

02-928-CD

Kenneth Thomas vs William Westover

02

02-928-CD
KENNETH R. THOMAS etal -vs- WILLIAM WESTOVER etal

Date		Judge
06/10/2002	Filing: Civil Complaint Paid by: Belin & Kubista Receipt number: 1843812 Dated: 06/10/2002 Amount: \$80.00 (Check) Four CC Attorney	No Judge ✓
07/29/2002	Answer to Complaint. Filed by s/Kenneth R. Sottile, Esq. Verification s/William & Theresa Westover 1 cc Atty Sottile	No Judge ✓
08/26/2002	Sheriff Return: Now July 9, 2002 Defendant was served Complaint in Equity at residence at Hopkins St. Westover. Now July 9, 2002 Defendant William Westover was served Complaint in Equity to Therese his wife at his residence.	No Judge ✓
08/29/2002	Preliminary Objections to New Matter. filed by s/Carl A. Belin, Esq. Cert of Svc 3 cc to Atty	No Judge ✓
11/20/2002	ORDER, NOW, this 20th day of November, 2002, re: Preliminary Objections filed on behalf of Plaintiff to Defendants' New Matter, Objections be and are hereby SUSTAINED and Counts 1, 3, and 4 of Defendants' New Matter STRICKEN. by the Court, s/JKR,JR.,P.J. 1 cc Atty Belin, K. Sottile	John K. Reilly Jr. ✓
12/04/2002	Reply to New Matter and Answer To Counterclaim. filed by s/Carl A. Belin, Jr., Esquire Verification s/Kenneth R. Thomas s/Linda M. Thomas Certificate of Service Three (3) cc to Atty	John K. Reilly Jr. ✓
05/02/2003	Certificate of Service, Plaintiffs' First Set of Interrogatories Directed to Defendants and Request for Production of Documents upon: KENNETH R. SOTTILE, ESQ. s/Carl A. Belin, Esquire no cc	John K. Reilly Jr. ✓
07/09/2003	Plaintiffs' Motion For Sanctions Against Defendants For Defendants' Failure To Answer Plaintiffs' Interrogatories To Defendants. filed by s/Carl A. Belin, Jr., Esquire ORDER, AND NOW, this 9th day of July, 2003, re: Motion is GRANTED and Defendants shall answer Plaintiffs' interrogatories within 20 days of the date of this Order or appropriate sanctions will be imposed upon further application to the Court. by the Court, s/JKR,JR.,P.J. 3 cc to Atty	John K. Reilly Jr. ✓
	Certificate of Service, Order and Plaintiffs' Motion for Sanctions Against Defendants for Defendants' Failure to Answer Plaintiffs' Interrogatories to Defendants upon KENNETH R. SOTTILE, ESQ. filed by s/Carl A. Belin, Jr., Esquire no cc	John K. Reilly Jr. ✓
08/05/2003	Plaintiffs' Motion For Sanctions Against Defendants. filed by s/Carl A. Belin, Jr., Esquire 3 cc Atty Belin	John K. Reilly Jr. ✓
	ORDER, AND NOW, this 5th day of August, 2003, re: Defendants William Westover and Therese Westover are PROHIBITED from entering any evidence in support of the adverse possession defense set forth in their answer and in support of their counterclaim set forth in their answer and counterclaim. by the Court, s/JKR,JR.,P.J. 3 cc Atty Belin	John K. Reilly Jr.
08/06/2003	Certificate of Service, Order and Plaintiffs' Motion for Sanctions upon: KENNETH R. SOTTILE, ESQ. filed by s/Carl A. Belin, Jr., Esq. no cc	John K. Reilly Jr. ✓
08/21/2003	Motion of Plaintiffs for Summary Judgment filed by Atty. Belin. 3 CC to Atty.	John K. Reilly Jr.

William A. Shaw
Prothonotary

JUN 10 2002

FILED

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928-CO
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	COMPLAINT
Defendants	:	

Filed on Behalf of:
Defendants

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

JUN 10 2002

01:40 / up

William A. Shaw
Prothonotary

4 cent to Mr

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
vi.	:	
	:	NO.
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

NOTICE

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
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830

(814) 765-2641 Ex 5982

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO.
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

COMPLAINT

AND NOW COMES Plaintiffs, Kenneth R. Thomas and Linda M. Thomas by and through their attorneys, Belin & Kubista, and files the following complaint against Defendants, William Westover and Therese Westover, and in support thereof avers as follows:

1. The Plaintiffs are Kenneth R. Thomas and Linda M. Thomas, husband and wife, whose address is P.O. Box 125, 216 Shepard Street, Westover, PA 16692.

2. That the Defendants are William Westover and Therese Westover, individuals whose address is P.O. Box 172, Westover, PA 16692.

3. That the Thomas' are vested with ownership of the hereinafter set forth property (hereinafter "the property")

situate in the Borough of Westover, County of Clearfield, and Commonwealth of Pennsylvania, bounded and described as follows:

On the North: Max Kitchen
On the South: Isaac Straw Estate
On the East: Hopkins Street
On the West: Alley

Said premises being more fully described as:

BEGINNING at a point located on the Western side and right-of-way of Green Street, said point being located 100 feet South of the intersection of Hopkins Street and Green Street, being the Southeast corner of a tract of land owned by Bill V. Westover and Therese M. Westover, his wife; thence South 04°00' West a distance of 100.00 feet to a point; thence North 86°00' West a distance of 150.00 feet to a point at the intersection with a Twenty (20) foot alley; thence North 04°00' East a distance of 100.00 feet to a point; thence South 86°00' East a distance of 150.00 feet to a point and the place of beginning. Said premises being located at Clearfield County tax Map #E17-358-00064.

AND BEING the same premises as was conveyed from Wanda K. Krevel et. al. by deed dated December 30, 1996 to Wanda K. Kreval et. al. as is found recorded in the Office of the Recorder of Deeds of Clearfield County in Deed and Record Volume 1812 at Page 547.

4. That the chain of title for the property is as follows:

a. Plaintiffs acquired title to said property by deed from Wanda K. Kreval, Barbara A. Neff and Richard D. Neff dated June 30, 1998 recorded in Clearfield County Deed & Record Book Volume 1952 Page 571.

b. Wanda K. Kreval, Barbara A. Neff and Richard D. Neff acquired title from Wanda K. Kreval and Barbara A. Neff, as Co-Executrices of the Estate of Mary Viola Buterbaugh dated December 30, 1996 recorded in Clearfield County Deed & Record Book Volume 1812 Page 547.

c. Edgar Buterbaugh and Mary Buterbaugh acquired title to said property by deed from Charles W. Englody and Sandra K. Englody dated July 30, 1975 recorded in Clearfield County Deed and Record Book Volume 705 Page 288.

d. Charles W. Englody and Sandra K. Englody acquired title to said property by deed from Buterbaugh Brothers Land and Timber Corporation dated July 2, 1975 recorded in Clearfield County Deed & Record Book Volume 703 Page 250.

e. The Buterbaugh Brothers acquired title to said property by deed from A.O. Curtis and Margaret Curtis dated May 25, 1972 recorded in Clearfield County Deed & Record Book Volume 599 Page 205.

f. A.O. Curtis acquired title to said property by deed from George McClellan and Clarence Haupt, surviving Executors and Trustees under the Last Will and Testament of G. Edward Haupt; Harold W. Swope, Executor under the Last Will and Testament of Lidah M. Haupt dated August 5, 1957 recorded in Clearfield County Deed & Record Book Volume 480 Page 294.

g. Although there is no deed of record in the Clearfield County Deed & Record Books, the Clearfield County Assessment records indicate that G. Edward Haupt acquired title to said property by tax sale from the Clearfield County Commissioners by deed dated August 10, 1950.

h. Although there is no deed of record in the Clearfield County Deed & Record Books, the Clearfield County Assessment records indicate that R.H. White and Frank C. Elling acquired title to said property from the Clearfield County Commissioners by tax sale in 1942.

i. Although there is no deed of record in the Clearfield County Deed & Record Books, the Clearfield County Assessment records indicate that George Frazier acquired title by tax sale to said property from the Clearfield County Commissioners. The property was sold in 1926 as the property of Benjamin Shepherd.

j. Benjamin Shepherd acquired title to said property by deed from Sophia D. Shepherd dated June 21, 1910 recorded in Clearfield County Deed & Record Book Volume 209 Page 279.

k. Sophia Shepherd acquired title to said property by deed from E.B. Rainey and Jennie M. Rainey dated October 21, 1904 recorded in Clearfield County Deed & Record Book Volume 145 Page 136.

1. E.B. Rainey acquired title to said property by deed from Benjamin F. Klinger dated February 28, 1903 recorded in Clearfield County Deed & Record Book Volume 130 Page 137.

m. Benjamin F. Klinger acquired title to said property by deed from William F. Mosser, the common grantor of said property dated June 15, 1901 recorded in Clearfield County Deed & Record Book Volume 130 Page 137.

