

02-1073-CD

KATHLEEN BROWN -vs- RICHARD H. MILGRUB

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

KATHLEEN BROWN	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
V.	:	
RICHARD H. MILGRUB	:	
Appellee	:	No. 681 WDA 2003

Appeal from the Order entered March 28, 2003  
In the Court of Common Pleas of Clearfield County  
Civil No. 02-1073-CD

BEFORE: FORD ELLIOTT, BOWES and MONTEMURO\*, JJ.

MEMORANDUM: FILED: February 4, 2004

This is an appeal from the Order entered March 28, 2003, in the Clearfield County Court of Common Pleas dismissing with prejudice Appellant Kathleen Brown's action for malicious prosecution.

Appellant hired Appellee Richard Milgrub, Esq. to represent her in a civil lawsuit to collect insurance money after she sustained personal injuries in an automobile accident. Appellant and Appellee entered into a contingency fee agreement establishing that Appellee would be paid one-third of the recovery. On June 13, 2001, Appellant notified Appellee that she needed money, and Appellee advanced her \$5,000 to help relieve her debt. The parties agreed that Appellant would repay Appellee the advance out of the money received through Appellant's pending lawsuit.

**FILED**

MAR 24 2004  
11:50 AM  
William A. Shaw  
Prothonotary/Clerk of Courts

\*Retired Justice assigned to Superior Court.

Around this time, Appellee obtained settlement with Appellant's insurance company. On June 21, 2001, in accordance with their fee agreement, Appellee gave Appellant her share of the settlement, but failed to withhold the \$5,000 advance he had given her the previous week. About three days later, Appellee notified Appellant of the mistake and asked her to repay the advance, to which she responded that she no longer had the money. Appellant offered to repay Appellee, however, and over the following ten weeks paid approximately \$2,500 of the balance.

After another ten weeks during which Appellant made no further payments, Appellee filed a private criminal complaint with the Clearfield County District Attorney, alleging that, pursuant to 18 Pa.C.S.A. § 3924,<sup>1</sup> Appellant committed theft of property lost, mislaid or delivered by mistake. On April 4, 2002, the trial court dismissed the charge, but only for the reason that Appellee's complaint misstated that the "delivery by mistake" was the advancement of \$5,000 to Appellant on June 13, 2001, rather than the overpayment to Appellant on June 21, 2001. In other words, the trial court interpreted the complaint as alleging that the advancement itself was a "delivery by mistake," and ruled that there was no mistake made during this

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<sup>1</sup> The statute reads, in pertinent part:

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with intent to deprive the owner thereof, he *fails to take reasonable measures* to restore the property to a person entitled to have it. (emphasis added).

transaction as "[a]ll parties did what they intended to do on June 13, 2001."  
(Trial Ct. Op., 4/4/02, at 4).

Appellant then filed a civil suit for malicious prosecution against Appellee, claiming that he lacked probable cause to bring criminal charges against her. On March 28, 2003, the trial court dismissed the suit with prejudice, determining that on the bases of Appellant's failure to fully repay Appellee, as well as the court's support of the District Attorney's discretion in bringing the charges, Appellee had probable cause to bring charges against Appellant. This appeal followed.

Appellant presents two issues on appeal, alleging that the trial court erred in finding that there was probable cause for the private criminal complaint brought by Appellee, and that the court also erred in deferring to the District Attorney's judgment in approving the complaint.

After a thorough review of the parties' briefs, the record, and the applicable law, we find that the trial court has thoroughly discussed and properly disposed of Appellant's claims in its Opinion. Therefore, we rest on its well-reasoned basis.

Order affirmed.

Judgment Entered:

Eleanor R. Valecko

Deputy Prothonotary

DATE: February 4, 2004

**FILED**

**MAR 24 2004**

William A. Snidow  
Prothonotary/Clerk of Courts

02-1073-<sup>SD</sup>

**The Superior Court of Pennsylvania**  
**Sitting at Pittsburgh**

1015 Grant Building  
Pittsburgh, Pennsylvania  
15219

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

**PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

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

**RECORD AND OPINION**

As remanded from said court in the following matter:

KATHLEEN BROWN V. RICHARD H. MILGRUB  
NO. 681 WDA 2003  
COURT OF COMMON PLEAS, CIVIL DIVISION, CLEARFIELD COUNTY  
No. 02-1073-CD

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: MARCH 22, 2004

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

*Eleanor R. Valecko*

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: MARCH 24, 2004

**FILED**

*[Signature]*  
(Signature & Title)

MAR 24 2004  
m/11:50a  
William A. Shaw  
Prothonotary/Clerk of Courts  
COPY TO S/C

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

2:02 P.M.

02-1073-CD

## Appeal Docket Sheet

Docket Number: 681 WDA 2003

Page 1 of 3

April 23, 2003

Kathleen Brown, Appellant

v.

Richard H Milgrub

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: April 21, 2003

Awaiting Original Record

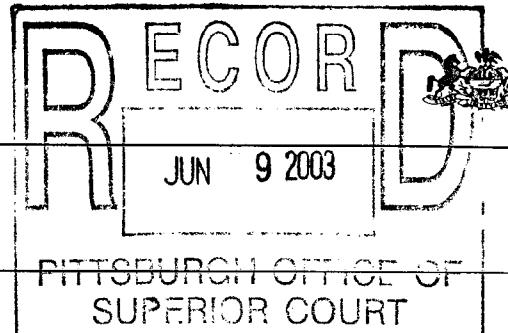
Journal Number:

Case Category: Civil

CaseType: Other

Consolidated Docket Nos.:

Related Docket Nos.:



### SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: May 7, 2003

Next Event Type: Original Record Received

Next Event Due Date: May 27, 2003

3152003

FILED

APR 25 2003

William A. Shaw  
Prothonotary

Record

**Appeal Docket Sheet****Docket Number: 681 WDA 2003****Page 2 of 3****April 23, 2003****Superior Court of Pennsylvania****COUNSEL INFORMATION**

**Appellant** Brown, Kathleen  
 Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellant Attorney Information:**

Attorney: Colavecchi, Joseph  
 Bar No.: 06810 Law Firm: Colavecchi, Ryan & Colavecchi  
 Address: 221 E Market Street  
 PO Box 131  
 Clearfield, PA 16830-0131

Phone No.: (814)765-1566 Fax No.: (814)765-4570

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Attorney: Gearhart, R. Denning  
 Bar No.: 26540 Law Firm:  
 Address: 215 E Locust Street  
 Clearfield, PA 16830

Phone No.: (814)765-1581 Fax No.: (814)765-6745

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Milgrub, Richard H  
 Pro Se: Appoint Counsel Status:

IFP Status:

**Appellee Attorney Information:**

Attorney: Dapper, Robert Eugene  
 Bar No.: 46378 Law Firm:  
 Address: Three Gateway Center, Suite 1375  
 401 Liberty Avenue  
 Pittsburgh, PA 15222

Phone No.: (412)456-5555 Fax No.: (412)456-2109

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid	Receipt Number
4/14/03	Notice of Appeal	60.00	60.00	2003SPRWD000483

**TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas

## Appeal Docket Sheet

Docket Number: 681 WDA 2003

Page 3 of 3

April 23, 2003

## Superior Court of Pennsylvania



County: Clearfield  
 Date of OrderAppealed From: March 28, 2003  
 Date Documents Received: April 21, 2003  
 Order Type: Order Entered  
 Judge: Quigley, Keith B.  
 President Judge

Division: Civil  
 Judicial District: 46  
 Date Notice of Appeal Filed: April 14, 2003  
 OTN:  
 Lower Court Docket No.: NO. 02-1073-CD

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
April 21, 2003	Notice of Appeal Filed	Appellant	Brown, Kathleen
April 23, 2003	Docketing Statement Exited (Civil)		Western District Filing Office



## Superior Court of Pennsylvania

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

Western District

April 23, 2003

600 Grant Building  
Pittsburgh, PA 15219  
412-565-7592  
[www.superior.court.state.pa.us](http://www.superior.court.state.pa.us)

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

Re: 681 WDA 2003  
Kathleen Brown, Appellant  
v.  
Richard H Milgrub

Dear Mr. Shaw:

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

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

Very truly yours,

Eleanor R. Valecko  
Deputy Prothonotary

KMS

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

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

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

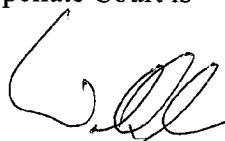
**02-1073-CD**

**Kathleen Brown**  
**VS.**  
**Richard H. Milgrub**

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

The documents compromising the record have been numbered from **No. 1 to No. 12**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is  
June 5, 2003.



