

02-1663-CD
GERALD L. HAWK, et al. vs. CLARENCE A. CATALDO, et al.

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

GERALD L. HAWK, RUSSEL J.
MASON, SR., AND CONNIE
M. MASON,

Plaintiffs

vs.

CLARENCE A. CATALDO and
J. HERZING and HUSTON TOWNSHIP,
by its Supervisors, i.e. NELLIE BUNDY,
TAMARA MCCLINTICK and DARREL
J. PATTON, JR.,

Defendants

No. 02-1663-CD
Equity

FILED

JUN 23 2003

William A. Shaw
Prothonotary

OPINION AND ORDER

Plaintiffs filed a Complaint in Equity on October 25, 2002 seeking injunctive relief. Defendant Huston Township, through its Supervisors, filed Preliminary Objections, following which Plaintiffs filed an Amended Complaint on December 3, 2002. Through the Amended Complaint, Plaintiffs seek a permanent injunction enjoining Huston Township or its Supervisors from 1.) vacating any portion to T-816 or Church Street, or Church Street Extension (the "Subject Roadway"), in any manner which is inconsistent with Pennsylvania law; 2.) renaming any portion of the Subject Roadway, without following the provisions of the Second Class Township Code or other good cause shown. Plaintiffs also seek injunctive relief against Defendants Cataldo and Herzing, preventing them from obstructing or attempting to obstruct access to the Subject Roadway. Lastly, Plaintiffs seek a declaration that they have acquired an easement by prescription over the Subject Roadway. On December 12, 2002, this Court Ordered that the Subject Roadway remain open for emergency vehicles and trucks only. On December 30, 2002, by Stipulated Order, the parties agreed that any matters ordinarily raised by preliminary objection would be preserved and raised at the trial of the case. Trial of

this matter took place on January 8, 2003, after which this Court granted the Motion for Non-Suit filed on behalf of the Supervisors who were dismissed as parties' defendant in this matter. Thereafter, the remaining parties filed briefs on the issues, and in connection therewith, the Court issues the following Opinion and Order:

Facts

Plaintiffs Russel and Connie Mason (the "Masons"), reside on a parcel of real estate located in Huston Township, Clearfield County, Pennsylvania, and Plaintiff Gerald Hawk resides at the Mason's home as their tenant. Huston Township (the "Township") is a Second Class Township. Plaintiffs' claims herein pertain to "a gravel roadway with a cartway of approximately 14 to 16 feet in width and a total length of .41 miles." (Referred to herein as the "Subject Roadway"). Russel J. Mason, Sr., purchased the parcel on which he and his wife presently reside on November 21, 1980, and from such date until October 13, 2002, the Masons, their family, guests, vendors and tenants used the Subject Roadway for ingress and egress to Route 255. The Subject Roadway lies adjacent to property owned by Defendant Clarence Cataldo ("Cataldo"), and within the boundaries of property owned by Defendant William Herzing ("Herzing")(Herzing and Cataldo, together, "Defendants"). After purchasing his property, Cataldo engaged Hess & Fisher Engineers, Inc. of Clearfield to review his title and boundaries, and in September 2002, Hess & Fisher notified Cataldo that the Subject Roadway was not a public road. By a writing dated September 17, 2002, Cataldo advised the Township of Hess & Fisher's conclusion that the Subject Roadway was not public, and also advised the Township that he had conferred with Herzing and that they concurred that they "would like to have the dirt lane closed to public travel since it is on private property." After conferring with its solicitor, the Township announced at a public meeting held on October 1,

2002 that it would cease maintenance of the Subject Roadway based upon its conclusion that it had no enforceable rights in and to the Subject Roadway, and thus "should honor the request of the property owners." The Township had begun plowing and maintaining the Subject Roadway in 1996, believing that it had rights to such roadway. Additionally, various residents in the area used the Subject Roadway for regular travel, and the U.S. Postal Service used the Subject Roadway daily for delivering mail from April 5, 1969 up until October 13, 2002. On or about October 13, 2002, Defendants Herzing and Cataldo blocked the Subject Roadway with trucks, cars, barrels and no trespassing signs. There is no Ordinance of record in the Township indicating the laying out or opening of the Subject Roadway, as is required by the Second Class Township Code. Prior to Herzing's acquisition of his property, the Subject Road did not exist, but rather was a part of a church parking lot. The Township's involvement with the Subject Roadway commenced after the Township Roadmaster asked for and received permission from Herzing to plow through the area because the Township plow had difficulty maneuvering around a turn on Township Route T-816. Until 1996, maintenance of the Subject Roadway was with Herzing's express permission in all cases. Plaintiffs have access to the Mason home by Township Route T-816, which bounds the Herzing property on the East and North. During the hearing on this matter, Defendants stipulated that the Subject Roadway was maintained by the Township and used by the public from 1967 until October 13, 2002.

Conclusions of Law and Opinion

- I. The joint owner of the property over which the Subject Roadway Transverses is an Indispensable Party to this Action, and Plaintiff's failure to name such party denies this Court Subject Matter Jurisdiction.**

The Subject Roadway intersects real estate owned by William J. Herzing and Anna Marie Herzing, husband and wife, as tenants by the entireties. Under Rule 2227(a) of the Rules

of Civil Procedure, a party having only a joint interest in the subject matter of an action must be joined on the same side as plaintiffs or defendants. Moorhead v. Lopatin, 300 Pa. Super. 81, 84, 445 A.2d 1308, 1310 (1982). As a joint owner of the property, Mrs. Herzing holds only a joint interest in the property. Furthermore, Mrs. Herzing is an indispensable party, given that her rights "are so connected with the claims of the litigants that no decree can be made without impairing those rights." Polydyne, Inc. v. City of Philadelphia, 795 A.2d 495, 496 (Pa. Commw. Ct. 2002)(citations omitted). The failure to join an indispensable party denies this Court subject matter jurisdiction. Id. Clearly, an injunction preventing Mr. Herzing and Mr. Cataldo from obstructing the Subject Roadway would impair Mrs. Herzing's rights as a tenant by the entireties. As such, exercising its powers pursuant to Rule 2232(c), this Court Orders that Anna Herzing be joined as a party defendant to this action.

II. The allegations in Plaintiffs' Complaint as well as the prayer for relief set forth therein set forth a claim upon which relief can be granted

In their Amended Complaint, Plaintiffs make the following allegations against the Township:

24. Huston Township Supervisors made a summary decision on or about October 1, 2002 to abandon the portion of Church Street Extension at the request of Defendant Cataldo. The decision is not in accord with the requirements to vacate a road as set out in Section 2304 of the Second Class Township Code.

25. Based upon information received it is believed and therefore averred that Huston Township intends to rename certain portions of Church Street or Church Street Extension and such renaming will adversely affect the Plaintiffs by requiring the changing of their mailing addresses.

Based upon these allegations against the Township, Plaintiffs request that this Court permanently enjoin Huston Township or any of its Supervisors from vacating or renaming any portion of the Subject Roadway in any manner which is not in accord with the full requirements of the statutes of Pennsylvania. As noted by the Township, such allegations and prayers for

relief assume that the Subject Roadway is a Township road. However, Plaintiffs in their Amended Complaint do not specifically ask that this Court determine whether the Subject Roadway is a township road. The Township argues that this defect in pleading bars this Court from determining whether the Subject Roadway is a township road.

An equity court has jurisdiction to grant broader relief than specifically requested where the complaint contains a prayer for general relief. Karpieniak v. Lowe, 747 A.2d 928, 931 (Pa. Super. 2000). However, such relief must be consistent with and agreeable to the case pleaded and proven. Id. As such, where neither the statement of the cause of action nor the relief requested in the complaint relate to the relief actually sought, a court is without power to grant such relief. Twp. of Ridley v. Ridley Arms, Inc., 494 A.2d 870 (Pa. Commw. 1985). In the case at hand, the Amended Complaint contains no general prayer for relief, but rather contains a specific request for injunctive relief against both Defendants and the Township. However, the allegations of the Amended Complaint clearly set forth a claim that the Subject Roadway is a township road. Moreover, the testimony presented at the hearing, as well as the arguments contained in Plaintiffs' Post-Trial Brief, directly related to Plaintiffs' argument that the Subject Roadway is public. *See* Karpieniak, 747 A.2d at 931 (fact that testimony did not relate to or otherwise support requested relief was factor relevant to determination that court lacked power to grant such relief). Such testimony and argument evidences Plaintiffs' intention, as set forth in the allegations of the Amended Complaint, to seek a determination that the Subject Roadway is public. As such, this Court finds that it is within its powers to adjudicate the issue of whether the Subject Roadway is a public road. Id. However, an adjudication of the merits of this issue must be postponed until Plaintiffs' take action to join Anna Herzing, an indispensable party to this litigation.

WHEREFORE, the Court enters the following Order:

O R D E R

AND NOW, this 23rd day of June, 2003, upon consideration of Amended Complaint in Equity, the trial of the matter and the briefs of the parties relating thereto, it is the finding and Order of this Court that pursuant to Rule 2232(c) of the Pennsylvania Rules of Civil Procedure, Plaintiffs join Anna Herzing as a party defendant to this litigation within the next 20 days. Following such joinder, this Court will render a full opinion on the merits herein.

President Judge

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1cc Don Whinnel

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J.
MASON, SR., AND CONNIE
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vs.

CLARENCE A. CATALDO and
J. HERZING and HUSTON TOWNSHIP,
by its Supervisors, i.e. NELLIE BUNDY,
TAMARA MCCLINTICK and DARREL
J. PATTON, JR.,

Defendants

No. 02-1663-CD
Equity

FILED

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William A. Shaw
Prothonotary

OPINION AND ORDER

In accordance with this Court's Opinion and Order of June 23, 2003, Plaintiffs, Russel J. Mason, Sr. and Connie M. Mason, filed a Second Amended Complaint in Equity to Add Additional Defendant Anna Herzing (the "Complaint") on July 14, 2003.¹ Answers to said Complaint have been filed on behalf of all defendants, and by stipulation of the parties, this matter has been submitted to this Court for adjudication on the present state of the record. Plaintiffs' request the following relief: 1.) that Defendants Cataldo or Herzing be enjoined from blocking travel over the disputed portion or segment of T-816, or Church Street or Church Street Extension (the "Subject Roadway"), 2.) that Huston Township (the "Township") be enjoined from vacating any portion of the Subject Roadway in any manner not in accordance with Pennsylvania law; 3.) that the Subject Roadway be declared a public road within the jurisdiction of the Township; 4.) the Township be enjoined from renaming the Subject Roadway except in accordance with the requirements of the Second Class Township Code or

¹ On the same date, Plaintiffs' filed a Suggestion of Succession and Praeipe to Amend Caption deleting Gerald L. Hawk as a named Plaintiff as a result of his death in June 2002.

for other good cause shown; and 5.) that this Court find that Plaintiffs have acquired an easement by prescription over the Subject Roadway.

I. The Subject Roadway is not a public road within the terms of Title 53, Section 67307 of Pennsylvania's Second Class Township Code.

Preliminarily, this Court must determine whether the Subject Roadway satisfies the standards of a "public road." Plaintiffs' Post-Trial Brief argues that the Subject Roadway should be declared a public road pursuant to Title 53, Section 67307 of Pennsylvania's Second Class Township Code, Act of May 1, 1933, P.L. 103, as amended (the "Code"). Plaintiffs assert that the testimony of witnesses and the stipulation of the Defendants that the Subject Roadway was used by the public and maintained by the Township from 1967 through 2002, satisfies the requirements of Section 67307 of the Code.

The Pennsylvania Supreme Court has directed that there are three methods for establishing the existence of a public road under the Code:

The first is the introduction of court records showing the road to have been opened under the act of June 13, 1836, P.L. 551, §1105, 36 P.S. §1781 et seq. The second is that provided in the Second Class Township Code . . . 53 P.S. §66105², setting forth the circumstances under which there arises a conclusive presumption that a road is public. The third is by prescription, requiring uniform, adverse, continuous use of the road under claim of right by the public for 21 years.

Stewart v. Watkins, 235 A.2d 604 (Pa. 1967).

In the case at hand, there has been no evidence submitted indicating that the Subject Roadway was opened to the public by official act or that it should be declared public by means of common law prescription. Rather, Plaintiffs assert that the Subject Roadway is in fact a

² This section was replaced by 53 P.S. §67307.

public road by virtue of statutory prescription. Section 67307 of the Code defines a “public road” as

[e]very road which has been used for public travel and maintained and kept in repair by the township for a period of at least 21 years as a public road having a right-of-way of 33 feet, even though there is no public record of the laying out or dedication for public use of the road.

53 Pa. C.S.A. §67307 (2003).

In the case at hand, Defendants have stipulated that the Subject Roadway was used by the public and maintained by the Township from 1967 until October 13, 2002. As found by this Court in the June 23, 2003 Opinion and Order

Russel J. Mason, Sr., purchased the parcel on which he and his wife presently reside on November 21, 1980, and from such date until October 13, 2002, the Masons, their family, guests, vendors and tenants used the Subject Roadway for ingress and egress to Route 255.

The Township adds³ that the Subject Roadway connected with Healy Street which dead ends at Plaintiffs’ residence, and that during Plaintiffs’ ownership (and except for Plaintiffs’ tenant), Healy Street has only served several camps and no permanent residences. As a result, the Township asserts that this usage does not equate with “public use,” quoting Morgan v. Richter, 724 A.2d 983 (Pa. Commw. 1999), for the proposition that “[p]ublic use is not made out by proof of the use of a road merely by those having business with the concerns as to whose establishments the road provides access, or by any one individual.”

The Court agrees, and finds that the limited usage of the Subject Roadway by Plaintiffs, their guests, vendors and tenants, as well as periodic usage by the owners of seasonal camps,

³ The Township has also asserted that Plaintiffs lack standing to assert that the Subject Roadway is a public road, and further that this Court has no power to adjudicate this a Township Road under 53 P.S. §67307. However, in Waksmunski v. Delginis, a case cited by the Township in its brief, the Superior Court affirmed the finding of the Count of Common Pleas of Cambria County that a certain roadway was not a public road, the issue was not of standing but of joinder of the township, an indispensable party: the Superior Court held that it had no jurisdiction to determine the issue of whether the roadway was public under Section 67307 due to the plaintiffs’ failure to join the township.

does not satisfy the standards of “public use” under Section 67307. *See Waksmunski v. Delginis*, 570 A.2d 88 (Pa. Super. Ct. 1990)(assuming jurisdiction, Superior Court would have affirmed finding of no public use where road was used for private access to homes by five families residing in area); *Morgan*, 724 A.2d 983(affirming findings of lower court that road was not publicly used though road was used by construction and utility companies, where business customers traveled to plaintiffs’ home, students used road to travel to field trips, mail and deliveries were made over road and state police used as a turn-around); *Lower Saucon Township v. Horvath*, 402 A.2d 1099 (Pa. Commw. Ct. 1979)(affirming finding of lower court that travel along private lane to and from private residences and fields, occasional use of lane by cars and motorcycles, and use for delivery of fuel, deer spotting and as “lovers’ lane,” did not satisfy requirements of public use).

Additionally, the Court notes that the designation of the Subject Roadway as a “public road” is further undercut by the fact that the Township’s maintenance of the roadway has been with Herzing’s express permission. *Horvath*, 402 A.2d 1101 (permissive use does not create a right of use in the general public). As indicated in this Court’s Opinion and Order of June 23, 2003,

The Township’s involvement with the Subject Roadway commenced after the Township Roadmaster asked for and received permission from Herzing to plow through the area because the Township plow had difficulty maneuvering around a turn on Township Route T-816. Until 1996, maintenance of the Subject Roadway *was with Herzing’s express permission* in all cases. (Emphasis added).

Based upon the foregoing, the Court finds that Plaintiffs’ have failed to establish that the Subject Roadway is a “public road” within the meaning of 53 P.S. §67307. Moreover, based upon this finding, Plaintiffs’ prayers for relief that the Township be enjoined from vacating or renaming the Subject Roadway are moot.

II. Plaintiffs have not established the existence of an easement by prescription over the Subject Roadway.

Plaintiffs also contend that they acquired an easement by prescription over the Subject Roadway, based upon testimony that they traveled over the Subject Roadway from the Summer of 1981 until October 13, 2002, without requesting permission or being told to request permission or being granted permission with respect to such usage.

An easement by prescription will exist where there has been adverse, open, continuous, notorious and uninterrupted use of a road for a period of 21 years. Waltmyer v. Smith, 556 A.2d 912, 913 (Pa. Super. Ct. 1989). However, a party's usage of a roadway for any period of time is not considered adverse if such usage is with the owner's permission. In re Condemnation by Com., Dep't of Transp., of Right of Way for State Route 0079, 727 A.2d 618 (Pa. Commw. Ct. 1999). Such permissive usage will be deemed to continue until it has been shown that such permission has been withdrawn. Margoline v. Holefelder, 218 A.2d 227 (Pa. 1966). To convert permissive use to hostile use, a party must prove that the owner is on notice that the use has become hostile, and that such hostile usage continues for the prescriptive period. Orth v. Werkheiser, 451 A.2d 1026 (Pa. Super. Ct. 1982).

As noted above, this Court has found that the maintenance of the Subject Roadway was done with Mr. Herzing's permission. Moreover, this Court also finds that Plaintiffs' usage was with permission. Mr. Herzing provided credible testimony that he regularly permitted persons to use the roadway insofar as they did not abuse the privilege by driving recklessly. There has been no evidence submitted indicating that this permission was withdrawn, or that Mr. Herzing was on notice that Plaintiffs' usage had become hostile to his possession of the Subject Roadway. As such, this Court must find that Plaintiffs' have failed to establish an easement by prescription.

WHEREFORE, the Court enters the following Order:

O R D E R

AND NOW this 22nd day of October, 2003, upon consideration of the foregoing, it is hereby Ordered, Adjudged and Decreed that Plaintiffs' Second Amended Complaint be and is hereby DISMISSED.

By the Court,



John K. Reilly, Jr.,
President Judge

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Wm. A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, and WILLIAM J.
HERZING, HUSTON TOWNSHIP, NELLIE
BUNDY, TAMARA MCCLINTICK and
DARREL J. PATTON, JR.

Defendants

NO. 02- 1663 -CD

AMENDED COMPLAINT INEQUITY

Code: Civil

Filed on behalf of Plaintiffs:

GERALD L. HAWK, RUSSEL J.
MASON, SR., CONNIE M. MASON

COUNSEL OF RECORD FOR
THIS PARTY:

TIMOTHY E. DURANT, ESQ.
Pa. I. D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

COUNSEL FOR HUSTON TWP &
SUPERVISORS

KIM C. KESNER, ESQ.
Pa. I.D. No. 28307
23 North Second Street
Clearfield, PA 16830
814-765-1706

COUNSEL FOR DEFENDANTS
CATALDO & HERZING

ROBERT M. HANAK, ESQ.
Pa. I.D. No. 05911
Hanak, Guido & Taladay
498 Jeffers Street, P.O. Box 487
DuBois, PA 15801
814-371-7768

FILED

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William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J. MASON, SR.,
and CONNIE M. MASON

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vs.

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DARREL J. PATTON, JR.

Defendants

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NO. 02- 1663 -CD

NOTICE TO DEFEND

TO ALL DEFENDANTS NAMED ABOVE:

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 Petition 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

GERALD L. HAWK, RUSSEL J. MASON, SR.,
and CONNIE M. MASON

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Defendants

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NO. 02- 1663 -CD

AMENDED COMPLAINT IN EQUITY

Plaintiffs, GERALD L. HAWK, RUSSEL J. MASON, SR., and CONNIE M. MASON, by their undersigned counsel, file this amended complaint in Equity and in support thereof aver as follows:

1. Plaintiff, **GERALD L. HAWK** is an adult individual who resides with Russel J. Mason, Sr. and Connie M. Mason, at RD #1, Box 127B, Penfield, Clearfield County, Pennsylvania 15849.

2. Plaintiffs, **RUSSEL J. MASON, SR.** and **CONNIE M. MASON**, herein after “the Masons” are husband and wife, who reside at RD #1, Box 127B, Penfield, Clearfield County, Pennsylvania 15849.

3. Defendant **CLARENCE A. CATALDO**, is an adult individual whose last known address is RR #1, Box 115, Penfield., Clearfield County, PA 15849 and who owns property adjacent to the herein disputed section of T-816.