5. That the Plaintiffs acquired an easement by virtue of the conveyance from the common grantor of the property.

6. That the Defendants have unlawfully occupied the easement by placing on that tract obstructions consisting of a poultry fence and shed.

7. That the Plaintiffs made a formal demand that the Defendants remove the obstructions by letter dated May 15, 2002 and Defendants refused to remove said obstructions.

8. That no adequate remedy exists at law.

WHEREFORE, Plaintiffs request Your Honorable Court to order the Defendants to remove all obstructions including a poultry fence and shed from the easement.

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF :

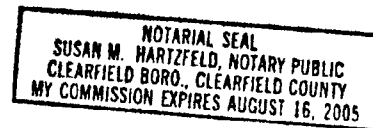
Before me the undersigned officer, personally appeared
KENNETH R. THOMAS and **LINDA M. THOMAS**, who being duly sworn
according to law, depose and say that the facts set forth in the
foregoing Complaint are true and correct to the best of their
knowledge, information and belief.

Kenneth R. Thomas
Kenneth R. Thomas

Linda M. Thomas
Linda M. Thomas

Sworn and subscribed before me this 10th day of
June, 2002.

Susan M. Hartzfeld
Notary Public



KENNETH R. THOMAS and
LINDA M. THOMAS,
Plaintiff,

vs.

WILLIAM WESTOVER and
THERESA WESTOVER,
Defendant,

: IN THE COURT OF COMMON PLEAS OF
: ~~CAMBERIA~~ COUNTY, PENNSYLVANIA
: *Clearfield*

: NO.2002 - 928 CD

: CIVIL ACTION - LAW

: TYPE OF DOCUMENT:

: ANSWER TO COMPLAINT

: COUNSEL OF RECORD FOR DEFENDANT:

: KENNETH R. SOTTILE, Esquire
: 137 N. Main Street
: PO Box 505
: Carrolltown, PA 15722
: Telephone: (814) 344-6541
: Facsimile: (814) 951-2964
: Supreme Court I.D. #39157

FILED

JUL 29 2002

m/1:29/1cc atty Sottile
William A. Shaw
Prothonotary
WAS

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
vi.	:	
	:	NO.
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

NOTICE

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.

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COURT ADMINISTRATOR
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830

(814) 765-2641 Ex 5982

KENNETH R. THOMAS and	:	IN THE COURT OF COMMON PLEAS OF
LINDA M. THOMAS,	:	CAMBRIA COUNTY, PENNSYLVANIA
Plaintiff,	:	
	:	
vs.	:	NO.2002 - 928-CD
	:	
WILLIAM WESTOVER and	:	CIVIL ACTION - LAW
THERESA WESTOVER,	:	
Defendants,	:	

ANSWER TO COMPLAINT

AND NOW, comes the Defendants, Bill Westover and Theresa Westover, by and through their attorney, Kenneth R. Sottile, and aver as follows:

1. Admitted.
2. Admitted.
3. Admitted.

4. After reasonable investigation the Defendants are without sufficient knowledge, information or belief to form an opinion as to the truth or falsity of the averments contained in paragraphs 4 a. through m.. Accordingly, same is denied and strict proof demanded at time of trial.

5. It is denied that the Plaintiffs have acquired an easement by virtue of a conveyance from a common grantor of the property.

6. It is denied that the Defendants have unlawfully occupied the easement by placing a poultry fence and shed on it.

7. Admitted.

8. It is admitted that no adequate remedy exists at law in that the Plaintiffs are not entitled to any remedy.

WHEREFORE, Defendants request your Honorable Court dismiss the Plaintiff's Complaint with Prejudice.

NEW MATTER

COUNT I - REVERSION TO ADJOINING LAND

9. The Defendants incorporate paragraphs 1 through 8 of the Complaint and their Answers thereto herein as though fully set forth herein.

10. The property in question on which the Plaintiffs claim to have an easement is an unopened alleyway plotted on the Westover Borough plan of lots.

11. Alternatively, if the unopened alleyway cannot be shown to be part of the original Westover Borough plan of lots it was included as part of a plan of lots, streets and alleyways and the plotted streets and alleyways were dedicated to and accepted by Westover Borough more than twenty one (21) years ago.

12. Since being either plotted on the original plan of lots for Westover Borough or since having been accepted and taken over by Westover Borough from a common grantor the Borough of Westover has chosen not to open the alleyway which constitutes the property in question for a period in excess of 21 years.

13. The Defendants own the property on both sides of the portion of the unopened alleyway which constitutes the property in question.

14. Because the unopened alleyway which constitutes the property in question was laid out but never opened there is no right to public use of the paper alleyway pursuant to 53 PSS 46723.

15. Because the unopened alleyway which constitutes the property in question has not been opened for a period in excess of twenty one (21) years and the Defendants own the property on both sides of it ownership of the property in question reverted to the Defendants by operation of law.

16. The property in question is not part of any recorded subdivision by a common grantor of the parties hereto.

WHEREFORE, the Defendants request this Honorable Court dismiss the Plaintiff's Complaint with Prejudice.

COUNT II ADVERSE POSSESSION

17. The Defendant's incorporate by reference paragraphs 1 through 16 of the Complaint and their answers thereto and their New Matter as through same were fully set forth herein.

18. For a period in excess of twenty one (21) years the Defendants and their predecessors in title have had actual continuous, exclusive, visible, notorious, distinct and hostile

possession of the property in question over which the easement is claimed in that they or their predecessors in title have cultivated it, planted grass and flowers on it, landscaped it, fenced it, placed a poultry fence and shed on it and barred all entry by unwanted or uninvited people and refused to vacate the premises.

19. Should the Court find that ownership of the property in question reverted to the Defendant's subject to an easement by virtue of an alleyway plotted by a common grantor, any such easement would have been extinguished by the Defendants and their predecessors in titles adverse possession of the property over which the easement is claimed.

20. Based on the aforesaid, the Plaintiff's action is barred by the provisions of 42 Pa. C.S.A. § 5530.

WHEREFORE, the Defendant's request the Honorable Court enter an order dismissing the Plaintiff's Complaint with Prejudice pursuant to 42 Pa. C.S.A. § 5530.

COUNT III - NO EASEMENT BY NECESSITY OR IMPLICATION

21. The Defendant's incorporate by reference paragraphs 1 through 20 of the Complaint and their answers thereto and their New Matter as through same were fully set forth herein.

22. Prior to or at the time of the claimed separation of title from the common grantor the claimed easement existed only on paper and no actual alleyway or roadway existed or exists today.

23. The claimed easement is not necessary for the Plaintiffs to use their land in that they have access to their land from Green Street.

24. Because of the above, the Plaintiffs are not entitled to any easement by necessity or implication for them to use their property.

WHEREFORE, the Defendant's request the Honorable Court enter an order dismissing the Plaintiff's Complaint with Prejudice pursuant to 42 Pa. C.S.A. § 5530.

COUNT IV - NO RIGHT TO OPEN ALLEYWAY

25. The Defendant's incorporate by reference paragraphs 1 through 24 of the Complaint and their answers thereto and their New Matter as through same were fully set forth herein.

26. The Plaintiffs have in the past requested the Borough of Westover open the alleyway in question.

27. In response to the Plaintiff's request the Borough of Westover told them they did not wish to have the alleyway opened, that they would not open it and that the Borough had no right to open it without the Defendant's permission.

28. The opening of the alleyway as planned by the Plaintiffs would constitute the opening of a street by them and could only be done under the provisions of the Borough Code, 53 P.S. § 46201 et seq..

29. The Plaintiffs could not open the alleyway in question without first obtaining the approval of the Defendants pursuant to 53 Pa. § 46201 and the Borough of Westover after having submitted their plans pursuant to 53 PS §46735.

30. The Defendants have refused to give their approval to the Borough for the opening of the alleyway in question.

WHEREFORE, the Defendant's request the Honorable Court enter an order dismissing the Plaintiff's Complaint with Prejudice.

COUNTERCLAIM

COUNT I DAMAGES FOR SPRAYING

31. The Defendant's incorporate by reference paragraphs 1 through 30 of the Complaint and their answers thereto and their New Matter, as through same were fully set forth herein.

32. The Plaintiffs have been cutting and removing vegetation, brush and trees from their property that adjoins the Defendant's property and is several feet from the Defendant's house and garden.

33. After cutting the brush and trees the Plaintiffs sprayed a chemical weed and grass killer on their property and in doing so

sprayed onto a portion of the Defendant's grass causing it to die and permitted over-spray to go into the Defendant's garden killing some of the plants and making some unsafe and unfit for human consumption.

