, this 11th day of December, 2002, re: Argument into Motion for Summary Judgment filed on behalf of Plaintiff. Motion be and is hereby DENIED. by the Court, s/JKR,JR.,P.J. 1 cc Atty Gearhart, Shope	John K. Reilly Jr. 
09/03/2004	Order. AND NOW, this 3rd day of September, 2004, it is the Order of the Court that a status conference in the above-captioned matter has been scheduled for Monday, October 4, 2004 at 9:30 a.m. in Courtroom No. 1, Clearfield County Courthouse.. BY THE COURT: /s/Fredric J. Ammerman, President Judge. 1 CC Attys: Gearhart, Hugney-Shope.	Fredric Joseph Ammerman 
10/05/2004	Order Now, this 4th day of October, 2004, following status conference among counsel and the Court, it is the ORDER of this Court that the Plaintiff have no more than forty-five days from this date in which to file an amended complaint. In the event no amended complaint is filed, the Court administrator shall cause the matter to be placed on the list for nonjury trial. S/ FJA 1 CC Atty. Gearhart, 1 CC Atty. Hugney-Shope, Copy to CA.	Fredric Joseph Ammerman 
10/22/2004	Order, NOW, this 4th day of October, 2004, following status conference among counsel and the Court, it is the ORDER of this Court that the Plaintiff have no more than 45 days from this date in which to file an amended complaint. In the event no amended complaint is filed, the Court Administrator shall cause the matter to be placed on the list for nonjury trial. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1 CC Attys Gearhart, Shope	Fredric Joseph Ammerman 

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

EDGAR L. ENGLISH

Plaintiff

VS.

NO. 02- *659* -CD

ST. SEVERINE CATHOLIC CHURCH,

Defendant

CASE NUMBER: 02- *659* -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: COMPLAINT IN EJECTMENT

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

APR 25 2002

01/0.00/atty gearhart
William A. Shaw
Prothonotary
pd 80.00
see atty

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

EDGAR L. ENGLISH

Plaintiff

VS.

NO. 02-

-CD

ST. SEVERINE CATHOLIC CHURCH,

Defendant

NOTICE TO DEFEND

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

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

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
814-765-2641 Ext. 50-51

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

EDGAR L. ENGLISH	:		
Plaintiff	:		
VS.	:	NO. 02-	-CD
ST. SEVERINE CATHOLIC CHURCH,	:		
Defendant	:		

COMPLAINT IN EJECTMENT

AND NOW, comes Plaintiff, by and through his attorney, R. Denning Gearhart, who avers as follows:

1. That Plaintiff, EDGAR L. ENGLISH, is an adult individual, residing at R.R. #1, Box 196-C, Philipsburg, Clearfield County, Pennsylvania 16866.
2. That Defendant, ST. SEVERINE CATHOLIC CHURCH, is a church with an address of P.O. Box 159, Frenchville, Clearfield County, Pennsylvania 16836. It is the owner and possessor of a certain parcel of property located in Cooper Township, Clearfield County, Pennsylvania and adjoining the property of the Plaintiffs. The property of the Defendants is the servient tenement of the easement which is the subject of this suit.
3. The easement in question is a strip of road running through the property of the Defendant to the property now owned by the Plaintiff. Said right of way is indicated on the map found of record in the Assessment Office of Clearfield County. The property of the Plaintiff is designated by the letter "P". The property of the Defendant is designated by the letter "D".
4. That said right of way is the only access to the property owned by Plaintiff.
5. That at one time, there existed a house on the property owned by the Plaintiff.

6. That said right of way has been used openly and continuously by the Plaintiff and his predecessors in title, as a matter of right and without license, for a period in excess of twenty-one (21) years. As such, Plaintiff, or his predecessors in title, has enjoyed a free and uninterrupted easement or right of way over that portion of the Defendant's land for ingress, egress, and regress by vehicle and foot to enter upon his property.

7. That there presently exists a visible road from PA Route 53 to the Plaintiff's property.

8. The use of this portion of Defendant's land by Plaintiff, or his predecessors in title, was open, visible, notorious, uninterrupted, and adverse for a period of over twenty-one years and Plaintiffs have thereby acquired a prescriptive easement or right of way over that portion of Defendant's land.

9. That the parcel of land which is the dominant tenement of this easement was conveyed to the Plaintiff by Deed of Marvin E. Dawkins and Gertrude G. Dawkins, his wife, dated September 23, 2000 and recorded in Clearfield to Instrument No. 200014410.

10. That the Plaintiff's property is without access to any roads except for the easement in question.

11. It is believed and therefore averred that the predecessors in title used and relied upon the easement in question in a manner described above.

12. That the Plaintiff is entitled to the relief sought based on a formation of an easement by prescription as well as an easement by necessity.

WHEREFORE, Plaintiff requests that this Court:

- (1) allow the continued use of the right of way herein described; and
- (2) find that an easement exists; or
- (3) in the alternative, let the Court find that an easement exists by prescription or in the alternative implication by necessity; and

(4) enter an Order prohibiting the Defendant or its successors in title from obstructing said easement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Denning Gearhart', is written over a horizontal line.

