

03-841-CD
TIMOTHY M. SEGRAVES, et al, vs. WILLIAM J. DUFOUR, et al

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

TIMOTHY M. SEGRAVES, and
RANDI L. POWERS,
Plaintiffs

-vs-

WILLIAM J. DUFOUR and
DARLENE L. DUFOUR,
Defendants

No. 03-841-CD

Type of Action:
Civil

Type of Pleading:
Complaint

Filed on Behalf of:
Plaintiffs

Counsel of Record for this
Party:

Brian K. Marshall, Esquire
Supreme Court I.D. 87331

The Law Offices of
Richard H. Milgrub
211 North Second Street
Clearfield, PA 16830
(814) 765-1717

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

FILED

JUN 09 2003

William A. Shaw
Prothonotary

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

TIMOTHY M. SEGRAVES, and
RANDI L. POWERS,
Plaintiffs

-VS-

No. 03-_____ -CD

WILLIAM J. DUFOUR and
DARLENE L. DUFOUR,
Defendants

NOTICE TO DEFEND AND CLAIM RIGHTS

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 (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

TIMOTHY M. SEGRAVES, and *
RANDI L. POWERS, *
Plaintiffs *
*
-vs- * No. 03-_____ -CD
*
WILLIAM J. DUFOUR and *
DARLENE L. DUFOUR, *
Defendants *

COMPLAINT

AND NOW, come the Plaintiffs, Timothy M. Segraves and Randi L. Powers, by and through their attorney, Brian K. Marshall, Esquire, who files the following Complaint against the defendants. In support therefore plaintiffs aver as follows:

I. EJECTMENT

1. Plaintiffs are land owners who own real estate in Curwensville Borough, Clearfield County, Pennsylvania, located at 204 McNaul Street, Curwensville, Pennsylvania, and more particularly described at Instrument No. 200306628 in the Office of Recorder of Deeds of Clearfield County.

2. Defendants are William J. DuFour and Darlene L. DuFour, husband and wife, who reside at 202 McNaul Street, Curwensville Borough, Clearfield County, Pennsylvania.

3. Attached hereto as Exhibit A is a true and correct copy of the deed to the property owned by defendants, such deed having been executed on August 28, 1989 and recorded on August 29, 1989 at Deed Book 1300, page 29.

4. All of the parties herein, reside in a neighborhood known as McNaul Street, with all of the real estate being depicted on the same county assessment map.

5. The property owned by plaintiffs, more particularly described as 204 McNaul Street, Curwensville Borough, Clearfield County, Pennsylvania, has, for a period of time well in excess of twenty-one (21) years, been served by a driveway which straddles the property line separating the property of plaintiffs at 204 McNaul Street and the property of the defendants, William J. DuFour and Darlene L. DuFour, located at 202 McNaul Street, Curwensville Borough, Clearfield County, Pennsylvania, which has enabled the property currently owned by the plaintiffs and their predecessors in title to access a garage and parking area which is located on the property located at 204 McNaul Street, Curwensville Borough, Clearfield County, Pennsylvania.

6. The most recent predecessors in title for the plaintiffs are Jacqueline J. Shinafelt, who owned the property in question under deed dated March 22, 2003, recorded at Instrument No. 200306627 and her predecessors in title Wilmer R. Lord and Marguerite B. Lord, who owned such property by deed dated April 26, 1955, and recorded in Clearfield County Deed Book Volume 442, page 162.

7. Plaintiffs have the right to continue use of the driveway so as to travel over the land owned by defendants, because plaintiffs and their predecessors in title have acquired prescriptive easement rights over that roadway.

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8. Specifically, plaintiffs individually and/or their predecessors in title have operated in an open, continuous, notorious, adverse and uninterrupted fashion over the driveway across the property of the defendants and their predecessors in title, for a period in excess of twenty-one (21) years, and as such, plaintiffs have acquired vested easement rights over that land.

