

02-1053-01  
ANITA SCHMIDT -vs- RANDY SCHMIDT

Date: 10/24/2002

Time: 10:30 AM

Page 1 of 1

**Clearfield County Court of Common Pleas**

User: BANDERSON

ROA Report

Case: 2002-01053-CD

Current Judge: Fredric J. Ammerman

Anita Schmidt vs. Randy Schmidt

Civil Other

Date	Judge
07/03/2002	Filing: Civil Complaint Paid by: Belin & Kubista Receipt number: 1844982 No Judge ✓ Dated: 07/03/2002 Amount: \$80.00 (Check) Three CC Attorney Kubista
07/12/2002	Acceptance of Service, Complaint on behalf of the Defendant. s/James A. Naddeo, Esq. 1 cc Atty Kubista No Judge ✓
08/12/2002	Defendant's Preliminary Objection to Plaintiff's Complaint. Filed by s/James A. Naddeo, Esq. 1 cc Atty Naddeo Cert. of Svc. No Judge ✓
10/04/2002	ORDER, filed 1 Cert. to Kubista & Naddeo AND NOW, this 1st day of Oct. 2002, Hearing scheduled for Oct. 30, 2002, at 1:PM Fredric J. Ammerman ✓

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

ANITA SCHMIDT, :  
Plaintiff, :  
v. : No. 02-1053-CD  
: :  
RANDY SCHMIDT, :  
Defendant :  
: :

COMPLAINT

Filed on behalf of

Plaintiff

Counsel of Record for  
this Party:

Kimberly M. Kubista  
Attorney-At-Law  
Pa. I.D. 52782

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

FILED

JUL 03 2002

0/3:201u

William A. Shaw  
Prothonotary

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

ANITA SCHMIDT, :  
Plaintiff, :  
v. : No. 02 - - CD  
: :  
RANDY SCHMIDT, :  
Defendant :  
:

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 Pleading 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 Pleading 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  
Market & Second Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 1300

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

ANITA SCHMIDT, :  
Plaintiff, :  
v. : No. 02 - - CD  
RANDY SCHMIDT, :  
Defendant :  
:

COMPLAINT

NOW COMES the Plaintiff, ANITA SCHMIDT, by and through her attorneys, Belin & Kubista, and sets forth the following Complaint and in support thereof would aver as follows:

1. That Plaintiff is Anita Schmidt, an adult individual residing at 208 W. Logan Avenue, DuBois, Pennsylvania.
2. The Defendant is Randy Schmidt, an adult individual residing at 516 Patterson Avenue, DuBois, Pennsylvania.
3. That the parties were married on April 9, 1983 and a divorce decree was issued on December 17, 1997. A copy of said Divorce Decree is attached hereto as Exhibit "A" and incorporated herein by reference as though set forth in full.
4. The parties entered into a marriage settlement agreement dated October 30, 1998 wherein the parties allegedly set forth an agreement as to the disposition of all marital funds, hereinafter "Agreement". A copy of said Agreement is attached hereto as Exhibit "B" and incorporated herein by reference as though set forth in full.

COUNT I - RECISSION

5. Paragraph 1 through 4 are incorporated herein by reference as though set forth in full.

6. That provision 19 of the Agreement entitled "Bonds and Certificates of Deposit" sets forth the following:

"It is understood that all Bonds and Certificates of Deposit obtained by the parties during their marriage shall be for the children's college education. The monies shall be divided equally between the children. If a child should decide not to go to college, then that child shall get his or her respective share upon turning eighteen. It is understood that Husband shall be responsible for completing the income tax returns for the children and that the accounting fees associated with said returns shall be taken from the children's monies.

7. That when Plaintiff entered into the Agreement, she believed there to be approximately \$20,000.00 in certificates of deposits to utilize for the children's education as well as various bonds.

8. That in September of 2001, Defendant communicated to Plaintiff that he had cashed in all monies which would be available for the parties' oldest daughter's education.

9. That Defendant indicated that no funds were available.

10. That Plaintiff filed a Petition to the divorce action alleging that Defendant had failed to maintain monies for college.

11. That during the course of reviewing the funds available for the parties' older child to attend college via a Subpoena to Timberland Credit Union, Plaintiff discovered that certain monies existed that were not disclosed during the negotiations for equitable distribution.

12. That after a review of Defendant's Answer to a discovery request as well as his inventory filed in the divorce action, Defendant failed to disclose certain assets at the time of negotiation of the Agreement.

13. That the funds that were not disclosed to the Plaintiff were as follows:

Federal Credit Union, Acct. 867-015	\$ 5,457.00
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Federal Credit Union, Acct. 4665-019	44,112.72
Share ACCU	1,110.67
Federal Credit Union, Acct. 5127-010	44,112.72
Share ACCU	1,110.67

14. That Defendant failed to make a full and fair disclosure to Plaintiff of the funds that existed at the time of the negotiations for the marriage settlement.

15. That based on said negotiations and failure by Defendant to fully disclose, the marriage settlement agreement should be rescinded.

WHEREFORE, Plaintiff requests that Your Honorable Court to set aside the marriage settlement agreement and to reopen the decree in order that the funds that have been discovered would be equitably divided between Plaintiff and the Defendant.

COUNT II – REFORMATION OF CONTRACT

16. Paragraph 1 through 15 are incorporated herein by reference as though set forth in full.

17. That the contract should be reformed based on the non-disclosure by Defendant of significant marital assets more fully described in paragraph 13 hereof.

18. That Defendant had control over the assets in that he continuously changed names on the accounts and moved the monies around in order to hide the same from Plaintiff.

19. That Defendant led Plaintiff to believe that bonds and certain certificates of deposit totaling \$20,000.00 were available for the children's education.

20. That pursuant to Defendant's inventory and discovery, Defendant failed to disclose those funds more fully described in paragraph 13 hereof.

21. That in 1996, Defendant placed monies in an account at Timberland Credit Union in his name and the children's names. Copies of said accounts are attached hereto as Exhibits "C" and "D" and incorporated herein by reference as though set forth in full.

22. That by 1997, Defendant had removed the accounts from Timberland Credit Union and it is believed that he placed the monies in the account of a third party.

23. That Defendant's conduct was an intentional and deliberate act to conceal the funds from Plaintiff in negotiation of the Agreement.

WHEREFORE, Plaintiff requests Your Honorable Court to reform the contract and to equitably divide the monies on a 60/40 bases more fully described in paragraph 13 hereof between the parties as well as direct Defendant to pay interest compounded from a date the Court deems appropriate on the accounts and such other relief as the Court deems proper.

COUNT III – COUNSEL FEES

24. Paragraphs 1 through 23 are incorporated herein by reference as though set forth in full.

25. That paragraph 24 of the Agreements entitled "Breach" sets forth the following:

"If either party willfully breaches any provision of this Agreement, the other party shall have the right, at his or her election, to sue for damages for such breach, or seek such other remedies or relief as may be available to him or her, and the party willfully breaching this contract shall be responsible for payment of legal fees and costs incurred by the other in enforcing their rights under this Agreement."

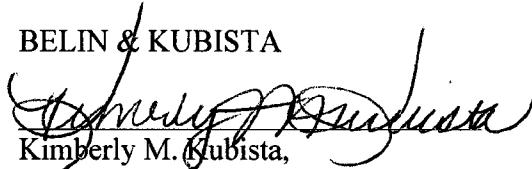
26. That Defendant has breached the agreement, and as such, should be held responsible for reasonable counsel fees.

27. That should the Court set aside the Agreement, this litigation was caused by Defendant's egregious conduct and he should be held responsible for said counsel fees.

28. That reasonable counsel fees are expected to be at least \$3,000.00.

WHEREFORE, Plaintiff requests Your Honorable Court to direct Defendant to pay Plaintiff's counsel fees in this matter.

BELIN & KUBISTA

  
Kimberly M. Kubista,  
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA:

ss

COUNTY OF CLEARFIELD

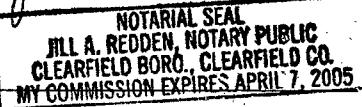
Before me, the undersigned Officer, personally appeared ANITA SCHMIDT, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing COMPLAINT are true and correct to the best of her knowledge, information and belief.

Anita Schmidt

**ANITA SCHMIDT**

SWORN and SUBSCRIBED before me this 3rd day of July, 2002.