4. **WILLIAM J. HERZING**, is an adult individual whose last known address is RR #2, Penfield, Clearfield County, PA 15849 and who owns property adjacent to the herein disputed section of T-816.

5. **HUSTON TOWNSHIP** is a political subdivision located in Clearfield County,

Pennsylvania, with a mailing address of PO Box 38, Penfield, PA 15849-0038 and is operated and governed by three Township Supervisors who at present are; **NELLIE BUNDY, TAMARA MCCLINTICK** and **DARREL J. PATTON, JR.**

6. The three Huston Township Supervisors, i.e. **NELLIE BUNDY, TAMARA MCCLINTICK** and **DARREL J. PATTON, JR.** are all residents of Huston Township, Clearfield County, PA.

7. By Agreement and Addendum dated November 21, 1980 recorded in the Clearfield County Recorder's Office in Miscellaneous Book 230 at page 437 on December 16, 1980 Russel J. Mason, plaintiff herein, and his sister Darlene A. Mason entered into an agreement (as joint tenants with the right of survivorship) to purchase the premises in Huston Township currently identified by Tax Map No. 119-I1-6 as H., Trailer, G. and 23 A surface. Since the summer of 1981 there has been someone living on these premises in a trailer or the house. This is the parcel where the plaintiffs now reside and their trailer situated hereon is rented out to a tenant. The Agreement and Addendum identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

8. Payments having been fully made by purchasers on the residence premises by January 1986, that certain deed dated January 27, 1986 recorded in the Clearfield County Register and Records Office in Deeds and Records Book 1090 at page 209 was delivered to Russel J. Mason and Darlene A. Mason (as joint tenants with the right of survivorship) all of which was in fulfillment of the terms of said Agreement. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

9. By deed dated April 26, 1994 from Darlene A. Mason, recorded in the Clearfield County Register and Records Office in Deeds and Records Book 1604 at page 533, Russel J. Mason and Connie M. Mason, Plaintiffs herein, acquired the other one-half interest in the said residence premises. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

10. By deed dated December 27, 2001 and recorded in the Clearfield County Recorder's Office on December 28, 2001 as Instrument No. 2001-20785 title to the parcel vested in Russel J. Mason and Connie M. Mason as tenants by the entireties. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

11. Since purchasing the above referenced parcel in 1980 the Masons, their tenants and guests have accessed the subject property from T-337 via T-816, identified, marked and comprised of Church Street and Church Street Extension, a gravel roadway with a cartway of approximately 14 to 16 feet in width and a total length of 0.41 miles.

12. Neighbors of the Masons on T-816 (John R. Toth and Kenneth Stuart have each owned and used their houses for hunting and recreational purposes for a period in excess of 21 years, and during that time they have always accessed their houses from T-337 by use of T-816 as described above.

13. The United States Postal Service has used T-816 as necessary to deliver the mail to residents on a daily basis from April 5, 1969 up to and including the present time until a certain segment or section of Church Street Extension was blockaded by defendants Herzing and Cataldo.

14. It is believed and averred that since approximately 1967, T-816 has been utilized and maintained by Huston Township, which maintenance consisted of inter alia, applying gravel to the roadway in the summer and plowing snow in the winter and using the disputed section for all township road purposes as needed.

15. Since at least 1967 the various residents in the area utilized the disputed segment of Church Street Extension for regular travel.

16. By deed dated December 19, 2001 and recorded in the Clearfield County Register and Records Office on December 19, 2001 as Instrument Number 2001-20360 defendant Cataldo acquired ownership of land adjoining Church Street Extension. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

17. On October 1, 2002 the afore-named Huston Township Supervisors read and

approved the following statement, *“In response to a request from property owners C.A. Cataldo and William Herzing, and supported by legal documentation, we will no longer be maintaining the dirt lane traversing their properties. Our solicitor has advised us that the municipality has no legal claim to this land and should honor the request of the property owners. The Township has never received liquid fuel allocations for maintaining this lane. PennDot is in the process of re-surveying the roads in this area for the purpose of returning to their original deed names and for liquid fuels appropriation.”*

18. It is believed and therefore averred that the afore-said Supervisors jointly and severally knew or had reason to know that the township had in fact maintained and/or plowed this disputed segment of Church Street Extension for a period in excess of twenty one years and had thereby acquired a surface easement over it and a defacto “taking” of the disputed segment and it had thus become a part of the township road system, i.e. T-816 as well as the fact that liquid fuel allocations had been received for maintaining the disputed section.

19. It is believed and therefore averred that the afore-said supervisors in making false and misleading statements were acting with malice against Connie M. Mason and her husband Russel due to the prior suits filed against Huston Township by Connie M. Mason for violations of the Whistle Blower Act, the Civil Rights Act and the Worker’s Compensation act.

20. It is believed and therefore averred that the afore-said supervisors in making false and misleading statements in the public meeting were acting with malice in a conspiracy and in concert with defendants Herzing and Cataldo because Connie Mason was seeking money damages against Huston Township.

21. It is believed and therefore averred that the afore-said supervisors in making false and misleading statements to their solicitor as to the maintenance of the disputed segment were acting with malice in a conspiracy and in concert with defendants.

22. On or about October 13, 2002 defendants Herzing and Cataldo and others at their direction cut off and blocked the section of Church Street Extension (T-816) which passes by

defendant Cataldo's newly acquired land. The blocking was done with trucks, cars, heavy equipment, barrels and no trespassing signs.

23. Due to the section of Church Street Extension being cut off plaintiffs have been required to traverse to and from their residence by a wholly inadequate round-about road which is more narrow, flanked by a hazardous ditch and 50% longer than the cut-off section.

24. Huston Township Supervisors made a summary decision on or about October 1, 2002 to abandon the portion of Church Street Extension at the request of defendant Cataldo. The decision was not in accord with the requirements to vacate a road as set out in Section 2304 of the Second Class Township Code.

25. Based upon information received as set out in paragraph 17 supra, it is believed and therefore averred that HUSTON TOWNSHIP intends to rename certain portions of Church Street or Church Street Extension and such renaming will adversely affect the plaintiff's by requiring the changing of their mailing addresses.

26. All Pennsylvania Department of Transportation maps from 1933 to the present as well as all known official Pennsylvania maps depict the disputed segment as part of Huston Township T-816.

27. Plaintiffs have private rights to traverse Church Street Extension and the full length of T-816 by virtue of the legal doctrines of adverse possession (easement by prescription) and/or easement by implication.

28. Plaintiffs have no adequate remedy at law and no alternative except to obtain a permanent injunction from this court to prohibit defendants from interfering with the use of the said road.

WHEREFORE, plaintiffs request this Court to hold a hearing and thereafter enter a permanent injunction based upon the facts contained in this Complaint and as adduced at the hearing. The Injunction is requested to include a prohibition against:

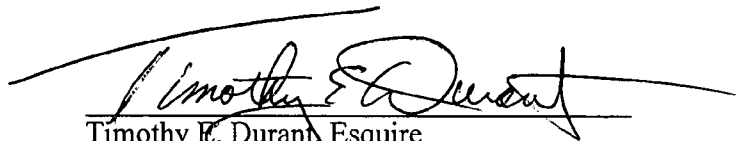
A. Defendants Cataldo or Herzing or anyone on their behalf blocking, obstructing or

attempting to prohibit in any way the travel of vehicles across T-816 or Church Street or Church Street Extension or such other name as shall be thereafter used for such portion of the subject road in the Tyler area of Huston Township, and

B. Defendant Huston Township or its any of it Supervisors named herein from vacating any portion of T-816 or Church Street, or Church Street Extension in any manner which is not in accord with the full requirements of the Statutes of Pennsylvania.

C. Defendant Huston Township or any of its Supervisors named herein from re-naming any portion of T-816, Church Street, or Church Street Extension without following the provisions of the Second Class Township Code or other good cause shown.

Date: December 2, 2002


Timothy E. Durant, Esquire
Attorney for Plaintiffs

VERIFICATION

We, GERALD L. HAWK, RUSSELL J. MASON, Sr. CONNIE M. MASON, verify that the statements made in this Pleading are true and correct to the best of our knowledge, information and belief. Plaintiffs understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

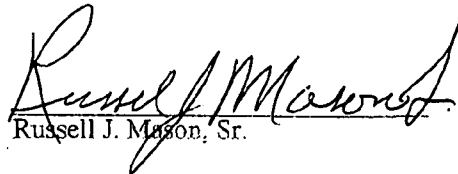
Dated:

10/18/02


Gerald L. Hawk

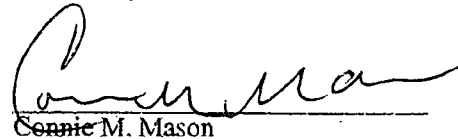
Dated:

10-18-02


Russell J. Mason, Sr.

Dated:

10-18-02


Connie M. Mason

5 cc
Atty Dussant
(cc on 12-3-02)

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, and WILLIAM J.
HERZING and HUSTON TOWNSHIP, by its
Supervisors, i.e., NELLIE BUNDY, TAMARA
MCCLINTICK and DARREL J. PATTON, JR.

Defendants

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NO. 02- 1663 -CD

COMPLAINT IN EQUITY

Code: Civil

Filed on behalf of Plaintiffs:

GERALD L. HAWK, RUSSEL J.
MASON, SR., CONNIE M. MASON

COUNSEL OF RECORD FOR
THIS PARTY:

TIMOTHY E. DURANT, ESQ.
Pa. I. D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

FILED

OCT 25 2002

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, and WILLIAM J.
HERZING and HUSTON TOWNSHIP, by its
Supervisors, i.e., NELLIE BUNDY, TAMARA
MCCLINTICK and DARREL J. PATTON, JR.

Defendants

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NO. 02- 1663 -CD

NOTICE TO DEFEND

TO ALL DEFENDANTS NAMED ABOVE:

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 Petition 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

GERALD L. HAWK, RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, and WILLIAM J.
HERZING and HUSTON TOWNSHIP, by its
Supervisors, i.e., NELLIE BUNDY, TAMARA
MCCLINTICK and DARREL J. PATTON, JR.

Defendants

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NO. 02- 1663 -CD

COMPLAINT IN EQUITY

Plaintiffs, GERALD L. HAWK, RUSSEL J. MASON, SR., and CONNIE M. MASON, by their undersigned counsel, file a complaint in Equity and in support thereof aver as follows:

1. Plaintiff, **GERALD L. HAWK** is an adult individual who resides with Russel J. Mason, Sr. and Connie M. Mason, at RD #1, Box 127B, Penfield, Clearfield County, Pennsylvania 15849.

2. Plaintiffs, **RUSSEL J. MASON, SR.** and **CONNIE M. MASON**, herein after "the Masons" are husband and wife, who reside at RD #1, Box 127B, Penfield, Clearfield County, Pennsylvania 15849.

3. Defendant **CLARENCE A. CATALDO**, is an adult individual whose last known address is RR #1, Box 115, Penfield., Clearfield County, PA 15849.

4. **WILLIAM J. HERZING**, is an adult individual whose last known address is RR #2, Penfield, Clearfield County, PA 15849 and who owns property adjacent to the herein disputed section of T-816..

5. **HUSTON TOWNSHIP** is a political subdivision located in Clearfield County, Pennsylvania, with a mailing address of PO Box 38, Penfield, PA 15849-0038 and is operated and governed by three Township Supervisors who at present are; NELLIE BUNDY, TAMARA

MCCLINTICK and DARREL J. PATTON, JR..

6. The three Township Supervisors, i.e. **NELLIE BUNDY, TAMARA MCCLINTICK and DARREL J. PATTON, JR.** are being named in their representative capacities.

7. By Agreement and Addendum dated November 21, 1980 recorded in the Clearfield County Recorder's Office in Miscellaneous Book 230 at page 437 on December 16, 1980 Russel J. Mason, plaintiff herein, and his sister Darlene A. Mason entered into an agreement (as joint tenants with the right of survivorship) to purchase the premises in Huston Township currently identified by Tax Map No. 119-11-6 as H., Trailer, G. and 23 A surface. Since the summer of 1981 there has been someone living on these premises in a trailer or the house. This is the parcel where the plaintiffs now reside and their trailer situated hereon is rented out to a tenant. The Agreement and Addendum identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

8. Payments having been fully made by purchasers on the residence premises by January 1986, that certain deed dated January 27, 1986 recorded in the Clearfield County Register and Records Office in Deeds and Records Book 1090 at page 209 was delivered to Russel J. Mason and Darlene A. Mason (as joint tenants with the right of survivorship) all of which was in fulfillment of the terms of said Agreement. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

9. By deed dated April 26, 1994 from Darlene A. Mason, recorded in the Clearfield County Register and Records Office in Deeds and Records Book 1604 at page 533, Russel J. Mason and Connie M. Mason, Plaintiffs herein, acquired the other one-half interest in the said residence premises. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

10. By deed dated December 27, 2001 and recorded in the Clearfield County Recorder's Office on December 28, 2001 as Instrument No. 2001-20785 title to the parcel vested in Russel J. Mason and Connie M. Mason as tenants by the entireties. The deed identified in this paragraph is

incorporated herein by reference as if set out in full and attached hereto.

11. Since purchasing the above referenced parcel in 1980 the Masons, their tenants and guests have accessed the subject property from T-337 via T-816, identified, marked and comprised of Church Street and Church Street Extension, a gravel roadway with a cartway of approximately 14 to 16 feet in width and a total length of 0.41 miles.

12. Neighbors of the Masons on T-816 (John R. Toth and Kenneth Stewart) have each used owned and used their houses for hunting and recreational purposes for a period in excess of 21 years, and during that time they have always accessed their houses from T-337 by use of T-816 as described above.

13. The United States Postal Service has used T-816 as necessary to deliver the mail to residents on a daily basis from April 5, 1969 up to and including the present time until the section of Church Street Extension was blockaded by defendants Herzing and Cataldo.

14. It is believed and averred that since at approximately 1960, T-816 has been maintained by Huston Township, which maintenance consisted of inter alia, applying gravel to the roadway in the summer and plowing snow in the winter.

15. Since at least 1960 the various residents in the area utilized, for regular travel, the section of Church Street Extension which defendant Cataldo aided and abetted by defendant Herzing seeks to close and blockade.

16. By deed dated December 19, 2001 and recorded in the Clearfield County Register and Records Office on December 19, 2001 as Instrument Number 2001-20360 defendant Cataldo acquired ownership of land adjoining Church Street Extension. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

17. On or about October 13, 2002 defendants Herzing and Cataldo and others at their direction cut off and blocked the section of Church Street Extension (T-816) which passes by defendant Cataldo's newly acquired land. The blocking was done with trucks, cars, heavy equipment, barrels and no trespassing signs.

16. Due to the section of Church Street Extension being cut off plaintiffs have been required to traverse to and from their residence by a wholly inadequate round-about road which is more narrow, flanked by a hazardous ditch and 50% longer than the cut-off section.

17. Huston Township Supervisors made a summary decision on or about October 1, 2002 to abandon the portion of Church Street Extension at the request of defendant Cataldo. The decision was not in accord with the requirements to vacate a road as set out in Section 2304 of the Second Class Township Code.

18. Based upon information received it is believed and therefore averred that HUSTON TOWNSHIP intends to rename certain portions of Church Street or Church Street Extension and such renaming will adversely affect the plaintiff's by requiring the changing of their mailing addresses.

19. Plaintiffs have private rights to traverse Church Street Extension and the full length of T-816 by virtue of the legal doctrines of adverse possession (easement by prescription) and/or easement by implication.

20. Plaintiffs have no adequate remedy at law and no alternative except to obtain a permanent injunction from this court to prohibit defendants from interfering with the use of the said road.

WHEREFORE, plaintiffs request this Court to hold a hearing and thereafter enter a permanent injunction based upon the facts contained in this Complaint and as adduced at the hearing. The Injunction is requested to include a prohibition against:

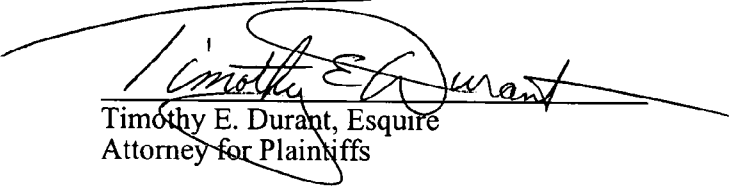
A. Defendants Cataldo or Herzing or anyone on their behalf blocking, obstructing or attempting to prohibit in any way the travel of vehicles across T-816 or Church Street or Church Street Extension or such other name as shall be thereafter used for such portion of the subject road in the Tyler area of Huston Township, and

B. Defendant Huston Township or its any of it Supervisors named herein from vacating any portion of T-816 or Church Street, or Church Street Extension in any manner which is not in

accord with the full requirements of the Statutes of Pennsylvania.

C. Defendant Huston Township or any of its Supervisors named herein from re-naming any portion of T-816, Church Street, or Church Street Extension without following the provisions of the Second Class Township Code or other good cause shown.

Date: October 25, 2002



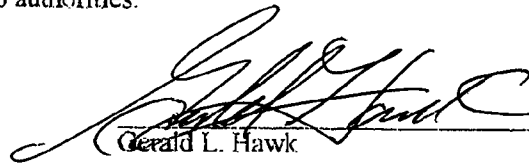
Timothy E. Durant, Esquire
Attorney for Plaintiffs

VERIFICATION

We, GERALD L. HAWK, RUSSELL J. MASON, Sr. CONNIE M. MASON, verify that the statements made in this Pleading are true and correct to the best of our knowledge, information and belief. Plaintiffs understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

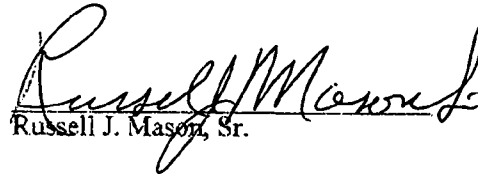
Dated:

10/17/02


Gerald L. Hawk

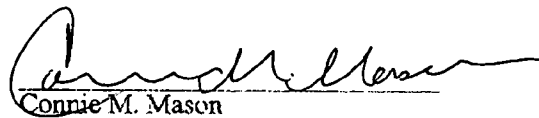
Dated:

10-17-02


Russell J. Mason, Sr.

Dated:

10-17-02


Connie M. Mason

FILED

cc

Atty Durant

013:38-4th

OCT 25 2002

2/25

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13225

HAWK, GERALD L. AI

02-1663-CD

VS.

CATALDO, CLARENCE A. AI

COMPLAINT IN EQUITY and ORDERS and PETITION FOR PRELIMINARY INJUNCTION

SHERIFF RETURNS

NOW OCTOBER 29, 2002 At 10:25 AM EST SERVED THE WITHIN COMPLAINT IN EQUITY (2 ORDERS), PETITION FOR PRELIMINARY INJUNCTION ON DARRELL J. PATTON, JR., SUPERVISOR AT EMPLOYMENT, PO BOX 38, TOWNSHIP BLDG., PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CYNTHIA SMITH, SEC./TREAS. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT, ORDER & PETITION AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: MCCLEARY/NEVLING

NOW OCTOBER 29, 2002 AT 10:25 AM EST SERVED THE WITHIN COMPLAINT IN EQUITY (2 ORDERS), PETITION FOR PRELIMINARY INJUNCTION ON TAMARA MCCLINTICK, SUPERVISOR AT EMPLOYMENT, PO BOX 38, TOWNSHIP BLDG., PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CYNTHIA SMITH, SEC./TREAS. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT, ORDER & PETITION AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: McCLEARY/NEVLING

NOW OCTOBER 29, 2002 AT 10:25 AM EST SERVED THE WITHIN COMPLAINT IN EQUITY (2 ORDERS), PETITION FOR PRELIMINARY INJUNCTION ON NELLIE BUNDY, SUPERVISOR AT EMPLOYMENT, PO BOX 38, TOWNSHIP BLDG., PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CYNTHIA SMITH, SEC./TREAS. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT, ORDER & PETITION AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: McCLEARY/NEVLING

NOW OCTOBER 29, 2002 AT 10:35 AM EST SERVED THE WITHIN COMPLAINT IN EQUITY (3 ORDERS), PETITION FOR PRELIMINARY INJUNCTION ON CLARENCE A. CATALDO, DEFENDANT AT EMPLOYMENT, RR#1 BOX 115, PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CLARENCE CATALDO A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT, ORDER & PETITION AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: McCLEARY/NEVLING.