R. Denning Gearhart
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA

SS:

COUNTY OF CLEARFIELD

AFFIDAVIT

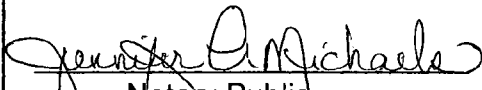
Before me, the undersigned officer, personally appeared, EDGAR L. ENGLISH who being duly sworn according to law deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information, and belief.

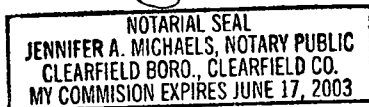

EDGAR L. ENGLISH

Sworn to and subscribed

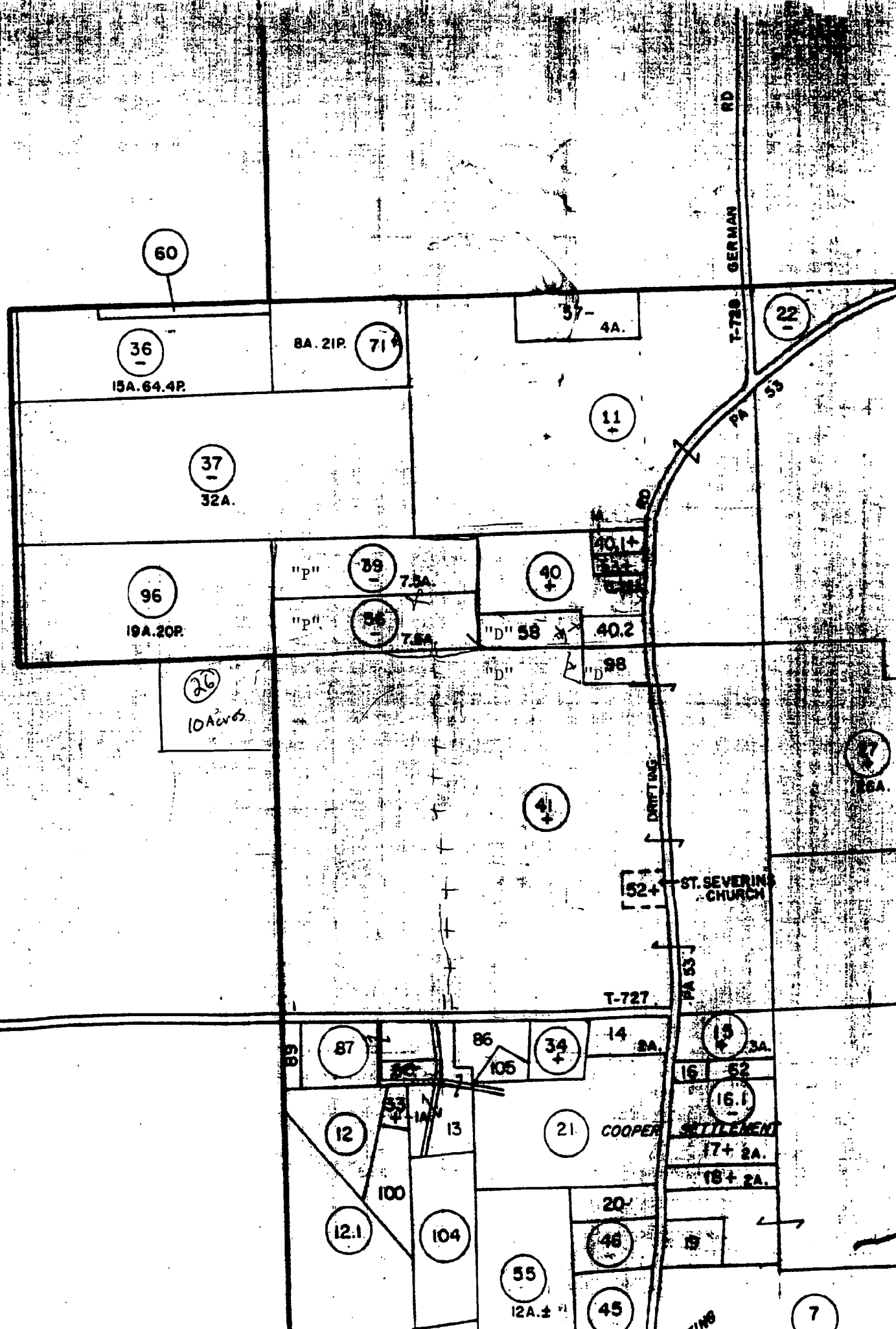
before me this 12th day

of April, 2002.


Notary Public



57



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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA (CIVIL DIVISION) NO. 02- -CD
EDGAR L. ENGLISH, Plaintiff VS. ST. SEVERINE CATHOLIC CHURCH, Defendant
COMPLAINT IN EJECTMENT
R. DENNING GEARHART ATTORNEY AT LAW CLEARFIELD, PA. 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12447

ENGLISH, EDGAR L.

02-659-CD

VS.

ST. SEVERINE CATHOLIC CHURCH

COMPLAINT IN EJECTMENT

SHERIFF RETURNS

NOW APRIL 30, 2002 AT 10:10 AM DST SERVED THE WITHIN COMPLAINT IN
EJECTMENT ON ST. SEVERINE CATHOLIC CHURCH, DEFENDANT AT
RESIDENCE, PO BOX 159, FRENCHVILLE, CLEARFIELD COUNTY, PENNSYLVANIA
BY HANDING TO FR. SAM BUNGO, P.I.C./PRIEST A TRUE AND ATTESTED COPY
OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN TO HIM THE
CONTENTS THEREOF.
SERVED BY: NEVLING.