Jill A. Redden



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

ANITA L. SCHMIDT, Plaintiff :  
vs. : No. 97-684-CD  
RANDY E. SCHMIDT, Defendant :

DIVORCE DECREE

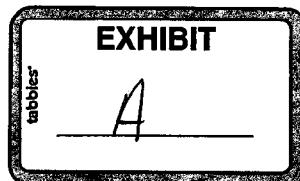
AND NOW, this 17 day of December, 1997, it  
is ORDERED and DECREED that ANITA L. SCHMIDT, Plaintiff and RANDY  
E. SCHMIDT, Defendant are divorced from the bonds of matrimony  
with the Court retaining jurisdiction over all ancillary issues.

BY THE COURT,

s/ Fredric Ammerman  
Judge

Certified from the record  
this 19th day of December,  
A.D. 1997.

W. Ammerman



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

ANITA L. SCHMIDT, :  
Plaintiff :  
: :  
vs. : : No. 97-684-CD  
: :  
RANDY E. SCHMIDT, :  
Defendant :  
:

**MARRIAGE SETTLEMENT AGREEMENT**

THIS AGREEMENT made this 30<sup>th</sup> day of October, 1998, between  
ANITA L. SCHMIDT, of 208 W. Logan Avenue, DuBois, Clearfield County, Pennsylvania,  
hereinafter "WIFE",

AND

RANDY E. SCHMIDT, of 516 Patterson Avenue, DuBois, Clearfield County, Pennsylvania,  
hereinafter "HUSBAND",

WITNESSETH:

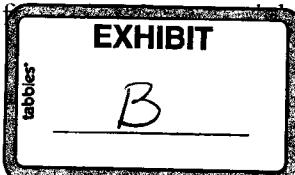
WHEREAS, the parties were married on April 9, 1983; and

WHEREAS, two (2) children were born to this marriage; namely, Marcia D. Schmidt and  
Eric P. Schmidt; and

WHEREAS, the parties hereto have been living separate and apart for a period of time prior  
to the execution of this Agreement; and

WHEREAS, the parties desire to settle their property rights permanently and for all time;  
and

WHEREAS, both parties agree to relinquish any and all claims which either may have  
against any property now owned or belonging to the other or which may hereafter be acquired by  
either of them by purchase, gift, inheritance or otherwise, except as to the



obligations, covenants and agreements contained herein; and

WHEREAS, the parties hereto have each had the benefit of competent and independent legal advice by separate counsel;

NOW THEREFORE, the parties intending to be legally bound do covenant and agree:

1. SEPARATION: It shall be lawful for each party at all times hereafter to live separate and apart from the other party at such place as he or she may from time to time choose or deem fit. The foregoing provisions shall not be taken as an admission on the part of either party of the lawfulness or unlawfulness of the causes leading to their living apart.

2. INTERFERENCE: Each party shall be free from interference, authority, and contact by the other, as fully as if he or she were single and unmarried except as may be necessary to carry out the provisions of this Agreement. Neither party shall molest the other or attempt to endeavor to molest the other, nor compel the other to cohabit with the other, nor in any way harass or malign the other, nor in any way interfere with the peaceful existence, separate and apart from the other.

3. DESIRE OF THE PARTIES: It is the desire of the parties, after long and careful consideration, to amicably adjust, compromise and settle all property rights and all rights in, to or against each other's property or estate, including property heretofore or subsequently acquired by either party, and to settle all disputes existing between them, including any and all claims for Wife's and/or Husband's maintenance and/or for support, alimony, counsel fees and costs, custody and equitable distribution.

4. DEBTS: The Husband and Wife represent and warrant to each other that neither one has contracted any debt or debts, charges or liabilities whatsoever, for which the other party or their property or their estates shall or may be or become liable or answerable, and they

covenant that they will at all times keep each other free, harmless and indemnified against and from any and all debts and liabilities heretofore or hereafter contracted or incurred by either of them, except as expressly provided in this Agreement.

5. EFFECT OF DIVORCE DECREE: The parties hereby acknowledge that Wife has commenced an action in divorce, indexed to Number 97-684-CD in the Court of Common Pleas of Clearfield County, Pennsylvania. The parties further agree that a divorce decree has been entered in this case with the Court maintaining jurisdiction over the ancillary issues.

6. MUTUAL RELEASE: Subject to the provisions of this Agreement, each party has released and discharged, and by this Agreement does for himself or herself and his or her heirs, legal representatives, executors, administrators and assigns, release and discharge the other of and from all causes of action, claims, rights, or demands, whatsoever in law of equity, which either of the parties ever had or now has against the other, except any or all cause or causes of action for divorce and except any or all causes of action for breach of any provisions of this Agreement.

7. CHECKING AND SAVINGS ACCOUNTS: The parties agree that there are no checking or savings accounts in the name of Husband and Wife and that each has their own separate such accounts with respect to which the other will make no claim.

8. DIVISION OF PERSONAL PROPERTY: Husband and Wife shall divide the marital property equally in kind and shall waive any right, title or interest to the property in the possession of the other. Wife shall specifically obtain these items more fully described as Exhibit "B" hereof and incorporated herein by reference as though set forth in full.

9. REAL ESTATE: Husband shall become sole owner of the marital residence located at 516 Patterson Avenue, DuBois, Clearfield County, Pennsylvania. Husband hereby agrees to

indemnify and hold Wife harmless from any liability associated with said premises. Wife hereby waives any right, title or interest to the same and further agrees to execute a special warranty deed conveying her interest to Husband

10. VEHICLES: Wife shall become sole owner of the 1993 Mercury Tracer titled in joint names. Husband agrees to execute any and all documentation necessary to effectuate the transfer of said vehicle to Wife. Wife agrees to indemnify and hold Husband harmless from any liability associated with the same.

Husband shall become sole owner of the 1993 Ford Explorer titled in joint names. Husband hereby agrees to indemnify and hold Wife harmless from any liability associated with the same. Wife agrees to execute any and all documentation necessary to effectuate the transfer of said vehicles to Husband.

11. CUSTODY: Wife shall have physical custody of the parties children while Husband and Wife will have shared legal custody of the parties children subject to periods of father's partial custody as follows:

A. Every other weekend from Friday through Sunday at times to be agreed upon by the parties. Husband shall return the children by 7:30 p.m. unless otherwise agreed to between the parties. In addition, Husband shall have the children during his vacation periods. It is understood that Husband gets several weeks vacation and that his weeks will not be taken consecutively.

B. The following holidays would be shared between the parties as follows:

i. Christmas: In even numbered years, Mother shall have the children on Christmas Eve until Christmas Day at 3:00 p.m. Father shall have the children on Christmas

Day from 3:00 p.m. until December 26<sup>th</sup> at a time to be agreed upon by the parties. In odd numbered years, Husband shall have the children from Christmas Eve at a time to be agreed upon between the parties until Christmas day at 3:00 p.m. at which time the children will be returned to Wife.

ii. Thanksgiving: Mother shall have the children each Thanksgiving Day until 3:00 p.m. at which time they shall go to Father's from 3:00 pm. until such time as Father concludes Thanksgiving dinner.

iii. All other holidays shall be shared as the parties can agree.

12. IRAs, PENSION/RETIREMENT AND 401K ACCOUNTS: Both Husband and Wife shall become the sole owners of their respective IRAs, Pension/Retirement and 401K accounts in their individual names. Each party agrees to waive any right, title or interest in and to the accounts of the other.

13. CHECKING ACCOUNTS, SAVINGS ACCOUNTS AND CHRISTMAS CLUB: Wife shall become the sole owner of the savings account with Timberland which had a balance of \$2,412.15 and the Christmas club which had a balance of \$121.00 at the time of separation. Husband shall retain the Timberland savings account which has a balance of \$2,602.32 and the Timberland checking account with a balance of \$658.26 at the time of separation. The parties agree to waive any right, title or interest they have to the other's accounts.

14. LIFE INSURANCE: It is agreed that Wife shall retain the insurance policy through Prudential Insurance titled in her name and Husband shall retain the insurance policy through Prudential Insurance titled in his name. It is further agreed that each party hereby waives any right, title or interest to the other's policy.

15. JEWELRY: Wife shall retain all jewelry in her possession and Husband hereby

waives any right, title or interest to the same.

16. DEPENDENCY EXEMPTION: Husband shall claim the parties child Marcia D. Schmidt for dependency purposes while Wife shall claim the parties child Eric P. Schmidt for dependency purposes. For the opportunity to claim a child for dependency exemption purposes, Husband shall pay to Wife the sum of \$2,000.00.

17. EQUITABLE DISTRIBUTION AND CASH PAYMENT: Husband shall pay to Wife whatever sum is necessary for Wife to obtain fifty (50%) percent of the marital property considering the property which Wife will receive in kind. The parties further agree to the distribution of property as is set forth herein as Exhibit "A" and incorporated herein by reference as set forth in full. Cash payment to Wife shall take place within thirty days of the execution of this agreement.