9. The manner in which plaintiffs have operated over the driveway, the plaintiffs and their predecessors in title have operated over the driveway in an adverse, open, continuance, notorious and uninterrupted manner for a period of time in excess of twenty-one (21) years is as follows:

(a) To access the garage which is located on the plaintiffs' premises;

(b) To provide parking for their automobiles and the automobiles of their guests and invitees.

10. On or about November 21, 2002, defendants abruptly, unreasonably and unlawfully interrupted the usage by plaintiffs of their easement rights over the driveway by commencing to park one or more of their vehicles immediately on the property line, thus causing there to remain insufficient space for plaintiffs to operate their vehicles over the driveway.

11. Plaintiffs have informed defendants of plaintiffs' lawful entitlement to use the driveway by virtue of their easements rights over that area, as it traverses defendants' property, but defendants have defiantly refused to honor plaintiffs' rights and have continued to block said driveway in the aforesaid manner.

12. Plaintiffs request your Honorable Court to enter an Order ejecting the defendants from the driveway of plaintiffs, and order defendants not to interfere with plaintiffs' rights of ingress, egress and regress over the driveway for themselves, their invitees, their assigns and heirs.

WHEREFORE, plaintiffs pray that an Order of Ejectment be entered against defendants, requiring them to cease blocking access to the plaintiffs' driveway and to cease and desist from blocking plaintiffs' easement rights over their driveway through the property of defendants, and award costs to the plaintiffs.

II. TRESPASS

Paragraphs 1 through 12 of this Complaint are incorporated by reference as though set forth in full.

13. By blocking the plaintiffs' driveway, defendants are interfering with the lawful right of ingress, egress and regress which plaintiffs have the driveway, and as such are trespassing against the lawful real estate rights of plaintiffs.

14. As a result of the trespass actions of defendants, plaintiffs have incurred and are continuing to incur the following damages:

(a) Inability to access a suitable place to park their vehicles;

(b) A greater risk of damage to their property by needing to attempt to operate their vehicles on the narrow path between their residence and the vehicles of the defendants which are parked immediately on the property line;

(c) A reduction in the value of their real estate by virtue of the blockage of the driveway so as to interfere with the natural means of accessing their driveway and garage;

(d) Personal inconvenience and the loss of the full enjoyment of their property.

15. The damages set forth herein continue to mount and accumulate as defendants unreasonably interfere with plaintiffs' easements rights and the full extent and enjoyment of their real estate.

WHEREFORE, plaintiffs pray that judgment be entered in their favor against the defendants, awarding them monetary damages in excess of \$20,000.00 for the trespass actions of defendants, plus costs and interest.

III. INJUNCTIVE RELIEF

Paragraphs 1 through 15 are incorporated by reference as though set forth in full.

16. This count is filed in the alternative, in the event that full relief is not granted in Counts I and II of this Complaint.

17. Plaintiffs hereby allege that the actions of defendants in depriving plaintiffs of the proper and lawful use of their driveway produces damages that are not measurable through a monetary award.

18. The specific damages that are not measurable through a monetary award are the following:

(a) Increased risk of injury to their child who suffers from a medical condition, if they are unable to remove

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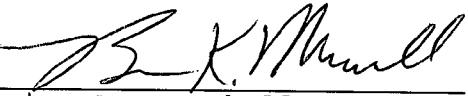
their vehicles from their driveway if defendants have parked in a manner blocking the driveway;

(b) Increased risk of injury to plaintiff or their child from attempting to exit their driveway when the visibility of oncoming traffic is blocked by defendants' large pick-up truck.

19. Plaintiffs allege, based upon the facts set hereinabove, that they have an inadequate remedy at law, and as such, they are entitled to injunctive relief.

20. Plaintiffs aver that their damages are irreparable so as to warrant injunctive relief.

WHEREFORE, plaintiffs pray that an Order be entered directing defendants to abstain and refrain from blocking or interfering with plaintiffs' easements rights over the corner of defendants' property, and that costs of this action be awarded to plaintiffs.