Return Costs

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

Sworn to Before Me This

gm Day Of *May* 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 Mauley Harris
Chester A. Hawkins
Sheriff

FILED

012:12
MAY 09 2002

Shaw William A. Shaw
Prothonotary

AUG 01 2002
013311 3ccatty Shop
William A. Shaw
Prothonotary
JRS

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

EDGAR L. ENGLISH,
Plaintiff

vs.

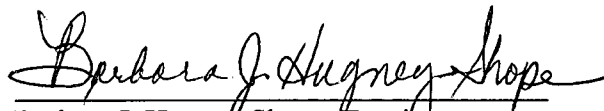
ST. SEVERINE CATHOLIC CHURCH
Defendant

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* **NO. 02-659-CD**
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NOTICE TO PLEAD

TO: EDGAR L. ENGLISH
c/o R. Denning Gearhart, Esquire
215 East Locust Street
Clearfield, PA 16830

You are hereby notified to file a written response to the enclosed NEW MATTER within twenty (20) days from service hereof or a judgment may be entered against you.



Barbara J. Hugney-Shope, Esquire
Attorney for Defendant
23 North Second Street
Clearfield, PA 16830
(814) 765-5155

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

EDGAR L. ENGLISH,
Plaintiff

vs.

ST. SEVERINE CATHOLIC CHURCH
Defendant

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*
* **NO. 02-659-CD**
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*

**ANSWER TO COMPLAINT IN EJECTMENT
AND NEW MATTER**

AND NOW, comes the Defendant, who by and through its attorney,
BARBARA J. HUGNEY-SHOPE, ESQUIRE, and files the following Answer to
Plaintiff's Complaint in Ejectment and avers as follows:

1. Admitted.
2. Denied in part. It is denied that the property of St. Severin's Catholic Church is the servient tenement of the alleged easement which is the subject of this suit. On the contrary, there is no easement over the land of St. Severin's Catholic Church to which the Plaintiff or his predecessors in title used or have any right to use. Further, the correct spelling of the Defendant's name is St. Severin not St. Severine as averred by the Plaintiff.

3. Denied. It is denied that there is any easement running through the property of the Defendant to the property now owned by the Plaintiff, nor is there any right of way indicated on any map of record in the Assessment Office of Clearfield County. On the contrary, the map attached as Defendant's Exhibit "A" represents the land of the Defendant and is as it appears in the records of Clearfield County without any alleged easement indicated.

4. Denied. It is denied that the alleged right of way is the only access to the property now owned by the Plaintiff. On the contrary, prior owners are believed to have used an access road existing north of land of Plaintiff for access to this property from PA 53.

5. Denied. Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief to the truth of this averment and strict proof thereof is demanded at trial. In further answer, a review of the tax assessment records for prior owners of the property now owned by the Plaintiff fail to indicate the existence of a house for over forty (40) years.

6. Denied. It is denied that any right of way has been used openly and continuously by Plaintiff or his predecessors in title for a period in excess of twenty (21) years. On the contrary, the alleged right of way claimed by the Plaintiff is through the St. Severin's Cemetery and was never used as an access road for any land beyond

the cemetery limits. In further answer, there was no dwelling on the property of Plaintiff for in excess of sixty (60) years.

7. Denied. It is denied that there exists a visible road from PA Route 53 to Plaintiff's property. On the contrary, the alleged right of way claimed by the Plaintiff is through the St. Severin's Cemetery to the old log church and was never used as an access road for any land beyond these cemetery limits. In further answer, there was no dwelling on the property of Plaintiff for in excess of sixty (60) years.

8. Denied. It is denied that any portion of Defendant's land was used by Plaintiff, or his predecessors in title for a period of over twenty-one years or that Plaintiffs have acquired any type of easement or right of way over any part of Defendant's land. On the contrary, the alleged right of way claimed by the Plaintiff is through the St. Severin's Cemetery to the old log church and was never used as an access road for any land beyond these cemetery limits.

9. Denied in part. It is denied that the parcel conveyed to Plaintiff is the dominant tenement of any easement through land of Defendant. On the contrary, there is no easement through land of Defendant nor was any of Defendant's land used to gain access to Plaintiff's land.

10. Denied, Paragraph 10 is denied in that Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief to the truth of this averment and strict proof thereof is demanded at trial.

11. Denied. It is denied that the Plaintiff's predecessors in title used or relied upon the easement in question. On the contrary, none of Plaintiff's predecessors in title ever used or relied upon access to Plaintiff's land by way of Defendant's land. In further answer, Defendant believes and avers that Plaintiff's predecessors in title had access to this land by some other route; specifically, north of Plaintiff's land which is or was owned by others.

12. Denied. It is denied that Plaintiff is entitled to an easement by prescription or by necessity. On the contrary, Plaintiff's predecessors in title obtained access to this land by some other route since they never used Defendant's land.

WHEREFORE, the Defendant respectfully requests your Honorable Court to dismiss Plaintiff's Complaint.

NEW MATTER

13. The averments set forth in Defendant's Answers to Paragraphs 1 through 12 are incorporated herein as though set forth in full.

14. Plaintiff does not have any claim for an easement over land of Defendant by either an alleged easement or any other proscriptive right.