18. ALIMONY, COUNSEL FEES, COSTS & EXPENSES: Husband shall pay to Wife the sum of \$300.00 a month for a three (3) year period. Said payments to commence as of June 1, 1998 and continue for a three (3) year period thereafter.

19. BONDS AND CERTIFICATES OF DEPOSIT: It is understood that all Bonds and Certificates of Deposit obtained by the parties during their marriage shall be for the children's college education. The monies shall be divided equally between the children. If a child should decide not to go to college, then that child shall get his or her respective share upon turning eighteen. It is understood that Husband will be responsible for completing the income tax returns for the children and that the accounting fees associated with said returns shall be taken from the children's monies.

20. EXECUTION OF DOCUMENTS: Should it at any time, become necessary for either party to execute any titles, deeds or similar documents to give effect to this Agreement, it

shall be done immediately upon request of the other party.

21. WAIVER OF CLAIMS AGAINST ESTATES: Except as herein otherwise provided, each party may dispose of his or her property in any way, and each party hereby waives and relinquishes any and all rights he or she may now have or hereafter acquire, under the present or future laws of any jurisdiction; the rights to share in the property or the estate of the other as a result of the marital relationship, including without limitation, dower, courtesy, statutory allowance, widow's allowance; the right to take property under equitable distribution; the right to take under the intestacy laws; the right to take against the Will of the other, and right to act as administrator or executor of the other's estate, and each will, at the request of the other, execute, acknowledge, and deliver any and all instruments which may be necessary or advisable to carry in to effect this mutual waiver and relinquishment of all such interests, rights and claims.

22. INTENDED TAX RESULT: By this Agreement, the parties have intended to effect an equal division of their marital property. The parties have determined that an equal division of such property conforms to a just and right standard with due regard to the rights of each party. The division of existing marital property is not (except as expressly provided in this Agreement) intended by the parties to constitute in any way a sale or exchange of assets, and the division is being effected without the introduction of outside funds or other property not constituting a party of the marital estate.

23. FINANCIAL DISCLOSURE: The parties confirm that each has relied on the substantial accuracy of the financial disclosure of the other as an inducement to the execution of this Agreement.

24. BREACH: If either party willfully breaches any provision of this Agreement, the other party shall have the right, at his or her election, to sue for damages for such breach, or

seek such other remedies or relief as may be available to him or her, and the party willfully breaching this contract shall be responsible for payment of legal fees and costs incurred by the other in enforcing their rights under this Agreement.

25. ADDITIONAL INSTRUMENTS: Each of the parties shall from time to time at the request of the other, execute acknowledge, and deliver to the other party any and all further instruments that may be reasonably required to give full force and effect to the provisions of this Agreement.

26. VOLUNTARY EXECUTION: The provisions of this Agreement and their legal effect have been fully explained to the parties by their respective counsel, and each party acknowledges that the Agreement is fair and equitable, that it is being entered into voluntarily, and that it is not the result of any duress or undue influence.

27. ENTIRE AGREEMENT: This Agreement contains the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

28. MODIFICATION AND WAIVER: A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

29. DESCRIPTIVE HEADINGS: The descriptive headings used herein are for convenience only. They shall have no effect whatsoever in determining the rights or obligations of the parties.

30. INDEPENDENT SEPARATE COVENANTS: It is specifically understood and

agreed by and between the parties hereto that, each paragraph hereto shall be deemed to be a separate and independent covenant and agreement.

31. APPLICABLE LAW: This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania.

32. VOID CLAUSES: If any term, condition, clause or provision of this Agreement shall be determined or declared to be void or invalid in law or otherwise, then only that term, condition, clause or provision shall be stricken from this Agreement and in all other respects this Agreement shall be valid and continue in full force, effect and operation.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

WITNESS:

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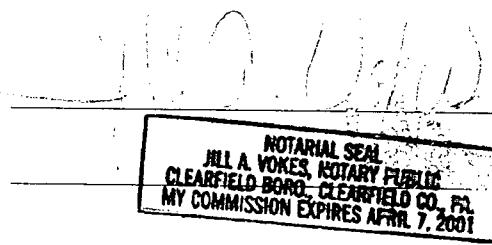
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Anita L. Schmidt  
Anita L. Schmidt

Randy E. Schmidt  
Randy E. Schmidt

On this 11<sup>th</sup> day of Sept/98, 1998, before me, the undersigned officer, personally appeared, Anita L. Schmidt, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

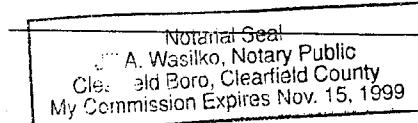
In witness whereof, I hereunto set my hand and notarial seal the day and year first  
above written.



COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CLEARFIELD )  
 )ss )

On this 30<sup>th</sup> day of October, 1998, before me, the undersigned officer, personally appeared, Randy E. Schmidt, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and seal the day and year first above written.



## EXHIBIT "A"

### ASSETS:

	<u>VALUE:</u>
1. House	\$ 94,000.00
2. Pension – Husband	18,017.21
3. IRA – Wife	2,663.73
4. 401(K) – Wife	8,147.83
5. 401(K) – Husband	48,195.66
6. Checking Account – Timberland – Husband	658.26
7. Life Insurance	1,420.00
8. Christmas Club	121.00
9. Life Insurance	478.00
10. 1993 Tracer	6,925.00
11. 1993 Explorer	11,125.00
12. Savings Account	2,412.15
13. Savings Account	2,602.32
14. Jewelry	500.00
	<hr/>
	\$197,266.16

50% of Marital Assets:	\$ 98,633.08
Items Wife had:	<u>21,247.71</u>
	<hr/>
Tax Dependent Monies:	\$ 77,385.37
Total Amount Due Wife:	<u>2,000.00</u>
	<hr/>
	\$ 79,385.37

Debts: No debts shall be taken into account in said distribution.

### Wife:

IRA	\$ 2,663.73
401(K)	8,147.83
Christmas Club	121.00
Life Insurance	478.00
1993 Tracer	6,925.00
Savings Account	2,412.15
Jewelry	500.00
Total	<hr/>
	\$ 21,247.71

Wife shall also receive her Clearfield County pension.

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Husband:

House	\$ 94,000.00
Pension	\$ 18,017.21
401(k)	48,195.66
Checking Account	658.26
1993 Explorer	11,125.00
Life Insurance	1,420.00
Savings Account	<u>2,602.32</u>
Total	\$176,018.45

EXHIBIT "B"

PUSH

RS 10/29/98 AS 10/29/98

Riding Lawn Mower

Dining Room Table and 4 Chairs

Card Table and Chairs - Wife's parent purchased for wife

Silverware - purchased by wife prior to marriage

Cedar Chest

1 Dresser (from master bedroom) CHESTER DRAW

RS 10/29/98 AS 10/29/98

Deep fryer - gift to wife from third party

Pots and Pans - gift to wife from third party

Table Cloth - gift to wife from third party

Small Food Chopper - gift to wife from third party

Fruit Bowl - gift to wife from third party

All other gifts to wife from third parties

Home Interior Items

Glasses - wife's parents gave her

Grandmother's Table and End Table

1 Picture of kids on wall

Deep Freezer

Gas Grill

Bug Snapper

8 Track tape player and speakers

8 Track tapes

TO REPORT ERRORS OR MAKE  
INQUIRIES ABOUT LOANS MADE  
ED WITH AN \* WRITE TO

TIMBERLAND FCU  
191 BEAVER DRIVE  
DUBUQUE IA 52001

## STATEMENT OF ACCOUNT

TO REPORT ERRORS OR MAKE INQUIRIES  
ABOUT ELECTRONIC FUNDS TRANSFERS  
MADE BY POSTER OR ATM, WRITE  
TO THE ADDRESS AT LEFT OR CALL:

800/477-3889

503101B 2719L

ACCOUNT NUMBER	REP	LOC.	STATEMENT PERIOD		SOCIAL SECURITY NO.	* PAGE
			FROM	TO		
4669-019	552		07/01/96	09/30/96	180-64-3860	1
MARCIE D SCHMIDT #552 RANDY SCHMIDT 516 PATTERSON AVE DU 5015 PA 15801-1432						

093096	2-YEAR SHARE ACCT 0CS DIVIDEND	PREVIOUS BALANCE 71107	4340165 4411272
093096	RATE 6.5000% ISSUED 03/27/95 MATURES 03/27/97	NEW BALANCE 1926	111067
093096	3-YEAR SHARE ACCT 0DS DIVIDEND	PREVIOUS BALANCE 109441	109441
093096	RATE 7.0000% ISSUED 03/29/95 MATURES 03/29/98	NEW BALANCE 111067	111067
-----YEAR TO DATE TOTALS----- \$2194.60 REGULAR DIVIDENDS			
"HOME EQUITY FEES ARE WAIVED" TIMBERLAND FCU WILL NOW PAY ALL CLOSING FEES ON YOUR HOME EQUITY LOAN. THIS COULD SAVE YOU "BIG TIME" \$300.00. CALL THE CREDIT UNION FOR DETAILS TO SEE IF YOU QUALIFY FOR A HOME EQUITY LOAN.			