WHEREFORE, the Defendants request this Honorable Court enter an Order prohibiting the Plaintiffs from spraying or causing over-spray of poisonous weed and grass killing chemicals to land on the Defendant's property and to award damages to the Defendants for the damage already done in an amount deemed appropriate by the Court.

COUNT II - QUIET TITLE

34. The Defendant's incorporate paragraphs 1 through 33 of the Complaint and Answers thereto and the New Matter and Counterclaim as though same were fully set forth herein.

35. The Defendant's continuous and exclusive use and possession of the property in question constitutes ownership and title in them by adverse possession which supersedes and defeats the Claim of ownership or easement by the Plaintiffs and all others who might so claim.

COMMONWEALTH OF PENNSYLVANIA:

: SS:

COUNTY OF CAMBRIA

:

Before me, the undersigned authority, personally appeared the within named Defendants, who being duly sworn according to law, deposes and says that the averments contained in the foregoing Answer to Complaint and Counterclaim are true and correct to the best of their knowledge, information and belief.

William Westover
WILLIAM WESTOVER

Theresa Westover
THERESA WESTOVER

Sworn to and subscribed before me
this 26th day of July, 2002.

Elizabeth J. Krug
NOTARY PUBLIC

Notarial Seal
Elizabeth J. Krug, Notary Public
Northern Cambria Boro, Cambria County
My Commission Expires Sept. 9, 2004
Member, Pennsylvania Association of Notaries

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12625

THOMAS, KENNETH R. & LINDA M.

02-928-CD

VS.

WESTOVER, WILLIAM & THERESE

COMPLAINT IN EQUITY

SHERIFF RETURNS

NOW JULY 9, 2002 AT 5:00 PM DST SERVED THE WITHIN COMPLAINT IN EQUITY ON THERESE WESTOVER, DEFENDANT AT RESIDENCE, HOPKINS ST., WESTOVER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDNIG TO THERESE WESTOVER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EQUITY AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

NOW JULY 9, 2002 AT 5:00 PM DST SERVED THE WTIHIN COMPLAINT IN EQUITY ON WILLIAM WESTOVER, DEFENDANT AT RESIDENCE, HOPKINS ST., WESTOVER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDNG TO THERESE WESTOVER, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

Return Costs

Cost	Description
110.14	SHFF. HAWKINS PAI D BY: <i>atty</i>
20.00	SURCHARGE PAID BY: ATTY.

FILED
WAS AUG 20 2002

William A. Shaw
Prothonotary

Sworn to Before Me This

26 Day Of August 2002

[Signature]

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

So Answers,

[Signature]
by Marilyn Harris

Chester A. Hawkins
Sheriff

William A. Shaw
Proprietary

AUG 29 2002

FILED

[Handwritten signature]

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

PRELIMINARY OBJECTIONS TO NEW MATTER

AND NOW COMES Plaintiffs, Kenneth R. Thomas and Linda M. Thomas ("Thomas"), by and through their attorneys, Belin & Kubista, and file preliminary objections to the new matter filed by Defendants William Westover and Therese Westover ("Westover"), and in support thereof avers as follows:

PRELIMINARY OBJECTIONS AS TO COUNT I

1. Thomas filed a Complaint against Westover claiming an easement by implication arising from a common grantor who has conveyed premises to the Westovers in which the alley is referred to as an adjoinder in the deed.

2. The Westovers have alleged in Count I as a defense that the alleyway was either a part of the original Westover

Plan of Lots or that it was a subsequent plan which was accepted by Westover Borough but that the alley was never opened.

3. That assuming the correctness of Count I the extinguishment of the right to use the alley does not extinguish the private alley created by the common grantor as a result of which Count I would not constitute a defense to Plaintiffs Complaint.

PRELIMINARY OBJECTIONS AS TO COUNT III

4. Paragraphs 1 through 3 of Plaintiffs' Preliminary Objections are hereby incorporated by reference and made a part hereof.

5. That Plaintiffs have an easement by virtue of the deed from the common grantor whether or not the alley referred to therein is only a paper alley and is not opened.

WHEREFORE, Westovers' Count II does not constitute a defense to the Thomas' Complaint.

PRELIMINARY OBJECTIONS AS TO COUNT IV

6. Paragraphs 1 through 5 of Plaintiffs' Preliminary Objections are hereby incorporated by reference and made a part hereof.

7. That the failure of Westover Borough to open the alley does not constitute an extinguishment of the easement.

8. That Plaintiffs have an easement to use the alley regardless of the actions of Defendants in this case.

WHEREFORE, Defendants' Count IV entitled "No Right To Open Alley" does not constitute a defense to Plaintiffs' Complaint.

WHEREFORE, Plaintiffs request Your Honorable Court to order:

(a) the Court grant a demurrer as to Counts I, III, and IV of Defendants' New Matter;

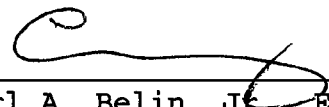
(b) that the Court strike Counts I, III and IV of Plaintiffs' Complaint; and

(c) such other relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA

By


Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

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

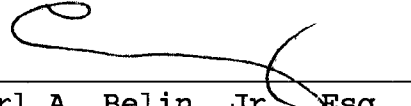
KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
vi.	:	CIVIL ACTION - EQUITY
	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a true and correct copy of Plaintiffs' Preliminary Objections to New Matter on behalf of the Plaintiffs in the above-captioned matter to the following party by postage prepaid United States mail on the 29th day of August, 2002:

Kenneth R. Sottile, Esquire
137 North Main Street
P.O. Box 505
Carrolltown, PA 15722

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

344-6541

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

KENNETH R. THOMAS and
LINDA M. THOMAS

-vs-

WILLIAM WESTOVER and
THERESE WESTOVER

No. 2002 – 928 – CD

ORDER

NOW, this 20th day of November, 2002, this being the day and date set for argument into the above-captioned Preliminary Objections filed on behalf of Plaintiff above-named to Defendants' New Matter, Defendants having failed to appear either in person or by counsel and having filed no brief as required, it is the ORDER of this Court that said Objections be and are hereby sustained and Counts 1, 3 and 4 of Defendants' New Matter stricken.

By the Court,

President Judge

FILED

NOV 20 2002

William A. Shaw
Prothonotary

FILED

ICC Aug Belin

0/10:37:28
NOV 20 2002

ICC Aug K. Seville



William A. Shaw
Prothonotary

0/2:40 p.m

Three (3) cc to 600

EB

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 - CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	REPLY TO NEW MATTER AND
Defendants	:	ANSWER TO COUNTERCLAIM

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

DEC 04 2002

William A. Shaw
Prothonotary

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 - CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

REPLY TO NEW MATTER

AND NOW COMES Plaintiffs, Kenneth R. Thomas and Linda M. Thomas by and through their attorneys, Belin & Kubista, the Court having entered an Order striking Counts I, III, and IV of the New Matter of Defendants, William Westover and Therese Westover, hereby file a reply as to Count II of the New Matter and an answer to the Counterclaim, and in support thereof aver as follows:

17. Plaintiffs hereby incorporate Paragraphs 1 through 16 of their Complaint as if fully set forth herein.

18. Paragraph 18 is denied and it is averred that Defendants have not exercised actual continuous, exclusive, visible, notorious, distinct and hostile possession of the

property, and in further answer thereto, after reasonable investigation, are without the knowledge or means sufficient to form a belief as to the truth of the averment and, if relevant, strict proof thereof is demanded at trial.

19. Paragraph 19 is denied as a matter of law the Court having stricken Count I alleging a reversion of the title to the property in Defendants and the extinguishment of the easement resulting therefrom and no answer is required. In further answer thereto, Paragraphs 1 through 16 of the Complaint is hereby incorporated by reference and made a part hereof.

20. Paragraph 20 is denied and in further answer thereto Paragraphs 1 through 16 of Plaintiffs' Complaint and Paragraph 18 of this Reply are hereby incorporated by reference and made a part hereof.

WHEREFORE, Plaintiffs request Your Honorable Court to order the Defendants to remove all obstructions including a poultry fence and shed from the easement.

COUNTERCLAIM

31. Plaintiffs hereby incorporate Paragraphs 1 through 16 of their Complaint and Paragraphs 18 through 20 of their Reply to New Matter as if fully set forth herein.

32. Paragraph 32 is denied and it is averred that Plaintiffs have not removed or cut any vegetation, brush or trees from any property other than the property of Plaintiffs or the area subject to the easement set forth in the Complaint.

33. Paragraph 33 is denied and it is averred that Plaintiffs have only taken such action as to clean up the property up to and including the easement and that any chemical weed and grass killer was limited to the area covered by Plaintiffs' property and the easement.

WHEREFORE, Plaintiffs respectfully request Your Honorable Court to dismiss the Counterclaim.