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Prothonotary/Clerk of Courts

(seal)

Date: 06/05/2003

Time: 12:40 PM

Page 1 of 1

Field County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2002-01073-CD

Current Judge: Keith B. Quiqley

Kathleen Brown vs. Richard H. Milgrub

Civil Other

Date	Judge
07/11/2002	Filing: Civil Complaint Paid by: Joseph Colavecchi, Esquire Receipt number: 1845345 Dated: 07/11/2002 Amount: \$80.00 (Check) Three CC Attorney Gearhart No Judge
08/05/2002	Praeclipe For Appearance, on behalf of Defendant RICHARD H. MILGRUB, No Judge ESQ. filed by s/Robert E. Dapper, Jr., Esq. Certificate of Service no cc
08/06/2002	Preliminary Objections. filed by s/Robert E. Dapper, Jr., Esq. Cert. of Svc. No Judge Verification s/Richard H. Milgrub, Esq. 3 cc Atty Milgrub
08/29/2002	Sheriff Returns: NOW July 17, 2002 Complaint served on Richard Milgrub by handing to Nancy Collins, Sec. Sheriff costs \$20.37. Surcharge: \$10.00. No Judge
09/19/2002	ORDER, filed, 6 cert. to C/A NOW, this 19th day of September, 2002, ORDER of this Court that the Court Administrator refer the above-captioned civil matter to Administrative Regional Unit II for assignment of a specially presiding judicial authority. John K. Reilly Jr.
10/17/2002	Filing: Certificate of Service of Answer to Preliminary Objections and Argument in Support of Answer to Preliminary Objections filed by Atty. No cc. No Judge
12/17/2002	Defendant's Reply to Plaintiff's Brief in Opposition to Preliminary Objections. filed by s/Robert E. Dapper, Jr., Esq. Certificate of Service no cc Keith B. Quiqley
04/02/2003	ORDER, AND NOW, March 28, 2003, in accordance with the within Memorandum, defendant's Preliminary Objections are SUSTAINED and the Complaint DISMISSED. by the Court, s/Keith B. Quiqley, P.J. 41st Judicial District, Specially Presiding 2 cc to Atty Colacecchi, Gearhart, and Dapper Keith B. Quiqley
04/14/2003	Filing: Appeal to High Court Paid by: Colavecchi, Joseph (attorney for Brown, Kathleen) Receipt number: 1858707 Dated: 04/14/2003 Amount: \$45.00 (Check) Notice of Appeal. s/Joseph M. Colavecchi s/R. Denning Gearhart, Esq. 1 cc w/check to Superior Court Order For Transcript. s/Joseph M. Colavecchi, Esq. s/R. Denning Gearhart, Esq. Keith B. Quiqley
04/23/2003	Memorandum, Notice of Appeal having been filed in the above matter, this Court advises that it will file no further memorandum in support of the decision from which an appeal was taken. BY THE COURT: /s/Keith B. Quiqley, P.J. One CC Attorney Colavecchi, One CC Attorney Gearhart Keith B. Quiqley
04/25/2003	Appeal Docket Sheet, Docket Number: 681 WDA 2003. filed no cc Keith B. Quiqley

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

JUN 05 2003

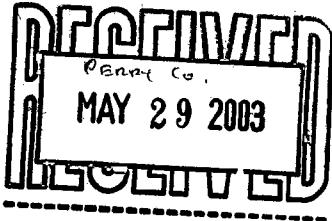
Attest.

*William B. Hudson*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 02-1073-CD  
Kathleen Brown  
VS.  
Richard H. Milgrub

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	07/11/02	Complaint	16
02	08/05/02	Praecipe for Appearance on behalf of Defendant Richard Milgrub	03
03	08/06/02	Preliminary Objections of Defendant	08
04	08/29/02	Sheriff Return	01
05	09/19/02	Order, Re: refer matter to Administrative Regional Unit II for assignment of specially presiding judicial authority	01
06	10/17/02	Certificate of Service of Answer to Preliminary Objections and Argument in Support of Answer to Preliminary Objections	01
07	12/17/02	Defendant's Reply to Plaintiff's Brief in Opposition to Preliminary Objections	05
08	04/02/03	Order, Re: Defendant's Preliminary Objections sustained and Complaint Dismissed	04
09	04/14/03	Notice of Appeal	05
10	04/14/03	Order for Transcript	02
11	04/23/03	Memorandum, Re: no further memorandum in support of decision from which appeal taken	01
12	04/25/03	Appeal Docket Sheet, Docket Number 681 WDA 2003	04



COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

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

**Kathleen Brown**

VS

**Richard H. Milgrub**

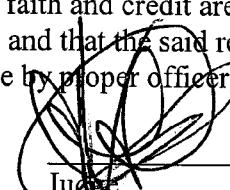
**02-1073-CD**

So full and entire as the same remains of record before the said Court, at No. **02-1073-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 28<sup>th</sup> Day of MAY, 2003.

  
Prothonotary/Clerk of Courts

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

  
Judge

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

In Testimony Whereof, I have  
hereunto set my hand and affixed  
the seal of said Court, this 5<sup>th</sup> day  
of June, 2003.

  
Prothonotary/Clerk of Courts

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

KATHLEEN BROWN, :  
Plaintiff :  
VS. : NO. 02-1073 -CD  
RICHARD H. MILGRUB, :  
Defendant :  
:

CASE NUMBER: 02- -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: COMPLAINT

FILED ON BEHALF OF: Plaintiff

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

JOSEPH COLAVECCHI, ESQUIRE  
Colavecchi, Ryan & Colavecchi  
221 E. Market Street  
P.O. Box 131  
Clearfield, PA 16830  
(814) 765-1566

FILED

JUL 11 2002

William A. Shaw  
Prothonotary

#1

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

KATHLEEN BROWN, :  
Plaintiff :  
VS. : NO. 02- -CD  
: :  
RICHARD H. MILGRUB, : JURY TRIAL DEMANDED  
Defendant : :

**NOTICE TO DEFEND**

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

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

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

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

<b>KATHLEEN BROWN,</b>	:	
Plaintiff	:	
<b>VS.</b>	:	<b>NO. 02- -CD</b>
	:	
<b>RICHARD H. MILGRUB,</b>	:	JURY TRIAL DEMANDED
Defendant	:	

**COMPLAINT**

AND NOW, comes the Plaintiff, Kathleen Brown, by and through her attorneys, R. Denning Gearhart and Joseph M. Colavecchi, who files this Complaint and in support thereof, avers as follows:

1. The Plaintiff is Kathleen Brown, an adult individual who resides at R.R. #1, Box 98-C, River Road, Sigel, PA 15860.
2. The Defendant Richard H. Milgrub, is an adult individual who is in the practice of law with his principal office located at 211 North Second Street, Clearfield, Pennsylvania, 16830.
3. That on or about June 28, 2000, the Plaintiff did hire the Defendant to represent her on a civil personal injury suit. That at the time she hired the Defendant, they entered into a contingency fee agreement, whereby she agreed to pay to the Defendant a sum equal to one-third of any recovery.
4. That following extensive negotiations and other legal action taken by the Defendant on behalf of the Plaintiff, the Defendant did advise the Plaintiff that the matter

had been settled. He advised the Plaintiff that she would need to sign a General Release, and shortly thereafter she would be paid the sum of \$15,000.00, less costs and the above-referenced contingency fee.

5. That on June 13, 2001, the Plaintiff did attend the Defendant's office and did, upon the advice of the Defendant, execute the Release.

6. At that time, the Defendant, in violation of Rule 1.8 of the Rules of Professional Conduct, did loan to the Plaintiff the sum of \$5,000.00, to be paid from the monies to be received later from Erie Insurance.

7. That on June 21, 2001, the Plaintiff again attended the offices of Defendant, whereupon he gave her a check for the sum of \$9694.33 -- said amount representing the \$15,000.00 received from the third party in the personal injury case, less the costs of the investigation and litigation of Plaintiff's claim, and less an additional \$5,000.00 which the Defendant correctly claimed as his one-third contingency fee.

8. That the Defendant did give to the Plaintiff a statement of distribution of the settlement indicating that it was a reflection of the deduction of costs plus the contingency fee.

9. That approximately two to three days later, the Defendant did realize that he had failed to deduct the \$5,000.00 advanced to the Plaintiff, at which time he called the Plaintiff and advised her of the error.

10. The Plaintiff advised the Defendant that she did not have the money available to pay it back in full and offered to make payments. She has paid approximately \$2,500.00 toward the amount mistakenly given to her.

11. That despite her efforts to repay this money, she was questioned by Officer Steve Maholtz of the Dubois City Police, who was summoned at the behest of the Defendant, Richard Milgrub, claiming that a crime had occurred.

12. That Officer Steve Maholtz of the Dubois City Police did not file any criminal charges.

13. That on November 16, 2001, the Defendant did file with the District Attorney of Clearfield County, through the Office of Magistrate Patrick Ford, a criminal complaint against the Plaintiff, claiming that she was guilty of a violation of §PA ST 18 Pa.C.S.A. SS 3924 - Theft of property lost, mislaid, or delivered by mistake. This section of the Crimes Code states, "A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it." A copy of the Criminal Complaint, including the Affidavit of Probable Cause, is attached hereto as Exhibit '1.'

14. That as a result of the criminal summons, the Plaintiff did attend a Preliminary Hearing at the office of Magistrate Patrick Ford, where she appeared without counsel. At the hearing, she was advised by Assistant District Attorney Blaise Ferraccio that she should waive her Preliminary Hearing, or she would be held in lieu of bail. Fearful of the same, she did waive her Preliminary Hearing.

15. In the course of the negotiations with the Assistant District Attorney, she advised the Assistant District Attorney, Blaise Ferraraccio, that she had made payments

toward the amount that she acknowledged was owed to the Richard Milgrub, and the Defendant, Mr. Milgrub, in fact acknowledged to the Assistant District Attorney that these payments were made. Despite this acknowledgment that these payments were made, the Defendant herein, Richard Milgrub, insisted that the Office of the District Attorney proceed with prosecution.

16. That following the Preliminary Hearing, the newspapers of general publication, specifically *The Clearfield Progress*, did carry an article naming the Plaintiff as a defendant that had been charged with a felony, all of which caused her great embarrassment and humiliation. A copy of that article found in the December 12, 2001 issue of *The Clearfield Progress*, is attached hereto.

17. That the Plaintiff, being a defendant now in a criminal case where she faced felony charges, hired the law offices of R. Denning Gearhart, who she agreed to pay at a rate of \$125.00 an hour, with a minimum fee of \$1,000.00.