See Reverse Side For Important Information

DO NOT REMOVE OR MAKE DUPLICATES

PSC F90-7594 132x64 CP 11 LP 10

EXHIBIT

Tables

C

TO REPORT ERRORS OR MAKE  
INQUIRIES ABOUT LOANS MARKED  
ED WITH AN "E" WRITE TO:

TIMBERLAND FCU  
191 BEAVER DRIVE  
DUBOIS PA 15801

TO REPORT ERRORS OR MAKE INQUIRIES  
ABOUT ELECTRONIC FUNDS TRANSFERS. M14  
MARKED WITH A "P" OR A "T" OR ATM. WRITE  
TO THE ADDRESS AT LEFT OR CALL

800/477-3889

5031018 2848R

ACCOUNT NUMBER	REF.	LOC.	STATEMENT PERIOD		SOCIAL SECURITY NO.	PAGE
			FROM	TO		
5127-010 552			07/01/96	09/30/96	208-64-1400	1

ERIC P SCHMIDT #552  
RANDY SCHMIDT  
516 PATTERSON AVE  
DU BOIS PA 15801-1432

053096 053096	2-YEAR SHARE ACCT ODO DIVIDEND	ISSUED 03/27/95	PREVIOUS BALANCE 71107	4340165 4411272		
			NEW BALANCE MATURES 03/27/97	4411272		
093096 093096	3-YEAR SHARE ACCT ODO DIVIDEND	ISSUED 03/29/95	PREVIOUS BALANCE 1926	105141 111067		
			NEW BALANCE MATURES 03/29/98	111067		
		----- YEAR TO DATE TOTALS----- \$2218.28 REGULAR DIVIDENDS				
		"HOME EQUITY FEES ARE WAIVED. TIMBERLAND FCU WILL NOW PAY ALL CLOSING FEES ON YOUR HOME EQUITY LOAN. THIS COULD SAVE YOU "BIG TIME" \$300.00. CALL THE CREDIT UNION FOR DETAILS TO SEE IF YOU QUALIFY FOR A HOME EQUITY LOAN.				

See Reverse Side for important information

EXHIBIT

D

**BELIN & KUBISTA**  
ATTORNEYS AT LAW  
15 NORTH FRONT STREET  
P. O. BOX 1  
CLEARFIELD, PENNSYLVANIA 16830

---

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

ANITA SCHMIDT,

Plaintiff

v.

No. 02-1053- CD

RANDY SCHMIDT,

Defendant

ACCEPTANCE OF SERVICE

Filed on behalf of

Plaintiff

Counsel of Record for  
this Party:

Kimberly M. Kubista  
Attorney-At-Law  
Pa. I.D. 52782

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

FILED

JUL 12 2002

07/12/02 cc atty Kubista  
William A. Shaw  
Prothonotary

Ex-2

JUL 11 2002

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

ANITA SCHMIDT,

Plaintiff

v.

No. 02 - CD

RANDY SCHMIDT,

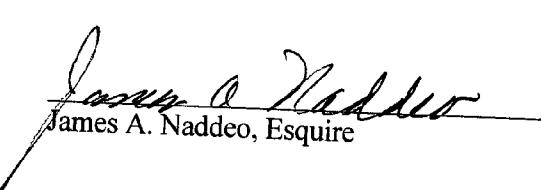
Defendant

ACCEPTANCE OF SERVICE

I accept service of the Complaint in the above referenced case on behalf of the  
Defendant.

Date:

7/11/02

  
James A. Naddeo, Esquire

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

ANITA L. SCHMIDT,  
Plaintiff

\*

\*

\*

VS.

\*

No. 02-1053-CD

RANDY L. SCHMIDT,  
Defendant

\*

\*

\*

**DEFENDANT'S PRELIMINARY  
OBJECTION TO PLAINTIFF'S  
COMPLAINT**

Filed on Behalf of:

Defendant

Counsel of Record for  
This Party:

James A. Naddeo, Esquire  
PA I.D. #06820

211 1/2 E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

**FILED**

AUG 12 2002

03/10/02 cc atty. Naddeo  
William A. Shaw  
Prothonotary

E  
JES

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

ANITA L. SCHMIDT,  
Plaintiff

\*

\*

VS.

\*

No. 02-1053-CD

\*

\*

RANDY L. SCHMIDT,  
Defendant

\*

DEFENDANT'S PRELIMINARY OBJECTION  
TO PLAINTIFF'S COMPLAINT

AND NOW comes the Defendant, RANDY E. SCHMIDT, by and through his attorney, James A. Naddeo, Esquire, and sets forth the following:

PRELIMINARY OBJECTION RAISING NONJOINDER OF  
A NECESSARY PARTY

1. Plaintiff's Complaint is based upon her claim that Defendant is liable to Plaintiff under a Marriage Settlement Agreement between the parties dated October 30, 1998. A copy of the Agreement, attached to the Complaint as Exhibit "A", is attached hereto as Exhibit "A".

2. Under the terms of the Marriage Settlement Agreement, the parties' two children, namely Marcia D. Schmidt and Eric P. Schmidt, have a joint interest with Plaintiff in any claim and recovery under the Marriage Settlement Agreement.

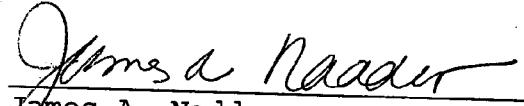
3. Marcia D. Schmidt and Eric P. Schmidt have not been joined as party Plaintiffs.

4. Pursuant to Pa. R.C.P. 2227(a), the joinder of Marcia D. Schmidt and Eric P. Schmidt, in this action was compulsory.

5. No reason appears in the Complaint for the omission of Marcia D. Schmidt and Eric P. Schmidt as parties to this action.

6. Marcia D. Schmidt and Eric P. Schmidt are accordingly necessary and indispensable parties to this action and their absence requires that the Complaint be dismissed.

WHEREFORE, the Defendant respectfully requests that his Preliminary Objections be sustained and Plaintiff's Complaint be dismissed.

  
\_\_\_\_\_  
James A. Naddeo  
Attorney for Defendant

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

ANITA L. SCHMIDT,

Plaintiff

vs.

No. 97-684-CD

RANDY E. SCHMIDT,

Defendant

MARRIAGE SETTLEMENT AGREEMENT

THIS AGREEMENT made this 30<sup>th</sup> day of OCTOBER, 1998, between  
ANITA L. SCHMIDT, of 208 W. Logan Avenue, DuBois, Clearfield County, Pennsylvania,  
hereinafter "WIFE",

AND

RANDY E. SCHMIDT, of 516 Patterson Avenue, DuBois, Clearfield County, Pennsylvania,  
hereinafter "HUSBAND",

WITNESSETH:

WHEREAS, the parties were married on April 9, 1983; and

WHEREAS, two (2) children were born to this marriage; namely, Marcia D. Schmidt and  
Eric P. Schmidt; and

WHEREAS, the parties hereto have been living separate and apart for a period of time prior  
to the execution of this Agreement; and

WHEREAS, the parties desire to settle their property rights permanently and for all time;  
and

WHEREAS, both parties agree to relinquish any and all claims which either may have  
against any property now owned or belonging to the other or which may hereafter be acquired by  
either of them by purchase, gift, devise, bequest, inheritance or otherwise, except as to the

obligations, covenants and agreements contained herein; and

WHEREAS, the parties hereto have each had the benefit of competent and independent legal advice by separate counsel;

NOW THEREFORE, the parties intending to be legally bound do covenant and agree:

1. SEPARATION: It shall be lawful for each party at all times hereafter to live separate and apart from the other party at such place as he or she may from time to time choose or deem fit. The foregoing provisions shall not be taken as an admission on the part of either party of the lawfulness or unlawfulness of the causes leading to their living apart.