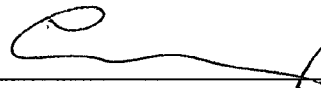
COUNTY II - QUIET TITLE

34. Plaintiffs hereby incorporate Paragraphs 1 through 16 of the Complaint, Paragraphs 18 through 20 of their Reply to New Matter, and Paragraphs 31 through 33 of their Answer to the Counterclaim as if fully set forth herein.

35. Paragraph 35 is denied and in further answer thereto Paragraphs 18 through 20 of Plaintiffs' Reply to New Matter are hereby incorporated by reference and made a part hereof.

WHEREFORE, Plaintiffs request that the Court enter an Order denying the Counterclaim and direct the Defendants to remove all obstructions including a poultry fence and shed from the easement.

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

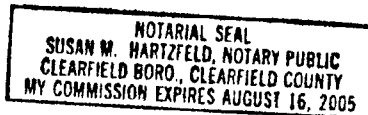
Before me the undersigned officer, personally appeared
KENNETH R. THOMAS and LINDA M. THOMAS, who depose and say that
the facts set forth in the foregoing Reply to New Matter and
Answer to Counterclaim are true and correct to the best of their
knowledge, information and belief.

Kenneth R. Thomas
Kenneth R. Thomas

Linda M. Thomas
Linda M. Thomas

Sworn and subscribed before me this 4th day of
December, 2002.

Susan M. Hartzfeld
Notary Public



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

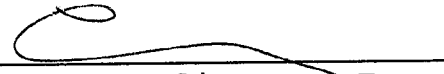
KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
vi.	:	CIVIL ACTION - EQUITY
	:	
	:	NO. 2002 - 928 - CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a true and correct copy of Reply to New Matter and Answer to Counterclaim on behalf of the Plaintiffs in the above-captioned matter to the following party by postage prepaid United States mail on December 4, 2002:

Kenneth R. Sottile, Esquire
137 North Main Street
P.O. Box 505
Carrolltown, PA 15722

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

FILED ^{NO CC}
012358th
MAY 02 2003

William A. Shaw
Prothonotary

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	CERTIFICATE OF SERVICE
Defendants	:	

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

MAY 02 2003

William A. Shaw
Prothonotary

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

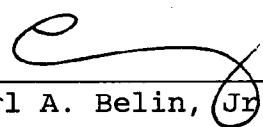
KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent an original of Plaintiffs' First Set of Interrogatories Directed to Defendants and Request for Production of Documents in the above-captioned matter to the following party by postage prepaid United States mail on the 2nd day of May, 2003:

Kenneth R. Sottile, Esquire
137 North Main Street
P.O. Box 505
Carrolltown, PA 15722

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

FILED
01 10:44 ^{NCC}
JUL 0 0 2003

William A. Shaw
Prothonotary

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	CERTIFICATE OF SERVICE
Defendants	:	

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

JUL 09 2003

William A. Shaw
Prothonotary

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

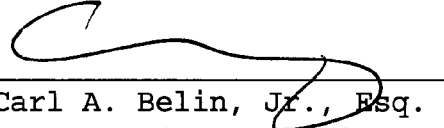
KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a certified copy of Order and Plaintiffs' Motion for Sanctions Against Defendants for Defendants' Failure to Answer Plaintiffs' Interrogatories to Defendants in the above-captioned matter to the following party by postage prepaid United States mail on the 9th day of July, 2003:

Kenneth R. Sottile, Esquire
137 North Main Street
P.O. Box 505
Carrolltown, PA 15722

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

FILED

JUL 09 2003
0/8:30 a.m.
William A. Shaw
Prothonotary

3 cc to Atty
E. ~~Atty~~

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

KENNETH R. THOMAS and
LINDA M. THOMAS,
Plaintiffs

v.

WILLIAM WESTOVER and
THERESE WESTOVER,
Defendants

:
:
:
:
: CIVIL ACTION - EQUITY
:
: NO. 2002 - 928 CD
:
: PLAINTIFFS' MOTION FOR
: SANCTIONS AGAINST
: DEFENDANTS FOR DEFENDANTS'
: FAILURE TO ANSWER PLAINTIFFS'
: INTERROGATORIES TO DEFENDANTS

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

JUL 09 2003

William A. Shaw
Prothonotary

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

KENNETH R. THOMAS and
LINDA M. THOMAS,
Plaintiffs

v.

WILLIAM WESTOVER and
THERESE WESTOVER,
Defendants

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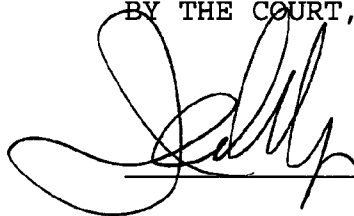
CIVIL ACTION - EQUITY

NO. 2002 - 928 CD

ORDER

AND NOW, this 9 day of July, 2003, upon
consideration of Plaintiffs' Motion for Sanctions Against
Defendants for Defendants' Failure to Answer Plaintiffs'
Interrogatories to Defendants, it is hereby ORDERED that the
motion is granted and Defendants shall answer Plaintiffs'
interrogatories within 20 days of the date of this Order or
appropriate sanctions will be imposed upon further application
to the Court.

BY THE COURT,



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

KENNETH R. THOMAS and :
LINDA M. THOMAS, :
Plaintiffs :
: CIVIL ACTION - EQUITY
v. :
: NO. 2002 - 928 CD
WILLIAM WESTOVER and :
THERESE WESTOVER, :
Defendants :

PLAINTIFFS' MOTION FOR SANCTIONS AGAINST DEFENDANTS
FOR DEFENDANTS' FAILURE TO ANSWER PLAINTIFFS'
INTERROGATORIES TO DEFENDANTS

Plaintiffs, Kenneth R. Thomas and Linda M. Thomas, by their undersigned counsel, hereby move this Court to enter an order pursuant to Pa.R.C.P. No. 4019(a)(1)(i) directing Defendants, William Westover and Therese Westover, to serve full and complete answers to Plaintiffs' interrogatories propounded to Defendants or suffer sanctions, and in support thereof aver as follows:

1. The action was instituted by complaint on June 10, 2002. Defendants filed their answer to the complaint on July 29, 2002.

2. On May 2, 2003, Plaintiffs served a set of interrogatories upon counsel for Defendants. A copy of

Plaintiffs' Interrogatories to Defendants and Plaintiffs' transmittal letter of May 2, 2003, are attached as Exhibit "A."

3. Pursuant to Pa. R.C.P. No. 4006(a)(2), Defendants' answers and objections, if any, to the interrogatories were due on or before June 2, 2003.

4. A period of more than thirty (30) days has elapsed since the interrogatories were served upon counsel for Plaintiffs, and no response of any kind has been provided.

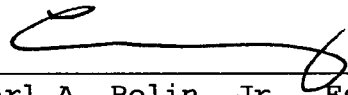
5. By letter dated June 11, 2003, counsel for Defendants was notified by counsel for Plaintiffs that Defendants' responses to the said interrogatories were overdue, and that a motion would be filed if answers were not transmitted on or before June 23, 2003. A true and correct copy of Plaintiffs' letter of June 11, 2003, is attached hereto as Exhibit "B."

6. For the foregoing reasons, Plaintiffs believe and aver that Defendants will not answer Plaintiffs' interrogatories absent a court order pursuant to Pa. R.C.P. No. 4019(a)(1)(i).

WHEREFORE, Plaintiffs request that the Court enter an order directing Defendants to file full and complete answers to Plaintiffs' Interrogatories to Plaintiffs within 20 days or

suffer appropriate sanctions to be imposed upon further application to the court.

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esquire
Attorney for Plaintiffs

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 - CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

PLAINTIFFS' FIRST SET OF INTERROGATORIES
DIRECTED TO DEFENDANTS

The following First Set of Interrogatories are directed to William Westover and Therese Westover ("Westover"), to be answered under oath and in compliance with Pa. R.C.P. Rules 4005 and 4006 within thirty (30) days of service thereof. If the space provided for an answer is insufficient, attach additional sheets.

These Interrogatories shall be deemed continuing so as to require additional answers if further information is obtained between the time answers are served and the time of trial. Such additional answers shall be served from time to time, but no

later than fifteen (15) days after such additional information is received by Defendants.

DEFINITIONS

The following definitions are applicable to each interrogatory and the instructions and are incorporated by reference in each interrogatory and the instructions. Your answers must be responsive to these interrogatories as defined herein.

1. "Plaintiffs": As used herein, "plaintiffs," "Thomas," "they," shall mean Kenneth R. Thomas and Linda M. Thomas, Plaintiffs.

2. "Defendants": As used herein, "defendants," "Westover," or "they" shall mean, William Westover and Therese Westover, Defendants.