15. By filing his Complaint in Ejectment against Defendant, without any basis, Plaintiff has caused Defendant to incur legal fees in order to defend this action.

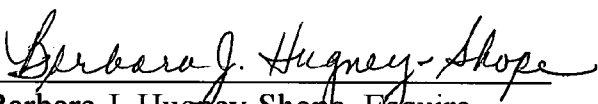
16. Defendant believes and avers that Plaintiff was fully aware that this property was landlocked when he purchased same and that he would have to proceed properly by requesting a Board of View to obtain any access.

17. Rather than proceeding as required by law, Plaintiff attempts to obtain access by claiming a non-existing easement when he knew full well that no such easement existed.

18. Defendant respectfully requests that Plaintiff be required to reimburse Defendant for reasonable counsel fees.

WHEREFORE, Defendant respectfully requests Your Honorable Court to dismiss Plaintiff's Complaint and enter an order requiring Plaintiff to pay Defendant's reasonable counsel fees.

Respectfully submitted,


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

S7

Defendant's Exhibit "A"

Defendant's Exhibit "A"

)

SS.:

)

On this, the 15th day of July, 2002, before me, the undersigned

John J. Harvey

Co-Chairman

of St. Severin's Catholic Church, and that as such does depose and state that the facts

set forth in the foregoing Answer and New Matter are true and correct to the best of his

knowledge, information and belief.

ST. SEVERIN'S CATHOLIC CHURCH

By: John F. Harvey

SWORN TO AND SUBSCRIBED

before me this 15th day

of July , 2002.

Barbara J. Hugney-Shope
Notary Public

NOTARIAL SEAL
BARBARA J. HUGNEY-SHOPE, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires Oct. 20, 2003

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

EDGAR L. ENGLISH,
Plaintiff

vs.

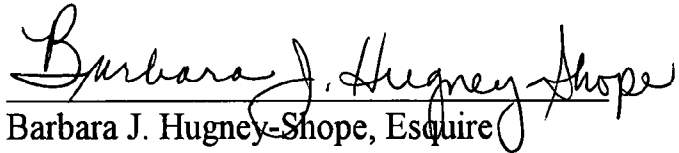
ST. SEVERINE CATHOLIC CHURCH
Defendant

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* NO. 02-659-CD
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CERTIFICATE OF SERVICE

AND NOW, this 1st day of August, 2002, I, Barbara J. Hugney-Shope, Esquire, do hereby certify that I served a certified copy of the ANSWER TO COMPLAINT IN EJECTMENT AND NEW MATTER filed in the above-captioned matter on R. Denning Gearhart, Esquire, Attorney for Plaintiff in the above-captioned matter, by hand delivering the same on the 1st day of August, 2002, at the following address:

R. Denning Gearhart, Esquire
Attorney for Plaintiff
215 East Locust Street
Clearfield, PA 16830



Barbara J. Hugney-Shope, Esquire

Attorney for the Defendant

23 North Second Street
Clearfield, PA 16830

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

NO. 02-659-CD

EDGAR L. ENGLISH,
Plaintiff,

vs.

ST. SEVERINE CATHOLIC CHURCH,
Defendant.

ANSWER TO COMPLAINT IN EJECTMENT
AND NEW MATTER

BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830
(814) 765-5155
FAX (814) 765-2957

BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830

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

EDGAR L. ENGLISH,
Plaintiff

VS.

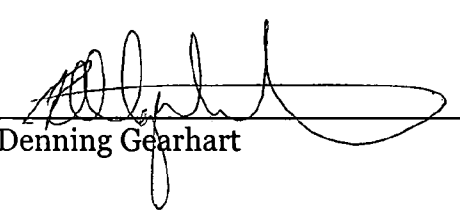
ST. SEVERINE CATHOLIC CHURCH
Defendant

NO. 02-659-CD

PRAECIPE TO AMEND CAPTION

Please amend the above caption such that the Defendant should read
"ST. SEVERIN CATHOLIC CHURCH".

Respectfully submitted,


R. Denning Gearhart

Dated: August 2, 2002

FILED

AUG 05 2002

0/1101/nc

William A. Shaw
Prothonotary

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

EDGAR L. ENGLISH,
Plaintiff

VS.

ST. SEVERIN CATHOLIC CHURCH,
Defendant

NO. 02-659-CD

CASE NUMBER: 02-659-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: ANSWER TO NEW MATTER

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

AUG 19 2002

012.172cc atty Gearhart
William A. Shaw
Prothonotary

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

EDGAR L. ENGLISH,
Plaintiff

VS.

ST. SEVERIN CATHOLIC CHURCH,
Defendant

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:
:
:

NO. 02-659-CD

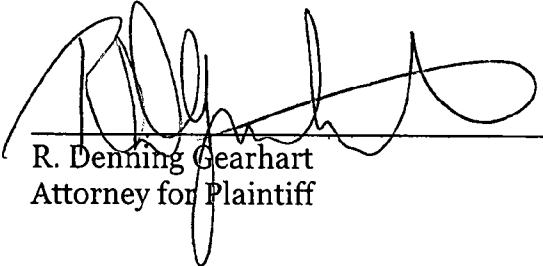
ANSWER TO NEW MATTER

AND NOW, comes the Plaintiff, EDGAR L. ENGLISH, who answers
Defendant's New Matter, and avers as follows:

13. No answer required.
14. Denied for reasons set forth in the Complaint.
15. Denied that the Complaint was without any basis.
16. Denied for reasons set forth in the Complaint.
17. Denied for reasons et forth in the Complaint.
18. No answer required.