FILED

NOV 06 2002

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13225

HAWK, GERALD L. AI

02-1663-CD

VS.

CATALDO, CLARENCE A. AI

COMPLAINT IN EQUITY and ORDERS and PETITION FOR PRELIMINARY INJUNCTION

SHERIFF RETURNS

NOW OCTOBER 29, 2002 AT 10:45 AM EST SERVED THE WITHIN COMPLAINT
IN EQUITY (3 ORDERS), PETITION FOR PRELIMINARY INJUNCTION ON WILLIAM
J. HERZING, DEFENDANT AT RESIDENCE, RR#2, PENFIELD, CLEARFIELD COUNTY,
PENNSYLVANIA BY HANDING TO WILLIAM HERZING, A TRUE AND ATTESTED
COPY OF THE ORIGINAL COMPLAINT, ORDER & PETITION AND MADE KNOWN
TO HIM THE CONTENTS THEREOF.
SERVED BY: McCLEARY/NEVLING

Return Costs

Cost	Description
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52.77	SHFF. HAWKINS PAID BY: PLFF.
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50.00	SURCHARGE PAID BY; PLFF.
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Sworn to Before Me This

6th Day Of Nov 2002
William Herzog

So Answers,

Chester A. Hawkins
Jay Mauter Stamp
Chester A. Hawkins
Sheriff

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

GERALD L. HAWK,
RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, WILLIAM J.
HERZING, and HUSTON TOWNSHIP, by its
Supervisors, i.e., NELLIE BUNDY, TAMARA
MCCLINTICK and DARREL J. PATTON, JR.
Defendants

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No. 02- 1663 -CD

TO THE PROTHONOTARY:

SUGGESTION OF SUCCESSION and PRAECIPE TO AMEND CAPTION

AND NOW, this 14th day of July, 2003, it is suggested of record that plaintiff, Gerald L. Hawk, died on June 9, 2003, in the County of Clearfield. The estate of Gerald L. Hawk a/k/a Gerald Lee Hawk has been opened in Clearfield County as Estate No. 2003-318. It is therefor requested that former plaintiff Gerald L. Hawk's name be removed from the caption of this case.

The Court by its ruling in this matter at trial on January 8, 2003 granted a non-suit as to the individual Huston Township Supervisors, furthermore by its Order dated June 23, 2003 the Court Ordered the Plaintiffs to join additional defendant Anna Herzing.

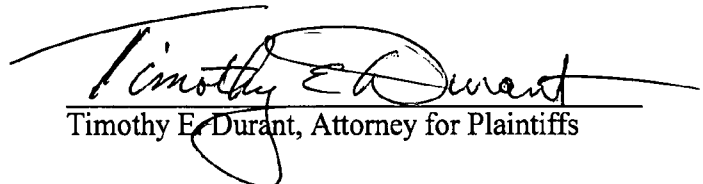
Therefore petitioner requests that the caption of the action should be changed to read **RUSSEL J. MASON, SR. and CONNIE M. MASON** as Plaintiffs vs. **CLARENCE A. CATALDO, WILLIAM J. HERZING, ANNA HERZING and HUSTON TOWNSHIP**, as Defendants.

July 14, 2003

FILED

JUL 14 2003

William A. Shaw
Prothonotary


Timothy E. Durant, Attorney for Plaintiffs

FILED

9:54 AM
JUL 14 2003
46676 0009

William A. Shaw
Prothonotary

WAS

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

GERALD L. HAWK, RUSSEL J.
MASON, SR., and CONNIE M. MASON,
Plaintiffs

vs.

CLARENCE A. CATALDO and WILLIAM
J. HERZING and HUSTON TOWNSHIP,
by its Supervisors, i.e., NELLIE BUNDY,
TAMARA MCCLINTICK and DARREL J.
PATTON, JR.,
Defendants

: No. 02-1663-CD
:
: Type of Case: Equity
:
: Type of Pleading: Preliminary Objections
:
: Filed of behalf of: Defendants Huston
: Township, Nellie Bundy, Tamara
: McClintick and Darrel J. Patton, Jr.
:
: Counsel of Record for these Parties:
:
: Kim C. Kesner, Esquire
: Supreme Ct. I.D. No. 28307
:
: 23 North Second Street
: Clearfield, PA 16830
: 814-765-1706
:
: Counsel of Record for Plaintiffs:
:
: Timothy E. Durant, Esquire
: 201 North Second Street
: Clearfield, PA 16830
: 814-765-1711
:

FILED

NOV 12 2012

William A. Shaw
Prothonotary/Clerk of Courts

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

GERALD L. HAWK, RUSSEL J.	:	No. 02-1663-CD
MASON, SR., and CONNIE M. MASON,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CLARENCE A. CATALDO and WILLIAM	:	
J. HERZING and HUSTON TOWNSHIP,	:	
by its Supervisors, i.e., NELLIE BUNDY,	:	
TAMARA MCCLINTICK and DARREL J.	:	
PATTON, JR.,	:	
Defendants	:	

PRELIMINARY OBJECTIONS BY DEFENDANTS
HUSTON TOWNSHIP, NELLIE BUNDY, TAMARA MCCLINTICK
AND DARREL J. PATTON, JR. TO PLAINTIFFS' COMPLAINT

I. Demurrer by Nellie Bundy,
Tamara McClintick and Darrel J. Patton, Jr.

1. In Paragraph 6 of their Complaint, Plaintiffs state that they have sued Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr. as Huston Township Supervisors "in their representative capacities."

2. A review of Plaintiffs' Complaint demonstrates that the only cognizable claims are against Huston Township.

3. There is no legal basis for naming the individual supervisors as parties defendant.

4. Plaintiffs' Complaint has failed to state a claim or cause of action upon which the relief requested can be granted.

WHEREFORE, it is respectfully requested that this Court dismiss Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr. as parties defendant in this action.

II. Demurrer by Huston Township

4. The sole allegations made by Plaintiffs' Complaint against Huston Township are contained in Paragraphs 17 and 18 as follows:

17. Huston Township Supervisors made a summary decision on or about October 1, 2002 to abandon the portion of Church Street Extension at the request of Defendant Cataldo. The decision is not in accord with the requirements to vacate a road as set out in Section 2304 of the Second Class Township Code.

18. Based upon information received it is believed and therefore averred that Huston Township intends to rename certain portions of Church Street or Church Street Extension and such renaming will adversely affect the Plaintiffs by requiring the changing of their mailing addresses.


5. Plaintiffs have failed to state a claim in Paragraph 17 against Huston Township for which the relief requested can be granted. To the extent that Huston Township took insufficient or incomplete action to vacate a road under the Second Class Township Code, the action is legally void. To the extent that Huston Township took unlawful action to vacate a road under the Second Class Township Code, Plaintiffs have the right to a direct appeal to this Court which is the exclusive remedy available to them for such a claim.

6. Plaintiffs have failed to state a claim or cause of action in Paragraph 18 against Huston Township upon which the relief requested can be granted. Plaintiffs' allegation "that Huston Township intends to rename certain portions of Church Street or Church Street Extension..." fails to state any cognizable claim for injunctive relief. That Plaintiffs may have a future claim or cause of action is purely speculative and review of any such claim is premature. Moreover, the naming of Township streets and alleys is within the sole discretion of the

Township and any Court review of such matters is limited, which review is Plaintiffs' exclusive remedy.

WHEREFORE, it is respectfully requested that this Court dismiss Plaintiffs' Complaint against Huston Township.

Respectfully submitted:



Kim C. Kesner, Esquire

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November, 2002, I caused to be served a true and correct copy of Defendant's Pre-Trial Statement on the following and in the manner indicated below:

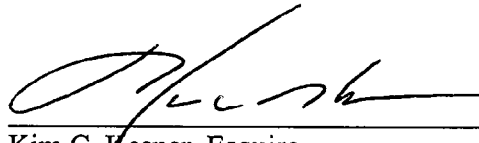
BY HAND DELIVERY

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(Attorney for Plaintiffs)

**BY U.S. FIRST CLASS MAIL,
POSTAGE PREPAID**

Clarence A. Cataldo
R.R. #1, Box 115
Penfield, PA 15849

William J. Herzing
R.R. #2
Penfield, PA 15849



Kim C. Kesner, Esquire
Attorney for Defendants Huston Township,
Nellie Bundy, Tamara McClintick and
Darrel J. Patton, Jr.

23 North Second Street
Clearfield, PA 16830

(814) 765-1706 – telephone
(814) 765-7006 – facsimile

Date: November 12, 2002

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 02-1663-CD

GERALD L. HAWK, RUSSELL J. MASON,
SR., and CONNIE M. MASON,
Plaintiffs

vs.

CLARENCE A. CATALDO and WILLIAM J.
HERZING and HUSTON TOWNSHIP by its
Supervisors, i.e., NELLIE BUNDY,
TAMARA MCCLINTICK and DARREL J.
PATTON, JR.,
Defendants

PRELIMINARY OBJECTIONS

KIM C. KESNER
ATTORNEY AT LAW
23 North Second Street
CLEARFIELD, PA 16830
(814) 765-1706

FILED

NOV 12 2002
0/9-20/w
William A. Shaw
Prothonotary/Clerk of Courts
5 CENT TO ATT

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

GERALD L. HAWK, RUSSELL J.
MASON, SR. and CONNIE M. MASON,
Plaintiffs

NO. 02-1663-CD

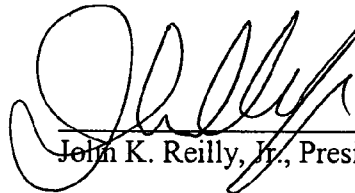
vs.

CLARENCE A. CATALDO and WILLIAM
J. HERZING and HUSTON TOWNSHIP
By its Supervisors, i.e. NELLIE BUNDY,
TAMARA MCCLINTICK and DARRELL
J. PATTON, JR.,
Defendants

ORDER

AND NOW, this 28th day of October, 2002, this Court having intended to issue a Rule to Show Cause on Plaintiffs' Petition for Preliminary Injunction and having executed a separate Order providing for a Preliminary Injunction in error, this Court's Order dated October 25, 2002 granting a Preliminary Injunction Without Prior Written Notice and Hearing is vacated and the parties are to be governed by this Court's separate Order issuing a Rule to Show Cause and scheduling a Status Conference on October 30, 2002.

BY THE COURT:


John K. Reilly, Jr., President Judge

FILED

OCT 28 2002

0/10:05/12

William A. Shaw
Prothonotary

4 CENS TO ATT



FILED

OCT 28 2002

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSELL J.
MASON, SR. and CONNIE M. MASON

vs.

No. 02-1663-CD

FILED

OCT 25 2002

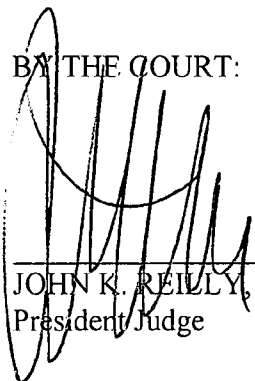
CLARENCE A. CATALDO and WILLIAM:
J. HERZING and HUSTON TOWNSHIP :
by its Supervisors, i.e., NELLIE BUNDY, ;
TAMARA MCCLINTICK and DARRELL :
J. PATTON, JR. :

William A. Shaw
Prothonotary

ORDER

NOW, this 25th day of October, 2002, upon consideration of
Plaintiffs' Petition for Preliminary Injunction Without Prior Written Notice and
Hearing, a Rule is hereby issued upon Defendants to Appear and Show Cause why
the Petition should not be granted. Status Conference is scheduled for the 30 day
of October, 2002 in Courtroom No. 1, ^{at 1:30 PM} Clearfield County
Courthouse, Clearfield, PA. Hearing is scheduled the 12 day of
December, 2002, at 2:30 P.M. in Courtroom No. 1,
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



JOHN K. REILLY, JR.
President Judge

FILED

0134:05-BD
OCT 25 2002

6 cc

Atty Dwant

E. K. S.

William A. Shaw
Prothonotary

FILED

OCT 25 2002

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

William A. Shaw
Prothonotary

GERALD L. HAWK, RUSSELL J. MASON, SR., *
and CONNIE M. MASON *

Plaintiffs *

vs. *

NO. 02- 11613-CD

CLARENCE A. CATALDO, and WILLIAM J. *
HERZING and HUSTON TOWNSHIP, by its *
Supervisors, i.e., NELLIE BUNDY, TAMARA *
MCCLINTICK and DARREL J. PATTON, JR. *

Defendants *

ORDER

AND NOW, this 25 day of October, 2002, upon consideration of the plaintiffs' petition for injunctive relief and the Court having, determined (1) that the plaintiffs will suffer irreparable harm if the requested relief is not granted immediately without notice and a hearing; (2) that plaintiffs do not have an adequate remedy at law; and (3) that greater injury would be inflicted upon plaintiffs by a denial of temporary injunctive relief than will be inflicted upon defendants by the granting of such relief; it is hereby ORDERED that Defendants are enjoined from:

A. Blocking any portion of Church Street, Church Street Extension or T-816 or in anyway making passage thereon hazardous, and

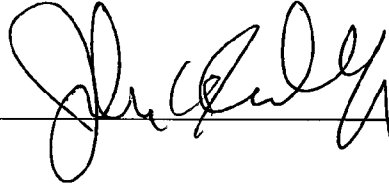
B. Vacating any portion of T-816 or Church Street, or Church Street Extension in any manner which is not in accord with the full requirements of the Statutes of Pennsylvania.

C. Removing street signs, route designations or changing the names of any portion of T-816 Church Street or Church Street Extension.

A hearing pertaining to the continuance of this preliminary injunction will be held on the 12 day of December, 2002 at 2:30, P M. in Courtroom 1, of the Clearfield County Courthouse, Clearfield, Pennsylvania, pursuant to Pa. R.C.P. No. 1531(d).

A rule is entered upon defendants to show cause at the above date and time why this preliminary injunction should not be continued.

This court requires bond to be posted by plaintiffs in the amount of \$100.00. The necessity for any continuation of bond and terms thereof shall be determined at the above date and time.



Judge

FILED

014:02
OCT 25 2002

William A. Shaw
Prothonotary

6cc
Amy Burant




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

GERALD L. HAWK, RUSSELL J. MASON, SR., *
and CONNIE M. MASON *

Plaintiffs *

vs. *

NO. 02- 1663-CD -CV

CLARENCE A. CATALDO, and WILLIAM J. *
HERZING and HUSTON TOWNSHIP, by its *
Supervisors, i.e., NELLIE BUNDY, TAMARA *
MCCLINTICK and DARREL J. PATTON, JR. *

Defendants *

PETITION FOR PRELIMINARY
INJUNCTION WITHOUT PRIOR
WRITTEN NOTICE AND
HEARING

Code: Civil

Filed on behalf of Plaintiffs:

GERALD L. HAWK, RUSSELL J.
MASON, SR., CONNIE M. MASON

COUNSEL OF RECORD FOR
THIS PARTY:

TIMOTHY E. DURANT, ESQ.
Pa. I. D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

FILED

OCT 23 2002

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSELL J. MASON, SR., *
and CONNIE M. MASON *

Plaintiffs *

vs. *

NO. 02- -CV

CLARENCE A. CATALDO, and WILLIAM J. *
HERZING and HUSTON TOWNSHIP, by its *
Supervisors, i.e., NELLIE BUNDY, TAMARA *
MCCLINTICK and DARREL J. PATTON, JR. *

Defendants *

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 Petition 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

GERALD L. HAWK, RUSSELL J. MASON, SR., *
and CONNIE M. MASON *

Plaintiffs *

vs. *

NO. 02-

-CV

CLARENCE A. CATALDO, and WILLIAM J. *
HERZING and HUSTON TOWNSHIP, by its *
Supervisors, i.e., NELLIE BUNDY, TAMARA *
MCCLINTICK and DARREL J. PATTON, JR. *

Defendants *

PETITION FOR PRELIMINARY INJUNCTION WITHOUT PRIOR
WRITTEN NOTICE

Plaintiffs, GERALD L. HAWK, RUSSELL J. MASON, SR., and CONNIE M. MASON, by their undersigned counsel, petition this Court for a preliminary injunction pursuant to Pa. R.C.P. 1531, and in support aver as follows:

1. Plaintiff, **GERALD L. HAWK** is an adult individual who resides with Russell J. Mason, Sr. and Connie M. Mason, at RD #1, Box 127B, Penfield, Clearfield County, Pennsylvania 15849.

2. Plaintiffs, **RUSSELL J. MASON, SR.** and **CONNIE M. MASON**, herein after "the Masons" are husband and wife, who reside at RD #1, Box 127B, Penfield, Clearfield County, Pennsylvania 15849.

3. Defendant **CLARENCE A. CATALDO**, is an adult individual whose last known address is RR #1, Box 115, Penfield., Clearfield County, PA 15849.

4. **WILLIAM J. HERZING**, is an adult individual whose last known address is RR #2, Penfield, Clearfield County, PA 15849 and who owns property adjacent to the herein disputed section of T-816..

5. **HUSTON TOWNSHIP** is a political subdivision located in Clearfield County,

Pennsylvania, with a mailing address of PO Box 38, Penfield, PA 15849-0038 and is operated and governed by three Township Supervisors who at present are; NELLIE BUNDY, TAMARA MCCLINTICK and DARREL J. PATTON, JR..

6. The three Township Supervisors, i.e. **NELLIE BUNDY, TAMARA MCCLINTICK** and **DARREL J. PATTON, JR.** are being named in their representative capacities.

7. By Agreement and Addendum dated November 21, 1980 recorded in the Clearfield County Recorder's Office in Miscellaneous Book 230 at page 437 on December 16, 1980 Russel J. Mason, plaintiff herein, and his sister Darlene A. Mason entered into an agreement (as joint tenants with the right of survivorship) to purchase the premises in Huston Township currently identified by Tax Map No. 119-I1-6 as H., Trailer, G. and 23 A surface. Since the summer of 1981 there has been someone living on these premises in a trailer or the house. This is the parcel where the plaintiffs now reside and their trailer situated hereon is rented out to a tenant. The Agreement and Addendum identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

8. Payments having been fully made by purchasers on the residence premises by January 1986, that certain deed dated January 27, 1986 recorded in the Clearfield County Register and Records Office in Deeds and Records Book 1090 at page 209 was delivered to Russel J. Mason and Darlene A. Mason (as joint tenants with the right of survivorship) all of which was in fulfillment of the terms of said Agreement. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

9. By deed dated April 26, 1994 from Darlene A. Mason, recorded in the Clearfield County Register and Records Office in Deeds and Records Book 1604 at page 533, Russel J. Mason and Connie M. Mason, Plaintiffs herein, acquired the other one-half interest in the said residence premises. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

10. By deed dated December 27, 2001 and recorded in the Clearfield County Recorder's

Office on December 28, 2001 as Instrument No. 2001-20785 title to the parcel vested in Russel J. Mason and Connie M. Mason as tenants by the entireties. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

11. Since purchasing the above referenced parcel in 1980 the Masons, their tenants and guests have accessed the subject property from T-337 via T-816, identified, marked and comprised of Church Street and Church Street Extension, a gravel roadway with a cartway of approximately 14 to 16 feet in width and a total length of 0.41 miles.

12. Neighbors of the Masons on T-816 (John R. Toth and Kenneth Stewart) have each used owned and used their houses for hunting and recreational purposes for a period in excess of 21 years, and during that time they have always accessed their houses from T-337 by use of T-816 as described above.

13. The United States Postal Service has used T-816 as necessary to deliver the mail to residents on a daily basis from April 5, 1969 up to and including the present time until the section of Church Street Extension was blockaded by defendants Herzing and Cataldo.

14. It is believed and averred that since at approximately 1960, T-816 has been maintained by Huston Township, which maintenance consisted of inter alia, applying gravel to the roadway in the summer and plowing snow in the winter.

15. Since at least 1960 the various residents in the area utilized, for regular travel, the section of Church Street Extension which defendant Cataldo aided and abetted by defendant Herzing seeks to close and blockade.

16. By deed dated December 19, 2001 and recorded in the Clearfield County Register and Records Office on December 19, 2001 as Instrument Number 2001-20360 defendant Cataldo acquired ownership of land adjoining Church Street Extension. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

17. On or about October 13, 2002 defendants Herzing and Cataldo and others at their direction cut off and blocked the section of Church Street Extension (T-816) which passes by

defendant Cataldo's newly acquired land. The blocking was done with trucks, cars, heavy equipment, barrels and no trespassing signs.