2. INTERFERENCE: Each party shall be free from interference, authority, and contact by the other, as fully as if he or she were single and unmarried except as may be necessary to carry out the provisions of this Agreement. Neither party shall molest the other or attempt to endeavor to molest the other, nor compel the other to cohabit with the other, nor in any way harass or malign the other, nor in any way interfere with the peaceful existence, separate and apart from the other.

3. DESIRE OF THE PARTIES: It is the desire of the parties, after long and careful consideration, to amicably adjust, compromise and settle all property rights and all rights in, to or against each other's property or estate, including property heretofore or subsequently acquired by either party, and to settle all disputes existing between them, including any and all claims for Wife's and/or Husband's maintenance and/or for support, alimony, counsel fees and costs, custody and equitable distribution.

4. DEBTS: The Husband and Wife represent and warrant to each other that neither one has contracted any debt or debts, charges or liabilities whatsoever, for which the other party or their property or their estates shall or may be or become liable or answerable, and they

covenant that they will at all times keep each other free, harmless and indemnified against and from any and all debts and liabilities heretofore or hereafter contracted or incurred by either of them, except as expressly provided in this Agreement.

5. EFFECT OF DIVORCE DECREE: The parties hereby acknowledge that Wife has commenced an action in divorce, indexed to Number 97-684-CD in the Court of Common Pleas of Clearfield County, Pennsylvania. The parties further agree that a divorce decree has been entered in this case with the Court maintaining jurisdiction over the ancillary issues.

6. MUTUAL RELEASE: Subject to the provisions of this Agreement, each party has released and discharged, and by this Agreement does for himself or herself and his or her heirs, legal representatives, executors, administrators and assigns, release and discharge the other of and from all causes of action, claims, rights, or demands, whatsoever in law or equity, which either of the parties ever had or now has against the other, except any or all cause or causes of action for divorce and except any or all causes of action for breach of any provisions of this Agreement.

7. CHECKING AND SAVINGS ACCOUNTS: The parties agree that there are no checking or savings accounts in the name of Husband and Wife and that each has their own separate such accounts with respect to which the other will make no claim.

8. DIVISION OF PERSONAL PROPERTY: Husband and Wife shall divide the marital property equally in kind and shall waive any right, title or interest to the property in the possession of the other. Wife shall specifically obtain these items more fully described as Exhibit "B" hereof and incorporated herein by reference as though set forth in full.

9. REAL ESTATE: Husband shall become sole owner of the marital residence located at 516 Patterson Avenue, DuBois, Clearfield County, Pennsylvania. Husband hereby agrees to

indemnify and hold Wife harmless from any liability associated with said premises. Wife hereby waives any right, title or interest to the same and further agrees to execute a special warranty deed conveying her interest to Husband

10. VEHICLES: Wife shall become sole owner of the 1993 Mercury Tracer titled in joint names. Husband agrees to execute any and all documentation necessary to effectuate the transfer of said vehicle to Wife. Wife agrees to indemnify and hold Husband harmless from any liability associated with the same.

Husband shall become sole owner of the 1993 Ford Explorer titled in joint names. Husband hereby agrees to indemnify and hold Wife harmless from any liability associated with the same. Wife agrees to execute any and all documentation necessary to effectuate the transfer of said vehicles to Husband.

11. CUSTODY: Wife shall have physical custody of the parties children while Husband and Wife will have shared legal custody of the parties children subject to periods of father's partial custody as follows:

A. Every other weekend from Friday through Sunday at times to be agreed upon by the parties. Husband shall return the children by 7:30 p.m. unless otherwise agreed to between the parties. In addition, Husband shall have the children during his vacation periods. It is understood that Husband gets several weeks vacation and that his weeks will not be taken consecutively.

B. The following holidays would be shared between the parties as follows:

i. Christmas: In even numbered years, Mother shall have the children on Christmas Eve until Christmas Day at 3:00 p.m. Father shall have the children on Christmas

Day from 3:00 p.m. until December 26<sup>th</sup> at a time to be agreed upon by the parties. In odd numbered years, Husband shall have the children from Christmas Eve at a time to be agreed upon between the parties until Christmas day at 3:00 p.m. at which time the children will be returned to Wife.

ii. Thanksgiving: Mother shall have the children each Thanksgiving Day until 3:00 p.m. at which time they shall go to Father's from 3:00 pm. until such time as Father concludes Thanksgiving dinner.

iii. All other holidays shall be shared as the parties can agree.

12. IRAs, PENSION/RETIREMENT AND 401K ACCOUNTS: Both Husband and Wife shall become the sole owners of their respective IRAs, Pension/Retirement and 401K accounts in their individual names. Each party agrees to waive any right, title or interest in and to the accounts of the other.

13. CHECKING ACCOUNTS, SAVINGS ACCOUNTS AND CHRISTMAS CLUB: Wife shall become the sole owner of the savings account with Timberland which had a balance of \$2,412.15 and the Christmas club which had a balance of \$121.00 at the time of separation. Husband shall retain the Timberland savings account which has a balance of \$2,602.32 and the Timberland checking account with a balance of \$658.26 at the time of separation. The parties agree to waive any right, title or interest they have to the other's accounts.

14. LIFE INSURANCE: It is agreed that Wife shall retain the insurance policy through Prudential Insurance titled in her name and Husband shall retain the insurance policy through Prudential Insurance titled in his name. It is further agreed that each party hereby waives any right, title or interest to the other's policy.

15. JEWELRY: Wife shall retain all jewelry in her possession and Husband hereby

waives any right, title or interest to the same.

16. DEPENDENCY EXEMPTION: Husband shall claim the parties child Marcia D. Schmidt for dependency purposes while Wife shall claim the parties child Eric P. Schmidt for dependency purposes. For the opportunity to claim a child for dependency exemption purposes, Husband shall pay to Wife the sum of \$2,000.00.

17. EQUITABLE DISTRIBUTION AND CASH PAYMENT: Husband shall pay to Wife whatever sum is necessary for Wife to obtain fifty (50%) percent of the marital property considering the property which Wife will receive in kind. The parties further agree to the distribution of property as is set forth herein as Exhibit "A" and incorporated herein by reference as set forth in full. Cash payment to Wife shall take place within thirty days of the execution of this agreement.

18. ALIMONY, COUNSEL FEES, COSTS & EXPENSES: Husband shall pay to Wife the sum of \$300.00 a month for a three (3) year period. Said payments to commence as of June 1, 1998 and continue for a three (3) year period thereafter.

19. BONDS AND CERTIFICATES OF DEPOSIT: It is understood that all Bonds and Certificates of Deposit obtained by the parties during their marriage shall be for the children's college education. The monies shall be divided equally between the children. If a child should decide not to go to college, then that child shall get his or her respective share upon turning eighteen. It is understood that Husband will be responsible for completing the income tax returns for the children and that the accounting fees associated with said returns shall be taken from the children's monies.

20. EXECUTION OF DOCUMENTS: Should it at any time, become necessary for either party to execute any titles, deeds or similar documents to give effect to this Agreement, it

shall be done immediately upon request of the other party.

21. WAIVER OF CLAIMS AGAINST ESTATES: Except as herein otherwise provided, each party may dispose of his or her property in any way, and each party hereby waives and relinquishes any and all rights he or she may now have or hereafter acquire, under the present or future laws of any jurisdiction; the rights to share in the property or the estate of the other as a result of the marital relationship, including without limitation, dower, courtesy, statutory allowance, widow's allowance; the right to take property under equitable distribution; the right to take under the intestacy laws; the right to take against the Will of the other, and right to act as administrator or executor of the other's estate, and each will, at the request of the other, execute, acknowledge, and deliver any and all instruments which may be necessary or advisable to carry in to effect this mutual waiver and relinquishment of all such interests, rights and claims.

22. INTENDED TAX RESULT: By this Agreement, the parties have intended to effect an equal division of their marital property. The parties have determined that an equal division of such property conforms to a just and right standard with due regard to the rights of each party. The division of existing marital property is not (except as expressly provided in this Agreement) intended by the parties to constitute in any way a sale or exchange of assets, and the division is being effected without the introduction of outside funds or other property not constituting a party of the marital estate.

23. FINANCIAL DISCLOSURE: The parties confirm that each has relied on the substantial accuracy of the financial disclosure of the other as an inducement to the execution of this Agreement.

24. BREACH: If either party willfully breaches any provision of this Agreement, the other party shall have the right, at his or her election, to sue for damages for such breach, or

seek such other remedies or relief as may be available to him or her, and the party willfully breaching this contract shall be responsible for payment of legal fees and costs incurred by the other in enforcing their rights under this Agreement.

25. ADDITIONAL INSTRUMENTS: Each of the parties shall from time to time at the request of the other, execute acknowledge, and deliver to the other party any and all further instruments that may be reasonably required to give full force and effect to the provisions of this Agreement.