WHEREFORE, Plaintiff respectfully requests your Honorable Court to
enter judgment for him and against the Defendant on the New Matter.

Respectfully submitted,



R. Denning Gearhart
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

AFFIDAVIT

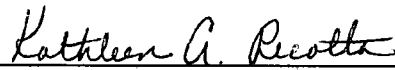
Before me, the undersigned officer, personally appeared, EDGAR L. ENGLISH who being duly sworn according to law deposes and says that the facts set forth in the foregoing Answer to New Matter are true and correct to the best of his knowledge, information, and belief.

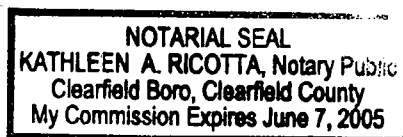

EDGAR L. ENGLISH

Sworn to and subscribed

before me this 19 day

of August, 2002.


Notary Public



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 02-659-CD

EDGAR L. ENGLISH,
Plaintiff

vs.

ST. SEVERIN CATHOLIC CHURCH,
Defendant

ANSWER TO NEW MATTER

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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

EDGAR L. ENGLISH,
Plaintiff

vs.

ST. SEVERIN CATHOLIC CHURCH,
Defendant

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:
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No. 02-659-CD

CASE NUMBER:

No. 02-659-CD

TYPE OF CASE:

Civil

TYPE OF PLEADING:

CERTIFICATE OF SERVICE

FILED ON BEHALF OF:

Plaintiff

COUNSEL OF RECORD FOR THIS PARTY:

R. DENNING GEARHART, ESQUIRE
Supreme Court I. D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

AUG 19 2002

Olivia Ince

William A. Shaw
Prothonotary

[Signature]

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

EDGAR L. ENGLISH,
Plaintiff

vs.

ST. SEVERIN CATHOLIC CHURCH,
Defendant

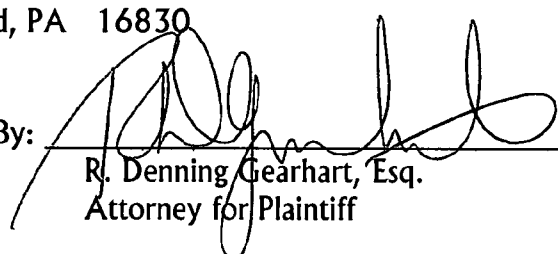
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: No.02-659-CD
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of the Answer to New Matter filed in the above captioned matter on the Defendant through Defendant's attorney by depositing such documents in the United States Mail postage pre-paid and addressed as follows:

Barbara J. Hugney-Shope, Esq.
23 North Second Street
Clearfield, PA 16830

By:


R. Denning Gearhart, Esq.
Attorney for Plaintiff

Dated: August 19, 2002

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

EDGAR L. ENGLISH,

Plaintiff

VS.

ST. SEVERIN CATHOLIC CHURCH,

Defendant

:
:
:
:
:
:

NO. 02-659-CD

CASE NUMBER: 02-659-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: MOTION FOR SUMMARY JUDGMENT

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

NOV 04 2002

William A. Shaw
Prothonotary

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

EDGAR L. ENGLISH,
Plaintiff

VS.

ST. SEVERIN CATHOLIC CHURCH,
Defendant

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:
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NO. 02-659-CD

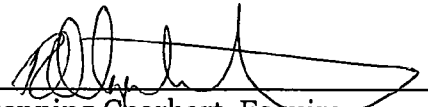
MOTION FOR SUMMARY JUDGMENT

NOW COMES, the Plaintiff, Edgar English, by and through his attorney, R. Denning Gearhart, who makes this motion and in support thereof avers as follows:

1. That the Plaintiff filed this complaint alleging a right of way over the lands of the Defendant.
2. That the Defendant in his answer admitted that the right of way had been formed by prescription. The Defendant in its New Matter alleged abandonment of that right of way.
3. That there are no facts averred to support evidence of abandonment of a right of way by the plaintiff or his predecessors in title.
4. Accordingly, there is no dispute of fact that the plaintiff is entitled to judgment as a matter of law.

WHEREFORE, Plaintiff prays the Honorable Court to grant him summary judgment, acknowledging the right of way where averred by the Plaintiff.

Respectfully submitted,



R. Denning Gearhart, Esquire

FILED
NOV 19 1981
NOV 14 2002
William A. Shaw
Prothonotary

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLARENCE, PA.

FILED
acc

019:2501 Att:Geachest
NOV 04 2002

William A. Shaw
Prothonotary

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

EDGAR L. ENGLISH,	:	
Plaintiff	:	
VS.	:	NO. 02-659-CD
	:	
ST. SEVERIN CATHOLIC CHURCH,	:	
Defendant	:	

CERTIFICATE OF SERVICE

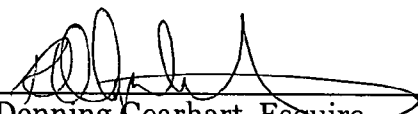
That on the 4th day of November, 2002, I served a certified copy of the Motion for Summary Judgment, together with the Brief in Support of Motion for Summary Judgment filed in this proceeding on the following and in the following manner:

U.S. POSTAL SERVICE - FIRST CLASS MAIL - POSTAGE PREPAID

Barbara J. Hugney-Shope, Esquire
23 N. Second Street
Clearfield, PA 16830

I certify under penalty of perjury that the foregoing is true and correct.