By 

Brian K. Marshall, Esquire
Attorney for Plaintiffs

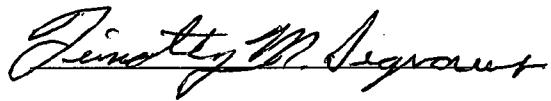
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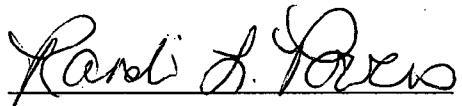
VERIFICATION

We, Timothy M. Segraves and Randi L. Powers, verify that the statements made herein are true and correct. We understand that false statements herein are made subject to penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: 6/15/03



Date: 6/15/03



THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

VOL 1300 PAGE 029

County Parcel No. _____

VOL 1300 PAGE 029

NTS/APG

THIS DEED

MADE the 28th day of August
in the year nineteen hundred and eighty-nine (1989)
BETWEEN CURWENSVILLE STATE BANK, a corporation organized and
existing under the laws of Pennsylvania, with its principal
office located at P. O. Box 29, 434 State Street, Curwensville,
Pennsylvania, hereinafter referred to as GRANTOR

A

N

D

WILLIAM J. DuFOUR and DARLENE L. DuFOUR, husband and wife, as
tenants by the entireties, of 400 Bloomington Avenue,
Curwensville, Clearfield County, Pennsylvania, hereinafter
referred to as GRANTEEES.

WITNESSETH, That in consideration of SEVENTEEN THOUSAND FIVE
HUNDRED (\$17,500.00)-----DOLLARS, in hand paid, the
receipt whereof is hereby acknowledged, the said grantor does
hereby grant and convey to the said grantees as tenants by the
entireties,

ALL those certain tract or parcel of land in the Borough of
Curwensville, Clearfield County, Pennsylvania, bounded and
described as follows:

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BEGINNING at a post on McNaul Street at the corner of Lot, now or formerly of V. H. Snyder; thence along said lot one hundred eighty (180) feet to an alley; thence by said alley forty (40) feet to a post as lot now or formerly of Oliver F. Smith; thence by line of said last mentioned lot one hundred eighty (180) feet to a post at McNaul Street; thence by line of McNaul Street forty (40) feet to a post and place of beginning.

Being further identified and described as House and Lot with Clearfield County Assessment Map Number 6.1-H9-290-19.

BEING the same premises which Chester A. Hawkins, Sheriff of Clearfield County, did grant and convey unto Curwensville State Bank by deed dated May 25, 1989 which appears of record in Clearfield County Deeds and Records Book 1284, Page 267. The aforementioned conveyance was made by said Sheriff as the result of an execution sale by virtue of a judgment entered in Mortgage Foreclosure at the suit of Curwensville State Bank vs. Donald W. Rowles and Charlene L. Rowles filed in the Court of Common Pleas of Clearfield County to No. 88-2277-CD, Execution Number 89-294-EX.

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1960", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

William J. DuFour
Charlene L. DuFour

This day of

VOL 1300 PAGE 031

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 10, 1965, as amended.)

AND the said grantor will SPECIALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

IN WITNESS WHEREOF, said Grantor has caused this Deed to be signed by its President or a Vice President, and also by its Secretary, or by an Assistant Secretary, or by its Treasurer, or by an Assistant Treasurer, and its Corporate Seal to be hereunto affixed, the day and year first above written.