26. VOLUNTARY EXECUTION: The provisions of this Agreement and their legal effect have been fully explained to the parties by their respective counsel, and each party acknowledges that the Agreement is fair and equitable, that it is being entered into voluntarily, and that it is not the result of any duress or undue influence.

27. ENTIRE AGREEMENT: This Agreement contains the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

28. MODIFICATION AND WAIVER: A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

29. DESCRIPTIVE HEADINGS: The descriptive headings used herein are for convenience only. They shall have no effect whatsoever in determining the rights or obligations of the parties.

30. INDEPENDENT SEPARATE COVENANTS: It is specifically understood and

agreed by and between the parties hereto that, each paragraph hereto shall be deemed to be a separate and independent covenant and agreement.

31. APPLICABLE LAW: This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania.

32. VOID CLAUSES: If any term, condition, clause or provision of this Agreement shall be determined or declared to be void or invalid in law or otherwise, then only that term, condition, clause or provision shall be stricken from this Agreement and in all other respects this Agreement shall be valid and continue in full force, effect and operation.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

WITNESS:

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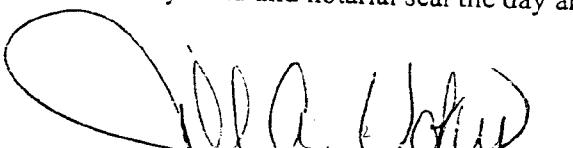
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Anita L Schmidt.  
Anita L. Schmidt  
Randy E Schmidt  
Randy E. Schmidt

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CLEARFIELD )  
ss )

On this 2nd day of October, 1998, before me, the undersigned officer, personally appeared, Anita L. Schmidt, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

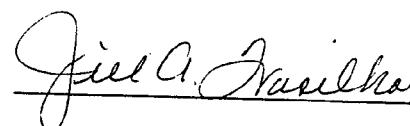
In witness whereof, I hereunto set my hand and notarial seal the day and year first above written.

  
NOTARIAL SEAL  
JIL A. WASILKO, NOTARY PUBLIC  
CLEARFIELD BORO, CLEARFIELD CO. PA  
MY COMMISSION EXPIRES APRIL 7, 2001

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CLEARFIELD )  
ss )

On this 30th day of October, 1998, before me, the undersigned officer, personally appeared, Randy E. Schmidt, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and seal the day and year first above written.

  
NOTARIAL SEAL  
JIL A. WASILKO, NOTARY PUBLIC  
CLEARFIELD BORO, CLEARFIELD COUNTY  
PA  
My Commission Expires Nov. 15, 1999

**EXHIBIT "A"**

<u>ASSETS:</u>	<u>VALUE:</u>
1. House	\$ 94,000.00
2. Pension – Husband	18,017.21
3. IRA – Wife	2,663.73
4. 401(K) – Wife	8,147.83
5. 401(K) – Husband	48,195.66
6. Checking Account – Timberland – Husband	658.26
7. Life Insurance	1,420.00
8. Christmas Club	121.00
9. Life Insurance	478.00
10. 1993 Tracer	6,925.00
11. 1993 Explorer	11,125.00
12. Savings Account	2,412.15
13. Savings Account	2,602.32
14. Jewelry	500.00
	<hr/>
	\$197,266.16
50% of Marital Assets:	\$ 98,633.08
Items Wife had:	<hr/> 21,247.71
	<hr/> \$ 77,385.37
Tax Dependent Monies:	<hr/> 2,000.00
Total Amount Due Wife:	<hr/> \$ 79,385.37

Debts: No debts shall be taken into account in said distribution.

Wife:

IRA	\$ 2,663.73
401(K)	8,147.83
Christmas Club	121.00
Life Insurance	478.00
1993 Tracer	6,925.00
Savings Account	2,412.15
Jewelry	500.00
Total	<hr/> \$ 21,247.71

Wife shall also receive her Clearfield County pension.

---

Husband:

House	\$ 94,000.00
Pension	\$ 18,017.21
401(k)	48,195.66
Checking Account	658.26
1993 Explorer	11,125.00
Life Insurance	1,420.00
Savings Account	<u>2,602.32</u>
Total	\$176,018.45

EXHIBIT "B"

AS-4 <sup>RS</sup> 10/29/98 AS-10-29-98  
Riding Lawn Mower

Dining Room Table and 4 Chairs

Card Table and Chairs - Wife's parent purchased for wife

Silverware - purchased by wife prior to marriage

Cedar Chest

1 Dresser (from master bedroom) CHEST DRAW <sup>RS</sup> 10/29/98

AS-10-29-98

Deep fryer - gift to wife from third party

Pots and Pans - gift to wife from third party

Table Cloth - gift to wife from third party

Small Food Chopper - gift to wife from third party

Fruit Bowl - gift to wife from third party

All other gifts to wife from third parties

Home Interior Items

Glasses - wife's parents gave her

Grandmother's Table and End Table

1 Picture of kids on wall

Deep Freezer

Gas Grill

Bug Snapper

8 Track tape player and speakers

8 Track tapes

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

ANITA L. SCHMIDT,  
Plaintiff

vs.

RANDY L. SCHMIDT,  
Defendant

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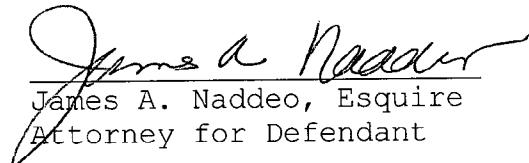
No. 97-684-CD

**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Defendant's Preliminary Objection to Plaintiff's Complaint filed in the above-captioned action was served on the following person and in the following manner on the 9th day of August, 2002:

First-Class Mail, Postage Prepaid

Kimberly M. Kubista, Esquire  
BELIN & KUBISTA  
15 N. Front Street  
Clearfield, PA 16830

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Defendant

**JAMES A. NADDEO**  
ATTORNEY AT LAW  
211 1/2 EAST LOCUST STREET  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

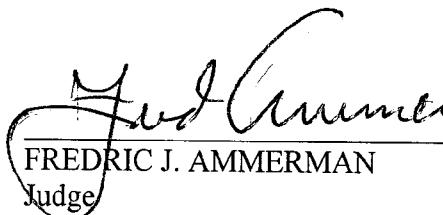
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

ANITA L. SCHMIDT :  
:  
vs. : No. 02-1053-CD  
:  
RANDY L. SCHMIDT :  
:

**ORDER**

AND NOW, this 1 day of October, 2002, it is the ORDER of the Court that argument on Defendant's Preliminary Objections to Plaintiff's Complaint in the above matter has been scheduled for Wednesday, October 30, 2002 at 1:30 P.M. in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
Judge

**FILED**

OCT 04 2002



William A. Shaw  
Prothonotary

FILED

1cc Atty Kubista  
1cc Atty Maddeo

09/10/2002  
Oct 4 2002  
William A. Shaw  
Prothonotary

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

ANITA L. SCHMIDT

:

-vs-

: No. 02-1053-CD

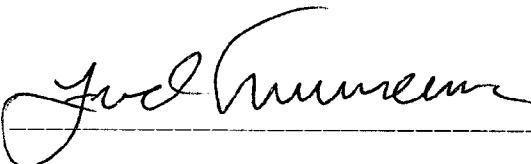
RANDY L. SCHMIDT

:

O R D E R

NOW, this 30th day of October, 2002, following argument on the Defendant's Preliminary Objections to Plaintiff's Complaint, it is the ORDER of this Court that the said Preliminary Objections be and are hereby dismissed.

BY THE COURT,



Judge

**FILED**

NOV 01 2002

William A. Shaw  
Prothonotary

**FILED**

01/01/02  
NOV 01 2002

2cc Atty Kubista

2cc Atty Nadeo

E  
681

William A. Shaw  
Prothonotary

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

ANITA SCHMIDT,  
Plaintiff

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\*

\*

vs.

\*

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RANDY SCHMIDT,  
Defendant

No. 02-1053-CD

**ANSWER TO PLAINTIFF'S  
COMPLAINT AND NEW MATTER**

Filed on Behalf of:

Defendant

Counsel of Record for  
This Party:

James A. Naddeo, Esquire  
PA I.D. #06820

211 1/2 E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

**FILED**

NOV 15 2002

William A. Shaw  
Prothonotary

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

ANITA SCHMIDT,  
Plaintiff

\*

\*

\*

vs.

\*

\*

No. 02-1053-CD

RANDY SCHMIDT,  
Defendant

\*

\*

**NOTICE TO PLEAD**

TO THE PLAINTIFF:

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.