Dated: November 4, 2002


R. Denning Gearhart, Esquire
Attorney for Plaintiff

FILED

NOV 05 2002

0/11:50
William A. Shaw
Prothonotary
No cert copy

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

EDGAR L. ENGLISH,
Plaintiff

vs.

ST. SEVERINE CATHOLIC CHURCH
Defendant

*
*
*
* **NO. 02-659-CD**
*
*
*
* **Type of Case: EQUITY**
*
*
*
* **Type of Pleading: DEFENDANT'S**
* **RESPONSE TO MOTION FOR**
* **SUMMARY JUDGMENT**
*
* **Filed on behalf of: DEFENDANT**
* **ST. SEVERIN'S CATHOLIC CHURCH**
*
*
* **Counsel of Record for Defendant:**
* **BARBARA J. HUGNEY-SHOPE, ESQUIRE**
* Supreme Court I. D. No. 26274
* 23 North Second Street
* Clearfield, PA 16830
* (814) 765-5155

FILED

DEC 04 2002

William A. Shaw
Prothonotary

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

EDGAR L. ENGLISH,
Plaintiff

vs.

ST. SEVERINE CATHOLIC CHURCH
Defendant

*
*
*
* **NO. 02-659-CD**
*
*
*

**DEFENDANT' RESPONSE TO MOTION
FOR SUMMARY JUDGMENT**

AND NOW, comes the Defendant, who by and through its attorney,
BARBARA J. HUGNEY-SHOPE, ESQUIRE, and files the following Response to
Defendant's Motion for Summary Judgment as follows:

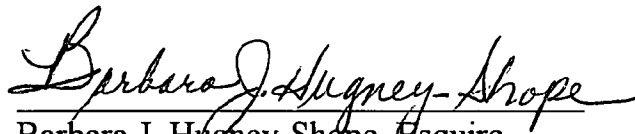
1. Admitted.
2. Denied. It is denied that the Defendant admitted that a right-of-way had been formed by prescription or alleged an abandonment of that right-of-way in its New Matter. On the contrary, the Answer and New Matter filed by the Defendant consistently deny that there is a right-of-way or that one ever existed over land owned by Defendant for access to Plaintiff's property. A copy of Defendant's Answer and New Matter are attached hereto as Exhibit A," and incorporated herein.

3. Admitted. In further answer, no facts were necessary to support an abandonment of an alleged right-of-way by the Plaintiff or his predecessors in title since Defendant's Answer and New Matter consistently averred that no right-of-way ever existed over its land for access to Plaintiff's land.

4. Denied. It is denied that no dispute of fact exists or that Plaintiff is entitled to judgment as a matter of law. On the contrary, Plaintiff's Motion misrepresents the pleadings in this case and, in fact, Defendant's Answer indicates that there is no right-of-way over its land creating a dispute of fact requiring that the Court hear testimony and other evidence in order to determine this issue.

WHEREFORE, Defendant prays the Honorable Court to deny Plaintiff's Motion for Summary Judgment and schedule this matter for trial.

Respectfully submitted,


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

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

EDGAR L. ENGLISH,
Plaintiff

vs.

ST. SEVERINE CATHOLIC CHURCH
Defendant

*
*
*
* NO. 02-659-CD
*
*

ANSWER TO COMPLAINT IN EJECTMENT
AND NEW MATTER

AND NOW, comes the Defendant, who by and through its attorney,
BARBARA J. HUGNEY-SHOPE, ESQUIRE, and files the following Answer to
Plaintiff's Complaint in Ejectment and avers as follows:

1. Admitted.
2. Denied in part. It is denied that the property of St. Severin's Catholic Church is the servient tenement of the alleged easement which is the subject of this suit. On the contrary, there is no easement over the land of St. Severin's Catholic Church to which the Plaintiff or his predecessors in title used or have any right to use. Further, the correct spelling of the Defendant's name is St. Severin not St. Severine as averred by the Plaintiff.

Exhibit "A"

3. Denied. It is denied that there is any easement running through the property of the Defendant to the property now owned by the Plaintiff, nor is there any right of way indicated on any map of record in the Assessment Office of Clearfield County. On the contrary, the map attached as Defendant's Exhibit "A" represents the land of the Defendant and is as it appears in the records of Clearfield County without any alleged easement indicated.

4. Denied. It is denied that the alleged right of way is the only access to the property now owned by the Plaintiff. On the contrary, prior owners are believed to have used an access road existing north of land of Plaintiff for access to this property from PA 53.

5. Denied. Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief to the truth of this averment and strict proof thereof is demanded at trial. In further answer, a review of the tax assessment records for prior owners of the property now owned by the Plaintiff fail to indicate the existence of a house for over forty (40) years.

6. Denied. It is denied that any right of way has been used openly and continuously by Plaintiff or his predecessors in title for a period in excess of twenty (21) years. On the contrary, the alleged right of way claimed by the Plaintiff is through the St. Severin's Cemetery and was never used as an access road for any land beyond

the cemetery limits. In further answer, there was no dwelling on the property of Plaintiff for in excess of sixty (60) years.