3. "Document": The term "document" means any written, recorded, printed, typed, or other graphic matter of any kind or nature, however produced or reproduced, whether sent or received or neither, including drafts or copies bearing meaning,

notations or marks not found on or in the original, and includes but is not limited to:

(a) all letters or other forms of correspondence communication, including envelopes, notes, telegrams, cables, telex messages, messages (including reports, notes, notations and memoranda of or relating to telephone conversations or conferences);

(b) all memoranda, reports, test results, financial statements or reports, notes, transcripts, tabulations, studies, analyses, evaluations, projections, work papers, corporate records or copies thereof, lists, comparisons, questionnaires, surveys, charts, graphs, summaries, extracts, statistical records, compilations, scientific treatises;

(c) all desk calendars, appointment books, diaries;

(d) all books, articles, press releases, magazines, newspapers, booklets, circulars, bulletins, notices, instruction manuals;

(e) all minutes or transcripts of all meetings; and

(f) all photographs, microfilms, phonographs, tapes or other records, punch cards, magnetic tapes, discs, data cells, drums, print-outs, and other data compilations from which information can be obtained.

4. "Communication": The term "communication" means not only oral communications but also any "documents" (as such term is defined in Paragraph 3 above), whether or not such document

or the information contained therein was transmitted by its author to any other person.

5. "Identify", "Identity", or "Identification":

(A) When used in reference to a natural person, the terms "identify", "identity", or "identification" seek the following information:

- (i) full name;
- (ii) present or last known business addresses; and
- (iii) present or last known home address.

(B) When used with reference to any entity other than a natural person, the terms "identify", "identity", or "identification" require that you state:

- (i) its full name;
- (ii) the address of its principal place of business;
- (iii) the identity of all individuals who acted or who authorized another to act on its behalf in connection with the matters referred to; and
- (iv) in the case of an entity other than a corporation, the identities of its partners or principals or all individuals who acted or who authorized another to act on its behalf in connection with the matters referred to.

(C) When used in reference to a document, the terms "identify", "identity", or "identification" mean to provide

the following information:

- (i) the nature of the document (e.g., letter, contract, memorandum) and any other information (i.e., its title, index or file number) which would facilitate in the identification thereof;
- (ii) its date of preparation;
- (iii) its present location and the identity (as defined in paragraph 5(A) hereof) of its present custodian or, of its present location and custodian are not known, a description of its last known disposition;
- (iv) its subject matter and substance or, in lieu thereof, annex a legible copy of the document to the answers of those interrogatories;
- (v) the identity (as defined in paragraph 5(A) hereof) of all persons to whom the document has been distributed;
- (vi) the identity (as defined in paragraph 5(A) hereof) of each person who performed any significant function or had any role in connection therewith (i.e., author, contributor of information, recipient, etc.) or who has any knowledge; and
- (vii) if the document has been destroyed or is otherwise no longer in existence or cannot be found, the reason, if known, why such document no longer exists, the identity as defined in paragraph 5(A) hereof) of the person responsible for the document no longer being in existence and of its last known custodian.

(D) When used in connection with an oral communication, the terms "identify", "identity", and "identification" mean to provide the following information:

- (i) its general nature (i.e., conference, telephonic communication, etc.);
- (ii) the time and place of its occurrence;
- (iii) the person(s) who initiated the communication;
- (iv) its subject matter and substance;
- (v) the identity (as defined in paragraph 5(A) hereof) of each person who performed any function or had any role in connection therewith or who had any knowledge thereof; and
- (vi) the identity (as defined in paragraph 5(B) hereof) of each document which refers thereto or which was used, referred to or prepared in the course or as a result thereof.

6. "Describe" or "Description": When used with respect to any act, action, accounting, activity, audit, practice, process, occurrence, occasion, course of conduct, happening, negotiation, relationship, scheme, communication, conference, discussion, development, service, transaction, instance,

accident or event, the terms "describe" or "description" mean to provide the following information:

- (i) the general nature of the subject;
- (ii) the time and place thereof;
- (iii) a chronological account setting forth each element thereof, what such element consisted of and what transpired as part thereof;
- (iv) the identity (as defined in paragraph 5(A) hereof) of each person who performed any function or had any role in connection therewith (i.e., speaker, participant, contributor of information, witness, etc.) or who has any knowledge thereof;
- (v) the identity (as defined in paragraph 5(B) hereof) of each document which refers thereto or which was used, referred to or prepared in the course or as a result thereof; and
- (vi) the identity (as defined in paragraph 5(C) hereof) of each oral communication which was a part thereof or referred thereto.

7. "Factual basis": The term "factual basis" means (A) set forth each item of information upon which the allegation, contention, claim or demand to which it pertains is based, and (B) with respect to each such item of information, identify each person having knowledge thereof and identify and describe (as defined in paragraphs 5 and 6 hereof) each source thereof,

including but not limited to each document, oral communication, act, action, activity, accounting, negotiation, practice, process, occurrence, occasion, course of conduct, happening, relationship, scheme, conference, discussion, development, service, instance, accident, event calculation and computation upon which you rely with respect thereto.

8. "Relates to": The terms "relates to" or "relating to" mean used or occurring or referred to in the preparation for, or in the course of, or as a consequence of, or referring to, when used in connection with any act, action, activity, accounting practice, process, occurrence, occasion, course of conduct, contractual provision or document, happening, relationship, scheme, conference, discussion, development, service, instance, accident, event, etc.

9. "State the basis": includes the factual, legal and other basis for the relevant allegation, and includes the terms "factual basis", "identify", and "describe" as herein defined.

10. "Person": The term "person" means all natural persons, corporations, partnerships or other business associations, public authorities, municipal corporations, state

governments, all governmental bodies, and any other legal entities.

11. "Answer by Reference to Documents": If any Interrogatory is answered by reference to a document or group of documents, with respect to each such answer, identify (as defined in paragraph 5(C) hereof) the specific document or documents containing the requested information.

12. "Rules of Construction":

A. The singular shall include the plural and the plural shall include the singular.

B. A masculine, feminine or neuter pronoun shall be construed to refer to all other gender pronouns.

C. Unless otherwise indicated, the applicable time frame for answering each Interrogatory is January 1, 1986, through the present.

13. "Claim of Privilege": In the event any information requested to be identified or described herein is not identified or described under any claim of privilege or otherwise, then for each item of information state:

(a) The information's identity;

(b) The basis upon which privilege is claimed or other basis for withholding the information; and

(c) The name of each person having knowledge of the information.

14. "The Property": As used herein "the property," shall refer to the twenty (20') foot strip of land that has been identified as an unnamed alley as a boundary in the deed of the Thomases dated December 30, 1996, and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 1812, page 547, which extends between Hopkins Street and McKee Street and is situated between lots owned by the Thomases and the Westovers.

15. "Survey": As used herein "the survey" shall refer to the survey prepared by Dennis E. Sheehan, PLS, dated June 4, 2001, and attached to these Interrogatories, which sets forth the property as "an unopened alley."

1. State when the Westovers acquired title to the property in dispute?

ANSWER:

2. State how the property was acquired and, if by deed, provide a deed reference by which the Westovers acquired the property?

ANSWER:

3. State when the Westovers began the following activities on the property:

- (a) cultivation of the property;
- (b) planted grass and flowers;
- (c) landscaping;
- (d) fenced the property;
- (e) erected a poultry farm on the property; and
- (f) erected a shed on the property.

ANSWER:

4. Identify all witnesses to the activities in
Interrogatory 3?

ANSWER:

5. Describe in detail the activities performed by the Westovers on the property for each of the following:

- (a) cultivation of the property;
- (b) planted grass and flowers;
- (c) landscaping;
- (d) fencing;
- (e) the poultry fence;
- (f) buildings of any nature.

ANSWER:

6. Identify all witnesses to the activities in Interrogatory 5?

ANSWER:

7. State the occasions when the Westovers barred third parties from using the property?

(a) Identify the third parties they barred from entering on the property and the dates thereof.

ANSWER:

8. Identify all witnesses to the activities in Interrogatory 7?

ANSWER:

9. State when the Westovers were asked or ordered to vacate the property?

(a) identify the individuals to whom they refused to vacate the property and the dates thereof?

ANSWER:

10. Identify all witnesses to the activities in Interrogatory 9?

ANSWER:

11. Identify all witnesses who have any knowledge or information as to the adverse possession which is averred in Westovers' answer?

(a) Identify all statements that have been taken of the witnesses and attach copies of the statements to these Interrogatories:

ANSWER:

12. Identify all documents that refer to the adverse possession which is averred in Westovers' answer?

ANSWER:

13. State when the Thomases engaged in the activities referred to in Paragraphs 32 and 33 of the Westovers' answer?

ANSWER:

14. (a) State where the grass is located on the property or the property of the Westovers that was affected by the weed killer as set forth in Paragraph 33 of the Westovers' answer?

(b) State when the activity by the Thomases occurred?