18. In accordance with serving the Plaintiff's interests, Attorney Gearhart did file an Omnibus Pretrial Motion, asking that the Criminal Information filed against the Plaintiff (now a criminal defendant) be quashed as it fails to state a crime. The client interview, investigation, drafting a motion, argument, and briefs, all totaled 12 hours of time

19. That, by Order dated April 4, 2002, the Court of Common Pleas of Clearfield County dismissed the charges against the Plaintiff (now a criminal defendant).

## **COUNT I – MALICIOUS PROSECUTION**

20. Paragraphs 1 through 19 above are incorporated herein as if fully averred.
21. That the Defendant Richard H. Milgrub has been an attorney since 1974, during which time he has extensively practiced criminal law; serving a number of years as a Public Defender.
22. The Defendant Richard H. Milgrub has a special relation with, and an inordinate amount of influence with, the Clearfield County Office of District Attorney, in that he rents office space to, and refers a great deal of business to, William Shaw, the First Assistant District Attorney.
23. That the Plaintiff was charged with a criminal charge based on the efforts, and information provided by, the Defendant Richard H. Milgrub.
24. These charges were totally without basis and without merit, and did not, even if true, rise to this or any other crime.
25. That the errors which caused this unfortunate incident, were completely the errors of the Defendant Richard H. Milgrub.
26. That the indebtedness owed to Richard H. Milgrub was solely caused by his own negligence and/or misconduct for the following reasons:
  - a. That he loaned the client money in violation of the Rules of Professional Responsibility.
  - b. That he attempted to use criminal process to collect a civil debt.

c. That he negligently failed to collect the \$5,000.00 and did act such to make the Plaintiff, his client, believe that she was entitled to all of the money which he handed to her.

27. That the filing of these criminal charges was a malicious abuse of the criminal process.

28. That this abuse of the criminal process caused the Plaintiff to incur an indebtedness of \$1500.00 in legal fees.

29. This misuse of criminal process caused the Plaintiff great embarrassment and humiliation and distress..

**WHEREFORE**, Plaintiff prays Your Honorable Court to enter judgment for her and against the Defendant in the amount in excess of Twenty-Five Thousand Dollars.

#### **COUNT II – DEFAMATION AND SLANDER**

29. Paragraphs 1 through 30 are incorporated herein as if fully averred.

30. That the accusations of criminal wrongdoing made by the Defendant were known by him to be wrong and false and completely without merit.

31. The Defendant knew these charges were likely to be published in the newspaper.

32. As a result of this publication, the Plaintiff suffered great embarrassment and humiliation and distress and was placed in ill repute in the eyes of the public.

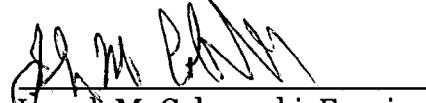
**WHEREFORE**, Plaintiff prays Your Honorable Court to enter judgment for her and against the Defendant in the amount in excess of Twenty-Five Thousand Dollars.

### **COUNT III – PUNITIVE DAMAGES**

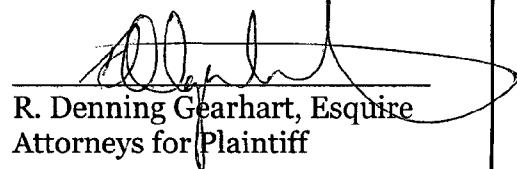
33. Paragraphs 1 through 32 are incorporated herein as if fully averred.
34. Defendant unlawfully, wrongfully and maliciously attempted to extort from Plaintiff a sum of money in excess of the amount due Defendant, she having made payments on the debt.
35. In furtherance of the above-referenced unlawful, wrongful and malicious intent, Defendant instituted the mentioned criminal proceedings, and procured and caused to be issued the warrant of arrest, not to vindicate the law or to arrest and punish Plaintiff for the charged offense, but for the wrongful, unlawful and malicious purpose and ulterior object of collecting a civil debt through the criminal proceedings.

**WHEREFORE**, Plaintiff prays exemplary and punitive damages against Defendant in an amount to be determined by the jury.

Respectfully Submitted,



Joseph M. Colavecchi, Esquire



R. Denning Gearhart, Esquire  
Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

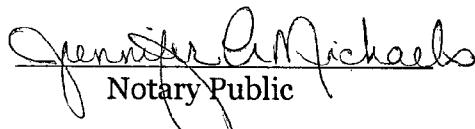
:  
: SS:  
:

**AFFIDAVIT**

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

  
\_\_\_\_\_  
KATHLEEN BROWN

Sworn to and subscribed  
before me this 2<sup>nd</sup> day  
of July, 2002.

  
\_\_\_\_\_  
Notary Public

NOTARIAL SEAL  
JENNIFER A. MICHAELS, NOTARY PUBLIC  
CLEARFIELD BORO., CLEARFIELD CO.  
MY COMMISSION EXPIRES JUNE 17, 2003

COMMONWEALTH OF PENNSYLVANIA  
CLEARFIELD  
COUNTY OF:

Magisterial District Number:

46-3-01

De: District Court 46-3-01  
309 Maple Avenue  
Add: P.O. Box 452  
DuBois, PA 15801

Telephone: (814) 371-5331

Docket No.: CR-539-01

Date Filed: 11/16/01

OTN: H 495401-4

(Above to be completed by court personnel)

**Notice:** Under PA Rules of Criminal Procedure, your complaint may require approval by the District Attorney before it can be accepted by the magisterial district court. If the District Attorney disapproves your complaint, you may petition the court of common pleas for review of the District Attorney's decision.

Fill in as much information as you have.

Defendant's Race/Ethnicity <input checked="" type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American	Defendant's Sex <input checked="" type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Unknown	Defendant's D.O.B. 1/5/62	Defendant's Social Security Number 161-58-5026	Defendant's SID (State Identification Number)
Defendant's A.K.A. (also known as) Kathy Brown		Defendant's Vehicle Information Plate Number	State	Defendant's Driver's License Number State

I, Richard H. Milgrub

(Name of Complainant - Please Print or Type)

do hereby state: (check the appropriate box)

1.  I accuse the above named defendant who lives at the address set forth above  
 I accuse the defendant whose name is unknown to me but who is described as \_\_\_\_\_
- I accuse the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe  
with violating the penal laws of the Commonwealth of Pennsylvania at the City of DuBois  
(Place-Political Subdivision)

in Clearfield County on or about June 13, 2001

Participants were: (if there were participants, place their names here, repeating the name of above defendant)  
Kathleen I. Brown

2. The acts committed by the accused were:

(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated without more, is not sufficient. In a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated.)  
On June 13, 2001, in anticipation of receipt of a settlement check, the victim gave the defendant \$5,000.00. Said check was cashed. On June 21, 2001, the victim received a settlement check in the amount of \$15,000.00. After the victim subtracted his attorney fees and costs, the defendant was given the balance. The victim failed to subtract the \$5,000.00 that was already given. The defendant was aware of the error at the time. The defendant cashed the check. Defendant refused to return cash that was given by mistake.

3924 Theft of property lost, mislaid, or delivered by mistake

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft it, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the

PRIVATE  
CRIMINAL COMPLAINT

COMMONWEALTH OF PENNSYLVANIA

VS.

DEFENDANT:

NAME AND ADDRESS

Kathleen I. Brown  
last known address:  
RR 2, Box 44  
Shortcut Road  
Rockton, PA 15856  
583-5576

(Fill in defendant's name and address)

(Continuation of No. 2)

PRIVATE  
CRIMINAL COMPLAINT



Defendant's Name:

Docket Number:

property to a person entitled to have it.

3. I ask that process be issued and that the defendant be required to answer the charges I have made.

4. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18.PA. C.S. §4904) relating to unsworn falsification to authorities.

(Signature of Complainant)

District Attorney's Office  Approved  Disapproved because:

PAIL E. CHERRY

(Name of Attorney for Commonwealth - Please Print or Type)

(Signature of Attorney for Commonwealth)

11/16/01  
(Date)

properly completed and verified.

46-300

(Magisterial District)

Patricia N. Ford

(Issuing Authority)

SEAL

Defendant's Name:

Docket Number:

CRIMINAL COMPLAINT



## AFFIDAVIT of PROBABLE CAUSE

The victim, Richard H. Milgrub, an attorney, represented the defendant, Kathleen Brown, in a personal injury case. The case was settled and a Release signed on June 13, 2001. Erie Insurance would not release the settlement check until they received the signed Release back. The defendant, who had numerous bills and was in the process of moving, asked if she could have a \$5,000.00 advance on her portion of the settlement. On June 13, 2001, a check in the amount of \$5,000.00 was written to Kathleen Brown, check number 1103. Said check was cashed June 14, 2001. On June 21, 2001, the victim received the settlement check in the amount of \$15,000.00. When the defendant received her portion, \$15,000.00 minus 1/3 plus expenses, coming to a total of \$9,694.33, check number 1106, the victim had mistakenly forgotten to subtract the \$5,000.00 previously paid. The victim did not become aware of the mistake until a week had passed. The defendant had cashed the check on June 22, 2001. The defendant, who was also handed a settlement sheet, was aware of the fact that she had received an additional \$5,000.00. When contacted approximately a week after receiving the check, number 1106, the defendant stated that she no longer had the money.

I, Richard H. Milgrub, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Richard H. Milgrub  
(Signature of Affiant)

Sworn to me and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_.