ATTEST:



CURWENSVILLE STATE BANK

James E. Kehaut Jr. *John W. Wallen Jr.*

CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the grantees herein is as follows:

202 Main St.
Curwensville, PA 16827

James L. Weigert
Attorney or Agent for Grantee

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COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

: SS:

On this, the 28th day of August, 1989, before me, the undersigned officer, personally appeared who acknowledged himself to be the of CURWENSVILLE STATE BANK, the foregoing corporation, and that as such he, being authorized by such corporation to do so, executed the foregoing deed for the purpose therein contained by signing his name thereon as such.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

My Commission Expires:

June 27, 1991

Nancy H. Neep



NOTARIAL SEAL	COMMONWEALTH OF PENNSYLVANIA
NANCY H. NEEPER, NOTARY PUBLIC	DEPARTMENT OF REVENUE
PIKE TWP., CLEARFIELD COUNTY	
MY COMMISSION EXPIRES JUNE 29, 1991	ACTV. TRANSFER JUN 29 1989
Member, Pennsylvania Association of Notaries	175.00
Commonwealth of Pennsylvania	REC'D.
County of Clearfield	SS:

RECORDED in the Office for Recording of Deeds, etc., in and for said County in Deed Book No. 1300, Page 029.

WITNESS my hand and official seal this 29 day of August 1989.

Michael R. Lytle
Recorder of Deeds

CLEARFIELD COUNTY 8-29-89
ENTERED OF RECORD 8-29-89
TIME 11:36 AM
BY *Michael R. Lytle*
FEES 13.50
Michael R. Lytle, Recorder

My Commission Expires
First Monday in January, 1992

CURWENSVILLE AREA 8: MOUL DISTRICT

1% REALTY TRANSFER TAX

AMOUNT \$ 175.00

PAID 8-29-89 BY MICHAEL R. LYTHE

Date *8-29-89* Agent *Michael R. Lytle*

Entered of Record *Aug 29 1989*, 11:36 AM Michael R. Lytle, Recorder

FILED *Atty pd.*
019.00 *Atty*
JUN 09 2003 *Atty*
1 cc *Atty*

William A. Shaw
Prothonotary

RICHARD H. MILGRUB

Attorney & Counselor at Law

211 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830

COMMONWEALTH OF PENNSYLVANIA
STATE CONSTABLE
CLEARFIELD COUNTY



CHARLES E. SLOPPY

P.O. BOX 211
CURWENSVILLE, PA 16833

(814) 236-3309

In the Court of Common Pleas of Clearfield County, Pennsylvania

RANDI POWERS

Plaintiff

Vs.

No. 03-841-CD

WILLIAM J. & DARLENE L. DUFOUR

Defendant

AFFIDAVIT OF SERVICE

Charles E. Sloppy, being duly sworn, deposes and says that he personally served a copy of the entered to the above captioned upon

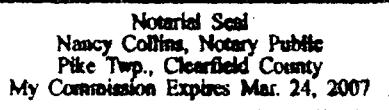
Darlene DuFour, co-defendant, residing at 202 McNaul Street,
Curwensville, Pa.

On the 10th day of June, 2003 at 12:35 p.m.

Charles E. Sloppy, Constable

Sworn to and subscribed before me on the 16th day of June, 2003.

Nancy Collins



Member, Pennsylvania Association of Notaries

FILED

JUN 16 2003

William A. Shaw
Prothonotary

FILED

0130285K
JUN 16 2003
cc
JAH

William A. Shaw
Prothonotary

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

TIMOTHY M. SEGRAVES and
RANDI L. POWERS,

Plaintiffs,

vs.

No. 03 - 841 - C.D.

WILLIAM J. DUFOUR and
DARLENE L. DUFOUR,

Defendants.

Type of case: Civil

Type of pleading: Answer, New
Matter and Counterclaim

Filed on behalf of: Defendants

Counsel for Defendants:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED

JUL 07 2003

073:30 AM

William A. Shaw

Prothonotary/Clerk of Courts

3 copy to ATTY

EJG

FREDERICK M. NEISWENDER
ATTORNEY AND COUNSELLOR AT LAW

501 EAST MARKET STREET • SUITE 3
CLEARFIELD, PENNSYLVANIA 16830



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

TIMOTHY M. SEGRAVES and	:	
RANDI L. POWERS,	:	
	Plaintiffs,	:
vs.	:	No. 03 - 841 - C.D.
WILLIAM J. DUFOUR and	:	
DARLENE L. DUFOUR,	:	
	Defendants.	:

NOTICE TO DEFEND

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

TIMOTHY M. SEGRAVES and :
RANDI L. POWERS, :
Plaintiffs, :
vs. : No. 03 - 841 - C.D.
WILLIAM J. DUFOUR and :
DARLENE L. DUFOUR, :
Defendants. :
.