7. Denied. It is denied that there exists a visible road from PA Route 53 to Plaintiff's property. On the contrary, the alleged right of way claimed by the Plaintiff is through the St. Severin's Cemetery to the old log church and was never used as an access road for any land beyond these cemetery limits. In further answer, there was no dwelling on the property of Plaintiff for in excess of sixty (60) years.

8. Denied. It is denied that any portion of Defendant's land was used by Plaintiff, or his predecessors in title for a period of over twenty-one years or that Plaintiffs have acquired any type of easement or right of way over any part of Defendant's land. On the contrary, the alleged right of way claimed by the Plaintiff is through the St. Severin's Cemetery to the old log church and was never used as an access road for any land beyond these cemetery limits.

9. Denied in part. It is denied that the parcel conveyed to Plaintiff is the dominant tenement of any easement through land of Defendant. On the contrary, there is no easement through land of Defendant nor was any of Defendant's land used to gain access to Plaintiff's land.

10. Denied, Paragraph 10 is denied in that Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief to the truth of this averment and strict proof thereof is demanded at trial.

11. Denied. It is denied that the Plaintiff's predecessors in title used or relied upon the easement in question. On the contrary, none of Plaintiff's predecessors in title ever used or relied upon access to Plaintiff's land by way of Defendant's land. In further answer, Defendant believes and avers that Plaintiff's predecessors in title had access to this land by some other route; specifically, north of Plaintiff's land which is or was owned by others.

12. Denied. It is denied that Plaintiff is entitled to an easement by prescription or by necessity. On the contrary, Plaintiff's predecessors in title obtained access to this land by some other route since they never used Defendant's land.

WHEREFORE, the Defendant respectfully requests your Honorable Court to dismiss Plaintiff's Complaint.

NEW MATTER

13. The averments set forth in Defendant's Answers to Paragraphs 1 through 12 are incorporated herein as though set forth in full.

14. Plaintiff does not have any claim for an easement over land of Defendant by either an alleged easement or any other proscriptive right.

15. By filing his Complaint in Ejectment against Defendant, without any basis, Plaintiff has caused Defendant to incur legal fees in order to defend this action.

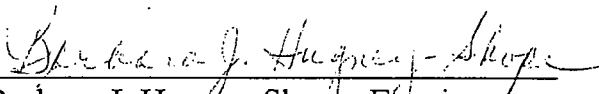
16. Defendant believes and avers that Plaintiff was fully aware that this property was landlocked when he purchased same and that he would have to proceed properly by requesting a Board of View to obtain any access.

17. Rather than proceeding as required by law, Plaintiff attempts to obtain access by claiming a non-existing easement when he knew full well that no such easement existed.

18. Defendant respectfully requests that Plaintiff be required to reimburse Defendant for reasonable counsel fees.

WHEREFORE, Defendant respectfully requests Your Honorable Court to dismiss Plaintiff's Complaint and enter an order requiring Plaintiff to pay Defendant's reasonable counsel fees.

Respectfully submitted,


Barbara J. Hugney-Shope, Esquire
Attorney for Defendant

S7

Defendant's Exhibit "A"

Defendant's Exhibit "A"

COMMONWEALTH OF PENNSYLVANIA)

SS.:

COUNTY OF CLEARFIELD)

On this, the 15th day of July, 2002, before me, the undersigned officer, personally appeared John J. Harvey, who, being duly sworn, deposes and states that he is Co-Chairman of St. Severin's Catholic Church, and that as such does depose and state that the facts set forth in the foregoing Answer and New Matter are true and correct to the best of his knowledge, information and belief.

ST. SEVERIN'S CATHOLIC CHURCH

By:

John J. Harvey

SWORN TO AND SUBSCRIBED

before me this 15th day

of July, 2002.

Barbara J. Hugney-Shope
Notary Public

NOTARIAL SEAL
BARBARA J. HUGNEY-SHOPE, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires Oct. 20, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
NO. 02-659-CD

EDGAR L. ENGLISH,
Plaintiff,

vs.

ST. SEVERINE CATHOLIC CHURCH,
Defendant.

DEFENDANT'S RESPONSE TO MOTION
FOR SUMMARY JUDGMENT

3 DC
Amy Shope
01/13/08
ES

BARBARA J. HUGNEY-SHOPE
Attorney-at-Law
23 N. Second Street
Clearfield, PA 16830
(814) 765-5155
FAX (814) 765-2957

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

EDGAR L. ENGLISH

:

-vs-

:

No. 02 – 659 – CD

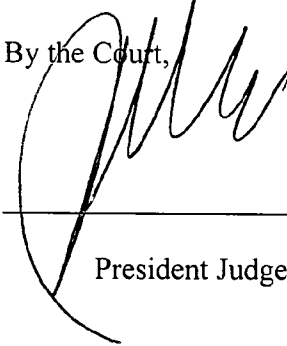
ST. SEVERINE CATHOLIC CHURCH

:

ORDER

NOW, this 11th day of December, 2002, this being the day and date set for argument into Motion for Summary Judgment filed on behalf of Plaintiff above-named, it is the ORDER of this Court that said Motion be and is hereby denied.