16. Due to the section of Church Street Extension being cut off plaintiffs have been required to traverse to and from their residence by a wholly inadequate round-about road which is more narrow, flanked by a hazardous ditch and 50% longer than the cut-off section.

17. Huston Township Supervisors made a summary decision on or about October 1, 2002 to abandon the portion of Church Street Extension at the request of defendant Cataldo. The decision was not in accord with the requirements to vacate a road as set out in Section 2304 of the Second Class Township Code.

18. Based upon information received it is believed and therefore averred that HUSTON TOWNSHIP intends to rename certain portions of Church Street or Church Street Extension and such renaming will adversely affect the plaintiff's by requiring the changing of their mailing addresses.

19. Plaintiffs have private rights to traverse Church Street Extension and the full length of T-816 by virtue of the legal doctrines of adverse possession (easement by prescription) and/or easement by implication.

20. Plaintiffs have no adequate remedy at law and no alternative except to obtain an injunction from this court to prohibit defendants from interfering with the use of the said road.

21. Plaintiffs will post such bond as may be required by this court.

WHEREFORE, plaintiffs request this Court to enter a preliminary injunction without written notice and hearing and a rule to show cause in the form attached to this petition. The Injunction is requested to include a prohibition against:

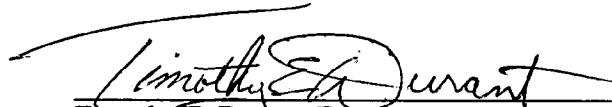
A. Defendants Cataldo or Herzing or anyone on their behalf blocking, obstructing or attempting to prohibit in any way the travel of vehicles across T-816 or Church Street or Church Street Extension in the Tyler area of Huston Township, and

B. Defendant Huston Township or its any of it Supervisors named herein from vacating

any portion of T-816 or Church Street, or Church Street Extension in any manner which is not in accord with the full requirements of the Statutes of Pennsylvania.

C. Defendant Huston Township or any of its Supervisors named herein from re-naming any portion of T-816, Church Street, or Church Street Extension without following the provisions of the Second Class Township Code or other good cause shown.

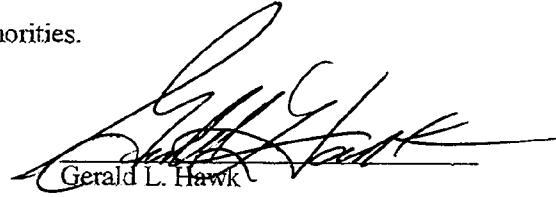
Date: October 21, 2002


Timothy E. Durant, Esquire
Attorney for Plaintiffs

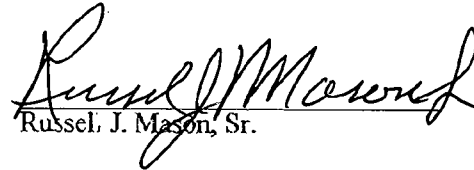
VERIFICATION

We, GERALD L. HAWK, RUSSELL J. MASON, Sr. CONNIE M. MASON, verify that the statements made in this Pleading are true and correct to the best of our knowledge, information and belief. Plaintiffs understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

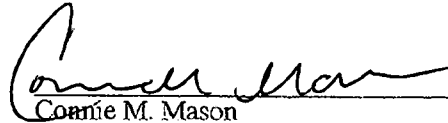
Dated: 10/17/02


Gerald L. Hawk

Dated: 10-17-02


Russel. J. Mason, Sr.

Dated: 10-17-02


Connie M. Mason

FILED

Plf pd.

82.00

01/25/2021

OCT 23 2002

7 cc Amy Darsant

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, and WILLIAM J.
HERZING and HUSTON TOWNSHIP, by its
Supervisors, i.e., NELLIE BUNDY, TAMARA
MCCLINTICK and DARREL J. PATTON, JR.

Defendants

NO. 02- 1663 -CD

BOND IN CONNECTION WITH PRELIMINARY INJUNCTION

AND NOW, this 25th day of October, 2002, KNOW ALL MEN BY THESE PRESENTS, THAT WE, **GERALD L. HAWK, RUSSEL J. MASON, SR.. and CONNIE M. MASON**, plaintiffs are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of \$100.00 paid in legal tender to the Prothonotary; to which payment, well and truly made, we bind ourselves, our and each of our heirs, executors, and administrators, firmly by these presents.

WHEREAS, plaintiffs filed a complaint in the Court of Common Pleas for the County of Clearfield, to No. 02- 1663 -CD against defendants, requesting, inter alia, an injunction to restrain the defendants as therein particularly set forth, which said injunction was duly granted by the said Court on the entering of the security in the above-mentioned sum.


NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, THAT if the injunction is dissolved because improperly granted, or for failure to hold a hearing, the plaintiffs shall pay to any person injured all damages sustained by reason of granting the injunction and all legally taxable costs and fees, this obligation then to be void; otherwise it is to remain in full force and effect.

FILED

OCT 25 2002

0/4:00/1
William A. Shaw
Prothonotary

4 came to the Court

 (SEAL)
GERALD L. HAWK, plaintiff on his own
behalf and on behalf of all plaintiffs

HL


GERALD L. HAWK
P.O. BOX 54
PENFIELD, PA 15849-0054

60-629/313
12455695

634

DATE *OCTOBER 21, 2002*

EXACT - MUST BE LEGIBLE & MATCH TAGBERRY

PRO THE NOTARY of Clearfield Co. \$ *100⁰⁰*
PAY TO THE ORDER OF
EXACTLY ONE HUNDRED 00/100 DOLLARS 

Security Features
Visible
On Back



DuBois Office
91 Beaver Drive
DuBois, PA 15801

Chairman's Club

MEMO

TF16 Inj.

[Signature]

MP

⑆031306294⑆ 1 2 45569 5⑈ 0634

Date: 10/25/2002

Clearfield County Court of Common Pleas

NO. 1850403

Time: 04:20 PM

Receipt

Page 1 of 1

Received of: Gerald L. Hawk \$ 100.00

One Hundred and 00/100 Dollars

Litigant: Hawk, Gerald L.

Case	Litigant type	Amount
2002-01663-CD	Plaintiff	
Cash bond		100.00
Total:		100.00

Check: 634

Payment Method: Check

Amount Tendered: 100.00

William A. Shaw, Prothonotary/Clerk of Courts

By: _____

Deputy Clerk

Clerk: BILLSHAW

Duplicate

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GERALD L. HAWK, RUSSEL J.
MASON, SR., and CONNIE M.
MASON,

Plaintiffs

vs.

CLARENCE A. CATALDO and
WILLIAM J. HERZING and
HUSTON TOWNSHIP, by its
Supervisors, i.e. NELLIE BUNDY,
TAMARA McCLINTICK and
DARREL J. PATTON, JR.,

Defendants

CIVIL DIVISION

No. 02-1663-CD

Type of case:

EQUITY

Type of pleading:

ENTRY OF APPEARANCE

Filed on behalf of:

DEFENDANTS -
CLARENCE A. CATALDO
and WILLIAM J. HERZING

Counsel of record for these
parties:

Robert M. Hanak, Esq.
I.D. No. 05911
Hanak, Guido and Taladay
498 Jeffers St., P. O. Box 487
DuBois, PA 15801

814-371-7768

FILED

NOV 21 2002

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J.
MASON, SR., and CONNIE M.
MASON,

Plaintiffs

vs.

No. 02-1663-CD

CLARENCE A. CATALDO and
WILLIAM J. HERZING and
HUSTON TOWNSHIP, by its
Supervisors, i.e. NELLIE BUNDY,
TAMARA McCLINTICK and
DARREL J. PATTON, JR.,

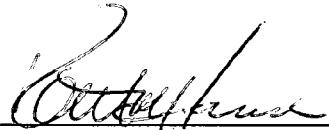
Defendants

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of CLARENCE A.

CATALDO and WILLIAM J. HERZING, Defendants above named.



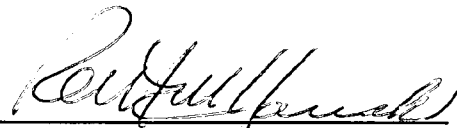
Robert M. Hanak
Attorney at Law

CERTIFICATE OF SERVICE

I certify that on the 19th day of November, 2002, a true and correct copy of the ENTRY OF APPEARANCE was sent via first class mail, postage prepaid, to the following:

Timothy E. Durant, Esq.
201 North Second St.
Clearfield, PA 16830

Kim C. Kesner, Esq.
23 North Second St.
Clearfield, PA 16830

A handwritten signature in cursive script, appearing to read "Robert M. Hanak", is written over a horizontal line.

Robert M. Hanak
Attorney for Defendants,
Clarence A. Cataldo and
William J. Herzing

FILED

NOV 21 2002

William A. Shaw
Prothonotary

NOV 21 2002
cc
Set

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

GERALD HAWK, RUSSEL J. MASON, :
SR. and CONNIE M. MASON :

-vs- :

No. 02 - 1663 - CD

CLARENCE A. CATALDO and WILLIAM :
J. HERZING, HUSTON TOWNSHIP, :
NELLIE BUNDY, TAMARA :
MCCLINTICK and DARREL J. PATTON, :
JR. :

ORDER

NOW, this 12th day of December, 2002, this being the day and date set for hearing into the above-captioned Petition for Preliminary Injunction, it is the ORDER of this Court that said Petition be and is hereby granted to the extent that the subject road shall remain open for the use of all emergency vehicles and trucks which have a legitimate need to access Plaintiffs' property. Said Petition is denied, however, with regards to Plaintiffs' use of said road with passenger vehicles and pick-up trucks pending hearing on the merits. It is the further ORDER of this Court that Plaintiffs shall advise all persons of whom they are aware who use the subject road of the nature of this Order.

By the Court,

President Judge

FILED

DEC 13 2002

William A. Shaw
Prothonotary

Shaw

FILED

100 Aug Durant

010:58801 100 Aug Hanak

DEC 19 2002

100 Aug ~~100~~

Yesnes

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

GERALD L. HAWK, RUSSEL J.
MASON, SR., and CONNIE M.
MASON,

Plaintiffs

vs.

CLARENCE A. CATALDO and
WILLIAM J. HERZING and
HUSTON TOWNSHIP, by its
Supervisors, i.e. NELLIE BUNDY,
TAMARA McCLINTICK and
DARREL J. PATTON, JR.,

Defendants

CIVIL DIVISION

No. 02-1663-CD

Type of case:

EQUITY

Type of pleading:

**ANSWER TO AMENDED
COMPLAINT AND NEW MATTER**

Filed on behalf of:

DEFENDANTS -
CLARENCE A. CATALDO
and WILLIAM J. HERZING

Counsel of record for these
parties:

Robert M. Hanak, Esq.
I.D. No. 05911
Hanak, Guido and Taladay
498 Jeffers St., P. O. Box 487
DuBois, PA 15801

814-371-7768

You are hereby notified to plead
to the within pleading within
twenty (20) days hereof or a
default judgment may be entered
against you.



FILED

DEC 17 2002

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J.
MASON, SR., and CONNIE M.
MASON,

Plaintiffs

vs.

No. 02-1663-CD

CLARENCE A. CATALDO and
WILLIAM J. HERZING and
HUSTON TOWNSHIP, by its
Supervisors, i.e. NELLIE BUNDY,
TAMARA McCLINTICK and
DARREL J. PATTON, JR.,

Defendants

ANSWER

AND NOW, come the Defendants, Clarence A. Cataldo and
William J. Herzing, and by and through their Attorney, Robert M.
Hanak, file the following Answer to the Amended Complaint:

1. Admitted.
2. Admitted.
3. Admitted.
4. It is admitted in part. It is denied that William J.
Herzing owns property adjacent to the disputed section of T-816.
5. Admitted.
6. Admitted.
7. It is admitted as to the recorded documents averred.
Further allegations as to residences or rentals are denied.
8. It is admitted as to the recorded documents averred.
Further allegations as to residences or rentals are denied.

9. Admitted.

10. Admitted.

11. Denied. Masons or guests or tenants may have used the roadway in question under consent by Defendant Herzing. It is denied that such road is a Township road.

12. The allegations of Paragraph No. 12 are denied in that any usage was sporadic, temporary, and with the consent of William Herzing. It is denied that there was 21 years of usage by said parties.

13. Denied.

14. It is denied that the Township has maintained the road since 1967. To the contrary, any use or maintenance commenced in the early 1980s with the consent of William Herzing.

15. Denied.

16. Admitted.

17. Admitted.

18. It is denied that there was any surface easement of the road in question, any defacto "taking", and further denied that the Township received liquid fuel allocations. Any usage by the Township was casual usage with the consent of William Herzing.

19. This allegation is directed to the Supervisor Defendants, and a responsive answer is not required of Herzing or Cataldo.

20. It is denied that there was any conspiracy or concert by Herzing or Cataldo, and the remaining allegations are denied.

21. It is denied that there were false or misleading statements made in which Defendants Herzing or Cataldo acted in conspiracy or concert with the Supervisor Defendants.

22. Admitted.

23. Denied that the roadway used as pleaded is inadequate. In fact, such roadway is a Township maintained road. it is denied that there is a hazardous ditch.

24. Admitted as to the abandonment of the road. The balance of the allegation is a legal conclusion to which a responsive answer is not necessary.

25. This applies to Defendants Huston Township Supervisors, therefore, a responsive answer from Herzing or Cataldo is not required.

26. Denied. Such maps do not show the subject road as part of the State recognized system.

27. It is denied that Plaintiffs have private rights to the said roadway, and it is further denied any application of the doctrines of adverse possession, easement by prescription or easement by implication. To the contrary, any usage was consensual usage given by William Herzing.

28. This is a conclusion of law, and a responsive answer is not required.

WHEREFORE, Defendants demand judgment in their favor.

NEW MATTER

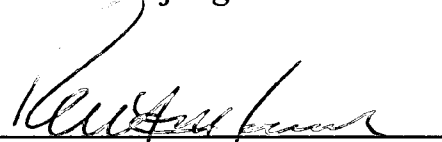
Defendants Cataldo and Herzing aver New Matter as follows:

29. The land on which the right-of-way which is subject to this action is not on land of Clarence Cataldo.

30. There are no private or public rights acquired by any user of the subject roadway as any past usage was consensual given specifically by Herzing.

31. For reasons that are believed to develop at trial, the Court lacks jurisdiction to affirm any order against Defendants Herzing or Cataldo.

WHEREFORE, Defendants demand judgment in their favor.

A handwritten signature in black ink, appearing to read "Robert M. Hanak", is written over a horizontal line.

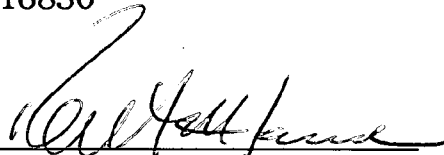
Robert M. Hanak
Attorney at Law

CERTIFICATE OF SERVICE

I certify that on the 16 day of December, 2002, a true and correct copy of the ANSWER AND NEW MATTER was sent via first class mail, postage prepaid, to the following:

Timothy E. Durant, Esq.
201 North Second St.
Clearfield, PA 16830

Kim C. Kesner, Esq.
23 North Second St.
Clearfield, PA 16830

A handwritten signature in dark ink, appearing to read "Robert M. Hanak", is written over a horizontal line.

Robert M. Hanak
Attorney for Defendants,
Clarence A. Cataldo and
William J. Herzing

FILED

NO CC
M/10:22:51
DEC 17 2002
KEY

William A. Shaw
Prothonotary

CP

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

GERALD L. HAWK, RUSSEL J.
MASON, SR., and CONNIE M.
MASON,

Plaintiffs

vs.

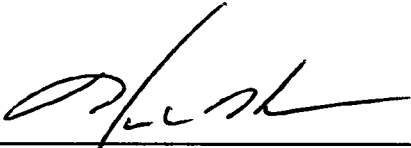
No. 02-1663-CD

CLARENCE A. CATALDO and
WILLIAM J. HERZING and
HUSTON TOWNSHIP, by its
Supervisors, i.e. NELLIE BUNDY,
TAMARA McCLINTICK and
DARREL J. PATTON, JR.,


Defendants

STIPULATION


This Stipulation is presented to your Honorable Court by all attorneys of record. It is agreed that to expedite hearing of this case, and to allow for judicial economy in the handling of this matter, it is agreed that any matters which would ordinarily be subject to be raised to the Court by virtue of preliminary objections, are preserved and may be raised by all parties at the trial of the case or in post-trial procedures, however, any such objections, to be argued, must be raised by the party and become a record matter in the transcript of the case.



Kim C. Kesner
Attorney for Defendants,
Huston Township and Supervisors



Timothy E. Durant
Attorney for Plaintiffs



Robert M. Hanak
Attorney for Defendants,
Cataldo and Herzing

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

GERALD L. HAWK, RUSSEL J.
MASON, SR., and CONNIE M.
MASON,

Plaintiffs

vs.

No. 02-1663-CD

CLARENCE A. CATALDO and
WILLIAM J. HERZING and
HUSTON TOWNSHIP, by its
Supervisors, i.e. NELLIE BUNDY,
TAMARA McCLINTICK and
DARREL J. PATTON, JR.,

Defendants

ORDER OF COURT

AND NOW, this 27th day of December, 2002,
upon presentation of the above Stipulation, the content of such
Stipulation is hereby ordered.

BY THE COURT:

P.J.

FILED

DEC 27 2002

William A. Shaw
Prothonotary

FILED

6 3:38 84 DEC 6 City Newark
DEC 27 2002

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J.
MASON, SR., and CONNIE M. MASON,
Plaintiffs

vs.

CLARENCE A. CATALDO and WILLIAM
J. HERZING and HUSTON TOWNSHIP,
by its Supervisors, i.e., NELLIE BUNDY,
TAMARA MCCLINTICK and DARREL J.
PATTON, JR.,
Defendants

: No. 02-1663-CD
:
: Type of Case: Equity
:
: Type of Pleading:
: Answer & New Matter to Amended
: Complaint in Equity
:
: Filed of behalf of: Defendants Huston
: Township, Nellie Bundy, Tamara
: McClintick and Darrel J. Patton, Jr.
:
: Counsel of Record for these Parties:
:
: Kim C. Kesner, Esquire
: Supreme Ct. I.D. No. 28307
:
: 23 North Second Street
: Clearfield, PA 16830
: 814-765-1706
:
: Counsel of Record for Plaintiffs:
:
: Timothy E. Durant, Esquire
: 201 North Second Street
: Clearfield, PA 16830
: 814-765-1711
:

FILED

JAN 06 2003

William A. Shaw
Prothonotary

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

GERALD L. HAWK, RUSSEL J.	:	No. 02-1663-CD
MASON, SR., and CONNIE M. MASON,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CLARENCE A. CATALDO and WILLIAM	:	
J. HERZING and HUSTON TOWNSHIP,	:	
by its Supervisors, i.e., NELLIE BUNDY,	:	
TAMARA MCCLINTICK and DARREL J.	:	
PATTON, JR.,	:	
Defendants	:	

ANSWER AND NEW MATTER TO AMENDED
COMPLAINT IN EQUITY ON BEHALF OF HUSTON TOWNSHIP,
NELLIE BUNDY, TAMARA MCCLINTICK AND DARREL J. PATTON, JR.

AND NOW, comes Defendants Huston Township, Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr., by Kim C. Kesner, Esquire, Solicitor of Huston Township who file this Answer and New Matter to Plaintiffs' Amended Complaint in Equity.

I. Answer

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. The Defendants believe and therefore aver that the disputed area being the subject of Plaintiffs' Amended Complaint lies within the boundaries of property owned by William J. Herzing and Anna Herzing.
5. Admitted.
6. Admitted.
7. Matters of record recited are admitted. Otherwise, Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations

contained in Paragraph 7 of Plaintiffs' Amended Complaint. Proof thereof at trial is hereby demanded.

8. Matters of record recited are admitted. Otherwise, Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 7 of Plaintiffs' Amended Complaint. Proof thereof at trial is hereby demanded.

9. Admitted.

10. Admitted.

11. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiffs' Amended Complaint regarding the Masons' past conduct and action. Otherwise, Defendants specifically deny that Huston Township has any sustainable right, title claim or interest in or to the area in dispute being the subject of Plaintiffs' Amended Complaint identified by Plaintiffs as "Church Street Extension".

12. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiffs' Amended Complaint regarding the past conduct and actions of John R. Toth and Kenneth Stuart. Otherwise, Defendants specifically deny that Huston Township has any sustainable right, title claim or interest in or to the area in dispute being the subject of Plaintiffs' Amended Complaint identified by Plaintiffs as "Church Street Extension".

13. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiffs' Amended Complaint regarding the past conduct and action of the United States Postal Service. Otherwise, Defendants specifically deny that Huston Township has any sustainable right, title claim or interest in or to

the area in dispute being the subject of Plaintiffs' Amended Complaint identified by Plaintiffs as "Church Street Extension".

14. Defendants specifically deny that the area in dispute identified by Plaintiffs as "Church Street Extension", has been utilized and maintained by Huston Township since 1967.

15. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 15 of Plaintiffs' Amended Complaint regarding the past conduct and actions of various residents of the area. Otherwise, Defendants specifically deny that Huston Township has any sustainable right, title claim or interest in or to the area in dispute being the subject of Plaintiffs' Amended Complaint identified by Plaintiffs as "Church Street Extension".

16. Admitted.

17. Admitted.

18. It is specifically denied that the Defendant Supervisors at the time this action was commenced jointly and severally knew or had reason to know that the Township had in fact maintained and/or plowed the disputed area for a period in excess of twenty-one (21) years and/or had made a de facto taking of the disputed area. To the contrary, when this action was filed, the Defendant Supervisors believed based upon information received and the advice of counsel that any maintenance of the disputed area by the Township had been with the consent of William J. Herzing and Anna Herzing and/or had been for insufficient duration to support a claim by the Township that it had acquired a surface easement over the disputed area.

19. It is specifically denied that the Defendant Supervisors made any false or misleading statements and/or acted with malice against Russell and Connie Mason and/or that the Defendant Supervisors made any decision or took any action relevant to this case because of prior lawsuits or claims filed against Huston Township by Connie M. Mason.

20. It is specifically denied that the Defendant Supervisors made any false or misleading statements and/or acted with malice against Russell and Connie Mason and/or that the Defendant Supervisors made any decision or took any action relevant to this case because of prior lawsuits or claims filed against Huston Township by Connie M. Mason and/or acted in any improper conspiracy with Defendants Herzing and Cataldo.

21. It is specifically denied that the Defendant Supervisors made any false or misleading statements and/or acted with malice against Russell and Connie Mason and/or that the Defendant Supervisors made any decision or took any action relevant to this case because of prior lawsuits or claims filed against Huston Township by Connie M. Mason and/or acted in any improper conspiracy with Defendants Herzing and Cataldo.

22. Admitted.

23. It is specifically denied that Plaintiffs lack adequate access to their residence(s).

24. It is specifically denied that Huston Township has taken any formal action to vacate the disputed area. To the contrary, the only action which Huston Township has taken is to publicly declare as averred in Paragraph 17 of Plaintiffs' Amended Complaint that based upon information received and advice of counsel, that Huston Township has no right, title, claim or interest in the disputed area.

25. It is specifically denied that Huston Township has taken any action to rename the disputed area. As averred hereinbefore, Huston Township believes and therefore avers that it has no right, title, claim or interest in and to the disputed area. As such, Huston Township believes and therefore avers that it has no right to name the disputed area as a township road or otherwise.

26. It is specifically denied that all Pennsylvania Department of Transportation Maps from 1933 to the present as well as all known official Pennsylvania Maps depict the disputed area as a Huston Township Road.

27. The allegations contained in Paragraph 27 of Plaintiffs' Amended Complaint constitute claims against Defendants Cataldo and Herzing. Therefore, a responsive pleading from Huston Township, Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr. is not required.

28. The averments contained in Paragraph 28 of Plaintiffs' Amended Complaint constitute an averment or conclusion of law to which a response is not required. To the extent that a response is required and is relevant it is specifically denied that Plaintiffs have no adequate remedy at law. To the contrary, the only allegations made in Plaintiffs' Amended Complaint regarding Huston Township are that: 1) Huston Township improperly vacated the disputed area; and 2) Huston Township intends to rename the disputed area which will adversely affect Plaintiffs. Plaintiffs have a direct right of appeal under the Administrative Agency Law with regard to any final decisions made by Huston Township in the regards indicated.

WHEREFORE, Defendants Huston Township, Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr. demand judgment in their favor.

II. New Matter

(Note: Defendants acknowledge that they are raising by New Matter certain Claims that are properly and solely raisable by Preliminary Objections. However, in accordance with the Stipulation, Defendants have been permitted to raise such claims by New Matter to be considered by this Court as a part of the trial in this matter.)

A. Demurrer by Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr.

1. In Paragraph 6 of their original Complaint, Plaintiffs state that they have sued Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr. as Huston Township Supervisors "in their representative capacities."

2. Defendants filed Preliminary Objections to Plaintiffs' original Complaint averring that the only cognizable claims made were against Huston Township.

3. In their Amended Complaint, Plaintiffs have asserted new allegations in Paragraphs 19, 20 and 21 that the individual Supervisors made "false and misleading statements" and acted with malice against the Plaintiffs in a conspiracy with Defendants Herzing and Cataldo.

4. However, Plaintiffs' prayer for relief requests no judgment or relief against the Supervisors in their individual capacities. To the contrary, Plaintiffs' prayer for relief in the Amended Complaint only asks for injunctive relief against Huston Township or the three individual Supervisors in their legislative functions.

5. Therefore, Plaintiffs' Amended Complaint has failed to state a claim or cause of action against Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr.

WHEREFORE, it is respectfully requested that this Court dismiss Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr. as parties defendant in this action.

B. Demurrer by Huston Township

6. The sole allegations made by Plaintiffs' Amended Complaint against Huston Township are contained in Paragraphs 24 and 25 as follows:

17. Huston Township Supervisors made a summary decision on or about October 1, 2002 to abandon the portion of Church Street Extension at the request of Defendant Cataldo. The decision is not in accord with the requirements to vacate a road as set out in Section 2304 of the Second Class Township Code.

18. Based upon information received it is believed and therefore averred that Huston Township intends to rename certain portions of Church Street or Church Street Extension and such renaming will adversely affect the Plaintiffs by requiring the changing of their mailing addresses.

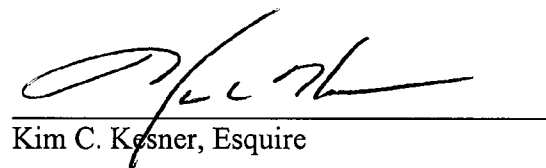
7. Plaintiffs have failed to state a claim in Paragraph 17 against Huston Township for which the relief requested can be granted. To the extent that Huston Township took insufficient or incomplete action to vacate a road under the Second Class Township Code, the action is legally void. To the extent that Huston Township took unlawful action to vacate a road

under the Second Class Township Code, Plaintiffs have the right to a direct appeal to this Court which is the exclusive remedy available to them for such a claim.

8. Plaintiffs have failed to state a claim or cause of action in Paragraph 18 against Huston Township upon which the relief requested can be granted. Plaintiffs' allegation "that Huston Township intends to rename certain portions of Church Street or Church Street Extension..." fails to state any cognizable claim for injunctive relief. That Plaintiffs may have a future claim or cause of action is purely speculative and review of any such claim is premature. Moreover, the naming of Township streets and alleys is within the sole discretion of the Township and any Court review of such matters is limited, which review is Plaintiffs' exclusive remedy.

WHEREFORE, it is respectfully requested that this Court dismiss Plaintiffs' Amended Complaint against Huston Township.

Respectfully submitted:



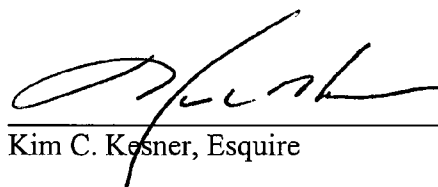
Kim C. Kesner, Esquire

VERIFICATION

The undersigned verifies that he is the attorney for Huston Township, Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr., Defendants, named in the within action, that as such attorney he is authorized to make this verification, and that the statements made in the foregoing Answer & New Matter are true and correct, not from his own knowledge, but from the information supplied to him and believed to be true, and that this Verification is filed by him for the purposes of expediting this litigation, and in the event a Verification from for Huston Township, Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr., Defendant, is required, same will be supplied. The undersigned understands that false statements made herein are subject to the penalties of 18 PA. C.S. 4904 relating to unsworn falsification to authorities.

Date: _____

1/6/03



Kim C. Kesner, Esquire

CERTIFICATE OF SERVICE

I hereby certify that on the 6 day of January, 2003, I caused to be served a true and correct copy of Answer and New Matter to Amended Complaint in Equity filed on behalf of Defendants Huston Township, Nellie Bundy, Tamara McClintick and Darrel J. Patton, Jr. on the following and in the manner indicated below:

BY U.S. FIRST CLASS MAIL,
POSTAGE PREPAID

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(Attorney for Plaintiffs)

Robert M. Hanak, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
Dubois, PA 15801
(Attorney for Defendants Herzing & Cataldo)



Kim C. Kesner, Esquire
Attorney for Defendants Huston Township,
Nellie Bundy, Tamara McClintick and
Darrel J. Patton, Jr.

23 North Second Street
Clearfield, PA 16830

(814) 765-1706 – telephone
(814) 765-7006 – facsimile

Date: January 6, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 02-1663-CD

GERALD L. HAWK, RUSSELL J.
MASON, SR. and CONNIE M. MASON,
Plaintiffs

vs.

CLARENCE A. CATALDO and WILLIAM
J. HERZING and HUSTON TOWNSHIP,
by its Supervisors, i.e.,
NETLIE BUNDY, TAMARA MCCLINTICK
and DARREL J. PATTON, JR.,
Defendants

ANSWER & NEW MATTER TO
AMENDED COMPLAINT

FILED

01/21/03
JAN 06 2003

William A. Shaw
Prothonotary

KIM C. KESNER
ATTORNEY AT LAW
23 North Second Street
CLEARFIELD, PA 16830
(814) 765-1706

4cc
Att. Kesner

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GERALD L. HAWK, et al :

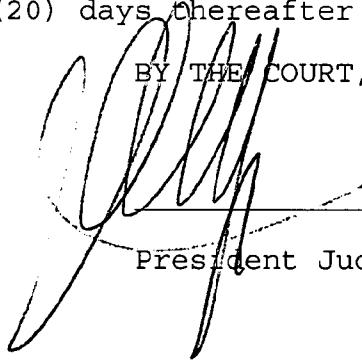
VS. : NO. 02-1663-CD

CLARENCE A. CATALDO, et al :

O R D E R

NOW, this 8th day of January, 2003, following testimony in the above-captioned matter, it is the ORDER of this Court that counsel for Plaintiffs file a brief within twenty (20) days from receipt of the deposition of George Hixon, and Defendants given twenty (20) days thereafter to respond in kind.

BY THE COURT,



President Judge

FILED

JAN 09 2003

William A. Shaw
Prothonotary

FILED

JAN 08 2003

2 cc Atty Durant

2 cc Atty Hanak

2 cc Atty Kessler

William A. Shaw
Prothonotary

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

RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, WILLIAM J.
HERZING and HUSTON TOWNSHIP

Defendants

AND

ANNA HERZING

Additional Defendant

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No. 02- 1663 -CD

IN EQUITY

2nd AMENDED COMPLAINT IN
EQUITY TO ADD ADDITIONAL
DEFENDANT

Filed on behalf of Plaintiffs:
RUSSEL J. MASON, SR., and
CONNIE M. MASON

COUNSEL OF RECORD FOR THESE
PARTIES:

TIMOTHY E. DURANT, ESQ.

Pa. I. D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

COUNSEL FOR HUSTON TWP.

KIM C. KESNER, ESQ.

Pa. I.D. No. 28307
23 North Second Street
Clearfield, PA 16830
814-765-1706

COUNSEL FOR DEFENDANTS

CATALDO & HERZING

ROBERT M. HANAK, ESQ.

Pa. I.D. No. 05911
Hanak, Guido & Taladay
498 Jeffers Street, P.O. Box 487
DuBois, PA 15801
814-371-7768

FILED

JUL 14 2003

William A. Shaw
Prothonotary

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

**RUSSEL J. MASON, SR.,
and CONNIE M. MASON**

Plaintiffs

vs.

**CLARENCE A. CATALDO, WILLIAM J.
HERZING**

Defendants

AND

ANNA HERZING

Additional Defendant

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No. 02- 1663 -CD

NOTICE TO DEFEND

TO ALL DEFENDANTS NAMED ABOVE:

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 Petition 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

**RUSSEL J. MASON, SR.
and CONNIE M. MASON**

Plaintiffs

vs.

**CLARENCE A. CATALDO,
WILLIAM J. HERZING**

Defendants

AND

ANNA HERZING

Additional Defendant

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No. 02- 1663 -CD

**2nd AMENDED COMPLAINT IN EQUITY TO ADD
ADDITIONAL DEFENDANT ANNA HERZING**

Plaintiffs, **RUSSEL J. MASON, SR.**, and **CONNIE M. MASON**, by their undersigned counsel, file this amended complaint in Equity and in support thereof aver as follows:

1. Plaintiffs, **RUSSEL J. MASON, SR.** and **CONNIE M. MASON**, herein after “the Masons” are husband and wife, who reside at RD #1, Box 127B, Penfield, Clearfield County, Pennsylvania 15849 who have had access to their home and/or parcel of land through the roadway, lane or drive hereinafter designated the disputed section of T-816.

2. Defendant **CLARENCE A. CATALDO**, hereinafter “Defendant Cataldo” is an adult individual whose last known address is RR #1, Box 115, Penfield., Clearfield County, PA 15849 and who owns property adjacent to the herein disputed section of T-816.

3. **WILLIAM J. HERZING and ANNA HERZING**, hereinafter jointly and severally “Defendant Herzing” are husband and wife whose last known address was RR #2, Penfield, Clearfield County, PA 15849 and who jointly own parcels of property which are either, adjacent to or perhaps underlie the herein disputed section of T-816.

4. **HUSTON TOWNSHIP** hereinafter “Township” is a political subdivision located

in Clearfield County, Pennsylvania whose mailing address is PO Box 38, Penfield, PA 15849-0038.

5. By Agreement and Addendum dated November 21, 1980 recorded in the Clearfield County Recorder's Office in Miscellaneous Book 230 at page 437 on December 16, 1980 Russel J. Mason, plaintiff herein, and his sister Darlene A. Mason entered into an agreement (as joint tenants with the right of survivorship) to purchase the premises in Huston Township currently identified by Tax Map No. 119-I1-6 as H., Trailer, G. and 23 A surface. Since the summer of 1981 there has been someone living on these premises in a trailer or the house. This is the parcel where the plaintiffs now reside and their trailer situated hereon is rented out to a tenant. The Agreement and Addendum identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

6. Payments having been fully made by purchasers on the residence premises by January 1986, that certain deed dated January 27, 1986 recorded in the Clearfield County Register and Records Office in Deeds and Records Book 1090 at page 209 was delivered to Russel J. Mason and Darlene A. Mason (as joint tenants with the right of survivorship) all of which was in fulfillment of the terms of said Agreement. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

7. By deed dated April 26, 1994 from Darlene A. Mason, recorded in the Clearfield County Register and Records Office in Deeds and Records Book 1604 at page 533, Russel J. Mason and Connie M. Mason, Plaintiffs herein, acquired the other one-half interest in the said residence premises. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

8. By deed dated December 27, 2001 and recorded in the Clearfield County Recorder's Office on December 28, 2001 as Instrument No. 2001-20785 title to the parcel vested in Russel J. Mason and Connie M. Mason as tenants by the entirety. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

9. Since purchasing the above referenced parcel in 1980 the Masons, their tenants and

guests have accessed the subject property from T-337 via T-816, identified, marked and comprised of Church Street and Church Street Extension, a gravel roadway with a cartway of approximately 14 to 16 feet in width and a total length of 0.41 miles.

10. Neighbors of the Masons on T-816 (John R. Toth and Kenneth Stuart have each owned and used their houses for hunting and recreational purposes for a period in excess of 21 years, and during that time they have always accessed their houses from T-337 by use of T-816 as described above.

11. The United States Postal Service has used T-816 as necessary to deliver the mail to residents on a daily basis from April 5, 1969 up to and including the present time until a certain segment or section of Church Street Extension was blockaded by defendants Herzing and Cataldo.

12. It is believed and averred that since approximately 1967, T-816 has been utilized and maintained by Huston Township, which maintenance consisted of inter alia, applying gravel to the roadway in the summer and plowing snow in the winter and using the disputed section for all township road purposes as needed.

13. Since at least 1967 the various residents in the area utilized the disputed segment of Church Street Extension for regular travel.

14. By deed dated December 19, 2001 and recorded in the Clearfield County Register and Records Office on December 19, 2001 as Instrument Number 2001-20360 defendant Cataldo acquired ownership of land adjoining Church Street Extension. The deed identified in this paragraph is incorporated herein by reference as if set out in full and attached hereto.

15. On October 1, 2002 the Huston Township Supervisors read and approved the following statement, *"In response to a request from property owners C.A. Cataldo and William Herzing, and supported by legal documentation, we will no longer be maintaining the dirt lane traversing their properties. Our solicitor has advised us that the municipality has no legal claim to this land and should honor the request of the property owners. The Township has never received liquid fuel allocations for maintaining this lane. PennDot is in the process of re-surveying the roads*

in this area for the purpose of returning to their original deed names and for liquid fuels appropriation.”

16. It is believed and therefore averred that the Supervisors jointly and severally knew or had reason to know that the township had in fact maintained and/or plowed this disputed segment of Church Street Extension for a period in excess of twenty one years and had thereby acquired a surface easement over it and a defacto “taking” of the disputed segment and it had thus become a part of the township road system, i.e. T-816 as well as the fact that liquid fuel allocations had been received for maintaining the disputed section.

17. It is believed and therefore averred that the supervisors in making false and misleading statements were acting with malice against Connie M. Mason and her husband Russel due to the prior suits filed against Huston Township by Connie M. Mason for violations of the Whistle Blower Act, the Civil Rights Act and the Worker’s Compensation act.

18. It is believed and therefore averred that the supervisors in making false and misleading statements in the public meeting were acting with malice in a conspiracy and in concert with defendants Herzing and Cataldo because Connie Mason was seeking money damages against Huston Township.

19. It is believed and therefore averred that the afore-said supervisors in making false and misleading statements to their solicitor as to the maintenance of the disputed segment were acting with malice in a conspiracy and in concert with defendants.

20. On or about October 13, 2002 defendants Herzing and Cataldo and others at their direction cut off and blocked the section of Church Street Extension (T-816) which passes by defendant Cataldo’s newly acquired land. The blocking was done with trucks, cars, heavy equipment, barrels and no trespassing signs.

21. Due to the section of Church Street Extension being cut off plaintiffs have been required to traverse to and from their residence by a wholly inadequate round-about road which is more narrow, flanked by a hazardous ditch and 50% longer than the cut-off section.

22. Huston Township Supervisors made a summary decision on or about October 1, 2002 to abandon the portion of Church Street Extension at the request of defendant Cataldo. The decision was not in accord with the requirements to vacate a road as set out in Section 2304 of the Second Class Township Code.

23. Based upon information received as set out in paragraph 17 supra, it is believed and therefore averred that HUSTON TOWNSHIP intends to rename certain portions of Church Street or Church Street Extension and such renaming will adversely affect the plaintiff's by requiring the changing of their mailing addresses.

24. All Pennsylvania Department of Transportation maps from 1933 to the present as well as all known official Pennsylvania maps depict the disputed segment as part of Huston Township T-816.

25. Plaintiffs have private rights to traverse Church Street Extension and the full length of T-816 by virtue of the legal doctrines of adverse possession (easement by prescription) and/or easement by implication.

26. Plaintiffs have no adequate remedy at law and no alternative except to obtain a permanent injunction from this court to prohibit defendants from interfering with the use of the said road.

27. Anna Herzing is an indispensable party to this litigation and pursuant to this Court's Order of June 23, 2003 she must be added as a party defendant in accordance with Rule 2232 c of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, plaintiffs request that this court order:

A. That Anna Herzing is an indispensable party and is hereby added as an additional defendant.

B. That Defendants Cataldo or Herzing or anyone on their behalf shall not block, obstruct or attempt to prohibit in any way the travel of vehicles across T-816 or Church Street or Church Street Extension or such other name as shall be thereafter used for such portion of the subject

road in the Tyler area of Huston Township, and

C. That Defendant Huston Township or its any of it Supervisors or anyone on their behalf shall not vacate any portion of T-816 or Church Street, or Church Street Extension in any manner which is not in accord with the full requirements of the Statutes of Pennsylvania.