ANSWER:

BELIN & KUBISTA

DATED: May 2, 2003

By _____
Carl A. Belin, Jr., Esq.

DATED: _____

Kenneth R. Sottile, Esquire

SHEPHERD STREET

50' wide



HOPKINS STREET

50' wide

Stabilized Contour 8' wide

20'

unopened

GREEN STREET

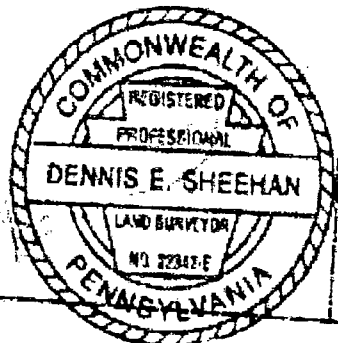
50' wide

McKEE STREET

50' wide

unopened

Graphic Scale



Note:
Surveyed in accordance with a draft of survey completed June 5, 1994 by Ronald Griffin, PLS as recorded in the Recorders Office of and for Clearfield County in Record Book Volume 1735 on Page 284 and reflects the accuracy or inaccuracy of said draft.

DRAFT OF SURVEY
for **KENNETH R. THOMAS et ux**
WESTOVER BOROUGH - CLEARFIELD CO. - PA
MAP SCALE 1" = 60'
AS SURVEYED JUNE 4, 2001
by **DENNIS E. SHEEHAN, PLS** PATTON, PA
814-674-5818

BELIN & KUBISTA

ATTORNEYS AT LAW

15 NORTH FRONT STREET

P. O. BOX 1

CLEARFIELD, PENNSYLVANIA 16830

CARL A. BELIN, JR.
KIMBERLY M. KUBISTA
JOHN R. RYAN

CARL A. BELIN
1901-1997

AREA CODE 814
TELEPHONE 765-8972
FAX (814) 765-9893

June 11, 2003

Kenneth R. Sottile, Esquire
137 North Main Street
P.O. Box 505
Carrolltown, PA 15722

In re: Kenneth R. Thomas and Linda M. Thomas v. William
Westover and Therese Westover No. 2002 - 928 CD

Dear Mr. Sottile:

On May 2, 2003, we sent you Plaintiffs' First Set of Interrogatories Directed to Defendants and Request for Production of Documents in the above-captioned action which were to be answered and served upon us by June 2nd.

In the event I do not receive the answers to these interrogatories and request for production on or before June 23rd, I intend to apply for sanctions with the Court of Common Pleas of Clearfield County. I hope this will not be necessary.

Very truly yours,

BELIN & KUBISTA

Carl A. Belin, Jr.

CABjr:smh

cc: Mr. and Mrs. Ken Thomas

Exhibit "B"

FILED

0 2:38 PM

3cc to atty.

AUG 21 2003

William A. Shaw
Prothonotary

William A. Shaw
Prothonotary

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

MOTION OF PLAINTIFFS
FOR SUMMARY JUDGMENT

Plaintiffs Kenneth R. Thomas and Linda M. Thomas ("Thomas") by their undersigned counsel, respectfully moves Your Honorable Court, pursuant to Pa. R.C.P. No. 1035, for the entry of a summary judgment in favor of Thomas and against William Westover and Therese Westover ("Westover"), and in support thereof aver as follows:

1. The pleadings are closed and time exists within which to dispose of this motion without delaying trial.
2. The pleadings and Orders of Court filed of record show that there is no genuine issue of fact and the Thomases are entitled to judgment as a matter of law.

3. This is an action filed by Thomas against the Westovers seeking to have certain obstructions removed from an easement acquired by the Thomases as a result of their chain of title.

4. That the Thomases claim an easement as a result of a conveyance from the common grantor, William F. Mosser, in which it specifically referred to an alley as a boundary of said property.

5. That in their answer, the Westovers merely filed a general denial to Paragraphs 4 a. through m. which set forth the chain of title and reference to the recorded deeds in said chain of title.

6. That the Westovers then set forth new matter in which they included four (4) defenses: (a) Reversion to Adjoining Land; (b) Adverse Possession; (c) No Easement By Necessity Or Implication; and (d) No Right To Open Alleyway, as well as a counterclaim.

7. That Thomases filed preliminary objections to Count I (Reversion to Adjoining Land), Count III (No Easement By Necessity Or Implication), and Count IV (No Right To Open Alleyway).

8. That by Order of Your Honorable Court on November 20, 2002, the Preliminary Objections were sustained and Counts I, II and IV of Defendants' New Matter were stricken, leaving only the adverse possession claim and Defendants' counterclaim.

9. That Plaintiffs then filed a discovery as to the adverse possession and counterclaim but Defendants failed to file their answers to the Interrogatories.

10. That on August 5, 2003, Your Honorable Court entered an order prohibiting the Westovers from entering any evidence in support of the adverse possession defense set forth in their answer and in support of their counterclaim set forth in their answer and counterclaim.

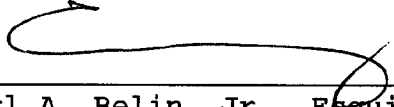
11. That as a result of the Orders of Court the Plaintiffs' title which is established by the recorded documents are deemed admitted as a result of the general denials and due to the Orders of Court Plaintiffs are entitled to judgment as a matter of law.

WHEREFORE, Plaintiffs respectfully request Your Honorable Court grant the Motion for Summary Judgment in favor of

Plaintiffs and against the Defendants.

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esquire

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

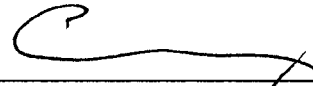
KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a certified copy of Motion of Plaintiffs' for Summary Judgment in the above-captioned matter to the following party by postage prepaid United States mail on the 21st day of August, 2003:

Kenneth R. Sottile, Esquire
137 North Main Street
P.O. Box 505
Carrolltown, PA 15722

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

FILED *3cc Amy Belin*
0/17
AUG 05 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	MOTION FOR SANCTIONS
Defendants	:	

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

AUG 05 2003

William A. Shaw
Prothonotary/Clerk of Courts

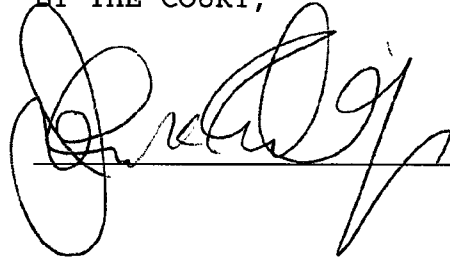
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

ORDER

AND NOW, this 5 day of August, 2003, upon consideration of Plaintiffs' Motion for Sanctions and the Court being advised the Defendants did not file interrogatories in accordance with the Court Order of July 9, 2003, it is the Order of the Court that Defendants William Westover and Therese Westover are hereby prohibited from entering any evidence in support of the adverse possession defense set forth in their answer and in support of their counterclaim set forth in their answer and counterclaim.

BY THE COURT,



FILED

AUG 05 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED 3 EC
09/17/03 Amy Berlin
AUG 05 2003
William A. Shaw
Prothonotary/Clerk of Courts

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

PLAINTIFFS' MOTION FOR SANCTIONS AGAINST DEFENDANTS

Plaintiffs, Kenneth R. Thomas and Linda M. Thomas, by their undersigned counsel, hereby move this Court to enter an order pursuant to Pa.R.C.P. No. 4019(a)(1)(i) directing Defendants, William Westover and Therese Westover, shall be prohibited from introducing any evidence in support of the adverse possession defense raised in their answer and the counterclaim raised in their answer and counterclaim and in support thereof aver as follows:

1. The action was instituted by complaint on June 10, 2002. Defendants filed their answer to the complaint on July 29, 2002.

2. On May 2, 2003, Plaintiffs served a set of interrogatories upon counsel for Defendants. A copy of

Plaintiffs' Interrogatories to Defendants and Plaintiffs' transmittal letter of May 2, 2003, are attached as Exhibit "A."

3. Pursuant to Pa. R.C.P. No. 4006(a)(2), Defendants' answers and objections, if any, to the interrogatories were due on or before June 2, 2003.

4. A period of more than thirty (30) days had elapsed since the interrogatories had been served upon counsel for Plaintiffs, and no response of any kind was ever provided.

5. A motion was filed seeking an order to direct Defendants to file answers to interrogatories which Your Honorable Court entered on July 9, 2003, directing the answers to be filed in twenty (20) days or appropriate sanctions would be entered by the Court.

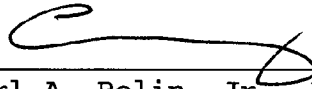
6. That the Order was served upon counsel for William Westover and Therese Westover on July 9, 2003. A copy of the letter is hereto attached as Exhibit "B."