By the Court,



President Judge

FILED

DEC 11 2002

William A. Shaw
Prothonotary

FILED

013:45
DEC 11 2002

ICC Atty General
ICC Atty Shupe

William A. Shaw
Prothonotary

[Handwritten signature]

CA

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

EDGAR L. ENGLISH

vs.

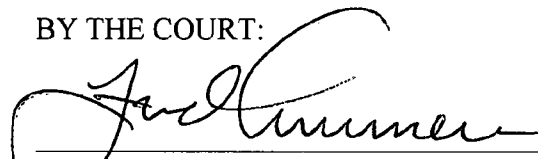
No. 02-659-CD

ST. SEVERIN CATHOLIC CHURCH

ORDER

AND NOW, this 3RD September day of ~~August~~, 2004, it is the Order of the Court that a status conference in the above-captioned matter has been scheduled for **Monday, October 4, 2004 at 9:30 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED ^{EGL}
^{icc}
02:27:01
SEP 03 2004
Atty's: Gearhart,
Hughey, Shore
(all envelopes)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDGAR L. ENGLISH

:

VS.

:

NO. 02-659-CD

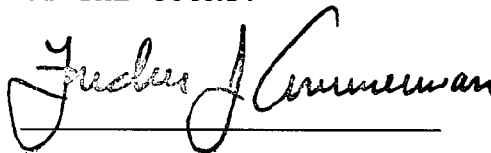
ST. SEVERIN CATHOLIC CHURCH

:

O R D E R

NOW, this 4th day of October, 2004, following status conference among counsel and the Court, it is the ORDER of this Court that the Plaintiff have no more than forty-five (45) days from this date in which to file an amended complaint. In the event no amended complaint is filed, the Court Administrator shall cause the matter to be placed on the list for nonjury trial.

BY THE COURT:



President Judge

FILED

6 9:57 AM xcc atty. Genhart
xcc atty. Augney-Shope
Copy to EPH
OCT 05 2004

William A. Shaw
Prothonotary

CA

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

EDGAR L. ENGLISH :
VS. : NO. 02-659-CD
ST. SEVERIN CATHOLIC CHURCH :

O R D E R

NOW, this 4th day of October, 2004, following status conference among counsel and the Court, it is the ORDER of this Court that the Plaintiff have no more than forty-five (45) days from this date in which to file an amended complaint. In the event no amended complaint is filed, the Court Administrator shall cause the matter to be placed on the list for nonjury trial.

BY THE COURT:



President Judge

FILED ^{EGK}
OCT 22 2004
10:54 AM
Alys Gearhart, Shope

William A. Shaw
Prothonotary, Clerk of Courts

CA

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

EDGAR L. ENGLISH

V.

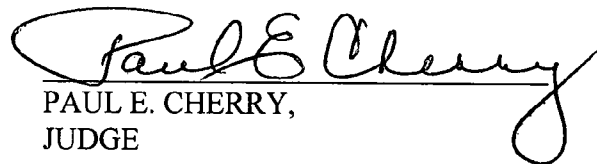
NO. 02-659-CD

ST. SEVERIN CATHOLIC CHURCH

ORDER

AND NOW, this 11th day of February, 2005, a Pre-Trial Conference having been held with regard to this matter on January 14, 2005, whereby counsel for the parties indicated their intent to file a Praeceptum to Withdraw/Discontinue Action, the Court noting that said Praeceptum has not been filed, it is the ORDER of the Court that counsel shall file a Praeceptum to Withdraw/Discontinue Action within ten (10) days of this date.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

OK FEB 11 2005
0/3:15/2
William A. Shaw
Prothonotary/Clerk of Courts

sent to Mr. Huganay-Shaw
+
Gennaro

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

EDGAR L. ENGLISH,
Plaintiff,

v.

ST. SEVERIN CATHOLIC CHURCH,
Defendant.

No. 02-659-CD

CASE NUMBER: 02-659-CD

TYPE OF PLEADING: PRAECIPE TO DISCONTINUE

FILED ON BEHALF OF: Plaintiff

COUNSEL FOR RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court ID#: 26540
207 East Market Street
Clearfield, PA 16830
814-765-1581

FILED

01/31/05
FEB 24 2005

William A. Shaw
Prothonotary/Clerk of Courts

cc
Cert. of Disc.
to Atty

Copy to cl.A

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

EDGAR L. ENGLISH,
Plaintiff,

v.

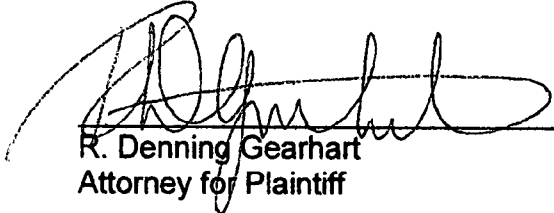
ST. SEVERIN CATHOLIC CHURCH,
Defendant.

No. 02-659-CD

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Please mark the above-captioned matter discontinued.



R. Denning Gearhart
Attorney for Plaintiff

Date: **February 24, 2005**

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Edgar L. English

Vs.

No. 2002-00659-CD

St. Severin Catholic Church

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 24, 2005, marked:

Discontinued

Record costs in the sum of \$80.00 have been paid in full by R. Denning Gearhart, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 24th day of February A.D. 2005.

William A. Shaw, Prothonotary