D. That the subject roadway (i.e. the disputed section) shall be and is declared a public road and more specifically a Huston Township Road.

E. That Defendant Huston Township or any of its Supervisors shall not re-name any portion of T-816, Church Street, or Church Street Extension without following the provisions of the Second Class Township Code or other good cause shown.

F. That Plaintiffs have acquired and easement by prescription over the subject roadway.

G. Such other relief as the court shall deem appropriate and necessary under the circumstances.

H. And render a full opinion in accordance with it's Order and Opinion dated June 23, 2003.

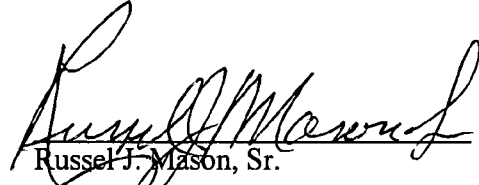
Date: July 14, 2003


Timothy E. Durant, Esquire
Attorney for Plaintiffs

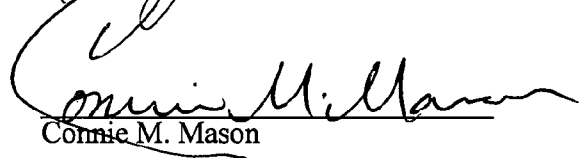
VERIFICATION

We, RUSSEL J. MASON, SR., and CONNIE M. MASON, verify that the statements made in this Pleading are true and correct to the best of our knowledge, information and belief. Plaintiffs understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Dated: July 12, 2003


Russel J. Mason, Sr.

Dated: July 12, 2003


Connie M. Mason

FILED

9:54 AM JUL 14 2003

[Signature]

William A. Shaw
Prothonotary

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

RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, WILLIAM J.
HERZING and HUSTON TOWNSHIP

Defendants

AND

ANNA HERZING

Additional Defendant *

No. 02- 1663 -CD

IN EQUITY

FILED

JUL 15 2003

CERTIFICATE OF SERVICE

William A. Shaw
Prothonotary

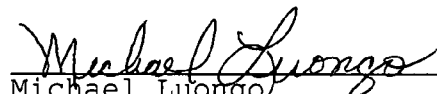
I, MICHAEL LUONGO, verify that on July, 15, 2003, I did deposit in the United States First Class Mail certified copies of the Plaintiffs' 2nd Amended Complaint To Add Additional Defendant and Plaintiffs' Suggestion Of Succession. The said documents were sent to:

ROBERT M. HANAK, ESQ., Hanak, Guido & Taladay, 498 Jeffers Street, P.O. Box 487, DuBois, PA 15801 counsel for Clarence A. Cataldo, William J. Herzing and Anna Herzing; and

KIM C. KESNER, ESQ., 23 North Second Street, Clearfield, PA 16830 counsel for Huston Township.

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

Dated: 7-15-03


Michael Luongo
201 North Second Street
Clearfield, PA 16830

FILED

02:46 PM
JUL 15 2003

William A. Shaw
Prothonotary

4cc
ECS

Atty Durant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

RUSSEL J. MASON, SR. and
CONNIE M. MASON,
Plaintiffs

vs.

CLARENCE A. CATALDO,
WILLIAM J. HERZING and
HUSTON TOWNSHIP,
Defendants

and

ANNA HERZING,
Additional Defendant

CIVIL DIVISION

No. 02-1663-CD

Type of case:

EQUITY

Type of pleading:

**ANSWER TO SECOND AMENDED
COMPLAINT AND NEW MATTER**

Filed on behalf of:

DEFENDANTS -
CLARENCE A. CATALDO,
WILLIAM J. HERZING, and
ADDITIONAL DEFENDANT,
ANNA HERZING

Counsel of record for these
parties:

Robert M. Hanak, Esq.
I.D. No. 05911
Hanak, Guido and Taladay
498 Jeffers St., P. O. Box 487
DuBois, PA 15801

814-371-7768

You are hereby notified to plead
to the within pleading within
twenty (20) days hereof or a
default judgment may be entered
against you.



FILED

AUG 01 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

RUSSEL J. MASON, SR. and
CONNIE M. MASON,
Plaintiffs

vs.

No. 02-1663-CD

CLARENCE A. CATALDO,
WILLIAM J. HERZING and
HUSTON TOWNSHIP,
Defendants

and

ANNA HERZING,
Additonal Defendant

ANSWER TO SECOND AMENDED COMPLAINT

AND NOW, come the Defendants, Clarence A. Cataldo and William J. Herzing, and Additional Defendant, Anna Herzing, and by and through their Attorney, Robert M. Hanak, file the following Answer to the Second Amended Complaint:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. It is admitted as to the recorded documents averred.

Further allegations as to residences or rentals are denied.

6. It is admitted as to the recorded documents averred.

Further allegations as to residences or rentals are denied.

7. Admitted.
8. Admitted.

9. Denied. Masons or guests or tenants may have used the roadway in question under consent by Defendant Herzing. It is denied that such road is a Township road.

10. The allegations of Paragraph No. 12 are denied in that any usage was sporadic, temporary, and with the consent of William Herzing. It is denied that there was 21 years of usage by said parties.

11. Denied.

12. It is denied that the Township has maintained the road since 1967. To the contrary, any use or maintenance commenced in the early 1980s with the consent of William Herzing.

13. Denied.

14. Admitted.

15. Admitted.

16. It is denied that there was any surface easement of the road in question, any defacto "taking", and further denied that the Township received liquid fuel allocations. Any usage by the Township was casual usage with the consent of William Herzing.

17. This allegation is directed to the Township Defendant, and a responsive answer is not required of Herzings or Cataldo.

18. It is denied that there was any conspiracy or concert by Herzings or Cataldo, and the remaining allegations are denied.

19. It is denied that there were false or misleading statements made in which Defendants Herzing or Cataldo acted in conspiracy or concert with the Supervisors.

20. Admitted.

21. Denied that the roadway used as pleaded is inadequate. In fact, such roadway is a Township maintained road. it is denied that there is a hazardous ditch.

22. Admitted as to the abandonment of the road. The balance of the allegation is a legal conclusion to which a responsive answer is not necessary.

23. This applies to Defendant Huston Township, therefore, a responsive answer from Herzings or Cataldo is not required.

24. Denied. Such maps do not show the subject road as part of the State recognized system.

25. It is denied that Plaintiffs have private rights to the said roadway, and it is further denied any application of the doctrines of adverse possession, easement by prescription or easement by implication. To the contrary, any usage was consensual usage given by William Herzing.

26. This is a conclusion of law, and a responsive answer is not required.

27. Admitted.

WHEREFORE, Defendants and Additional Defendant demand judgment in their favor.

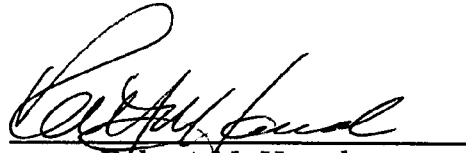
NEW MATTER

Defendants Cataldo and Herzing and Additional Defendant, Anna Herzing, aver New Matter as follows:

28. The land on which the right-of-way which is subject to this action is not on land of Clarence Cataldo.

29. There are no private or public rights acquired by any user of the subject roadway as any past usage was consensual given specifically by Herzing.

WHEREFORE, Defendants, Clarence A. Cataldo and William J. Herzing, and Additional Defendant, Anna Herzing, demand judgment in their favor.



Robert M. Hanak
Attorney at Law

VERIFICATION

I, CLARENCE A. CATALDO, do hereby verify that I have read the foregoing ANSWER TO SECOND AMENDED COMPLAINT AND NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 7-31-03

A handwritten signature in black ink, appearing to read 'Clarence A. Cataldo', written over a horizontal line.

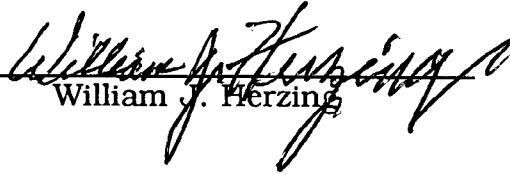
Clarence A. Cataldo

VERIFICATION

I, WILLIAM J. HERZING, do hereby verify that I have read the foregoing ANSWER TO SECOND AMENDED COMPLAINT AND NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 07-29-03



William J. Herzing

VERIFICATION

I, ANNA HERZING, do hereby verify that I have read the foregoing ANSWER TO SECOND AMENDED COMPLAINT AND NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 07-29-03


Anna M. Herzing
Anna Herzing

CERTIFICATE OF SERVICE

I certify that on the 31 day of July, 2003, a true and correct copy of the ANSWER AND NEW MATTER was sent via first class mail, postage prepaid, to the following:

Timothy E. Durant, Esq.
201 North Second St.
Clearfield, PA 16830

Kim C. Kesner, Esq.
23 North Second St.
Clearfield, PA 16830


Robert M. Hanak
Attorney for Defendants,
Clarence A. Cataldo and
William J. Herzing, and
Additional Defendant,
Anna Herzing

FILED

NO
cc
M/10:44
AUG 01 2003

William A. Shaw
Prothonotary/Clerk of Courts

[Handwritten signature]

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

RUSSEL J. MASON, SR. and	:	No. 02-1663-CD
CONNIE M. MASON,	:	
Plaintiffs	:	Type of Case: Equity
	:	
vs.	:	Type of Pleading:
	:	Answer to Second Amended
	:	Complaint in Equity
	:	
CLARENCE A. CATALDO, WILLIAM	:	Filed on behalf of: Huston Township
J. HERZING and HUSTON TOWNSHIP,	:	
Defendants	:	Counsel of Record for these Parties:
	:	
and	:	Kim C. Kesner, Esquire
	:	Supreme Ct. I.D. No. 28307
ANNA HERZING,	:	
Additional Defendant	:	23 North Second Street
	:	Clearfield, PA 16830
	:	814-765-1706
	:	
	:	Counsel of Record for Plaintiffs:
	:	
	:	Timothy E. Durant, Esquire
	:	201 North Second Street
	:	Clearfield, PA 16830
	:	814-765-1711
	:	
	:	Counsel for Defendants Cataldo &
	:	Herzing
	:	
	:	Robert M. Hanak, Esquire
	:	Hanak, Guido & Taladay
	:	498 Jeffers Street, P.O. Box 487
	:	DuBois, PA 15801
	:	814-371-7768

FILED

AUG 01 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

RUSSEL J. MASON, SR. and	:	No. 02-1663-CD
CONNIE M. MASON,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CLARENCE A. CATALDO and WILLIAM	:	
J. HERZING and HUSTON TOWNSHIP,	:	
Defendants	:	
	:	
and	:	
	:	
ANNA HERZING,	:	
Additional Defendant	:	

ANSWER TO SECOND AMENDED
COMPLAINT IN EQUITY ON BEHALF OF HUSTON TOWNSHIP,

AND NOW, comes Defendant Huston Township, by Kim C. Kesner, Esquire, Solicitor of Huston Township who file this Answer to Plaintiffs' Second Amended Complaint in Equity.

1. Admitted.
2. Admitted in part and denied in part. The Defendant believes and therefore avers that the disputed area being the subject of Plaintiffs' Second Amended Complaint lies within the boundaries of property owned by William J. Herzing and Anna Herzing.
3. Admitted.
4. Admitted.
5. Matters of record recited are admitted. Otherwise, Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 5 of Plaintiffs' Second Amended Complaint. Proof thereof at trial is hereby demanded.

6. Matters of record recited are admitted. Otherwise, Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 6 of Plaintiffs' Second Amended Complaint. Proof thereof at trial is hereby demanded.

7. Matters of record recited are admitted. Otherwise, Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 7 of Plaintiffs' Second Amended Complaint. Proof thereof at trial is hereby demanded.

8. Matters of record recited are admitted. Otherwise, Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 8 of Plaintiffs' Second Amended Complaint. Proof thereof at trial is hereby demanded.

9. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 9 of Plaintiffs' Second Amended Complaint regarding the Masons' past conduct and action. Otherwise, Defendant specifically denies that Huston Township has any sustainable right, title claim or interest in or to the area in dispute being the subject of Plaintiffs' Second Amended Complaint identified by Plaintiffs as "Church Street Extension".

10. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10 of Plaintiffs' Second Amended Complaint regarding the past conduct and actions of John R. Toth and Kenneth Stuart. Otherwise, Defendant specifically denies that Huston Township has any sustainable right, title claim or

interest in or to the area in dispute being the subject of Plaintiffs' Second Amended Complaint identified by Plaintiffs as "Church Street Extension".

11. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiffs' Second Amended Complaint regarding the past conduct and action of the United States Postal Service. Otherwise, Defendant specifically denies that Huston Township has any sustainable right, title claim or interest in or to the area in dispute being the subject of Plaintiffs' Second Amended Complaint identified by Plaintiffs as "Church Street Extension".

12. Defendant admits that Huston Township provided some maintenance of the area in dispute from 1967 until October 13, 2002. However, the Township's maintenance commenced after the Township Road Master asked for and received permission from Defendant William Herzing to plow through the disputed area because the Township plow had difficulty maneuvering around a turn on Township Route T-816. Until 1996, any maintenance of the area in question was with Defendant William Herzing's express permission in all cases.

13. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiffs' Second Amended Complaint regarding the past conduct and actions of various residents of the area. Otherwise, Defendant specifically denies that Huston Township has any sustainable right, title claim or interest in or to the area in dispute being the subject of Plaintiffs' Second Amended Complaint identified by Plaintiffs as "Church Street Extension".

14. Admitted.

15. Admitted.

16. It is specifically denied that the Supervisors at the time this action was commenced jointly and severally knew or had reason to know that the Township had in fact maintained and/or plowed the disputed area for a period in excess of twenty-one (21) years and/or had acquired a surface easement over it and/or had made a de facto taking of the disputed area. To the contrary, when this action was filed, the Supervisors believed based upon information received and the advice of counsel that any maintenance of the disputed area by the Township had been with the consent of William J. Herzing and Anna Herzing and/or had been for insufficient duration to support a claim by the Township that it had acquired a surface easement over the disputed area.

17. It is specifically denied that the Supervisors made any false or misleading statements and/or acted with malice against Russell and Connie Mason and/or that the Supervisors made any decision or took any action relevant to this case because of prior lawsuits or claims filed against Huston Township by Connie M. Mason and/or her pursuit of any damages against the Township.

18. It is specifically denied that the Supervisors made any false or misleading statements and/or acted with malice against Russell and Connie Mason and/or that the Supervisors made any decision or took any action relevant to this case because of prior lawsuits or claims filed against Huston Township by Connie M. Mason and/or acted in any improper conspiracy with Defendants Herzing and Cataldo.

19. It is specifically denied that the Supervisors made any false or misleading statements and/or acted with malice against Russell and Connie Mason and/or that the Supervisors made any decision or took any action relevant to this case because of prior lawsuits

or claims filed against Huston Township by Connie M. Mason and/or acted in any improper conspiracy with Defendants Herzing and Cataldo.

20. Admitted.

21. It is specifically denied that Plaintiffs lack adequate access to their residence(s).

22. It is specifically denied that Huston Township has taken any formal action to vacate the disputed area. To the contrary, the only action which Huston Township has taken is to publicly declare as averred in Paragraph 15 of Plaintiffs' Second Amended Complaint that based upon information received and advice of counsel, that Huston Township has no right, title, claim or interest in the disputed area.

23. It is specifically denied that Huston Township has taken any action to rename the disputed area. As averred hereinbefore, Huston Township believes and therefore avers that it has no right, title, claim or interest in and to the disputed area. As such, Huston Township believes and therefore avers that it has no right to name the disputed area as a township road or otherwise.

24. It is specifically denied that all Pennsylvania Department of Transportation Maps from 1933 to the present as well as all known official Pennsylvania Maps depict the disputed area as a Huston Township Road.

25. The allegations contained in Paragraph 25 of Plaintiffs' Second Amended Complaint constitute claims against Defendants Cataldo and Herzing. Therefore, a responsive pleading from Huston Township is not required.

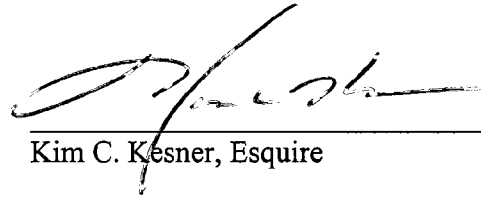
26. The averments contained in Paragraph 26 of Plaintiffs' Second Amended Complaint constitute an averment or conclusion of law to which a response is not required. To the extent that a response is required and is relevant it is specifically denied that Plaintiffs have no adequate remedy at law. To the contrary, the only allegations made in Plaintiffs' Second

Amended Complaint regarding Huston Township are that: 1) Huston Township improperly vacated the disputed area; and 2) Huston Township intends to rename the disputed area which will adversely affect Plaintiffs. Plaintiffs have a direct right of appeal under the Administrative Agency Law with regard to any final decisions made by Huston Township in the regards indicated.

27. Admitted.

WHEREFORE, Defendant Huston Township demands judgment in its favor.

Respectfully submitted:



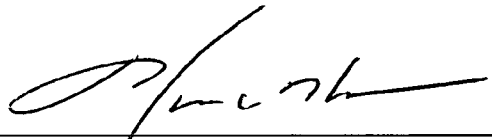
Kim C. Kesner, Esquire

VERIFICATION

The undersigned verifies that he is the attorney for Huston Township, Defendant, named in the within action, that as such attorney he is authorized to make this verification, and that the statements made in the foregoing Answer to Plaintiffs' Second Amended Complaint are true and correct, not from his own knowledge, but from the information supplied to him and believed to be true, and that this Verification is filed by him for the purposes of expediting this litigation, and in the event a Verification from Huston Township, Defendant, is required, same will be supplied. The undersigned understands that false statements made herein are subject to the penalties of 18 PA. C.S. 4904 relating to unsworn falsification to authorities.

Date: _____

7/31/03



Kim C. Kesner, Esquire

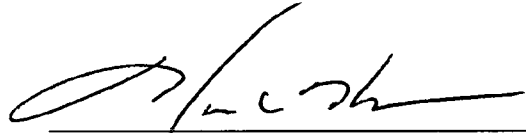
CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 2003, I caused to be served a true and correct copy of Answer to Plaintiffs' Second Amended Complaint in Equity filed on behalf of Defendants Huston Township on the following and in the manner indicated below:

BY U.S. FIRST CLASS MAIL,
POSTAGE PREPAID

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(Attorney for Plaintiffs)

Robert M. Hanak, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
Dubois, PA 15801
(Attorney for Defendants Herzing & Cataldo)



Kim C. Kesner, Esquire
Attorney for Defendants Huston Township,

23 North Second Street
Clearfield, PA 16830

(814) 765-1706 – telephone
(814) 765-7006 – facsimile

Date: August 1, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 02-1663-CD

RUSSEL J. MASON, SR. and CONNIE
M. MASON,
Plaintiffs

vs.

CLARENCE A. CATALDO, WILLIAM J.
HERZING and HUSTON TOWNSHIP,
Defendants

and

ANNA HERZING,
Additional Defendant

ANSWER TO SECOND AMENDED
COMPLAINT IN EQUITY

William A. Shaw
Prothonotary/Clerk of Courts

KIM C. KESNER
ATTORNEY AT LAW
23 North Second Street
CLEARFIELD, PA 16830
(814) 765-1706

FILED 4cc
0/2:53:46
AUG 01 2003
Kag
Attg Kesner

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

RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, WILLIAM J.
HERZING and HUSTON TOWNSHIP

Defendants

AND

ANNA HERZING

Additional Defendant *

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No. 02- 1663 -CD

IN EQUITY

REPLY TO NEW MATTER

Filed on behalf of Plaintiffs:
RUSSEL J. MASON, SR., and
CONNIE M. MASON

COUNSEL OF RECORD FOR THESE
PARTIES:

TIMOTHY E. DURANT, ESQ.

Pa. I. D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

COUNSEL FOR HUSTON TWP.

KIM C. KESNER, ESQ.

Pa. I.D. No. 28307
23 North Second Street
Clearfield, PA 16830
814-765-1706

COUNSEL FOR DEFENDANTS

CATALDO & HERZING

ROBERT M. HANAK, ESQ.