7. That no answer for interrogatories has been filed.

WHEREFORE, Plaintiffs request Your Honorable Court to enter an Order prohibiting Defendants William Westover and Therese Westover from entering evidence in support of the adverse

possession defense of the counterclaim set forth in the answer and counterclaim.

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esquire
Attorney for Plaintiffs

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

KENNETH R. THOMAS and
LINDA M. THOMAS,
Plaintiffs

v.

WILLIAM WESTOVER and
THERESE WESTOVER,
Defendants

:
:
:
:
: CIVIL ACTION - EQUITY
:
: NO. 2002-928-CD
:
: COMPLAINT
:

Filed on Behalf of:
Defendants

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
vi.	:	CIVIL ACTION - EQUITY
	:	NO.
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

NOTICE

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
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830

(814) 765-2641 Ex 5982

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO.
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

COMPLAINT

AND NOW COMES Plaintiffs, Kenneth R. Thomas and Linda M. Thomas by and through their attorneys, Belin & Kubista, and files the following complaint against Defendants, William Westover and Therese Westover, and in support thereof avers as follows:

1. The Plaintiffs are Kenneth R. Thomas and Linda M. Thomas, husband and wife, whose address is P.O. Box 125, 216 Shepard Street, Westover, PA 16692.

2. That the Defendants are William Westover and Therese Westover, individuals whose address is P.O. Box 172, Westover, PA 16692.

3. That the Thomas' are vested with ownership of the hereinafter set forth property (hereinafter "the property")

situate in the Borough of Westover, County of Clearfield, and Commonwealth of Pennsylvania, bounded and described as follows:

On the North: Max Kitchen
On the South: Isaac Straw Estate
On the East: Hopkins Street
On the West: Alley

Said premises being more fully described as:

BEGINNING at a point located on the Western side and right-of-way of Green Street, said point being located 100 feet South of the intersection of Hopkins Street and Green Street, being the Southeast corner of a tract of land owned by Bill V. Westover and Therese M. Westover, his wife; thence South $04^{\circ}00'$ West a distance of 100.00 feet to a point; thence North $86^{\circ}00'$ West a distance of 150.00 feet to a point at the intersection with a Twenty (20) foot alley; thence North $04^{\circ}00'$ East a distance of 100.00 feet to a point; thence South $86^{\circ}00'$ East a distance of 150.00 feet to a point and the place of beginning. Said premises being located at Clearfield County tax Map #E17-358-00064.

AND BEING the same premises as was conveyed from Wanda K. Krevel et. al. by deed dated December 30, 1996 to Wanda K. Kreval et. al. as is found recorded in the Office of the Recorder of Deeds of Clearfield County in Deed and Record Volume 1812 at Page 547.

4. That the chain of title for the property is as follows:

a. Plaintiffs acquired title to said property by deed from Wanda K. Kreval, Barbara A. Neff and Richard D. Neff dated June 30, 1998 recorded in Clearfield County Deed & Record Book Volume 1952 Page 571.

b. Wanda K. Kreval, Barbara A. Neff and Richard D. Neff acquired title from Wanda K. Kreval and Barbara A. Neff, as Co-Executrices of the Estate of Mary Viola Buterbaugh dated December 30, 1996 recorded in Clearfield County Deed & Record Book Volume 1812 Page 547.

c. Edgar Buterbaugh and Mary Buterbaugh acquired title to said property by deed from Charles W. Englody and Sandra K. Englody dated July 30, 1975 recorded in Clearfield County Deed and Record Book Volume 705 Page 288.

d. Charles W. Englody and Sandra K. Englody acquired title to said property by deed from Buterbaugh Brothers Land and Timber Corporation dated July 2, 1975 recorded in Clearfield County Deed & Record Book Volume 703 Page 250.

e. The Buterbaugh Brothers acquired title to said property by deed from A.O. Curtis and Margaret Curtis dated May 25, 1972 recorded in Clearfield County Deed & Record Book Volume 599 Page 205.

f. A.O. Curtis acquired title to said property by deed from George McClellan and Clarence Haupt, surviving Executors and Trustees under the Last Will and Testament of G. Edward Haupt; Harold W. Swope, Executor under the Last Will and Testament of Lidah M. Haupt dated August 5, 1957 recorded in Clearfield County Deed & Record Book Volume 480 Page 294.

g. Although there is no deed of record in the Clearfield County Deed & Record Books, the Clearfield County Assessment records indicate that G. Edward Haupt acquired title to said property by tax sale from the Clearfield County Commissioners by deed dated August 10, 1950.

h. Although there is no deed of record in the Clearfield County Deed & Record Books, the Clearfield County Assessment records indicate that R.H. White and Frank C. Elling acquired title to said property from the Clearfield County Commissioners by tax sale in 1942.

i. Although there is no deed of record in the Clearfield County Deed & Record Books, the Clearfield County Assessment records indicate that George Frazier acquired title by tax sale to said property from the Clearfield County Commissioners. The property was sold in 1926 as the property of Benjamin Shepherd.

j. Benjamin Shepherd acquired title to said property by deed from Sophia D. Shepherd dated June 21, 1910 recorded in Clearfield County Deed & Record Book Volume 209 Page 279.

k. Sophia Shepherd acquired title to said property by deed from E.B. Rainey and Jennie M. Rainey dated October 21, 1904 recorded in Clearfield County Deed & Record Book Volume 145 Page 136.

l. E.B. Rainey acquired title to said property by deed from Benjamin F. Klinger dated February 28, 1903 recorded in Clearfield County Deed & Record Book Volume 130 Page 137.

m. Benjamin F. Klinger acquired title to said property by deed from William F. Mosser, the common grantor of said property dated June 15, 1901 recorded in Clearfield County Deed & Record Book Volume 130 Page 137.

5. That the Plaintiffs acquired an easement by virtue of the conveyance from the common grantor of the property.

6. That the Defendants have unlawfully occupied the easement by placing on that tract obstructions consisting of a poultry fence and shed.

7. That the Plaintiffs made a formal demand that the Defendants remove the obstructions by letter dated May 15, 2002 and Defendants refused to remove said obstructions.

8. That no adequate remedy exists at law.

WHEREFORE, Plaintiffs request Your Honorable Court to order the Defendants to remove all obstructions including a poultry fence and shed from the easement.

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF :

Before me the undersigned officer, personally appeared
KENNETH R. THOMAS and LINDA M. THOMAS, who being duly sworn
according to law, depose and say that the facts set forth in the
foregoing Complaint are true and correct to the best of their
knowledge, information and belief.

Kenneth R. Thomas
Kenneth R. Thomas

Linda M. Thomas
Linda M. Thomas

Sworn and subscribed before me this 10th day of
June, 2002.

Susan M. Hartzfeld
Notary Public

NOTARIAL SEAL
SUSAN M. HARTZFELD, NOTARY PUBLIC
CLEARFIELD BORO., CLEARFIELD COUNTY
MY COMMISSION EXPIRES AUGUST 16, 2005

BELIN & KUBISTA

ATTORNEYS AT LAW

15 NORTH FRONT STREET

P.O. BOX 1

CLEARFIELD, PENNSYLVANIA 16830

CARL A. BELIN, JR.
KIMBERLY M. KUBISTA
JOHN R. RYAN

CARL A. BELIN
1901-1997

AREA CODE 814
TELEPHONE 765-8972
FAX (814) 765-9893

July 9, 2003

Kenneth R. Sottile, Esquire
137 North Main Street
P.O. Box 505
Carrolltown, PA 15722

In re: Kenneth R. Thomas and Linda M. Thomas v. William
Westover and Therese Westover No. 2002 - 928 CD

Dear Mr. Sottile:

Enclosed find certified copy of Order and Plaintiffs' Motion
for Sanctions Against Defendants For Defendants' Failure to
Answer Plaintiffs' Interrogatories to Defendants and Certificate
of Service.

Very truly yours,

BELIN & KUBISTA

Carl A. Belin, Jr.

CABjr:smh

Enclosures

cc: Mr. and Mrs. Ken Thomas
w/enclosures

Exhibit "B"

FILED No cc
01/10:42-011
AUG 06 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

KENNETH R. THOMAS and
LINDA M. THOMAS,
Plaintiffs

v.