11-16-01 Date Patrick M. Ford, District Justice

My commission expires first Monday of January, 2006

SEAL

RICHARD H. MILGRUB  
ATTORNEY AT LAW

Escrow Account #1  
211 North 2nd St  
Clearfield, Pa 16830

1106

60-627/313

DATE 6/21/01

PAY TO THE  
ORDER OF

*Cathleen Brown*

\$ 9,694  $\frac{3}{8}$

Nine Thousand Six Hundred + Ninety-four  $\frac{3}{8}$   $\%$

DOLLARS 

**CNB**  
COUNTY NATIONAL BANK  
MAIN OFFICE, CLEARFIELD, PA

FOR

1000110610 10313062781 647136710

100009694331

*Richard H. Milgrub*

RICHARD H. MILGRUB  
ATTORNEY AT LAW

Escrow Account #1  
211 North 2nd St  
Clearfield, Pa 16830

1103

60-627/313

DATE 6/13/01

PAY TO THE  
ORDER OF

*Cathy Brown*

\$ 5,000  $\%$

Five Thousand

5000 DOLLARS 

**CNB**  
COUNTY NATIONAL BANK  
MAIN OFFICE, CLEARFIELD, PA

FOR

1000110310 10313062781 647136710

10000500000

*Richard H. Milgrub*



# Magistrate Ford conducts preliminary criminal session

By G. Kerry Webster  
Staff Writer

DUBOIS — District Magistrate Patrick Ford conducted a session of preliminary criminal cases at his office in DuBois on Friday.

Richard Cowder of RR 1 Box 101, Woodland, entered a guilty plea to a charge of bad checks. The commonwealth withdrew a charge of theft by deception. He was ordered to pay \$885.26 in fines, costs and restitution.

Police said Mr. Cowder passed a \$574.76 check at Pet Place in Sandy Township on Sept. 8, 2000, that was returned "account closed."

Bail was set at \$5,000 unsecured for both Charles Johnson, 53, and George Jones, 33, both of Bradford, who waived their hearings on two counts of retail theft and single charges of criminal conspiracy.

According to police, the men were involved in the theft of a Craftsman tool set and two pair of Levi pants at Sears in Sandy Township on Nov. 19. Police also said the pair was involved in the theft of three pair of Levi pants and a pair of Nike shoes from J.C. Penney's, also in Sandy Township on Nov. 19.

John Yenzi IV, 19, of Reynoldsville waived a hearing on charges of driving under the influence, driving at safe speeds, turning movements and required signals, stop signs, minor prohibi-

ited and alcohol by minor. The commonwealth withdrew a charge of fleeing or attempting to elude police. Bail was set at \$2,500 unsecured.

According to police, Mr. Yenzi was involved in an accident that caused property damage at the intersection of East Long Avenue and South Stockdale Street on Oct. 26. Police said his blood alcohol content equaled .08 percent.

Fines and costs in the amount of \$190.50 were assessed to Lee Brown, 37, of New Florence who entered a guilty plea to a charge of bad checks.

Police said Mr. Brown passed a \$207.44 check at Johnson Motors in Sandy Township on Aug. 30 that was returned "overline."

Bail was set at \$5,000 unsecured for Kathleen Brown, 39, of Rockton who waived a hearing on a charge of theft of property lost, etc., by mistake.

Police said Clearfield attorney Richard Milgrub represented Ms. Brown in a personal injury complaint. Police said Ms. Brown got a cash advance of \$5,000 from Mr. Milgrub, with the promise she would pay the funds back when her case was finished.

Police said the case finished and she received her money, but failed to pay Mr. Milgrub back the money she received in advance.

streets or highways. Dumb or sober — remember, one intoxicated person is usually no match for two or more sober ones. You can outwit them — or you can use force if necessary. Everyone I have mentioned in this letter was at least twice my size. I'm female, 5 feet, 2 inches and weigh less than 100 pounds.

BEEN THERE,  
DONE THAT,

AND I'LL KEEP DOING IT

DEAR BEEN THERE: I admire your gutsiness and ingenuity in switching car keys with your drunken male friend. However, knowing how unpredictable a person under the influence can be, I would never recommend using force to dissuade someone from driving, because it could provoke violence. It's deplorable, but I've seen it happen.

\*\*\*

DEAR ABBY: I'm 29 years old, a single mother of three kids, and I have been dating one guy exclusively for about five years. We live together in a house he inherited from his grandmother.

Every time his mother comes into town, he asks my kids and me to pack up all our stuff and leave until she's gone.

He says it's because his mother doesn't want us to live together until we're married and that she was raised in this house. What do you think?

PUT OUT IN PHOENIX

DEAR PUT OUT: I think after five years, it's time you stopped clinging to this fully grown boy and found a man who is marriage-minded.

His insistence that you take the children and move out when his mother comes to town means he's unwilling or unable to stand up to her disapproval.

Children need stability. Being uprooted every time this woman visits cannot be good for them emotionally.

Please understand that this is only a sample of what your future holds, if at any point you and this man marry. His mother's approval will always come before the welfare of you and your children.

\*\*\*

Dear Abby is written by Pauline Phillips and daughter Jeanne Phillips.

small package to day, she had me a tic grocery bag at me that it would "S" hook of her hook was made hanger by one fiance men at her

She said man

## Pinochle standing Week 1:

HAWK RUN Club Pinochle League for Week 13 are 1

Players are listed by placement in the

The numbers player's name accumulated points accumulated total.

- Conrad, G.
- Sagges, J.
- Slabon, J.
- Holencik, G.
- Kovalcin Sr., J.
- White, J.
- Jones, J.
- Ling, R.
- Clark, A.
- Sagges, P.
- Domblsky, B.
- Hockman, J.
- Slabon, D.
- Conklin, C.
- Gray, M.
- Sypa, M.
- Demchak, D.
- Blasko, P.
- Campomizzi, F.
- Kovalcin, J.
- Jones, B.
- Shoff, B.
- Andrejcek, J.
- Hahn, H.
- Peterson, H.
- Kephart, B.
- Way, R.
- O'Connor, L.

Substitute for Emigh.



## Christmas is Almost Here!

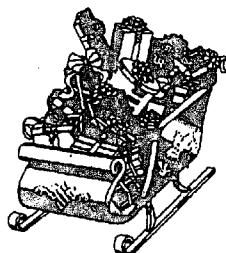
Before the season really takes off, we wanted to wish everyone all good things for the holidays and beyond.

Thanks so much for your support and continued patronage!

Our Office will be closed  
Sat., Dec. 22, Tues., Dec. 25,  
Wed., Dec. 26 & Sat., Dec. 29  
For The Holidays

**HRENKO INSURANCE  
AGENCY, INC.**

Route 350 S. Philipsburg  
(814) 342-5204



**Clearfield  
Hospital**

1901 - 2001

"100 Years of Healing"

Is Pleased to Announce That  
**ARVINDER S. BIR, M.D.**

Will Be Accepting New Patients Beginning Thursday, November 1, at

**Philipsburg Family Practice**

15 Ames Plaza ♥ Philipsburg

Dr. Bir attended the Institute of Medical Sciences in Varanasi, India. He completed his residency in Family Practice at Genesys Regional Medical Center, Grand Blanc, Michigan.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)  
NO. 02-  
-CD

KATHLEEN BROWN,  
Plaintiff  
vs.

RICHARD H. MILGRUB,  
Defendant

COMPLAINT

FILED

Jul 11 2002  
011148/acty Gearhart  
cc: William A. Shaw  
Prothonotary 10d \$0.00

3cc atty Gearhart

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

COMMERCIAL PRINTING CO., CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

KATHLEEN BROWN,

Plaintiff, No. 02-1073-CD

v.

RICHARD H. MILGRUB,

Defendant.

CASE NUMBER: 02-1073-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: **PRAECIPE FOR APPEARANCE**

FILED ON BEHALF OF: Defendant, Richard H. Milgrub

COUNSEL OF RECORD FOR THIS PARTY:

ROBERT E. DAPPER, JR.  
Pa. I.D. No.: 46378  
Dapper Baldasare Benson &  
Kane, P.C.  
401 Liberty Avenue  
Three Gateway Center  
Suite 1375  
Pittsburgh, PA 15222  
(412) 456-5555

**FILED**

AUG 05 2002  
M/1146/mcc  
William A. Shaw *Copy A*  
Prothonotary

*ERG*

(#2)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

KATHLEEN BROWN,

Plaintiff, No. 02-1073-CD

v.

RICHARD H. MILGRUB,

Defendant.

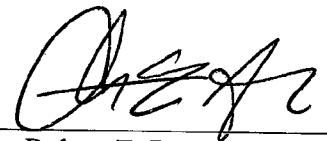
**PRAECIPE FOR APPEARANCE**

TO: Prothonotary

Please enter our Appearance as counsel of record for Defendant, Richard H. Milgrub, with regard to this matter.

Respectfully submitted,

DAPPER, BALDASARE, BENSON &  
KANE, P.C.

By: 

Robert E. Dapper, Jr.  
PA I.D. #46378  
Three Gateway Center  
Suite 1375  
401 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 456-5555

*Attorneys for Defendant, Richard H.  
Milgrub*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the within **PRAECIPE FOR APPEARANCE** was forwarded by U.S. First Class Mail, postage pre-paid, this 2<sup>nd</sup> day of AUGUST, 2002, upon the following:

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

Joseph Colavecchi, Esquire  
Colavecchi, Ryan & Colavecchi  
221 E. Market Street  
P.O. Box 131  
Clearfield, PA 16830

*Attorneys for Plaintiff*



\_\_\_\_\_  
Robert E. Dapper, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

KATHLEEN BROWN,

Plaintiff, No. 02-1073-CD

v.

RICHARD H. MILGRUB,

Defendant.

CASE NUMBER: 02-1073-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: **PRELIMINARY OBJECTIONS**

FILED ON BEHALF OF: Defendant, Richard H. Milgrub

COUNSEL OF RECORD FOR THIS PARTY:

ROBERT E. DAPPER, JR.  
Pa. I.D. No.: 46378  
Dapper Baldasare Benson &  
Kane, P.C.  
401 Liberty Avenue  
Three Gateway Center  
Suite 1375  
Pittsburgh, PA 15222  
(412) 456-5555

**FILED**

AUG 06 2002  
011:26/3cc atty Milgrub  
William A. Shaw  
Prothonotary

#3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

KATHLEEN BROWN,

Plaintiff,

No. 02-1073-CD

v.

RICHARD H. MILGRUB,

Defendant.

**PRELIMINARY OBJECTIONS**

AND NOW, comes the Defendant, Richard H. Milgrub, by and through his attorneys, Dapper Baldasare Benson & Kane, P.C. and files Preliminary Objections to Plaintiff's Complaint in Civil Action, averring as follows:

1. Plaintiff's Complaint should be dismissed because the factual allegations of her own Complaint confirm that Defendant's alleged statements and actions were truthful and appropriate, thereby insulating the Defendant from purported claims of malicious prosecution, defamation and slander, and punitive damages.

**I. Factual Background**

2. According to Plaintiff's Complaint, she hired the Defendant to represent her in a personal injury lawsuit and she agreed to pay the Defendant a sum equal to one-third of any recovery. See, Complaint at Paragraph 3.

3. After the lawsuit was settled, Plaintiff alleges that the Defendant loaned her the sum of \$5,000 on June 13, 2001, which was "to be paid from the monies to be received later from Erie Insurance." See, Complaint at Paragraph 6.

4. Plaintiff also alleges that on June 21, 2001, the Defendant gave the Plaintiff a check in the sum of \$9,694.33, which Plaintiff characterizes as "said amount representing the \$15,000 received from the third party in the personal injury case, less the costs of the investigation and litigation of Plaintiff's claim, and less an additional \$5,000 which the Defendant correctly claimed as his one-third contingency fee." See, Complaint at Paragraph 7.

5. The Plaintiff alleges that approximately two to three days after June 21, 2001, the Defendant advised the Plaintiff that he "failed to deduct the \$5,000 advanced to the Plaintiff" and "advised her of the error." See, Complaint at Paragraph 9.

6. Finally, Plaintiff alleges that she was only paid approximately \$2,500 of the \$5,000 "**mistakenly given to her.**" See, Complaint at Paragraph 10. (Emphasis added.)

7. Based on the Plaintiff's own allegations, it is undisputed that the Plaintiff has failed to return to the Defendant a substantial portion of the \$5,000 that was mistakenly delivered to her by the Defendant.

## **II. Argument**

A. Because All of Defendant's Alleged Statements were True, Plaintiff's Complaint Fails to State a Claim for Malicious Prosecution or Defamation.

8. In Count I of her Complaint, Plaintiff alleges malicious prosecution.

9. In Count II of her Complaint, Plaintiff alleges defamation and slander.

10. Both of the Counts arise from the same operative facts, that is, the allegation that the Defendant's statements about the Plaintiff were without basis and false.

11. The Plaintiff purports to base her claim on the Private Criminal Complaint and Affidavit, which are attached as Exhibit 1 to the Complaint.

12. Either a cursory or careful reading of the Private Criminal Complaint and Affidavit confirm that both are entirely accurate based on the undisputed facts alleged in Plaintiff's own Complaint.

13. Because the Private Criminal Complaint and Affidavit were factually correct, Plaintiff's Complaint is legally insufficient to state a claim for malicious prosecution or defamation and slander.

14. The facts alleged in Plaintiff's own Complaint totally refute the essential allegation contained in Paragraph 24 of the Complaint, that is, that the charges were "totally without basis and without merit." On the contrary, the facts establish that probable cause did exist.

15. Similarly, the allegations contained in Plaintiff's own Complaint likewise refute the essential allegation contained in Paragraph 30 of the Complaint that Defendant's accusations were "wrong and false and completely without merit." On the contrary, the alleged statements were accurate and correct.

16. In addition to the foregoing, the Complaint fails to state a claim for malicious prosecution because the Plaintiff was not acquitted of the criminal charges after a trial on the merits.

17. The claim for malicious prosecution also fails to state a claim upon which relief may be granted based on privilege and justification as the exhibit attached to Plaintiff's Complaint confirms that the District Attorney's Office approved the Private Criminal Complaint.

18. The claim for defamation and slander is also legally insufficient to state a claim because statements made during judicial proceedings are absolutely privileged and all of the Defendant's alleged statements were made in the context of a judicial proceeding.

B. In the Alternative, the Claims for Punitive Damages should be Stricken because Outrageous Conduct has not been Alleged.

19. In order to state a claim for punitive damages, a Complaint must allege outrageous conduct, that is, conduct intended to cause harm to the Plaintiff.

20. Given all of the factual admissions made by the Plaintiff in her own Complaint, none of the purported activities by the Defendant can be deemed the type of outrageous conduct that is required for the imposition of punitive damages.

21. Plaintiff's claim for punitive damages should be stricken.

C. In the Alternative, Plaintiff's Scandalous and Impertinent Allegations Regarding the District Attorney and the Code of Professional Conduct should be Stricken.

22. At Paragraphs 6 and 26(a) of the Complaint, the Plaintiff alleges that the Defendant violated Rule 1.8 of the Rules of Professional Conduct.

23. The Rules of Professional Conduct do not provide a private cause of action and this Court does not have subject matter jurisdiction of such claims.

24. Because this Court does not have subject matter jurisdiction regarding the Code of Professional Conduct and any violation does not give rise to a private cause of action, the allegations contained in Paragraphs 6 and 26(a) are impertinent and should be stricken.

25. At Paragraph 22 of the Complaint, it is alleged that the Defendant "has a special relation with, and an inordinate amount of influence with," the District Attorney of Clearfield County.

26. The allegation regarding the District Attorney is scandalous and impertinent.

27. The allegation regarding the District Attorney should be stricken.

### **III. Conclusion**

28. Because Plaintiff's own Complaint admits that she has failed to return to the Defendant money that she knows was mistakenly given to her, the Complaint must be dismissed.

29. Plaintiff's own Complaint confirms the accuracy and truth of the Defendant's alleged statements about the Plaintiff, that is, that she failed to return money that she knew she was given by mistake.

30. In the alternative, Plaintiff's claims for punitive damages and allegations regarding violations of the Code of Professional Conduct and the District Attorney's Office should be stricken.

WHEREFORE, Defendant, Richard H. Milgrub, respectfully requests that his Preliminary Objections be granted.

Respectfully submitted,

DAPPER, BALDASARE, BENSON &  
KANE, P.C.

By: 

Robert E. Dapper, Jr.  
PA I.D. #46378  
Three Gateway Center  
Suite 1375  
401 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 456-5555

*Attorneys for Defendant, Richard H.  
Milgrub*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the within **PRELIMINARY OBJECTIONS** was forwarded by U.S. First Class Mail, postage pre-paid, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, upon the following:

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

Joseph Colavecchi, Esquire  
Colavecchi, Ryan & Colavecchi  
221 E. Market Street  
P.O. Box 131  
Clearfield, PA 16830

*Attorneys for Plaintiff*

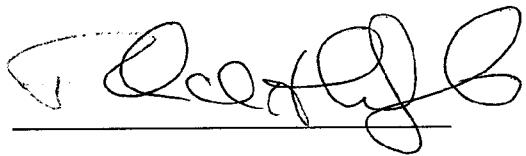


\_\_\_\_\_  
Robert E. Dapper, Jr.

VERIFICATION

I, Richard H. Milgrub, verify that the statements made herein are true and correct. I understand that false statements herein are made subject to penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: 6/6/02



In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12782

BROWN, KATHLEEN

02-1073-CD

VS.

MILGRUB, RICHARD H.

COMPLAINT

**SHERIFF RETURNS**

NOW JULY 17, 2002 AT 10:03 AM DST SERVED THE WITHIN COMPLAINT ON RICHARD H. MILGRUB, DEFENDANT AT EMPLOYMENT, 211 NORTH SECOND ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO NACY COLLINS, SEC. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING

---

Return Costs

Cost	Description
20.37	SHFF. HAWKINS PAID BY; ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

29 Day Of August 2002

William A. Shaw

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

So Answers,

Chester A. Hawkins  
by Maury Hays  
Chester A. Hawkins  
Sheriff

**FILED**

*BS*  
AUG 29 2002  
0/8:57/BA  
William A. Shaw  
Prothonotary



WILLIAM V. SHAHAN  
President  
American Legion  
711 Broadway, New York, N.Y.  
Chairman, Civic Activities

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

KATHLEEN BROWN :  
vs. : No. 02-1073-CD  
: :  
RICHARD H. MILGRUB : :

ORDER

NOW, this 19<sup>th</sup> day of September, 2002, upon consideration of  
recusal of both Judges sitting in the 46<sup>th</sup> Judicial District, it is the ORDER of this  
Court that the Court Administrator of Clearfield County refer the above-captioned  
civil matter to Administrative Regional Unit II for assignment of a specially presiding  
judicial authority.

BY THE COURT:

JOHN K. REILLY, JR.  
President Judge

FILED

SEP 19 2002

William A. Shaw  
Prothonotary

45

FILED  
11:46-01  
SEP 19 2002  
cc  
cja

William A. Shaw  
Prothonotary

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

KATHLEEN BROWN, Plaintiff  
VS. : NO. 02-1073-CD  
RICHARD H. MILGRUB, Defendant : :

**CERTIFICATE OF SERVICE**

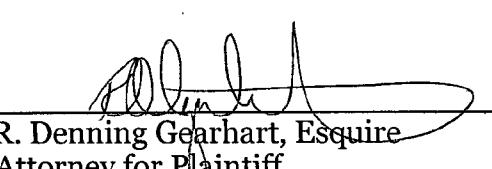
That on the 16th day of October, 2002, I served a certified copy of the Answer to Preliminary Objections and Argument in Support of Answer to Preliminary Objections filed in this proceeding on the following and in the following manner:

U.S. POSTAL SERVICE - FIRST CLASS MAIL

Robert E. Dapper, Jr., Esquire  
DAPPER, BALDASARE, BENSON & KANE, P.C.  
Three Gateway Center, Suite 1375  
401 Liberty Avenue  
Pittsburgh, PA 15222

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

Dated: October 16, 2002

  
R. Denning Gearhart, Esquire  
Attorney for Plaintiff

**FILED**

OCT 17 2002

William A. Shaw  
Prothonotary

619

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OCT 17 2002  
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no ce

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

KATHLEEN BROWN,

Plaintiff,

No. 02-1073-CD

v.

RICHARD H. MILGRUB,

Defendant.

CASE NUMBER: 02-1073-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: **DEFENDANT'S REPLY TO PLAINTIFF'S BRIEF IN  
OPPOSITION TO PRELIMINARY OBJECTIONS**

FILED ON BEHALF OF: Defendant, Richard H. Milgrub

COUNSEL OF RECORD FOR THIS PARTY:

ROBERT E. DAPPER, JR.  
Pa. I.D. No.: 46378  
Dapper Baldasare Benson &  
Kane, P.C.  
401 Liberty Avenue  
Three Gateway Center  
Suite 1375  
Pittsburgh, PA 15222  
(412) 456-5555

**FILED**

DEC 17 2002

William A. Shaw  
Prothonotary

1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

KATHLEEN BROWN,

Plaintiff, No. 02-1073-CD

V.

RICHARD H. MILGRUB,

Defendant.

**DEFENDANT'S REPLY TO PLAINTIFF'S BRIEF IN OPPOSITION  
TO PRELIMINARY OBJECTIONS**

AND NOW, comes Defendant, Richard H. Milgrub, by and through his attorneys, Dapper, Baldasare, Benson & Kane, P.C., and files a Reply to Plaintiff's Brief in Opposition to Preliminary Objections averring as follows:

1. Plaintiff's Brief contains little substance and no new case law. However, it does contain one misstatement and one half truth that should be corrected if the matter is to be decided solely on the Briefs.

2. The mischaracterization contained in Plaintiff's Brief relates to the Opinion and Order of Judge Ammerman regarding the Criminal Complaint.

3. While Plaintiff's so-called "mantra" is that the absence of probable cause has already been "determined" by Judge Ammerman, such a characterization is misleading and inaccurate because it is apparent that Judge Ammerman dismissed the Criminal Complaint based on little more than a technicality, that is, an incorrect date in the Private Criminal Complaint.

4. A copy of Judge Ammerman's Opinion and Order was attached as Exhibit A to Defendant's Brief.

5. The Opinion and Order are clearly premised on the fact that the Criminal Complaint incorrectly alleged that the property was delivered by mistake when the advance was made on June 13, 2001, rather than when the second and mistaken payment was made on June 21, 2001.

6. In pertinent part, Judge Ammerman held as follows:

All parties did what they intended to do on June 13, 2001. Without doubt, the appropriate date for an allegation of criminal conduct is June 21, 2001, the day it is claimed that an additional \$5,000 was delivered by mistake. Therefore, even assuming the truth of the averments as set forth by the Commonwealth in the prosecution documents, the Commonwealth cannot prevail. As a matter of law, it cannot be shown that on June 13, 2001 the Defendant knew that the \$5,000 had been delivered by mistake and that she intended to deprive the owner of the money.

7. It is apparent that Judge Ammerman's Opinion did not decide the merits of the charge, nor is it even apparent that the result would have been the same had the correct date been contained in the charge, that is, June 21, 2001.

8. Therefore, Plaintiff's reliance on Judge Ammerman's Opinion as a "mantra" is fundamentally misplaced.

9. The second matter that is worthy of clarification and amplification is the repeated assertion that the Plaintiff paid "approximately \$2,500 in about ten weeks."

10. Assuming arguendo that approximately \$2,500 was paid in about ten weeks, such an allegation begs the question as to why the balance of \$2,500 has not been repaid at any time, including the more than ten weeks that elapsed between the purported repayments and the filing of the Criminal Complaint on November 16, 2001.

11. Plaintiff's own Civil Complaint and exhibits attached thereto establish that the money was delivered by mistake on June 21, 2001, but that the Criminal Complaint was not filed until November 16, 2001, approximately five months later.

12. Given the failure to make any payments over a substantial period of time, there was certainly probable cause to believe that the Plaintiff "failed to take reasonable efforts to return the property."

WHEREFORE, the Defendant, Richard H. Milgrub, respectfully requests that his Preliminary Objections be granted and that Plaintiff's Complaint be dismissed, with prejudice.

Respectfully submitted,

DAPPER, BALDASARE, BENSON &  
KANE, P.C.

By: 

Robert E. Dapper, Jr.  
PA I.D. #46378  
Three Gateway Center  
Suite 1375  
401 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 456-5555

*Attorneys for Defendant, Richard H.  
Milgrub*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the within  
**DEFENDANT'S REPLY TO PLAINTIFF'S BRIEF IN OPPOSITION TO PRELIMINARY  
OBJECTIONS** was forwarded by facsimile and U.S. First Class Mail, postage pre-paid, this 13<sup>th</sup>  
day of Dec., 2002, upon the following:

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

Joseph Colavecchi, Esquire  
Colavecchi, Ryan & Colavecchi  
221 E. Market Street  
P.O. Box 131  
Clearfield, PA 16830

*Attorneys for Plaintiff*

The Honorable Keith B. Quigley  
Perry County Courthouse  
P.O. Box 668  
New Bloomfield, PA 17068-0668



\_\_\_\_\_  
Robert E. Dapper, Jr.

FILED NO<sup>o</sup> C

M 19-28 BL  
DEC 17 2002

W.A.S.

William A. Shaw  
Prothonotary

KATHLEEN BROWN

v.

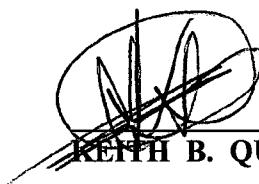
RICHARD H. MILGRUB

:IN THE COURT OF COMMON PLEAS  
:OF PENNSYLVANIA -  
:CLEARFIELD COUNTY BRANCH  
:  
:NO. 02-1073-CD

ORDER

AND NOW March 28, 2003, in accordance with the within Memorandum, defendant's Preliminary Objections are sustained and the complaint dismissed.

BY THE COURT,



KEITH B. QUIGLEY, P.J.

41<sup>ST</sup> Judicial District  
Specially Presiding

cc: Robert E. Dapper, Jr., Esquire  
Joseph M. Colavecchi, Esquire  
R. Denning Gearhart, Esquire  
Kathleen Brown  
File

FILED

APR 02 2003

William A. Shaw  
Prothonotary

58

**FILED**

APR 02 2003

04:00 1

William A. Shaw  
Prothonotary

2 CERT TO ATTY COLANGECI  
1 CERT TO GEMHAM  
1 CERT TO DAPPER

KATHLEEN BROWN

V.

RICHARD H. MILGRUB

:IN THE COURT OF COMMON PLEAS  
:OF PENNSYLVANIA -  
:CLEARFIELD COUNTY BRANCH  
:  
:NO. 02-1073-CD

M E M O R A N D U M

This is a case of alleged malicious prosecution. Plaintiff hired Defendant, an attorney, to represent her in a civil personal injury suit for which he collected \$15,000 and was to be paid 1/3 contingent fee. On June 13, 2001, at Plaintiff's request, Defendant advanced her \$5,000 of the forthcoming settlement proceeds. On June 21, 2001, Defendant received the settlement check and paid the Plaintiff her share of the settlement proceeds but neglected to deduct the \$5,000 for the advance. Approximately three days after disbursing the check Defendant realized his error and asked the Plaintiff to return the \$5,000 overpayment. Plaintiff advised the Defendant that she no longer had the money to pay the amount back in full, but offered to make payments. At the time this case was instituted, Plaintiff had repaid approximately \$2,500 of the \$5,000 advanced.

On November 16, 2001, Defendant filed a Private Criminal Complaint with the District Attorney of Clearfield County. Plaintiff was subsequently charged with a violation of 18 Pa.C.S.A. §3924, [t]heft of property lost, mislaid, or delivered by mistake. On April 4, 2002, the Court of Common Pleas of Clearfield County dismissed the charges without reaching the merits. Plaintiff commenced the instant civil action alleging malicious prosecution.<sup>1</sup> Plaintiff also claims punitive damages in Count III of her complaint. However, because I find that the Defendant had probable cause to bring the underlying action, I do not reach the issue of punitive damages.

---

<sup>1</sup> Plaintiff's original Complaint also included a second count alleging defamation and slander. However, in Plaintiff's Brief in Opposition to Preliminary Objections these allegations were retracted.