Pa. I.D. No. 05911
Hanak, Guido & Taladay
498 Jeffers Street, P.O. Box 487
DuBois, PA 15801
814-371-7768

FILED

AUG 15 2003

01/11/03/1/03
William A. Shaw
Prothonotary

Y SENT TO JUDGE

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

**RUSSEL J. MASON, SR.
and CONNIE M. MASON**

Plaintiffs

vs.

No. 02- 1663 -CD

**CLARENCE A. CATALDO,
WILLIAM J. HERZING**

Defendants

AND

ANNA HERZING

Additional Defendant

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**REPLY TO NEW MATTER OF C. CATALDO, W. HERZING
ADDITIONAL DEFENDANT ANNA HERZING**

Plaintiffs, **RUSSEL J. MASON, SR.**, and **CONNIE M. MASON**, by their undersigned counsel, file this Reply to New Matter and in support thereof aver as follows:

28. Denied. On the contrary, Plaintiffs, **RUSSEL J. MASON, SR.** and **CONNIE M. MASON**, are without knowledge sufficient to know for certain whose property is traversed by the disputed section of T-816 but no blockage of the said section occurred until **CLARENCE A. CATALDO** purchased land under or adjacent to the said section and both **CLARENCE A. CATALDO** and **WILLIAM J. HERZING** were personally involved in blocking said section on and after October 13, 2002.

29. No answer is required as this is merely a repetition of the denial previously set out be defendants in their answer to Complaint. Furthermore this is a conclusion of law and thus does not require an answer. To the extent that an answer may be required plaintiffs reply as follows: Denied. On the contrary no permission was ever given to plaintiffs nor did they ever ask for permission from defendants **HERZING** or **CATALDO** or any other person or persons. Plaintiffs were never stopped from using the disputed section of T-816 area until on or about October 13,

2002, the date set out in their Complaint.

WHEREFORE, plaintiffs request that this court order:

A. That Defendants Cataldo or the Herzings or anyone on their behalf shall not block, obstruct or attempt to prohibit in any way the travel of vehicles across T-816 or Church Street or Church Street Extension or such other name as shall be thereafter used for such portion of the subject road in the Tyler area of Huston Township, and

B. That Defendant Huston Township or its any of it Supervisors or anyone on their behalf shall not vacate any portion of T-816 or Church Street, or Church Street Extension in any manner which is not in accord with the full requirements of the Statutes of Pennsylvania.

C. That the subject roadway (i.e. the disputed section) shall be and is declared a public road and more specifically a Huston Township Road.

D. That Defendant Huston Township or any of its Supervisors shall not re-name any portion of T-816, Church Street, or Church Street Extension without following the provisions of the Second Class Township Code or other good cause shown.

E. That Plaintiffs have acquired an easement by prescription over the subject roadway.

F. Such other relief as the court shall deem appropriate and necessary under the circumstances.

And that this Court render a full opinion in accordance with its Order and Opinion dated June 23, 2003.

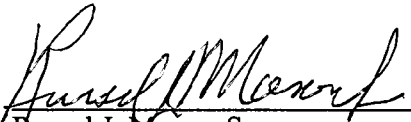
Date: August , 2003


Timothy E. Durant, Esquire
Attorney for Plaintiffs

VERIFICATION

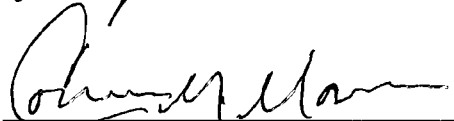
We, RUSSEL J. MASON, SR., and CONNIE M. MASON, verify that the statements made in this Pleading are true and correct to the best of our knowledge, information and belief. Plaintiffs understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Dated:



Russel J. Mason, Sr.

Dated:



Connie M. Mason

FILED

AUG 15 2003

William A. Shaw
Prothonotary

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

RUSSEL J. MASON, SR.,
and CONNIE M. MASON

Plaintiffs

vs.

CLARENCE A. CATALDO, WILLIAM J.
HERZING and HUSTON TOWNSHIP

Defendants

AND

ANNA HERZING

Additional Defendant

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No. 02- 1663 -CD

IN EQUITY

CERTIFICATE OF SERVICE

I, MICHAEL LUONGO, verify that on August, 15, 2003, I did deposit in the United States First Class Mail certified copies of the Plaintiffs' Reply To New Matter. The said documents were sent to:

ROBERT M. HANAK, ESQ., Hanak, Guido & Taladay, 498 Jeffers Street, PO Box 487, DuBois, PA 15801 counsel for Clarence A. Cataldo, William J. Herzing and Anna Herzing; and

KIM C. KESNER, ESQ., 23 North Second Street, Clearfield, PA 16830 counsel for Huston Township.

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

FILED

Dated:

AUG 15 2003

01/11/55/12
William A. Shaw
Prothonotary

9. SENT TO APT

Michael Luongo
Michael Luongo
201 North Second Street
Clearfield, PA 16830

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

GERALD L. HAWK, RUSSEL J. MASON, SR.,
and CONNIE M. MASON
Plaintiffs

vs.

NO. 02- 1663 -CD

CLARENCE A. CATALDO, WILLIAM J.
HERZING and HUSTON TOWNSHIP, by its
Supervisors, i.e., NELLIE BUNDY, TAMARA
MCCLINTICK and DARREL J. PATTON, JR.
Defendants
AND

ANNA HERZING

Additional Defendant

FILED

0112:43/01
AUG 07 2007

William A. Shaw
Prothonotary/Clerk of Courts

PETITION TO RELEASE CASH BOND

Plaintiffs, Russell J. Mason, Sr. and Connie M. Mason hereby move this court to order the cash bond filed in this matter released to counsel for the Plaintiffs' following reasons:

1. The matter has been resolved to by Order of the Court dated October 22, 2003 which dismissed the Plaintiffs' 2nd Amended Complaint.
2. A cash bond in the amount of \$100.00 was filed in this matter on October 25, 2002.
3. Plaintiff, Gerald L. Hawk departed this life on June 9, 2003.
4. Petitioners desire to have the cash bond filed in this matter returned to them by way of refund to Timothy E. Durant as attorney for Plaintiffs.

WHEREFORE Plaintiffs pray this court to return the cash bond filed by them with the Prothonotary to Timothy E. Durant, as Attorney for Plaintiffs.

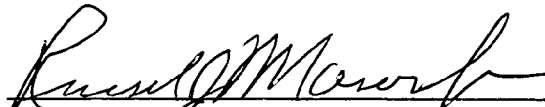

Timothy E. Durant, Attorney
for Plaintiffs

Dated: August 7, 2007

VERIFICATION

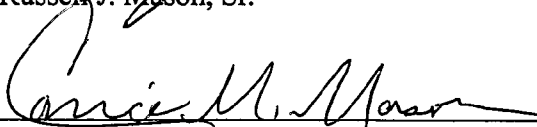
We, **RUSSELL J. MASON, SR.** and **CONNIE M. MASON**, verify that the statements made in this Petition are true and correct to the best of our knowledge, information and belief. Plaintiffs understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Dated: 8-5-07



Russell J. Mason, Sr.

Dated: 8-5-07



Connie M. Mason

FILED

AUG 07 2007

William A. Shaw
Prothonotary/Clerk of Courts

CR

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

GERALD L. HAWK, RUSSEL J. MASON, SR., *
and CONNIE M. MASON *
Plaintiffs *

vs. *

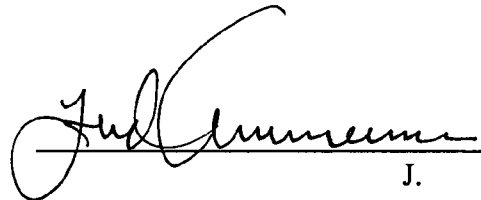
NO. 02- 1663 -CD

CLARENCE A. CATALDO, WILLIAM J. *
HERZING and HUSTON TOWNSHIP, by its *
Supervisors, i.e., NELLIE BUNDY, TAMARA *
MCCLINTICK and DARREL J. PATTON, JR. *
Defendants *
AND *

ANNA HERZING *
Additional Defendant *

ORDER

AND NOW, this 7 day of Aug., 2007, upon consideration of the plaintiffs', Russell J. Mason, Sr. and Connie M. Mason petition to release the bond filed in the above captioned matter, it is the Order of this Court that the Prothonotary shall return the cash funds posted as bond in this matter to Timothy E. Durant as counsel for Plaintiffs.


J.

FILED
010:14 6th
AUG 08 2007

ICC
Ashy Durant

William A. Shaw Issued check #1212
Prothonotary/Clerk of Courts to Timothy E. Durant

(CR)

FILED

AUG 08 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/8/07

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

CLEARFIELD COUNTY PROTHONOTARY 7-83

1212

~~ASSIGNED TO~~ William A. Shaw
ESCROW ACCOUNT
P.O. BOX 549
CLEARFIELD, PA 16830

August 8 18 2007

60-629/313

PAY
TO THE
ORDER OF

Timothy E. Durant

\$ 100.00

ONE HUNDRED

AND NO/100

DOLLARS



Main Office
11 North 2nd Street
Clearfield, PA 16830

FOR 02-1663-CD PER C/O 8-7-07

IMMA

⑆031306294⑆ 1 2 26577 211 1212

Clearfield County Court of Common Pleas

NO. 0020324

DISBURSEMENT

Wednesday, August 08, 2007

Paid to: Timothy E. Durant, Esq.

\$100.00

Clearfield PA 16830

One Hundred and 00/100 Dollars

Case: 2002-01663-CD

: Gerald L. Hawk, etal. vs. Clarence A. Cataldo, etal.

For: Trust

100.00 William A. Shaw, Prothonotary/Clerk of Courts

By: _____
Deputy Clerk

Clerk: BILLSHAW

NOT NEGOTIABLE

1 IN THE COURT OF COMMON PLEAS OF
2 CLEARFIELD COUNTY, PA
3 CIVIL DIVISION

4 * * * * *

5 GERALD L. HAWK, *

6 RUSSEL J. MASON, *

7 SR., and CONNIE M.*

8 MASON, *

9 Plaintiffs * No.

10 vs. * 02-1663-CD

11 CLARENCE A. *

12 CATALDO, and *

13 WILLIAM J. HERZING*

14 HUSTON TOWNSHIP, *

15 NELLI BUNDY, *

16 TAMARA MCCLINTICK *

17 and DARREL J. *

18 PATTON, JR., *

19 Defendants *

20 DEPOSITION OF

21 GEORGE HIXON

22 DECEMBER 19, 2002

23 Any reproduction of this transcript

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25 by the certifying agency

DEPOSITION

OF

GEORGE HIXON was taken on behalf of
the Defendants herein, pursuant to
the Rules of Civil Procedure, taken
before me, the undersigned, Tammie
B. Elias, a Registered Professional
Reporter and Notary Public in and
for the Commonwealth of
Pennsylvania, at the law offices of
Hanak, Guido and Taladay, 498
Jeffers Street, DuBois,
Pennsylvania, on Thursday, December
19, 2002, at 10:13 a.m.

A P P E A R A N C E S

TIMOTHY E. DURANT, ESQUIRE

201 North Second Street

Clearfield, PA 16830

COUNSEL FOR PLAINTIFFS

CASEY BOWERS, ESQUIRE

Hanak, Guido and Taladay

498 Jeffers Street

P.O. Box 487

DuBois, PA 15801

COUNSEL FOR DEFENDANTS, CATALDO

AND HERZING

KIM C. KESNER, ESQUIRE

23 North Second Street

Clearfield, PA 16830

COUNSEL FOR DEFENDANTS, HUSTON

TOWNSHIP AND SUPERVISORS

I N D E X

WITNESS: GEORGE HIXON

EXAMINATION

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CERTIFICATE 46

EXHIBIT PAGEPAGENUMBERIDENTIFICATIONIDENTIFIED

NONE.

OBJECTION PAGEATTORNEYPAGE

Durant

24, 34

Kesner

42

P R O C E E D I N G S

GEORGE HIXON, HAVING FIRST BEEN DULY
SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY ATTORNEY KESNER:

Q. You are Mr. Hixon, is that
correct?

A. Yes, sir.

Q. Now, George, I know of
you. So would you be offended if I
refer to you as George rather than
Mr. Hixon?

A. No, absolutely not.

Q. George, this is a
discovery deposition in the case of
Gerald Hawk, Russel Mason, Connie
Mason versus Huston Township and
others.

And as a discovery
deposition, the purpose is for me as
Counsel of the Township to learn
what information, if any, that is
relevant and material to the case

1 you have within your personal
2 knowledge.

3 Now, you have been listed
4 as a potential witness by the
5 Plaintiffs by Mr. Durant. And
6 that's the reason for this
7 deposition.

8 I want you to understand
9 going into it that because I'm
10 merely trying to learn what's within
11 your knowledge, I don't expect this
12 deposition in any way to be
13 confrontational.

14 A. It won't be.

15 Q. I'm not intending to
16 confront you or abuse you in any
17 regard. The purpose is to learn
18 information, but to learn accurate
19 and valid information. So I would
20 ask you to listen carefully to my
21 questions. Keep in mind that my
22 questions may not be specific,
23 because I don't know what you know.
24 And therefore, I may have to ask
25 generalized questions.

1 Do you understand what I
2 have just said to you?

3 A. Yes, sir.

4 ATTORNEY KESNER:

5 Mr. Durant, if you
6 will, in order to assist
7 me, would you please give
8 a brief offer of proof as
9 to what you understand
10 this witness may be asked
11 at the time of trial?

12 ATTORNEY DURANT:

13 All right.

14 ATTORNEY KESNER:

15 Or put more
16 succinctly, what relevant
17 material to the
18 Plaintiffs' cause of
19 action this witness may be
20 able to present at the
21 time of trial.

22 ATTORNEY DURANT:

23 Yes, Mr. Hixon was a
24 Township employee of
25 Huston Township during

1 years past. And as such,
2 was involved in use and
3 maintenance of the section
4 of road in question. I
5 think we can refer to it
6 as Church Street Extension
7 or the disputed section
8 and has some personal
9 knowledge about Huston
10 Township's involvement in
11 maintaining that road and
12 so on during the past and
13 in the past at some point.

14 ATTORNEY KESNER:

15 Other than in the
16 capacity of Township
17 employee, do you believe
18 he has any other relevant
19 or material testimony?

20 ATTORNEY DURANT:

21 Not that I'm aware
22 of. Discovery may show
23 something, of course.

24 ATTORNEY KESNER:

25 I appreciate that and

1 that allows me to focus.

2 BY ATTORNEY KESNER:

3 Q. George, you are under oath
4 as you understand.

5 A. Yes, sir.

6 Q. And I will ask you a
7 series of questions. I want to make
8 sure that you hear and understand
9 the question before you respond to
10 it. May I assume if you answer a
11 question that you both heard it and
12 understood it?

13 A. Yes, sir.

14 Q. Would you would please
15 state for the record your full
16 formal name?

17 A. George Alford Hixon, Jr.

18 Q. And George, what is your
19 present residence address?

20 A. 1652 Treasure Lake,
21 DuBois, Pennsylvania.

22 Q. And just to test your long
23 term memory, what's your age?

24 A. 52.

25 Q. Mr. Hixon, are you

1 presently employed and, if so, in
2 what capacity?

3 A. I'm the project manager
4 for Earthmovers Unlimited on the
5 Huston Township sewer project.

6 Q. Now, representation was
7 made prior to these questions that
8 at one point in the past, you may
9 have been employed as an employee of
10 Huston Township, is that correct?

11 A. Yes, sir.

12 Q. Could you indicate the
13 tenure of any employment you held
14 with Huston Township?

15 A. I started working for the
16 Township as a laborer and slash
17 truck driver the winter of 1967 and
18 '68 and was employed through that
19 winter and the following winter '69,
20 '70.

21 Q. Was your employment just
22 during winter months?

23 A. No, sir.

24 OFF RECORD DISCUSSION

25 BY ATTORNEY KESNER:

1 Q. Going back on the record.
2 Mr. Hixon, I believe you had just
3 indicated that you were employed by
4 Huston Township from a date during
5 the winter of 1967 to a date during
6 the winter of 1968, 1969. Did I
7 understand you correctly?

8 A. Yes.

9 Q. So you were employed
10 approximately a year?

11 A. About 16 months, two
12 winters' worth.

13 Q. And approximately how old
14 were you then?

15 A. I just turned 18 when I
16 started.

17 Q. So you were 18 and then
18 you were employed by Huston
19 Township, is that correct?

20 A. Yes.

21 Q. That was your first job
22 after becoming 18 years of age?

23 A. Yes.

24 Q. And you were hired as a
25 laborer?

1 A. Initially as a laborer,
2 yes.

3 Q. Were you upgraded at some
4 future point?

5 A. By necessity there were
6 only two of us that worked for the
7 Township and they had massive snow
8 falls, and it just required both of
9 us to run equipment.

10 Q. So you became an equipment
11 operator during a period?

12 A. Yes.

13 Q. Who were the supervisors,
14 if can you remember, during that
15 period of time?

16 A. Richard Shoemaker is the
17 only person I could faithfully say I
18 knew who was a supervisor at that
19 time.

20 Q. And who was the other
21 laborer or equipment operator?

22 A. Richard Shoemaker.

23 Q. So not only was he a
24 supervisor, he was also an employee?

25 A. Yes.

1 Q. Was there just the two of
2 you employed at that time?

3 A. Yes.

4 Q. Now, I assume you're
5 familiar with the Village of Tyler?

6 A. Yes, sir.

7 Q. And are you familiar with
8 William Herzing, who is present at
9 the deposition this morning?

10 A. Yes, sir.

11 Q. And you know where he
12 lives?

13 A. Yes, sir.

14 Q. And I'm not going to be
15 --- I'm going to try not to be too
16 rigorous with regard to maps or
17 descriptions. Mr. Durant talked in
18 terms of the disputed section of
19 road. And what I understand that to
20 be is an area adjoining Mr.
21 Herzing's property, which is now
22 blocked. Are you familiar with that
23 area?

24 A. Yes, sir, I am.

25 Q. And are you familiar with

1 an adjoining road that circles his
2 residence?

3 A. Yes.

4 Q. Now, this I'm showing you
5 is a map, which was prepared by Hess
6 and Fisher Engineers for Mr.
7 Cataldo. I'm not going to ask you
8 to endorse anything that it shows.
9 And I'm not going to Cross Examine
10 you on anything that it shows,
11 because you didn't prepare this and
12 you may never have seen it prior to
13 today. But it does show, does it
14 not, Mr. Herzing's residence?

15 A. Yes, it does.

16 Q. It shows an area here and
17 another roadway here, correct?

18 A. Yes.

19 Q. Both of which connected to
20 Haley Street and both of which I
21 believe would end up connecting with
22 255 at some location?

23 A. Yes, sir.

24 Q. But do you understand that
25 this lawsuit pertains to a dispute

1 over this area right here?

2 A. Yes, I do.

3 Q. And that the Plaintiffs,
4 Russ and Connie Mason, live in this
5 direction?

6 A. Yes.

7 Q. You have been indicated as
8 a witness apparently because you
9 have some knowledge stemming from
10 the period that you were an employee
11 of the Township concerning Mr.
12 Herzing's residence and that area.
13 What do you remember about that?

14 A. That Huston Township had
15 purchased a new all wheel drive snow
16 plow, a larger truck. And that
17 being the only snow plow that the
18 Township owned whenever we at some
19 point during that winter months
20 where there was a snowfall, and Rich
21 and I went to plow the roads, the
22 truck wouldn't physically make the
23 left-hand turn from Church Street on
24 to the McCloud Alley physically
25 because of mechanics of the all

1 wheel drive didn't turn short enough
2 to allow it to go around a stone ---
3 there's a stone wall on the north
4 side of Church Street next to Mr.
5 Herzing's property.

6 Q. There was at that time?

7 A. There was, if my memory
8 --- there still is a stone wall.

9 But from my memory Church Street is
10 actually become elevated somewhat
11 now to what it was back 25 years ago
12 or so.