WILLIAM WESTOVER and
THERESE WESTOVER,
Defendants

:
:
:
:
:
:
:
:

CIVIL ACTION - EQUITY

NO. 2002 - 928 CD

CERTIFICATE OF SERVICE

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

AUG 06 2003

William A. Shaw
Prcthonotary/Clerk of Courts

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

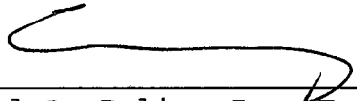
KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a certified copy of Order and Plaintiffs' Motion for Sanctions in the above-captioned matter to the following party by postage prepaid United States mail on the 5th day of August, 2003:

Kenneth R. Sottile, Esquire
137 North Main Street
P.O. Box 505
Carrolltown, PA 15722

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

FILED

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

KENNETH R. THOMAS and
LINDA M. THOMAS

William A. Shaw
Prothonotary

-vs-

No. 02 – 928 – CD

WILLIAM WESTOVER and
THERESE WESTOVER

OPINION AND ORDER

On June 10, 2002, Plaintiffs above-named filed a Complaint in Equity claiming an easement as a result of an unopened road and originating in a deed from the common grantor of both the Plaintiffs and Defendants properties. The Complaint alleges that Defendants have placed obstructions on this easement and seeks to require the removal thereof. On July 29, 2002, Defendants filed an Answer to Plaintiffs' Complaint containing new matter as follows: Count I alleging reversion of the alleged easement to the adjoining land owners which in this case is the Defendants; Count II adverse possession; Count III denying an easement of necessity or implication; and Count IV alleging that Plaintiffs have no right to open the alleyway. On August 28, 2002, Plaintiff filed Preliminary Objections to Counts I, III and IV of Defendants' New Matter and argument on said Objections was scheduled for November 20, 2002. On that date the Defendants did not appear in person or by counsel and this Court sustained said Objections and struck Counts I, III and IV of Defendants' New Matter.

On August 5, 2003, Plaintiffs moved for sanctions against the Defendants for failing to respond to Plaintiffs' interrogatories answering the issue of adverse possession raised in Count II of Defendants' New Matter and as a result thereof, on that date this Court entered an Order prohibiting the Defendants from entering any evidence in support of this defense.

Plaintiffs have now moved for Summary Judgment alleging that no further issues of fact exist and in their brief in opposition thereto Defendants argue that Plaintiffs have not successfully pleaded a common grantor in their chains of title and that Plaintiffs' chain of title is incomplete.

This Court notes that Plaintiffs have set forth their chain of title in their Complaint in paragraphs 4(a) through (m). In their Answer, Plaintiffs offer the general denial to this entire paragraph as follows:

4. After reasonable investigation the Defendants are without sufficient knowledge, information or belief to form an opinion as to the truth or falsity of the averments contained in paragraphs 4 a. through m.. Accordingly, same is denied and strict proof demanded at time of trial.

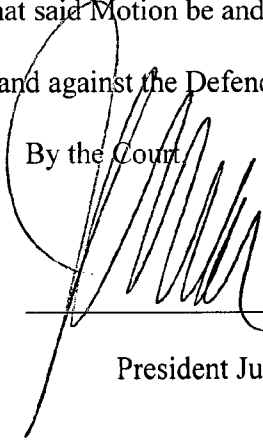
This Court agrees with Plaintiffs' argument that this is a general denial and insufficient under the law. Here if Defendants had made a reasonable investigation the public records of Clearfield County would have readily revealed the truth or falsity of the allegation. See Strank v. Mercy Hospital of Johnstown, 102 A.2d 170 (1954). And, as held in Gross v. Simsack, 72 A.2d 103 (Pa. 1950) and Swayne v. Lorett, 346 A.2d 857 (Pa. Cmwlth. 1975), these allegations must be taken as admitted.

Here the deeds from the common grantor describe a boundary as a 20-foot alley. Where the street called for as a boundary in a deed is not a highway or dedicated to public use, the grantee does not take title to the middle of it but acquires an easement by implication over it. See Beechwood v. Reed, 265 A.2d 624 (1970). For all of the above reasons therefore, this Court concludes that Plaintiffs have, by their pleadings, proved an easement by implication over the subject premises and there being no further issue of fact to be determined, the Court enters the following:

ORDER

NOW, this 24th day of November, 2003, upon Motion of Plaintiffs for Summary Judgment, it is the ORDER of this Court that said Motion be and is hereby granted and judgment entered in favor of the Plaintiffs and against the Defendants.

By the Court

A handwritten signature in dark ink, consisting of several loops and strokes, is written over a horizontal line. The signature is positioned to the right of the text "By the Court".

President Judge

FILED

cc *Att'y Belin*
cc *Att'y Little*
cc *Att'y Muehl*
cc *Att'y Muehl*
NOV 25 2003 11:09 AM

William A. Shaw
Prothonotary

WAS

FILED 300 Amy Belin
DEC 9 2003

William J. ...
Prothonotary, Clerk of Court

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

KENNETH R. THOMAS and
LINDA M. THOMAS,
Plaintiffs

v.

WILLIAM WESTOVER and
THERESE WESTOVER,
Defendants

:
:
:
: CIVIL ACTION - EQUITY
:
: NO. 2002 - 928 CD
:
: MOTION OF PLAINTIFFS FOR
: ORDER ARISING FROM JUDGMENT
: AND SUPPLEMENTAL ORDER

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

DEC 10 2003

William A. Shaw
Prothonotary/Clerk of Courts

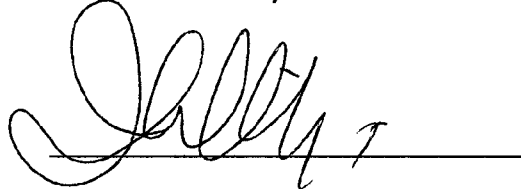
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

KENNETH R. THOMAS and :
LINDA M. THOMAS, :
Plaintiffs :
v. : CIVIL ACTION - EQUITY
: NO. 2002 - 928 CD
WILLIAM WESTOVER and :
THERESE WESTOVER, :
Defendants :

SUPPLEMENTAL ORDER

AND NOW, this 16 day of December, 2003, upon reading and considering the foregoing Motion, it is the ORDER of the Court that the Defendants, William Westover and Therese Westover, are hereby directed to remove all obstructions from the alley including but not limited to the poultry pens and shed. It is the FURTHER ORDER of the Court that judgment is hereby entered in favor of Plaintiffs and against the Defendants for the cutting and removing of vegetation, brush and trees and spraying the grass lying within the easement area.

BY THE COURT,



FILED

DEC 10 2003

William A. Shaw
Prothonotary-Clerk of Courts

FILED

3cc

0/9:50:28
DEC 10 2003

Atty Belin
C. A.

William A. Shaw
Prothonotary/Clerk of Courts

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

KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

MOTION OF PLAINTIFFS
FOR ORDER ARISING FROM JUDGMENT

Plaintiffs Kenneth R. Thomas and Linda M. Thomas ("Thomas") by their undersigned counsel, respectfully moves Your Honorable Court, for the entry of an order arising from judgment and in support thereof aver as follows:

1. That Plaintiffs sought to enforce an easement abutting the rear of their property and to order the Defendants to remove all obstructions including a poultry fence and shed from the easement.

2. That Defendants filed a counterclaim seeking damages for cutting and removal of vegetation and brush and spraying weed and grass killer on the easement in order to make it useable.

3. That the Court has entered a summary judgment in favor of the Plaintiffs against Defendants on the claim and counter claim.

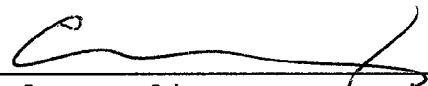
4. That it is the purpose of the Motion to seek an Order on the judgment and enable Plaintiffs to commence enforcement of said judgment.

WHEREFORE, Plaintiffs respectfully request Your Honorable Court enter an Order directing Defendants, William Westover and Therese Westover, to remove all obstructions from the alley, including the poultry pens and shed, and further enter judgment in favor of Plaintiffs and against Defendants for the cutting and removing of vegetation, brush and trees and spraying the grass lying within the easement area.

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA

By


Carl A. Belin, Jr., Esquire

FILED

023208 NOCC

DEC 10 2003

William A. Shaw
Proprietary

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

KENNETH R. THOMAS and
LINDA M. THOMAS,
Plaintiffs

v.

WILLIAM WESTOVER and
THERESE WESTOVER,
Defendants

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:
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:
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:
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:

CIVIL ACTION - EQUITY

NO. 2002 - 928 CD

CERTIFICATE OF SERVICE

Filed on Behalf of:
Plaintiffs

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

DEC 10 2003

William A. Shaw
Prothonotary

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

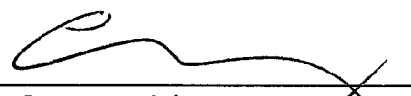
KENNETH R. THOMAS and	:	
LINDA M. THOMAS,	:	
Plaintiffs	:	
	:	CIVIL ACTION - EQUITY
v.	:	
	:	NO. 2002 - 928 CD
WILLIAM WESTOVER and	:	
THERESE WESTOVER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a certified copy of Motion of Plaintiffs For Order Arising From Judgment and Supplemental Order in the above-captioned matter to the following party by postage prepaid United States mail on the 10th day of December, 2003:

Kenneth R. Sottile, Esquire
137 North Main Street
P.O. Box 505
Carrolltown, PA 15722

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs