

02-1844-CD

WILLIAM D. WESTOVER, et al vs. KENNETH R. THOMAS, et al

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

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his wife,
Plaintiffs

VS.

KENNETH R. THOMAS and
LINDA M. THOMAS, his wife,
and EMMA JEAN HUGILL,
Defendants

NO. 02- 1844 -CD

CASE NUMBER: 02- -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: **COMPLAINT IN EJECTMENT**

FILED ON BEHALF OF: Plaintiffs

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

FILED

NOV 14 2002

W. J. Shaw
Prothonotary

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

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his wife,
Plaintiffs

VS.

KENNETH R. THOMAS and
LINDA M. THOMAS, his wife,
and EMMA JEAN HUGILL,
Defendants

:
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:
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:
:

NO. 02- -CD

NOTICE TO DEFEND

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

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

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

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

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his wife,
Plaintiffs

VS.

NO. 02- -CD

KENNETH R. THOMAS and
LINDA M. THOMAS, his wife,
and EMMA JEAN HUGILL,
Defendants

COMPLAINT IN EJECTMENT

AND NOW, comes Plaintiffs, by and through their attorney, R. Denning Gearhart,
who aver as follows:

1. That Plaintiffs, WILLIAM D. WESTOVER and SHEILA WESTOVER, are
husband and wife, residing at 491 West Bridge Street, Westover, Clearfield County,
Pennsylvania 16692.

2. That Defendants, KENNETH R. THOMAS and LINDA M. THOMAS, are
husband and wife, with an address of P.O. Box 125, Westover, Clearfield County, Pennsylvania
16692. They are the owners and possessors of a certain parcel of property located in the
Borough of Westover, Clearfield County, Pennsylvania and adjoining the property of the
Plaintiffs.

3. That Defendant, EMMA JEAN HUGILL, is an adult individual, with an
address of P.O. Box 19, Westover, Clearfield County, Pennsylvania 16692. She is the owner and
possessor of a certain parcel of property located in the Borough of Westover, Clearfield County,
Pennsylvania and adjoining the property of the Plaintiffs.

4. The subject property is part of the residue of lands conveyed to William
D. Westover and Elizabeth G. Westover by Deed from William Neal and Mary Neal, husband
and wife dated July 2, 1993 and filed for record in Clearfield County in Deeds & Records Book

Volume 1544, Page 115. Elizabeth G. Westover having passed away July 1, 1994, whereby title to this property vested in William D. Westover as the surviving tenant by the entirety. William D. Westover having since married Sheila A. Westover. The Plaintiffs have conveyed to Robert N. Gallaher and Carole A. Gallaher, a portion of that property by Deed dated June 24, 1996 and filed for record in Clearfield County in Deeds & Records Book Volume 1768, Page 246, but retained for themselves the approximate 20 foot wide parcel of property located on the western most portion of said property. Said 20 foot wide parcel (hereinafter referred to as 20 foot strip) borders the properties of the Defendants. This 20 foot strip which remained the property of the Plaintiffs is designated by the letter "W". The property of the Defendants, Thomas, is designated by the letter "T". The property of the Defendant, Hugill, is designated by the letter "H".

8. This property was obtained by Mary Straw Neal, Sole surviving Trustee under the Will of Isaac Straw dated July 22, 1970 and recorded on September 1, 1970 to Deed Book Volume 567, Page 034; Deed of William Straw and Melba Straw, husband and wife and Mary E. Dunn dated March 9, 1993 and recorded to Deed Book Volume 1524, Page 395. It is believed and therefore averred that these predecessors in title used and relied upon the strip of land in question in a manner described above.

WHEREFORE, Plaintiffs request that this Court find for them and against the Defendants and in so doing find that the real estate in question is the sole property of the Plaintiffs and to further order that the Defendants vacate the property and otherwise enjoin the Defendants from interfering with the Plaintiffs peaceable enjoyment of their property.


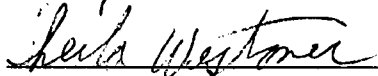
Respectfully submitted,


R. Denning Gearhart
Attorney for Plaintiffs

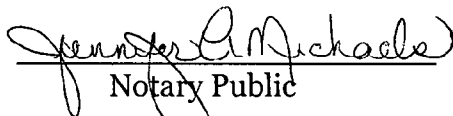
COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

AFFIDAVIT

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


WILLIAM D. WESTOVER

SHEILA WESTOVER

Sworn to and subscribed
before me this 22nd day
of November, 2002.


Notary Public

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

← 40 FT. R/W TO HARMONY STATE ROUTE NO. 3006

PHILIP L. RUPERT
&
MARILYN R. RUPERT

ROBERT N. GALLAHER
&
CAROLE A. GALLAHER

JEAN HUGILL

WILLIAM D. WESTOVER

&

SHEILA A. WESTOVER

KENNETH THOMAS

1.044 ACRES

NO SEWAGE
NO WATER
NO BUILDINGS

LOT NO. 3
VOL. 1788
PAGE 248

LOT NO. 4

VOLUME 1773 PAGE 206

WILLIAM D. WESTOVER

&

SHEILA A. WESTOVER

6.176 ACRES

LOT NO. 5

LOT NO. 2

1.205 ACRES
NO SEWAGE, WATER
BUILDING

VOLUME 1723
PAGE 311

LOT NO. 1

ROBERT N. GALLAHER
&
CAROLE A. GALLAHER

1.205 ACRES
NO SEWAGE, WATER,
BUILDINGS

MCKEE STREET 50 FT WIDE

S

COMMERCIAL PRINTING CO., OAKRIDGE, PA

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

3 cc
 Qty Gearhart
 Qty 25.2502
 William A. Shaw
 Prethonyary
 Qty pd. 85.00

William A. Shaw
Prothonotary

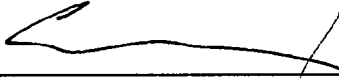
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

WILLIAM D. WESTOVER and	:	
SHEILA WESTOVER, his wife,	:	
Plaintiffs	:	
	:	NO. 02 - 1844 - C.D.
vii.	:	
	:	
KENNETH R. THOMAS and	:	
Linda M. THOMAS, his wife,	:	
and EMMA JEAN HUGILL,	:	
Defendants	:	

NOTICE

You are hereby notified to plead to the within pleading within twenty (20) days of service thereof, or default judgment may be entered against you.

BELIN & KUBISTA



Carl A. Belin, Jr., Esq.

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

WILLIAM D. WESTOVER and	:	
SHEILA WESTOVER, his wife,	:	
Plaintiffs	:	
	:	NO. 02 - 1844 - C.D.
v.	:	
	:	
KENNETH R. THOMAS and	:	
Linda M. THOMAS, his wife,	:	
and EMMA JEAN HUGILL,	:	
Defendants	:	

ANSWER AND NEW MATTER

NOW COMES two (2) of the Defendants, Kenneth R. Thomas and Linda M. Thomas, his wife ("Thomas"), and file an answer and new matter to the Complaint in Ejectment filed by William D. Westover and Sheila Westover, his wife ("Westover"), and in support thereof avers as follows:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted and it is further averred that Kenneth R. Thomas and Linda M. Thomas are the owners of Lots 38 and 39 by virtue of a deed from Catharine Thomas et al. dated October 5, 1978 and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 771, page 497; and Lots 40 and 41 by deed from Katherine Thomas, dated March 7, 1974,

and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 678, page 204. It is also averred that by virtue of a deed from the common Grantor, William Mosser, that the Thomases also acquired an easement in an alley which traverses to the West and rear of the four (4) lots by virtue of a reference to an alley in the description as an adjoinder to all four (4) lots.

3. Paragraph 3 is admitted that Emma Jean Hugill is an individual with an address of P.O. Box 19, Westover, Clearfield County, Pennsylvania 16692. Thomases neither admit nor deny the remainder of Paragraph 3 as the means or knowledge is under control of third parties and strict proof is demanded at trial.

4. Paragraph 4 is admitted but it is averred that the land acquired by William Westover and which is the subject of the action is the same area covered by the alley and is subject to the easement in favor of the Thomases and that they have the right to use the easement in connection with the enjoyment of their premises for the purposes of ingress, egress, and regress.

8. Paragraph 8 [sic] is admitted and it is averred that the Westovers' predecessor in title was William F. Mosser et ux.

by virtue of a deed to Isaac Straw dated January 17, 1907 and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 160, page 91 and that prior thereto, Mosser made two (2) deeds referencing the alley as an adjoinder to the lots conveyed to the predecessors of Thomas by deed to J. W. Markle dated November 28, 1900 and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 154, page 243; and also by deed to Lizzie J. Allison dated July 18, 1902, and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 130, page 36. As the property immediately to the rear of the Thomas lots is subject to an easement they have the right and are entitled to use of said alley.

WHEREFORE, Thomases request that Your Honorable Court enter judgment in their favor and against Plaintiffs.

NEW MATTER

9. Defendants Thomas hereby incorporate by reference Paragraphs 1 through 8 of their answer as if fully set forth herein.

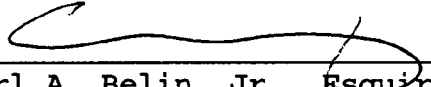
10. Defendants Thomas have acquired an easement by implication and by virtue of a description contained in the deeds from common grantor, William F. Mosser, to the predecessors in title of Thomas. The deeds from Mosser to predecessors in title of Thomas preceded the deed to the predecessors of Westover.

11. By virtue of the easement by implication, the Thomases have a right to use the 25 foot strip of land to the rear and West of their lots for the purpose of ingress, egress and regress, and all activities taken by them were for the purpose of facilitating the use of the easement.

WHEREFORE, Defendants Thomas request Your Honorable Court enter judgment in their favor and against Plaintiffs

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA



Carl A. Belin, Jr., Esquire
Attorney for Defendants
Kenneth R. Thomas and
Linda M. Thomas

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

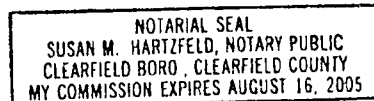
Before me the undersigned officer, personally appeared
KENNETH R. THOMAS and LINDA M. THOMAS, being duly sworn
according to law, depose and say that the facts set forth in the
foregoing Answer and New Matter are true and correct to the best
of our knowledge, information and belief.

Kenneth R. Thomas
Kenneth R. Thomas

Linda M. Thomas
Linda M. Thomas

Sworn and subscribed before me this 16th day of
December, 2002.

Susan M. Hartzfeld
Notary Public



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

WILLIAM D. WESTOVER and :
SHEILA WESTOVER, his wife, :
Plaintiffs :
vi. : NO. 02 - 1844 - C.D.
: :
KENNETH R. THOMAS and :
Linda M. THOMAS, his wife, :
and EMMA JEAN HUGILL, :
Defendants :

CERTIFICATE OF SERVICE

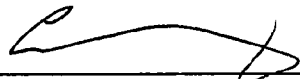
This is to certify that the undersigned has sent a true and correct copy of Answer and New Matter on behalf of the Defendants in the above-captioned matter to the following party by postage prepaid United States mail on the 16th day of December, 2002:

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

Ms. Emma Jean Hugill
P.O. Box 19
Westover, PA 16692

BELIN & KUBISTA

By


Carl A. Belin, Jr., Esq.
Attorney for Defendants
Kenneth R. Thomas and
Linda M. Thomas

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

FILED

4cc

012:50 ~~AT~~
DEC 16 2002

Atty Belin

William A. Shaw
Prothonotary

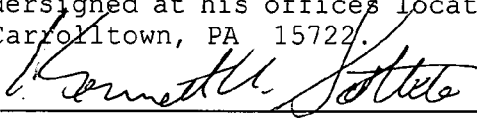
WAS

WILLIAM D. WESTOVER and : IN THE COURT OF COMMON PLEAS OF
SHEILA WESTOVER, his : CLEARFIELD COUNTY, PENNSYLVANIA
wife, :
Plaintiff, : NO. 2002-1844-CD
:
vs. :
:
KENNETH R. THOMAS and :
LINDA M. THOMAS, his :
wife, and EMMA JEAN :
HUGILL, :
Defendants, :

PRAECIPE FOR ENTRY OF APPEARANCE ON BEHALF OF
DEFENDANT EMMA JEAN HUGILL

TO THE PROTHONOTARY:

Please note the entry of appearance of the undersigned as counsel of record for Emma Jean Hugill, Defendant named in the above captioned matter, noting that all papers for process should be served upon said parties may be served upon the undersigned at his offices located at P.O. Box 505, 137 North Main Street, Carrolltown, PA 15722.


KENNETH R. SOTTILE, Esquire
P.O. Box 505, 137 North Main Street
Carrolltown, PA 15722
(814) 344-6541
Attorney I.D. #15937

DATED: 12-17-02

FILED

JAN 03 2003

William A. Shaw
Prothonotary

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his
wife,

Plaintiff,

VS.

KENNETH R. THOMAS and
LINDA M. THOMAS, his
wife, and EMMA JEAN
HUGILL,

Defendants,

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 2002-1844-CD

TYPE OF DOCUMENT:

ANSWER AND COUNTERCLAIM

COUNSEL OF RECORD FOR DEFENDANT:

KENNETH R. SOTTILE, Esquire

P.O. Box 505

137 N. Main Street

Carrolltown, PA 15722

Supreme Court I.D. #39157

Telephone NO. (814) 344-6541

FILED

JAN 03 2003

William A. Shaw
Prothonotary

WILLIAM D. WESTOVER and : IN THE COURT OF COMMON PLEAS OF
SHEILA WESTOVER, his : CLEARFIELD COUNTY, PENNSYLVANIA
wife, :
Plaintiff, : NO. 2002-1844-CD
vs. :
KENNETH R. THOMAS and :
LINDA M. THOMAS, his :
wife, and EMMA JEAN :
HUGILL, :
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 the answer and counterclaim 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 counterclaim or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

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

WILLIAM D. WESTOVER and	:	IN THE COURT OF COMMON PLEAS OF
SHEILA WESTOVER, his	:	CLEARFIELD COUNTY, PENNSYLVANIA
wife,	:	
Plaintiff,	:	NO. 2002-1844-CD
	:	
vs.	:	
	:	
KENNETH R. THOMAS and	:	
LINDA M. THOMAS, his	:	
wife, and EMMA JEAN	:	
HUGILL,	:	
Defendants,	:	

ANSWER TO COMPLAINT

NOW COMES, EMMA JEAN HUGILL, Defendant above captioned by and through her attorney, Kenneth R. Sottile, and files the within Answer to Complaint and Counterclaim, and in support thereof avers as follows:

1. Admitted.
2. The answering Defendant is without sufficient knowledge or information to know what the address of the Thomas's is or what property exactly is owned by them. Accordingly, same is denied and strict proof demanded of him at trial.
3. It is admitted that Emma Jean Hugill is an adult individual and that her address is as stated. It is admitted that she is the owner of a parcel of property located in Westover Borough, Clearfield County. It is denied that her property adjoins that Plaintiff's property in that it is separated by a "paper alleyway". To the extent it would be found that ownership of the

unopened alleyway as reverted to the adjoining property owners then her land would adjoin the Plaintiffs.

4. With respect to the various allegations contained in paragraph 4 of the Complaint the answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of same. Accordingly, said averments are denied and strict proof of same is demanded at the time of trial.

8. With respect to the various allegations contained in paragraph 8 of the Complaint the answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of same. Accordingly, said averments are denied and strict proof of same is demanded at the time of trial.

WHEREFORE, the Defendant Emma Jean Hugill requests the Complaint be dismissed with prejudice and that she be awarded costs of the suite including reasonable attorney's fees.

COUNTERCLAIM
QUIET TITLE

9. The Defendant, Emma Jean Hugill, incorporates paragraphs 1 through 8 of the Complaint and her Answers thereto as though same were fully set forth herein.


10. The property now occupied by Emma Jean Hugill has been occupied by her predecessor in title for a period in excess of 21 years.

11. Based on the Plaintiff's "Exhibit A" Emma Jean Hugill believes and therefore avers that the twenty (20') foot wide strip of property marked "W" is an unopened alleyway plotted on the plan for the Borough of Westover.

12. Because the unopened alleyway marked "W" on Plaintiff's exhibit has been plotted and not opened the Borough of Westover has lost its right to open it and ownership of the twenty feet has reverted to the adjoining landowners to the centerline.

13. Emma Jean Hugill and her predecessors in title continued and exclusive use and possession of the property in question constitutes ownership and title in her by adverse possession which supersedes and defeats the Plaintiff's claim of ownership and all others who might so claim.

WHEREFORE, the Defendant Emma Jean Hugill request the Court to enter an Order or Decree confirming the validity of her and/or her heirs, successors and assigns, title to the property in question in fee simple absolute and extinguish the claimed interest of the Plaintiffs, their heirs, successors and assigns and any other persons or entity who might so claim.


KENNETH R. SOTTILE, Esquire
Attorney for Defendant Emma Jean Hugill

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CAMBRIA

:

Before me, the undersigned authority personally appeared, Odessa Morris, the within named Defendant, who being duly sworn according to law, deposes and says that the averments contained in the foregoing Answers to Complaint are true and correct to the best of her knowledge, information and belief.

Emma Jean Hugill
EMMA JEAN HUGILL

Sworn to and subscribed before me

this 17 day of December, 2002.

Elizabeth J. Krug

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

KENNETH R. SOTTILE, ESQUIRE
P.O. BOX 505
NORTH MAIN STREET
CARROLLTOWN, PA 15722

FILED
NO
12:48 PM
JAN 03 2003
William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13357

WESTOVER, WILLIAM D. & SHEILA

02-1844-CD

VS.

THOMAS, KENNETH R. & LINDA M. & EMMA JEAN HUGILL

COMPLAINT IN EJECTMENT

SHERIFF RETURNS

NOW DECEMBER 2, 2002 AT 2:30 PM EST SERVED THE WITHIN COMPLAINT IN EJECTMENT ON KENNETH R. THOMAS, DEFENDANT AT RESIDENCE, P.O. BOX 125, WESTOVER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO KENNETH THOMAS A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

NOW DECEMBER 2, 2002 AT 2:30 PM EST SERVED THE WITHIN COMPLAINT IN EJECTMENT ON LINDA M. THOMAS, DEFENDANT AT RESIDENCE, P.O. BOX 125, WESTOVER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LINDA THOMAS A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

NOW DECEMBER 2, 2002 AT 2:35 PM EST SERVED THE WITHIN COMPLAINT IN EJECTMENT ON EMMA JEAN HUGILL, DEFENDANT AT RESIDENCE, P.O. BOX 19 WESTOVER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO EMMA JEAN HUGILL A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCLEARY/NEVLING

Return Costs

Cost	Description
------	-------------

53.83	SHFF. HAWKINS PD. BY: ATTY.
-------	-----------------------------

20.00	SURCHARGE PD. BY: ATTY.
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FILED

JAN 31 2003

01/11/03 a-m

William A. Shaw
Prothonotary

WCC

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket #

13357

WESTOVER, WILLIAM D. & SHEILA

02-1844-CD

VS.

THOMAS, KENNETH R. & LINDA M. & EMMA JEAN HUGILL

COMPLAINT IN EJECTMENT

SHERIFF RETURNS

Sworn to Before Me This

31st Day Of January 2003



So Answers,



Chester A. Hawkins

Sheriff

Westover - Answer to Counterclaim filed by Defendants Thomas

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

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his wife,
Plaintiff

VS.

KENNETH R. THOMAS and
LINDA M. THOMAS, his wife, and
EMMA JEAN HUGILL,
Defendants

CASE NUMBER:

02-1844-CD

TYPE OF CASE:

Civil

TYPE OF PLEADING:

**Answer to Counterclaim filed by
Defendants Kenneth R. Thomas and
Linda M. Thomas**

FILED ON BEHALF OF:

Plaintiff

COUNSEL OF RECORD FOR THIS PARTY:

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

FILED

MAY 16 2003

**William A. Shaw
Prothonotary**

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

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his wife,
Plaintiff

VS.

No. 2002-1844-CD

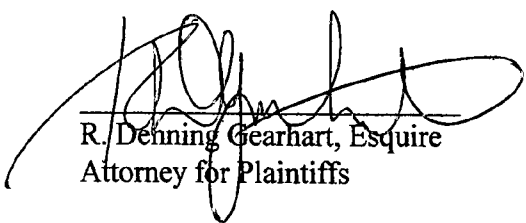
KENNETH R. THOMAS and
LINDA M. THOMAS, his wife, and
EMMA JEAN HUGILL,
Defendants

ANSWER TO COUNTERCLAIM

Comes now, R. Denning Gearhart, on behalf of the Plaintiffs, William D. Westover and Sheila Westover, and answers the Counterclaim filed by Defendants, Kenneth R. Thomas and Linda M. Thomas, as follows:

9. No answer required.
10. Denied. Nothing in the averment by Defendant Thomas states a reason why there is an easement by implication or by virtue of a description contained in the deed from the common grantor. The mere fact that there was a common grantor and that the deeds from the predecessors in title of Defendant Thomas preceded the deeds to the predecessors of the Plaintiff does not create an easement by implication.
11. Denied for the reasons set forth in paragraph 10.