13 Q. At the location of this
14 stone wall?

15 A. At the turn to the McCloud
16 Alley. When we saw that we couldn't
17 make it, actually we got the fuel
18 tank, or low underneath the doors,
19 that was the area of interference,
20 the fuel tank actually would strike
21 and couldn't make the turn. I don't
22 believe it was that particular day
23 we backed out of Church Street and
24 went and plowed the balance of the
25 Township roads. But in the

1 following days, two, one day, three
2 days I don't recall the time line
3 difference, we went back to plow
4 again and still couldn't make it.
5 Rich Shoemaker and I got out of the
6 vehicle to see if we could manage a
7 way around, and Rich --- at that
8 point a gentleman was there and I to
9 this day do not --- I can't say for
10 100 percent that it was Mr.
11 Herzing. You know, I didn't know
12 him at the time. And I still don't
13 really know him. But anyway, the
14 gentleman that spoke with Rich.
15 Rich asked if there was any way that
16 they could just plow through what's
17 marked as a dirt lane and make the
18 management of the roads from that
19 direction. And it was an affirmed,
20 yes, you know, if you have to plow.
21 I have to get out was what I, you
22 know, and that was how the balance
23 --- at that particular time, there
24 were no living residents --- full
25 time residents that were back Haley

1 Street. But we did have a long term
2 resident at the end of Church
3 Street. It's marked as an existing
4 location here on the map.

5 Q. Right.

6 A. If we plowed just
7 directionally to the end of where
8 Church Street would turn, everything
9 that would plow would plow this
10 driveway shut. And the only way we
11 couldn't plow it shut was to plow
12 from this direction. And ---.

13 Q. So at that time you're
14 certain there were no full time
15 residents back on Haley Street?

16 A. Oh, absolutely.

17 Q. Now, does that mean that
18 there were some structures back
19 there?

20 A. Oh, there had been a
21 number of structures there from well
22 before I was born.

23 Q. How would you characterize
24 those?

25 A. Well, they had been

1 existing homes. But they evolved
2 through camps then later.

3 Q. Were some of them
4 abandoned?

5 A. Yes, some were abandoned.

6 Q. Can you give me an
7 approximate number of structures?

8 A. Oh, four, five.

9 Q. Is abandoned, some used as
10 camps?

11 A. Yes.

12 Q. None permanent structures?

13 A. None permanent residents
14 at that time.

15 Q. I'm sorry. Permanent
16 residence, absolutely?

17 A. That I'm aware of, none
18 that we maintained the road for
19 anyway.

20 Q. If there were no permanent
21 present residences back Haley
22 Street, why were you plowing Church
23 Street and then McCloud Alley or
24 attempting to?

25 A. To turn and plow. That

1 was the way to get, I believe, Mr.
2 Herzing out.

3 Q. Plus you had somebody on
4 Church Street?

5 A. Plus we had somebody on
6 out this private that if we didn't
7 plow across the road this way, this
8 guy would just have a mound of snow.

9 Q. But your purpose initially
10 was to plow Church Street and
11 McCloud Alley, but physically you
12 found the truck couldn't do that?

13 A. Yes, sir.

14 Q. And so you specifically
15 recall that Mr. Shoemaker asked a
16 gentleman for permission and that a
17 gentleman granted him permission to
18 go over the disputed area?

19 A. Yes.

20 Q. During the period of your
21 employment, how many times did you
22 plow over the disputed area?

23 A. It's going to have to be
24 an approximation, but I would assume
25 that because of the snowfall, it was

1 there that year and a half that I
2 worked, probably 50 or 60 times. It
3 could have been more, but I would
4 think 50 or 60.

5 Q. And your knowledge with
6 regard to this disputed area is
7 limited to that period of time, from
8 the winter of '67, '68 to the winter
9 of '68, '69, is that correct?

10 A. Yes.

11 ATTORNEY KESNER:

12 I don't have anything
13 further Mr. Hixon.

14 EXAMINATION

15 BY ATTORNEY BOWERS:

16 Q. George, like I said
17 before, my name is Casey Bowers. I
18 represent or my firm represents Mr.
19 Cataldo and Mr. Herzing. I'd just
20 like to confirm that you only plowed
21 the disputed area after Mr.
22 Shoemaker asked permission from a
23 gentleman purporting to be the owner
24 of the property?

25 A. Yes.

1 ATTORNEY DURANT:

2 Objection. He said
3 that ---.

4 A. I'm sorry.

5 ATTORNEY DURANT:

6 The testimony was he
7 asked permission, but he
8 didn't say the person
9 purported to be the owner
10 asked permission from
11 somebody. He didn't know
12 who.

13 A. Right.

14 BY ATTORNEY BOWERS:

15 Q. That person who he asked,
16 was it your understanding at the
17 time that person was the owner of
18 the property?

19 A. Yes.

20 Q. And you only used or you
21 only plowed that road after
22 receiving that permission?

23 A. Yes, sir.

24 ATTORNEY BOWERS:

25 That's all I have.

1 EXAMINATION

2 BY ATTORNEY DURANT:

3 Q. Now, you were asked if you
4 had any other knowledge of this area
5 besides that year and a half when
6 you were employed there. You have
7 been out there recently?

8 A. Oh, yes.

9 Q. And have you been there in
10 the 30 years in between or 34 years
11 in between '67 and 2002?

12 A. Yes, sir.

13 Q. And what have you observed
14 with regard to what I'll refer to as
15 the disputed area, as far as
16 maintenance of it?

17 A. It appeared that it had
18 been wholly utilized and maintained
19 as a common direction or a common
20 road to Haley Street.

21 Q. With regard to that road,
22 were you involved in any way in any
23 summer maintenance of that road,
24 that disputed section?

25 A. It was graded the summer

1 in between '68 and '69 with the ---.

2 Q. Were you operating
3 equipment?

4 A. At that point, I was back
5 to a laborer again.

6 Q. Were you working on that
7 section?

8 A. Yes, sir.

9 Q. What did you do?

10 A. I believe all that was
11 done at that summer was regraded and
12 put some slope in the road to crown
13 to give it drainage and fill the
14 potholes that developed over the
15 winter. It was very minimal if I
16 remember.

17 Q. And since then, have you
18 been an employee of the Township
19 since about 1969 or so?

20 A. No, sir, I have not.

21 Q. But now you're working in
22 what capacity?

23 A. I'm project manager for
24 Earthmovers Unlimited.

25 ATTORNEY KESNER:

1 Which was a
2 contractor for the Huston
3 Township Sewer Authority.

4 A. Yes, sir.

5 BY ATTORNEY DURANT:

6 Q. And were you --- did you
7 observe the road being blocked, the
8 disputed area being blocked that was
9 blocked?

10 A. I observed that it was
11 blocked.

12 Q. And in the time that
13 you've known that section of the
14 road, has there been any other time
15 that it was ever blocked?

16 A. Not of my knowledge, I
17 have no idea. But I personally
18 don't have any knowledge of it.

19 Q. Do you have any
20 recollection of how often you would
21 have gone in that direction after
22 1969 and before you began working
23 for Earthmovers?

24 A. Very limited, minimal.
25 Could have been 40 times or 70

1 times, I wouldn't know.

2 Q. Did you use that section
3 of the disputed section for any
4 purpose?

5 A. Yes, sir, in 1989, I
6 believe, or '88 through '89, we cut
7 timber on a portion of property
8 adjoining Mr. Mason's property. And
9 there were four or five loads of
10 logs that was more convenient to
11 come Haley Street to Church Street
12 and down across the bridge to 255.

13 Q. And were you the owner of
14 the business that removed the logs?

15 A. Yes.

16 Q. And what was the business
17 known as?

18 A. Hixon Lumber and Wood
19 Products.

20 Q. And did you in that
21 capacity have to bond roads that you
22 used?

23 A. Yes, sir.

24 Q. And was this road bonded?

25 A. I believe it was. I

1 really couldn't say, you know, the
2 Township roadmaster looked at where
3 our log landing was going to be and
4 he made measurements and told the
5 supervisor how much they wanted as
6 road bond. At that time you were
7 able to give them a company check
8 and that's what I did. I have no
9 idea whether they included that
10 portion or not.

11 Q. That is, in fact, the way
12 you went in and out, though?

13 A. Yes, it was.

14 Q. You didn't go around to go
15 into the property to remove the
16 timber or to come out with the
17 timber, you didn't go around this,
18 well, what I refer to as a
19 roundabout, the road that goes
20 around Herzing's and up a 90 degree
21 turn and up an alley?

22 A. No, sir, the log trucks
23 wouldn't --- by their design
24 wouldn't make that turn.

25 Q. Would have been physically

1 impossible?

2 A. Yes.

3 Q. And how long were your log
4 trucks?

5 A. Overall, they are 46, 42
6 feet depending on which truck.

7 Q. Nose to tail?

8 A. Yes.

9 Q. And in doing that, did you
10 obtain permission from anyone except
11 the Township to use that road?

12 A. No, sir.

13 Q. Did anyone claim rights to
14 the use of that section of the road?

15 A. None were ever voiced to
16 me. Again, it was only four or five
17 loads that came out.

18 Q. That was in '88?

19 A. The summer of '88 through
20 '89 or fall of '88 I should say.

21 Q. Did you have to repair any
22 of those roads that were bonded?

23 A. Not to my knowledge.

24 Q. During that time of using
25 the disputed area to move logs in

1 and out, did you observe any
2 maintenance on that section of road
3 during any of those times?

4 A. No, sir.

5 ATTORNEY DURANT:

6 That's all.

7 RE-EXAMINATION

8 BY ATTORNEY KESNER:

9 Q. George, I may not have
10 made myself clear before, but my
11 purpose is to find out anything that
12 you know that's relevant to this
13 controversy. And I can respect the
14 fact that you may not know not being
15 a party or Counsel for a party
16 what's relevant. But I certainly
17 believe that testimony that the road
18 was graded in the summer of '69 and
19 testimony of hauling logs over the
20 disputed area in 1988, 1989 is
21 directly relevant. So I'll get to a
22 point here in a moment. I'll ask
23 you questions if you have any other
24 knowledge. And I really want you to
25 stretch your recollection because I

1 don't want to be surprised at the
2 time of trial with additional
3 testimony that fairly could have
4 been revealed.

5 A. Sure.

6 Q. At this point, okay. And,
7 again, no one is here to challenge
8 you or confront you, this is a
9 discovery deposition. The purpose
10 is to find out what witnesses know
11 about a situation. The reason it's
12 being done under oath is so that we
13 can be as accurate and verified as
14 possible. Going back, the summer of
15 '69?

16 A. Yes.

17 Q. Was it the summer of '69?

18 A. Yes.

19 Q. Very good year, spurred
20 rock and roll songs and other
21 things. You were still an employee
22 until the winter then of '69, is
23 that correct?

24 A. Yes.

25 Q. And you recall grading the

1 disputed section?

2 A. Yes, sir.

3 Q. Were you operating the
4 grader?

5 A. No.

6 Q. Or did you just observe
7 that?

8 A. I just observed that.

9 Q. Did Mr. Shoemaker run the
10 grader?

11 A. Yes, he did.

12 Q. Now, why was the grading
13 done?

14 A. Because the winter had
15 been a very bad winter. The use of
16 the road took place in the middle of
17 an already frozen condition. And it
18 was just a utilization of whatever
19 existing conditions were there, of
20 the dirt lane.

21 Q. I'm confused. It was
22 frozen when you graded it?

23 A. No, no. When we first
24 started to use that portion of
25 property that's marked on the map as

1 dirt lane.

2 Q. Right?

3 A. It was already covered in
4 snow, so it was the very first time
5 that I'm aware of that the Township
6 utilized it. It was in the
7 condition that it had been over
8 years. It hadn't apparently --- it
9 had not been anything that was ---.

10 Q. It wasn't anything used as
11 a road?

12 A. In good condition.

13 Q. It wasn't anything used as
14 a road?

15 A. No.

16 ATTORNEY DURANT:

17 Objection unless he
18 knows.

19 A. I don't know that.

20 BY ATTORNEY KESNER:

21 Q. What was the condition
22 when you went in in the summer to
23 grade it?

24 A. It was a very flat area.
25 It had very limited amounts of

1 drainage. It was a very smeary,
2 greasy surface that appeared.

3 Q. Made up of what?

4 A. It appeared to be a
5 decomposed mine residue that was
6 very common on the roads. And at
7 that point I have no idea whatever
8 prompted the Township to grade it,
9 but we had the grader in the area
10 and it's a very short limited piece
11 and they just graded it and left.

12 Q. So you don't have personal
13 knowledge as to why the Township
14 elected to grade it?

15 A. I do not.

16 Q. Do you have any personal
17 knowledge as to whether or not
18 consent was requested to grade it?

19 A. I don't.

20 Q. Do you know if it was
21 being graded so that it would be
22 plowed effectively the next winter?

23 A. I don't.

24 Q. How long did it take to
25 grade?

1 A. 25 to 40 minutes.

2 Q. I know this is a long
3 time, do you recall if anyone was in
4 the vicinity, obviously, you did
5 this during the day time?

6 A. Oh, sure.

7 Q. Do you know if anyone was
8 in the vicinity at the time?

9 A. I don't know.

10 Q. The grading itself would
11 have visibly changed the surface
12 area or not?

13 A. It would have very minor
14 change.

15 Q. But in your opinion, did
16 it make it more of a passable area?

17 A. Surely.

18 Q. After grading, would it
19 have been suitable for normal
20 passenger vehicle travel?

21 A. Oh, yes, it was suitable
22 before.

23 Q. But before the grading,
24 was there any discernible roadway or
25 passageway there or was it just a

1 flat area?

2 A. It had been --- at some
3 point in the past, it had been
4 utilized by vehicular use. I don't
5 know that it was a road, but it was
6 passable.

7 Q. But in a straight line or
8 as any parking area might be used by
9 vehicle use?

10 A. It was generally a ---
11 well, I'll have to remember. I
12 believe it was a former parking lot
13 that some areas closer to Church
14 Street on the west side from memory
15 appeared to be wider. But there was
16 an opening through to Haley Street
17 that was sufficient to get the dump
18 truck through.

19 Q. Sure. If we look out here
20 we have a parking area and it's
21 flat?

22 A. Yes.

23 Q. And there's an area that
24 people drive?

25 A. Sure.

1 Q. From one point to the
2 other point. But it's also a part
3 of a parking area?

4 A. Yes, it.

5 Q. And that's your
6 recollection of what this area is?

7 A. As best as I can recall,
8 yes.

9 Q. But the grader went
10 through?

11 A. Yes.

12 Q. In a direct straight line?

13 A. Yes.

14 Q. Did you grade any of the
15 other parking area?

16 A. There really wasn't a ---
17 it's hard to describe how the lay of
18 the ground is, the area that seemed
19 to be the most concentrated effort
20 was about the middle of the portion
21 of it. And it was very limited in
22 length, maybe 60 or 80 feet where
23 there seemed to be a low lying area
24 that had no drainage and that was
25 really the only area that was

1 impacted.

2 Q. Do you recall during your
3 employment the Township doing any
4 other improvement work or
5 maintenance work to this area other
6 than the grading that you testified
7 to that you said would have taken
8 about 25 to 40 minutes?

9 A. Other than the next year
10 when we plowed, we plowed the same
11 way again.

12 Q. Right, I understand that.
13 Any other maintenance work that you
14 can recall?

15 A. Not that I'm aware of.

16 Q. Any application of any
17 surface treatment, such as gravel,
18 oil, anything of that nature?

19 A. Not that I'm aware of.

20 Q. Was there any signage in
21 this vicinity in 1968 and 1969?

22 A. I don't recall any signs
23 at all in the Township back then.
24 There could have been, but I don't
25 recall any.

1 Q. I respect that. Now,
2 let's go to 1988 and 1999. You
3 hauled about four to five loads of
4 logs across this area, is that
5 correct?

6 A. Yes, sir.

7 Q. Did your company ask Mr.
8 Herzing for permission at that time?

9 A. No, sir.

10 Q. If you know, was there a
11 posted weight limit anywhere in this
12 vicinity indicating the maximum
13 haulage weight on these roads?

14 A. There was, that's why I
15 bonded the road, yeah.

16 Q. Where was the signage?

17 A. I honestly couldn't say.

18 Q. At the time, did the
19 Township have an excess haulage
20 ordinance?

21 A. I don't know.

22 Q. Do you know if you gave a
23 bond because you had to or because
24 the Township was asking for it?

25 A. I gave ---.

1 Q. That's not a good
2 question.

3 A. I ---.

4 Q. That's not a legitimate
5 question. And I'll withdraw it.
6 But you know you did haul over that
7 area?

8 A. Yes, sir.

9 Q. Did the hauling do any
10 damage to the road surface?

11 A. Not that I'm aware of.

12 Q. So there was no dispute
13 either at the beginning or at the
14 end with the Township over your
15 haulage?

16 A. I had no recollection at
17 all of having any problems.

18 Q. Do you have any
19 recollection of doing any repairs on
20 that after the hauling?

21 A. No, I don't.

22 Q. But your recollection is
23 then that the hauling would have
24 been an inconsequential thing that
25 didn't do damage to this area that

1 you were hauling over?

2 A. No, sir.

3 Q. No, sir, meaning it didn't
4 do any significant damage?

5 A. It didn't do any damage.

6 ATTORNEY KESNER:

7 I don't have anything
8 further.

9 RE-EXAMINATION

10 BY ATTORNEY BOWERS:

11 Q. I had a couple of
12 questions. Back in '88 and '89 when
13 these logs were hauled, those five
14 or six loads, over what period of
15 time were those loads taken out, was
16 it over a couple days or a couple
17 weeks?

18 A. A couple of weeks.

19 ATTORNEY KESNER:

20 I would pose
21 objection to the question
22 only in that my
23 recollection was the
24 estimate was four to five
25 loads now not five to six

1 isn't significant, but I
2 don't want to purposely
3 increase the witness'
4 estimate.

5 BY ATTORNEY BOWERS:

6 Q. All right. However many
7 there were, it was over ---?

8 A. It wasn't --- they weren't
9 all piled and hauled out at the same
10 time. It was over a period of
11 several days or a week.

12 ATTORNEY BOWERS:

13 All right. That's
14 all I have.

15 RE-EXAMINATION

16 BY ATTORNEY DURANT:

17 Q. Where was the landing for
18 those logs?

19 A. At the corner of a ---
20 well, it isn't on this map. At the
21 corner of an unknown camp owner, it
22 was very small portion, and I'm
23 trying to describe where the Masons
24 have a no trespassing sign on a
25 tree, you know. I don't ---

1 currently there is a Township turn
2 around on Haley Street at the end of
3 Haley Street.

4 Q. That's where your landing
5 was?

6 A. Landing would have been
7 about 30 feet closer to the Mason
8 property from that turn around.

9 Q. And the Township told you
10 where to make your landing?

11 A. No, sir.

12 Q. Who made the decision
13 about the landing?

14 A. I did.

15 Q. From when you did your
16 work for the Township, was there a
17 Roman Catholic church existing near
18 where the Herzings live now?

19 A. It was named as a church,
20 I never knew specific what it was
21 or, you know, everybody always just
22 said the church.

23 Q. Was there a church
24 structure there, that's what I'm
25 asking, if you recall?

1 A. I don't believe it was a
2 church at that time from memory.

3 Q. Was there any other church
4 structure down Haley Street?

5 A. Not that I'm aware of.

6 Q. At the time you worked for
7 the Township?

8 A. I don't recall any. There
9 could be, but I don't recall it.

10 ATTORNEY DURANT:

11 That's all I have.

12 Thanks.

13 ATTORNEY KESNER:

14 That's all I have.

15 ATTORNEY BOWERS:

16 Okay.

17 ATTORNEY DURANT:

18 Thank you, sir.

19 ATTORNEY KESNER:

20 Mr. Hixon can be
21 released.

22 * * * * *

23 DEPOSITION CONCLUDED AT 10:50 A.M.

24 * * * * *

25

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF INDIANA)

3 C E R T I F I C A T E

4 I, Tammie B. Elias, RPR, a Notary Public in and
5 for the Commonwealth of Pennsylvania, do hereby
6 certify:

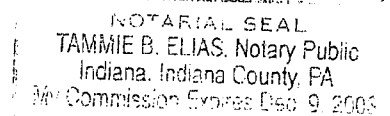
7 That the witness was first duly sworn to testify
8 to the truth, the whole truth, and nothing but the
9 truth; that the foregoing deposition was taken at the
10 time and place stated herein; and that the said
11 deposition was taken stenographically by me and
12 reduced to typewriting, and constitutes a true and
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing
15 of said depositions were (not) waived by counsel for
16 the respective parties and by the witness.

17 I further certify that I am not a relative,
18 employee or attorney of any of the parties, nor a
19 relative or employee of counsel, and that I am in no
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and stamp this 9th day of Jan 2003.

23
24 *Tammie B. Elias*



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