*James A. Naddeo*

James A. Naddeo, Esquire  
Attorney for Defendants

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

ANITA SCHMIDT,  
Plaintiff

\*

\*

VS.

\*

No. 02-1053-CD

\*

RANDY SCHMIDT,  
Defendant

\*

\*

**ANSWER AND NEW MATTER**

AND NOW comes the Defendant, RANDY SCHMIDT, by and through his attorney, James A. Naddeo, Esquire, and sets forth the following:

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

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

**COUNT I - RECISSION**

5. No answer required.
6. Admitted.
7. Paragraph 7 is neither admitted nor denied in that Defendant is unable to determine Plaintiff's state of mind. To the extent that said allegation implies that there was \$20,000.00 in certificates of deposit and bonds to be utilized

for the children's education at the time the Marriage Settlement Agreement was signed, said allegation is denied. On the contrary, it is alleged that the monies earmarked for the children's education was substantially greater than \$20,000.00 and was held in the Timberland Credit Union and in bonds.

8. Denied. On the contrary, Defendant informed Plaintiff that money was no longer in the same bank and had been reinvested.

9. Admitted.

10. Denied. On the contrary, Defendant informed Plaintiff that he would have to check assets to see which ones could be accessed without penalty.

11. Denied. On the contrary, it is alleged that during the parties' negotiations both parties were fully aware that bonds and certificates of deposits had been set aside for their children's college education. In further answer thereto, it is alleged that the funds in the Timberland Credit Union were, in fact, the funds that had been set aside to the benefit of the children as will more fully appear from said statements.

12. Denied in that to Defendant's knowledge no discovery request was ever filed by Plaintiff in the divorce action. It is admitted, however, that Defendant filed an Inventory which did not include certificates of deposit held in the Timberland Credit Union to the benefit of the children nor

did said Inventory include bonds held to the benefit of the children.

13. Admitted in respect to Federal Credit Union Account #867-015 in the amount of \$5,457.00. It is denied however, that Defendant failed to disclose Federal Credit Union Account #4665-019 or Federal Credit Union Account #5127-010 for the reason that said accounts did not constitute marital funds but to the contrary represented the certificates of deposit held to the benefit of the children for their college education.

14. States a conclusion to which no answer is required. To the extent that an answer may be required, Defendant incorporates his answers to Paragraph 11, 12 and 13 to Plaintiff's Complaint and makes them a part hereof.

15. States a conclusion to which no answer is required. To the extent that an answer may be required, Defendant incorporates his answers to Paragraph 11, 12 and 13 to Plaintiff's Complaint and makes them a part hereof.

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

COUNT II - REFORMATION OF CONTRACT

16. No answer is required.

17. States a conclusion of law to which no answer is required. To the extent that an answer may be required,

Defendant incorporates New Matter hereinafter set forth by reference and makes it a part hereof.

18. Denied. On the contrary, it is alleged that Defendant did manage the funds set aside for the children's education and in the process invested said funds in various investment vehicles. It is denied, however, that said assets were moved or re-invested in order to hide the same from Plaintiff who at all times was aware that the parties had set aside funds for the education of their children.

19. Denied. On the contrary, it is alleged that Defendant at no time represented to Plaintiff that the parties had a specific amount of money set aside for the education of their children. It is admitted, however, that Defendant represented to Plaintiff that bonds and certificates of deposit had been set aside for their children's college education. In further answer thereto, it is alleged that the amount available for the education of the children was substantially in excess of \$20,000.00 both prior to and after the date of the parties' separation.

20. Denied in that Plaintiff never filed a request for discovery during the parties divorce litigation. In further answer thereto, Defendant incorporates his answer to Paragraph 13 of Plaintiff's Complaint by reference and makes it a part hereof.

21. Admitted as stated but in further answer thereto, it is alleged that Defendant had established accounts for the children in the Timberland Credit Union as early as 1993 at which time each account held in excess of \$35,000.00 for each child.

22. Admitted in so far as it alleges that Defendant at some point removed the children's savings accounts from Timberland Credit Union. It is denied, however, that said accounts were removed in 1997 in that after reasonable investigation Defendant is unable to determine the date upon which said accounts were transferred.

23. States a conclusion to which no answer is required. To the extent that an answer may be required, Defendant incorporates New Matter hereinafter set forth by reference and makes it a part hereof.

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

COUNT III - COUNSEL FEES

24. No answer required.

25. Admitted.

26. States a conclusion to which no answer is required. To the extent that an answer may be required,

Defendant incorporates New Matter hereinafter set forth by reference and makes it a part hereof.

27. States a conclusion to which no answer is required. To the extent that an answer may be required, Defendant incorporates New Matter hereinafter set forth by reference and makes it a part hereof.

28. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

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

**NEW MATTER**

29. That the parties to this action were married on April 9, 1983.

30. That two children were born to the marriage; namely, Marcia D. Schmidt and Eric P. Schmidt.

31. That during the course of the marriage the parties set aside funds to be used for the education of their children, which funds were under the exclusive control and direction of the children's father, Randy Schmidt.

32. That unhappy differences arose between the parties which culminated in a divorce granted by Decree dated December 17, 1997, a copy of which is attached to Plaintiff's Complaint as

Exhibit "A" and incorporated herein by reference and made a part hereof.

33. That the parties were able to negotiate a Marriage Settlement Agreement dated October 30, 1998, a copy of which is attached to Plaintiff's Complaint as Exhibit "B" and incorporated herein by reference and made a part hereof.

34. That both Plaintiff and Defendant filed an Inventory in the underlying divorce action which did not identify or include the funds managed by Defendant on behalf of the children for their college education in that the parties agreed that these funds were not part of the marital estate and were the property of the children.

35. That to Defendant's knowledge neither party to the underlying divorce action filed formal discovery requests.

36. That Paragraph 19 of the Marriage Settlement Agreement attached to Plaintiff's Complaint as Exhibit "B" provides as follows:

"It is understood that all Bonds and Certificates of deposit obtained by the parties during their marriage shall be for the children's college education. The monies shall be divided equally between the children. If a child should decide not to go to college, then that child shall get his or her respective share upon turning eighteen. It is understood that Husband shall be responsible for completing the income tax returns for the children and that the accounting fees associated with said

returns shall be taken from the children's monies."

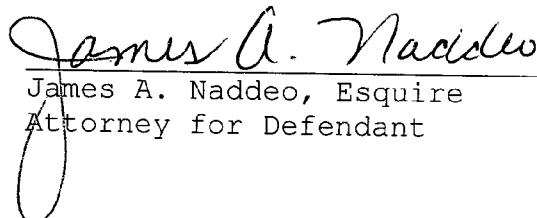
37. That up to and including the date of the parties' separation the college funds held for the children were invested in the Timberland Credit Union and in bonds having a value in excess of \$40,000.00 for each child.

38. That Defendant remains in possession and control of all funds set aside by the parties to fund the education of their children, including accumulated earnings on their investments less certain withdrawals for taxes and miscellaneous expenses for the purchase and repair of vehicles for the children, a copy of which is attached hereto as Exhibit "A".

39. That Defendant has failed and/or refused to distribute the funds held for the children due to the pendency of this action.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed and that the children's college funds, including accrued earnings, be distributed to the children and/or their guardian as the case may be.

Respectfully submitted,

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Defendant

9/27/1996 #1437	\$2,461.94	4 WHEELER
4/11/1997 #1508	\$347.00	MARCIES TAXES
4/11/1997 #1509	\$83.00	MARCIES TAXES
4/11/1997 #1510	\$347.00	ERICS TAXES
4/11/1997 #1511	\$83.00	ERIC TAXES
4/14/1998 #1669	\$419.76	MARCI & ERIC TAXES
4/14/1998 #1670	\$32.00	ERICS TAXES
4/14/1998 #1671	\$36.00	MARCIES TAXES
4/14/1998 #1672	\$29.83	ERICS TAXES
4/14/1998 #1673	\$25.17	MARCIES TAXES
8/11/1998 #1717	\$2,937.00	4 WHEELER
4/14/1999 #1816	\$4.00	MARCIES TAXES
4/14/1999 #1817	\$3.00	ERICS TAXES
1/8/2000 #1924	\$2,000.00	4 WHEELER
2/4/2000 #1935	\$459.93	BALANCE ON 4 WHEELER
7/18/2001 #1990	\$30.00	4 WHEELER BATTERY
11/6/2000 #2034	\$2,000.00	MARCIES CAR
11/6/2000 #2035	\$108.00	MARCIES CAR REGISTRATION
2/27/2001 #2069	\$77.00	MARCI & ERIC TAXES - BARBER
3/23/2001 #2079	\$2.30	MARCIES CENT. TAXES
3/23/2001 #2080	\$4.00	MARCIES ST. TAXES
4/5/2001 #2088	\$159.00	MARCIES CAR RADIATOR
6/27/2001 #2163	\$70.07	MARCIES CAR WINDOW/OIL
9/7/2001 #2488	\$250.00	ERICS BOW
9/27/2001 #2200	\$36.00	MARCIES CAR REGISTRATION
2/14/2002 #2247	\$76.32	MARCIES WINDOW
3/11/2002 #2240	\$2.00	ERICS TAXES

DATE CK. NO. TOTAL \$12,168.69

EXPENSES  
9/27/96 THRU 3/11/02

Expenses

EXHIBIT "A"

COMMONWEALTH OF PENNSYLVANIA)

ss.