In order to prevail on a malicious prosecution claim the Plaintiff must prove three elements: (1) that defendant instituted criminal proceedings without probable cause; (2) that the defendant instituted the criminal complaint with malice; and (3) that the criminal proceedings were terminated in the Plaintiff's favor. *Strickland v. University of Scranton*, 700 A.2d 979, 984 (Pa. Super. 1997). In the instant case, the trial court reviewed the information filed by the Commonwealth and concluded that the charges against the Plaintiff must be dismissed. *Opinion and Order at 3, Dated April 4, 2002*. Consequently, the proceedings terminated in favor of the Plaintiff thereby establishing the third necessary element. Furthermore, the second element, malice, may be inferred by the absence of probable cause. *Amicone v. Shoaf*, 620 A.2d 1222, 1224 (Pa. Super. 1993). Therefore, Plaintiff must establish that the Defendant [] initiated the underlying criminal proceedings without the requisite probable cause to sustain her claim of malicious prosecution. *Id.*

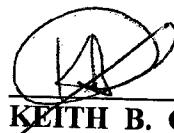
Probable cause in the context of a malicious prosecution claim does not require proof beyond a reasonable doubt. Instead, it is defined as "a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation in believing that a party is guilty of the offense." *Strickland* at 984. Additionally, an individual is justified in launching a criminal complaint "if the facts convince him, as a reasonable, honest, and intelligent human being, that the suspected person is guilty of a criminal offense." *Jaindl v. Mohr*, 637 A.2d 1353, 1357 (Pa. Super. 1994).

In this case it is undisputed that the Defendant loaned the Plaintiff \$5,000 which, by their agreement, was to be repaid from the proceeds of the insurance settlement. Plaintiff accepted the loan under those terms and has not as of yet repaid the money.

While this Court does not endorse the loaning of money from attorney to client or the use of criminal proceedings to collect a civil debt, it cannot be said that the Defendant lacked the necessary probable cause to institute criminal proceedings. Furthermore, the District Attorney of Clearfield County, in his discretion, reviewed and approved the Private Criminal Complaint thereby affirming that probable cause existed to institute the complaint. This Court will not disturb the discretionary decisions of the District Attorney absent a clear abuse of discretion which, in fact, does not exist in this case.

Subsequently, this Court finds that the Defendant *did* have the probable cause necessary to institute his Private Criminal Complaint. Therefore, Defendant's Preliminary Objections are GRANTED and Plaintiff's Complaint is hereby DISMISSED WITH PREDJUDICE.

BY THE COURT,



KEITH B. QUIGLEY, P.J.

41<sup>ST</sup> Judicial District  
Specially Presiding

FILED

APR 02 2003

March 28, 2003

cc: Robert E. Dapper, Jr., Esquire  
Joseph M. Colavecchi, Esquire  
R. Denning Gearhart, Esquire  
Kathleen Brown  
File

William A. Shaw  
Prothonotary

FILED

APR 02 2003

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William A. Shaw  
Prothonotary

2 CERT TO COLAVERDI  
1 CERT TO GRANTHAM  
1 CERT TO DAPPER

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KATHLEEN BROWN,

CIVIL DIVISION

Plaintiff

No. 02 - 1073 - CD

vs.

NOTICE OF APPEAL

RICHARD H. MILGRUB,

Filed on behalf of:

Defendant

Plaintiff, KATHLEEN BROWN

Counsel of Record for  
this Party:

JOSEPH COLAVECCHI, ESQUIRE  
PA I.D. 06810

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830  
814/765-1566

R. DENNING GEARHART, ESQUIRE  
PA I.D. 26540

215 East Locust Street  
Clearfield, PA 16830  
814/765-1581

**FILED**

APR 14 2003

William A. Shaw  
Prothonotary

64

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

**KATHLEEN BROWN,** :  
Plaintiff :  
VS. : NO. 02- 1073 -CD  
: :  
**RICHARD H. MILGRUB,** :  
Defendant :  
:

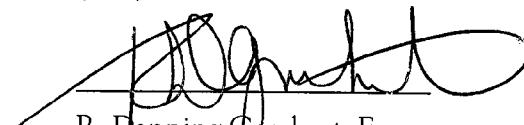
**NOTICE OF APPEAL**

Notice is hereby given that Kathleen Brown, the Plaintiff above named, hereby appeals to the Superior Court of Pennsylvania from the Order of March 28, 2003 and entered in this matter on April 2, 2003. This order has been reduced to judgment and entered in the docket as evidenced by the attached copy of the docket entry.

Respectfully Submitted,

  
\_\_\_\_\_  
Joseph M. Colavecchi, Esquire

Attorney for Plaintiff  
Supreme Court No. 06810  
221 East Market Street  
Clearfield, PA 16830  
(814)765-1566

  
\_\_\_\_\_  
R. Denning Gearhart, Esq.  
Attorney for Plaintiff  
Supreme Court No. 26540  
215 East Locust Street  
Clearfield, PA 16830  
(814)765-1581

Date: 04/14/2003

Time: 11:58 AM

Page 1 of 1

Jefferson County Court of Common Pleas

User: ACCESS

ROA Report

Case: 2002-01073-CD

Current Judge: Keith B. Quigley

Kathleen Brown vs. Richard H. Milgrub

Civil Other

Date	Judge
07/11/2002	Filing: Civil Complaint Paid by: Joseph Colavecchi, Esquire Receipt number: 1845345 Dated: 07/11/2002 Amount: \$80.00 (Check) Three CC Attorney Gearhart No Judge
08/05/2002	Praecipe For Appearance, on behalf of Defendant RICHARD H. MILGRUB, No Judge ESQ. filed by s/Robert E. Dapper, Jr., Esq. Certificate of Service no cc
08/06/2002	Preliminary Objections. filed by s/Robert E. Dapper, Jr., Esq. Cert. of Svc. No Judge Verification s/Richard H. Milgrub, Esq. 3 cc Atty Milgrub
08/29/2002	Sheriff Returns: NOW July 17, 2002 Complaint served on Richard Milgrub by handing to Nancy Collins, Sec. Sheriff costs \$20.37. Surcharge: \$10.00. No Judge
09/19/2002	ORDER, filed, 6 cert. to C/A NOW, this 19th day of September, 2002, ORDER of this Court that the Court Administrator refer the above-captioned civil matter to Administrative Regional Unit II for assignment of a specially presiding judicial authority. John K. Reilly Jr.
10/17/2002	Filing: Certificate of Service of Answer to Preliminary Objections and Argument in Support of Answer to Preliminary Objections filed by Atty. No cc. No Judge
12/17/2002	Defendant's Reply to Plaintiff's Brief in Opposition to Preliminary Objections. filed by s/Robert E. Dapper, Jr., Esq. Certificate of Service no cc Keith B. Quigley
04/02/2003	ORDER, AND NOW, March 28, 2003, in accordance with the within Memorandum, defendant's Preliminary Objections are SUSTAINED and the Complaint DISMISSED. by the Court, s/Keith B. Quigley, P.J. 41st Judicial District, Specially Presiding 2 cc to Atty Colacecchi, Gearhart, and Dapper Keith B. Quigley

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

**KATHLEEN BROWN** :  
Plaintiff :  
**VS.** : NO. 02- 1073 -CD  
:  
**RICHARD H. MILGRUB** :  
Defendant :

**PROOF OF SERVICE**

I hereby certify that a true and correct copy of Plaintiffs' Notice of Appeal and Order for Transcript was served upon the parties listed below pursuant to Rule 906 of the Pennsylvania Rules of Appellate Procedure this 14 day of April, 2003, by United States Mail, First Class, Postage Pre-Paid except where noted otherwise, which service satisfies the requirements of Pa.R.A.P. 121:

The Honorable Keith B. Quigley  
Perry County Courthouse  
P. O. Box 668  
New Bloomfield, PA 17068-0668

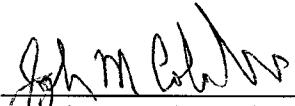
William A. Shaw, Prothonotary  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

The Honorable Keith B. Quigley  
c/o David Meholick, Court Administrator  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

Robert E. Dapper, Jr., Esq.  
Dapper, Baldasare, Benson & Kane, P.C.  
Three Gateway Center, Suite 1375  
401 Liberty Avenue  
Pittsburgh, PA 15222

Court Reporter  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

Respectfully Submitted,

  
Joseph M. Colavecchi, Esquire  
Attorney for Plaintiff  
Supreme Court No.  
221 East Market Street  
Clearfield, PA 16830  
(814)765-1566

  
R.J. Denning Gearhart, Esq.  
Attorney for Plaintiff  
Supreme Court No. 26540  
215 East Locust Street  
Clearfield, PA 16830  
(814)765-1581

**FILED**

1 cc w/ \$60.00 check  
to Superior Court

Cl 3:51454  
APR 14 2003

William A. Shaw  
Prothonotary  
Attn: Colavuccio, pd.  
45.00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KATHLEEN BROWN,

CIVIL DIVISION

Plaintiff

No. 02 - 1073 - CD

vs.

ORDER FOR TRANSCRIPT

RICHARD H. MILGRUB,

Filed on behalf of:

Defendant

Plaintiff, KATHLEEN BROWN

Counsel of Record for  
this Party:

JOSEPH COLAVECCHI, ESQUIRE  
PA I.D. 06810

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830  
814/765-1566

R. DENNING GEARHART, ESQUIRE  
PA I.D. 26540

215 East Locust Street  
Clearfield, PA 16830  
814/765-1581

**FILED**

APR 14 2003

William A. Shaw  
Prothonotary

10

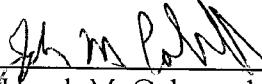
IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

KATHLEEN BROWN, :  
Plaintiff :  
VS. : NO. 02- 1073 -CD  
:  
RICHARD H. MILGRUB, :  
Defendant :  
:

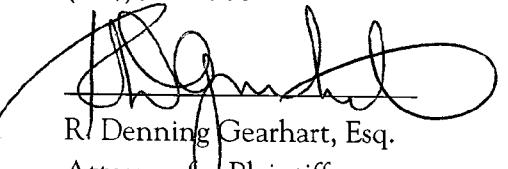
**ORDER FOR TRANSCRIPT**

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

Respectfully Submitted,

  
Joseph M. Colavecchi, Esquire

Attorney for Plaintiff  
Supreme Court No. 06810  
221 East Market Street  
Clearfield, PA 16830  
(814)765-1566

  
R. Denning Gearhart, Esq.  
Attorney for Plaintiff  
Supreme Court No. 26540  
215 East Locust Street  
Clearfield, PA 16830  
(814)765-1581

FILED

APR 13 2003

APR 14 2003

William A. Shaw  
Secretary

KATHLEEN BROWN  
V.  
RICHARD H. MILGRUB

:IN THE COURT OF COMMON PLEAS  
:OF PENNSYLVANIA -  
:CLEARFIELD COUNTY BRANCH  
:  
:NO. 02-1073-CD

MEMORANDUM

Notice of Appeal having been filed in the above matter, this Court advises that it will file no further memorandum in support of the decision from which an appeal was taken.