Respectfully submitted,


R. Denning Gearhart, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 02-1844-CD

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his wife,
Plaintiff

vs.

KENNETH R. THOMAS and
LINDA M. THOMAS, his wife, and
EMMA JEAN HUGILL,
Defendants

ANSWER TO COUNTERCLAIM FILED BY
DEFENDANTS KENNETH R. THOMAS
and LINDA M. THOMAS

FILED

O 1:30 PM 3cc's only
MAY 16 2003 *W*

William A. Shaw
Prothonotary

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

Westover - Answer to Counterclaim filed by Defendant Emma Jean Hugill

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

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his wife,
Plaintiff

VS.

KENNETH R. THOMAS and
LINDA M. THOMAS, his wife, and
EMMA JEAN HUGILL,
Defendants

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CASE NUMBER:

02-1844-CD

TYPE OF CASE:

Civil

TYPE OF PLEADING:

**Answer to Counterclaim filed by
Defendant Emma Jean Hugill**

FILED ON BEHALF OF:

Plaintiff

COUNSEL OF RECORD FOR THIS PARTY:

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

FILED

MAY 16 2003

**William A. Shaw
Prothonotary**

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

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his wife,
Plaintiff

VS.

No. 2002-1844-CD

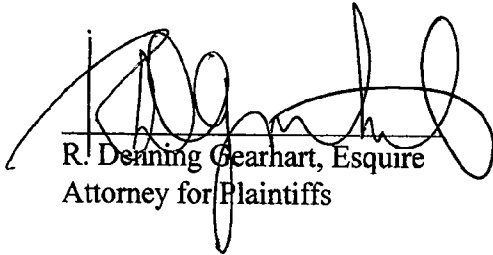
KENNETH R. THOMAS and
LINDA M. THOMAS, his wife, and
EMMA JEAN HUGILL,
Defendants

ANSWER TO COUNTERCLAIM

Comes now, R. Denning Gearhart, on behalf of the Plaintiffs, William D. Westover and Sheila Westover, and answers the Counterclaim filed by Defendant Emma Jean Hugill as follows:

9. No answer required.
10. Denied that anyone other than Plaintiffs have occupied the subject premises for a period in excess of twenty-one years. Further, it is averred that in as much as the property referred to by Defendant Hugill is titled in the name of the Borough of Westover, it is irrelevant as to occupation by her or by her predecessors in title.
11. To the extent that the Plaintiffs can respond to Defendant Hugill's beliefs, Plaintiffs deny that this strip of property is the unopened alleyway.
12. This averment calls for conclusion of law, and therefore, no answer is required.
13. Denied for the reasons set forth in paragraph 10 above.

Respectfully submitted,


R. Denning Gearhart, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 02-1844-CD

WILLIAM D. WESTOVER and
SHEILA WESTOVER, His Wife,
Plaintiff

vs.

KENNETH R. THOMAS and
LINDA M. THOMAS, His Wife, and
EMMA JEAN HUGILL,
Defendants

ANSWER TO COUNTERCLAIM FILED BY
DEPENDANT EMMA JEAN HUGILL

FILED

o 1:30 PM

MAY 16 2003

4cc to [unclear]
[unclear]

William A. Shaw
Prothonotary

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

William A. Shaw
Prothonotary

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

WILLIAM D. WESTOVER and :
SHEILA WESTOVER, his wife, :
Plaintiffs :
vi. : NO. 02 - 1844 - C.D.
KENNETH R. THOMAS and :
LINDA M. THOMAS, his wife, :
and EMMA JEAN HUGILL, :
Defendants :

AMENDED CERTIFICATE OF SERVICE


This is to certify that the undersigned has sent a
certified copy of Preliminary Objections To Reply to New Matter
on behalf of the Defendants Kenneth R. Thomas and Linda M.
Thomas, in the above-captioned matter to the following party by
postage prepaid United States mail on the 28th day of May, 2003:

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

Ms. Emma Jean Hugill
P.O. Box 19
Westover, PA 16692

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

BELIN & KUBISTA

By 
Carl A. Belin, Jr. Esq.
Attorney for Defendants
Kenneth R. Thomas and
Linda M. Thomas