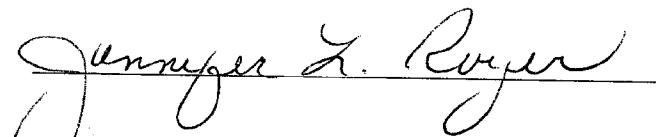
COUNTY OF CLEARFIELD

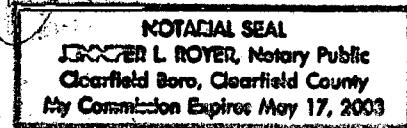
)

Before me, the undersigned officer, personally appeared RANDY L. SCHMIDT, who being duly sworn according to law, deposes and states 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.

  
Randy E. Schmidt

SWORN and SUBSCRIBED before me this 13<sup>th</sup> day of November, 2002.

  
Jennifer L. Royer



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

ANITA SCHMIDT,  
Plaintiff

\*

\*

\*

vs.

\*

\*

\*

RANDY SCHMIDT,  
Defendant

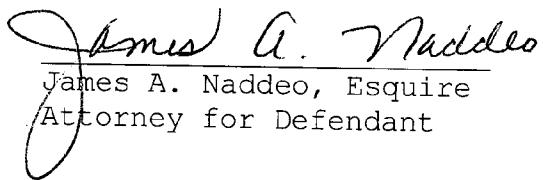
No. 02 - 1053 - CD

**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Answer to Plaintiff's Complaint and New Matter filed in the above-captioned action was served on the following person and in the following manner on the 15th day of November, 2002:

First-Class Mail, Postage Prepaid

Kimberly M. Kubista, Esquire  
BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Defendant

**JAMES A. NADDEO**  
ATTORNEY AT LAW  
211½ EAST LOCUST STREET  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

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

ANITA SCHMIDT,

Plaintiff,

v.

No. 02-1053-CD

RANDY SCHMIDT,

Defendant

ANSWER TO NEW MATTER

Filed on behalf of

Plaintiff

Counsel of Record for  
this Party:

Kimberly M. Kubista  
Attorney-At-Law  
Pa. I.D. 52782

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

FILED

DEC 02 2002

William A. Shaw  
Prothonotary

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

ANITA SCHMIDT, :  
Plaintiff, :  
v. : No. 02 -1053- CD  
RANDY SCHMIDT, :  
Defendant :  
:

ANSWER TO NEW MATTER

NOW COMES the Plaintiff, ANITA SCHMIDT, by and through her attorneys, Belin & Kubista, and sets forth the following Answer to New Matter and in support thereof would aver as follows:

29. Paragraph 29 is admitted.
30. Paragraph 30 is admitted.
31. Paragraph 31 is denied as stated. During the course of the marriage, the children received bonds from relatives which were set aside for their college education. In addition, Husband had led Wife to believe that four (4) certificates of deposit and/or notes in the amount of \$5,000.00 each were set aside for the children's education and were under exclusive control and direction of the children's father, Randy Schmidt, during the parties' marriage.
32. Paragraph 32 is admitted and in further answer thereto, the same was negotiated based on information contained in the parties' inventories.
33. Paragraph 33 is admitted.

34. Paragraph 34 is admitted in part and denied in part. It is admitted that both Plaintiff and Defendant filed an Inventory in the divorce action. It is denied that funds for the children were not identified or included in the Inventories. To the contrary, Plaintiff did identify the notes in her Inventory set forth as item number 3 under the Non-Marital section described as "5,000.00 notes" for the kids. It is agreed that Defendant filed an Inventory that failed to set forth any property he was managing for the children.

35. Paragraph 35 is neither admitted nor denied in that after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief to this averment.

36. Paragraph 36 is admitted.

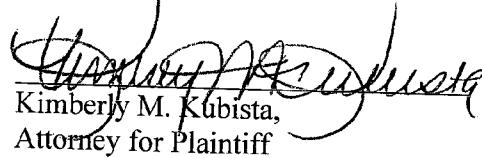
37. Paragraph 37 is denied as stated. Based on the fact that Defendant did not disclose what he had done with the monies or the values of any accounts, it is unknown what exactly Defendant did with the monies designated for the children's college. In addition, it is denied that it was the intent by the Plaintiff to have monies set aside in excess of \$40,000.00 for each child or that Defendant disclosed the same to Plaintiff prior to negotiating the Marriage Settlement Agreement.

38. Paragraph 38 is admitted in part and denied in part. It is admitted that that Defendant remains in possession and control of the funds. It is denied that all the funds held by the Defendant were intended for the parties' children's education. Only the funds in the form of certificates of deposit and bonds were to be used for the education. In reference to the withdrawals made by the Defendant, it is unknown to the Plaintiff what Defendant has done with the monies and therefore, Plaintiff can not attest to the accuracy of Exhibit "A".

39. Paragraph 39 is admitted.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to grant the relief requested in her Complaint.

BELIN & KUBISTA

  
Kimberly M. Kubista,  
Attorney for Plaintiff

I verify that the statements made in this Answer are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Dec 3-02  
Date

Anita Schmidt  
Anita Schmidt

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

ANITA SCHMIDT, :  
Plaintiff, :  
v. : No. 02 -1053- CD  
RANDY SCHMIDT, :  
Defendant :  
:

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of Answer to New Matter in the above captioned matter on the following party by facsimile and by first-class, postage prepaid mail on the 6<sup>th</sup> day of December, 2002:

(814) 765-8142  
James A. Naddeo, Esquire  
211 1/2 E. Locust Street  
Clearfield, PA 16830

BELIN & KUBISTA

  
Kimberly M. Kubista  
Attorney for Plaintiff

**BELIN & KUBISTA**  
ATTORNEYS AT LAW  
15 NORTH FRONT STREET  
P. O. BOX 1  
CLEARFIELD, PENNSYLVANIA 16830

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

ANITA SCHMIDT,

Plaintiff,

v.

No. 02-1053-CD

RANDY SCHMIDT,

Defendant

PRAECIPE TO DISCONTINUE

Filed on behalf of

Plaintiff

Counsel of Record for  
this Party:

Kimberly M. Kubista  
Attorney-At-Law  
Pa. I.D. 52782

BELIN & KUBISTA  
15 N. 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 FOR CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

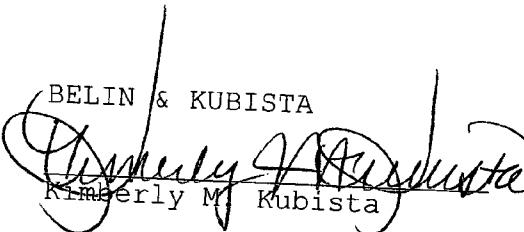
ANITA SCHMIDT, :  
Plaintiff, :  
v. : No. 02 -1053- CD  
RANDY SCHMIDT, :  
Defendant :  
:

PRAECIPE TO DISCONTINUE

TO THE PROTHONTARY:

Please mark the above captioned action satisfied,  
settled and discontinued.

Date: 8-4-03

BELIN & KUBISTA  
  
Kimberly M. Kubista

**BELIN & KUBISTA**  
ATTORNEYS AT LAW  
15 NORTH FRONT STREET  
P. O. BOX 1  
CLEARFIELD, PENNSYLVANIA 16830

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FILED NOCC  
AUG 10 2003 8:45 AM  
Cert. of Disc  
AUG 05 2003  
William A. Shaw  
Off to Atty, copy to CJA  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Anita Schmidt

Vs.  
Randy Schmidt

No. 2002-01053-CD

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 August 5, 2003, marked:

Satisfied, Settled and Discontinued

Record costs in the sum of \$80.00 have been paid in full by Belin & Kubista.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 5th day of August A.D. 2003.

\_\_\_\_\_  
William A. Shaw, Prothonotary