  
\_\_\_\_\_  
KEITH B. QUIGLEY, P.J.

April 18, 2003

cc: Joseph Colavecchi, Esquire  
R. Denning Gearhart, Esquire  
File

FILED

APR 23 2003

William A. Shaw  
Prothonotary

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ICC Atty J. Coluccio  
03:53 AM  
APR 23 2003  
ICC Atty Gearhart  
SAC  
William A. Shaw  
Prothonotary

## Appeal Docket Sheet

Docket Number: 681 WDA 2003

Page 1 of 3

April 23, 2003



Kathleen Brown, Appellant

v.

Richard H Milgrub

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: April 21, 2003 Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Other

Consolidated Docket Nos.:

Related Docket Nos.:

# COPY

## SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: May 7, 2003

Next Event Type: Original Record Received

Next Event Due Date: May 27, 2003

**FILED**

 m11:10 AM NO  
 APR 25 2003  
 CC

 William A. Shaw  
 Prothonotary

**Appeal Docket Sheet****Docket Number: 681 WDA 2003****Page 2 of 3****April 23, 2003****Superior Court of Pennsylvania****COUNSEL INFORMATION****Appellant** Brown, Kathleen

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellant Attorney Information:**

Attorney: Colavecchi, Joseph

Bar No.: 06810 Law Firm: Colavecchi, Ryan &amp; Colavecchi

Address: 221 E Market Street

PO Box 131

Clearfield, PA 16830-0131

Phone No.: (814)765-1566 Fax No.: (814)765-4570

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Attorney: Gearhart, R. Denning

Bar No.: 26540 Law Firm:

Address: 215 E Locust Street

Clearfield, PA 16830

Phone No.: (814)765-1581 Fax No.: (814)765-6745

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Milgrub, Richard H

Pro Se: Appoint Counsel Status:

IFP Status:

**Appellee Attorney Information:**

Attorney: Dapper, Robert Eugene

Bar No.: 46378 Law Firm:

Address: Three Gateway Center, Suite 1375

401 Liberty Avenue

Pittsburgh, PA 15222

Phone No.: (412)456-5555 Fax No.: (412)456-2109

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid	Receipt Number
4/14/03	Notice of Appeal	60.00	60.00	2003SPRWD000483

**TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas

## Appeal Docket Sheet

Docket Number: 681 WDA 2003

Page 3 of 3

April 23, 2003

Superior Court of Pennsylvania



County: Clearfield	Division: Civil
Date of OrderAppealed From: March 28, 2003	Judicial District: 46
Date Documents Received: April 21, 2003	Date Notice of Appeal Filed: April 14, 2003
Order Type: Order Entered	OTN:
Judge: Quigley, Keith B. President Judge	Lower Court Docket No.: NO. 02-1073-CD

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

**Date of Remand of Record:**

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
April 21, 2003	Notice of Appeal Filed	Appellant	Brown, Kathleen
April 23, 2003	Docketing Statement Exited (Civil)		Western District Filing Office



## Superior Court of Pennsylvania

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

Western District

April 23, 2003

600 Grant Building  
Pittsburgh, PA 15219  
412-565-7592  
[www.superior.court.state.pa.us](http://www.superior.court.state.pa.us)

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

Re: 681 WDA 2003  
Kathleen Brown, Appellant  
v.  
Richard H Milgrub

Dear Mr. Shaw:

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

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

Very truly yours,

Eleanor R. Valecko  
Deputy Prothonotary

KMS

**FILED**

JUN 05 2003

0 3:45 (u)

William A. Shaw

### Prothonotary/Clerk of Courts

SUN 03 2003  
1/3:45 (u)  
William A. Shaw  
Editor (Clark of C.)

notary/Clerk of Cou

2002-1073-CD

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For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>		
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Total Postage & Fees	\$ <b>6.95</b>	
<b>Sent To</b> <b>Superior Court of PA-Prothonotary</b> <i>Street, Apt. No.; or PO Box No.</i> <b>600 Grant Building</b> <i>City, State, ZIP+4</i> <b>Pittsburgh, PA 15219</b>		

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

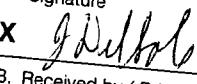
Superior Court of Pennsylvania  
Office of the Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219

## 2. Article Number

*(Transfer from service label)*

PS Form 3811, August 2001

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature	<input type="checkbox"/> Agent
	<input type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery
	66-03
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
E. Service Type	
<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.
F. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

7002 2030 0000 6877 0794

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William A. Shaw  
Office of the Prothonotary  
PO Box 549  
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01 10:30 AM  
JUN 18 2003

William A. Shaw  
Prothonotary

Date: 04/21/2003

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:23 AM

ROA Report

Page 1 of 1

Case: 2002-01073-CD

Current Judge: Keith B. Quiqley

Kathleen Brown vs. Richard H. Milgrub

Civil Other

Date	Judge
07/11/2002	① Filing: Civil Complaint Paid by: Joseph Colavecchi, Esquire Receipt number: 1845345 Dated: 07/11/2002 Amount: \$80.00 (Check) Three CC Attorney Gearhart No Judge
08/05/2002	② Praeclipe For Appearance, on behalf of Defendant RICHARD H. MILGRUB, No Judge ESQ. filed by s/Robert E. Dapper, Jr., Esq. Certificate of Service no 3 cc
08/06/2002	③ Preliminary Objections. filed by s/Robert E. Dapper, Jr., Esq. Cert. of Svc No Judge Verification s/Richard H. Milgrub, Esq. 3 cc Atty Milgrub
08/29/2002	④ Sheriff Returns: NOW July 17, 2002 Complaint served on Richard Milgrub by handing to Nancy Collins, Sec. Sheriff costs \$20.37. Surcharge: \$10.00. No Judge
09/19/2002	⑤ ORDER, filed, 6 cert. to C/A ⑥ NOW, this 19th day of September, 2002, ORDER of this Court that the Court Administrator refer the above-captioned civil matter to Administrative Regional Unit II for assignment of a specially presiding judicial authority. John K. Reilly Jr.
10/17/2002	⑦ Filing: Certificate of Service of Answer to Preliminary Objections and ⑧ Argument in Support of Answer to Preliminary Objections filed by Atty. No cc. No Judge
12/17/2002	⑨ Defendant's Reply to Plaintiff's Brief in Opposition to Preliminary Objections. filed by s/Robert E. Dapper, Jr., Esq. Certificate of Service no cc 5 Keith B. Quiqley
04/02/2003	⑩ ORDER, AND NOW, March 28, 2003, in accordance with the within Memorandum, defendant's Preliminary Objections are SUSTAINED and the Complaint DISMISSED. by the Court, s/Keith B. Quiqley, P.J. 41st Judicial District, Specially Presiding 2 cc to Atty Colacecchi, Gearhart, and Dapper 4 Keith B. Quiqley
04/14/2003	⑪ Filing: Appeal to High Court Paid by: Colavecchi, Joseph (attorney for Brown, Kathleen) Receipt number: 1858707 Dated: 04/14/2003 Amount: \$45.00 (Check) Notice of Appeal. s/Joseph M. Colavecchi s/R. Denning Gearhart, Esq. 1 cc w/check to Superior Court 5 Keith B. Quiqley ⑫ Order For Transcript. s/Joseph M. Colavecchi, Esq. s/R. Denning Gearhart, Esq. 2 Keith B. Quiqley

Date: 04/29/2003

Time: 08:52 AM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2002-01073-CD

Current Judge: Keith B. Quigley

Kathleen Brown vs. Richard H. Milgrub

Civil Other

Date	Judge
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10/17/2002	Filing: Certificate of Service of Answer to Preliminary Objections and Argument in Support of Answer to Preliminary Objections filed by Atty. No cc. No Judge
12/17/2002	Defendant's Reply to Plaintiff's Brief in Opposition to Preliminary Objections. filed by s/Robert E. Dapper, Jr., Esq. Certificate of Service no cc Keith B. Quigley
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04/14/2003	Filing: Appeal to High Court Paid by: Colavecchi, Joseph (attorney for Brown, Kathleen) Receipt number: 1858707 Dated: 04/14/2003 Amount: \$45.00 (Check) Notice of Appeal. s/Joseph M. Colavecchi s/R. Denning Gearhart, Esq. 1 cc w/check to Superior Court Order For Transcript. s/Joseph M. Colavecchi, Esq. s/R. Denning Gearhart, Esq. Keith B. Quigley
04/23/2003 ⑪	Memorandum, Notice of Appeal having been filed in the above matter, this Court advises that it will file no further memorandum in support of the decision from which an appeal was taken. BY THE COURT: /s/Keith B. Quigley, P.J. One CC Attorney Colavecchi, One CC Attorney Gearhart Keith B. Quigley
04/25/2003 ⑫	Appeal Docket Sheet, Docket Number: 681 WDA 2003. filed no cc 4 Keith B. Quigley