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

WILLIAM A. SHAW
PROSECUTOR

FILED
DEC 4 1963
012:59 PM
NOV 20 1963
Attg Belin

William A. Shaw
Prothonotary

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

WILLIAM D. WESTOVER and :
SHEILA WESTOVER, his wife, :
Plaintiffs :
: NO. 02 - 1844 - C.D.
v. :
: :
KENNETH R. THOMAS and :
LINDA M. THOMAS, his wife, :
And EMMA JEAN HUGILL, :
Defendants :

PRELIMINARY OBJECTIONS TO REPLY TO NEW MATTER

AND NOW COMES Defendants, Kenneth R. Thomas and Linda M. Thomas ("Thomases"), by and through their attorneys, Belin & Kubista, and file preliminary objections to the reply to new matter in the nature of a demurer, and in support thereof avers as follows:

DEMURER

1. The deed from the common grantor William F. Mosser references an alley as the adjoinder to all four lots owned by the Thomases.

2. The complaint seeks to eject the Thomases from the alley area.

3. That the Thomases in their new matter averred that the reference to the alley in the deeds creates an easement in favor of the Thomases to the alley.

4. The answer to the "counterclaim" [sic] merely denies an easement arises from the description in the deed.


5. That the reference to the alley as a boundary to the Thomases' lots creates an easement by implication as a matter of law.

WHEREFORE, the Thomases demur to the reply to the new matter.

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA

By



Carl A. Belin, Jr., Esq.
Attorney for Defendants
Kenneth R. Thomas and
Linda M. Thomas

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

WILLIAM D. WESTOVER and :
SHEILA WESTOVER, his wife, :
Plaintiffs :
vi. : NO. 02 - 1844 - C.D.
: :
KENNETH R. THOMAS and :
LINDA M. THOMAS, his wife, :
and EMMA JEAN HUGILL, :
Defendants :

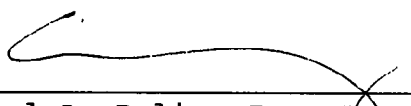
CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a true and correct copy of Preliminary Objections To Reply to New Matter on behalf of the Defendants in the above-captioned matter to the following party by postage prepaid United States mail on the 28 day of May, 2003:

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

Ms. Emma Jean Hugill
P.O. Box 19
Westover, PA 16692

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.
Attorney for Defendants
Kenneth R. Thomas and
Linda M. Thomas

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

FILED
MAY 20 1983
4cc
Amy Bein
William A. Shaw
Prothonotary

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

WILLIAM D. WESTOVER and
SHEILA WESTOVER, his wife

-vs-

KENNETH R. THOMAS and
LINDA M. THOMAS, his wife,
and EMMA JEAN HUGILL

No. 02 - 1844 - CD

FILED

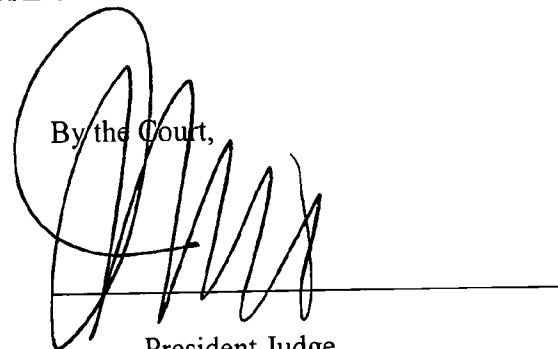
SEP 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

NOW, this 16th day of September, 2003, this being the day and date set for argument and counsel having stipulated that the Defendants have an easement by implication over an alley and street, it is the ORDER of this Court that Kenneth and Linda Thomas are hereby declared to be the owners of an easement overlying a 20 foot alley which is to the rear of lots 38, 39, 40 and 41 owned by them and Hopkins Street which runs along lot 38. It is the further ORDER of this Court that the Thomases shall have the right to conduct such activities including filling of holes, mowing of lawns and such other activities as are consistent with the use of the alley and street provided that neither the Thomases or Westovers shall place any obstructions on the easement that will interfere with the ingress, regress and egress in the use of the alley and the street. It is the further ORDER of this Court that this Order shall not apply to the other Defendant, Emma Jean Hugill.

By the Court,



President Judge

FILED

SEP 11 11:00 AM
SEP 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

1cc Atty Bellin

1cc Atty Gearhart

1cc Def Emma Huggins

PO Box 19

Westover, PA 19692