ANSWER

I. EJECTMENT

NOW, come the Defendants, WILLIAM J. DUFOUR and DARLENE L. DUFOUR, by and through their attorney, FREDERICK M. NEISWENDER, ESQUIRE and make their Answer to Plaintiffs' Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part, Denied in part. The driveway in question has also been used by the Defendants and their predecessors in title well in excess of twenty-one (21) years to access a parking area located on their property at 202 McNaul Street.
6. Admitted.

7. Admitted in part, Denied in part. Defendants also have the right to continuous use of the driveway in question so as to travel over the land owned by the Plaintiffs, because Defendants and their predecessors in title have acquired a prescriptive easement to access the parking area located on their property at 202 McNaul Street.
8. Admitted in part, Denied in part. The driveway in question has also been used by the Defendants and their predecessors in title well in excess of twenty-one (21) years to access a parking area located on their property at 202 McNaul Street.
9. (a., b.) Admitted.
10. Denied. Defendants have always acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants.
11. Denied. Defendants have always acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants.
12. This paragraph is a prayer for relief and does not require an answer by Defendants.

WHEREFORE, Defendants respectfully requests this Court dismiss Plaintiffs' Complaint and enter judgment in favor of the Defendants.

II. TRESPASS

13. Denied. Defendants have always acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants.

14. (a.,b.,c.,d.) Denied. Defendants have always acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants. Strict proof of damages is required.

15. Denied. Defendants have always acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants. Strict proof of damages is required.

WHEREFORE, Defendants respectfully requests this Court dismiss Plaintiffs' Complaint and enter judgment in favor of the Defendants.

III. INJUNCTIVE RELIEF

16. This paragraph does not require an answer by Defendants.
17. Denied. Defendants have always acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants. Strict proof of damages is required.
18. (a., b.) Denied. Defendants have always acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants. Strict proof of damages is required.
19. Denied. Defendants have always acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants. Plaintiffs are not entitled to injunctive relief.
20. Denied. Defendants have always acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants. Plaintiffs are not entitled to injunctive relief.

WHEREFORE, Defendants respectfully requests this Court dismiss Plaintiffs' Complaint and enter judgment in favor of the Defendants.

NEW MATTER

NOW, come the Defendants, WILLIAM J. DUFOUR and DARLENE L. DUFOUR, by and through their attorney, FREDERICK M. NEISWENDER, ESQUIRE and aver as New Matter the following:

21. Defendants restate and incorporate Paragraphs 1 through 20 above as if stated at length herein.
22. Defendants have lived on the property at 202 McNaul Street, Curwensville, Pennsylvania for approximately fourteen (14) years.
23. The driveway in question has been used by the Defendants and their predecessors in title well in excess of twenty-one (21) years to access a parking area located on the property. Through this continuous use, Defendants and their predecessors in title have acquired a prescriptive easement to access the parking area.
24. Defendants have no other area in which to park on their property and no other means to access their property as "on street" parking is prohibited.
25. Prior to the filing of Plaintiffs' Compliant, the driveway in question was amicably shared by Defendants and Plaintiffs' predecessors in interest.
26. At all times prior to and since the filing of Plaintiffs' Complaint, Defendants have acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants.

WHEREFORE, Defendants respectfully requests this Court dismiss Plaintiffs' Complaint and enter judgment in favor of the Defendants.

COUNTERCLAIM

NOW, come the Defendants, WILLIAM J. DUFOUR and DARLENE L. DUFOUR, by and through their attorney, FREDERICK M. NEISWENDER, ESQUIRE and aver as a Counterclaim the following:

COUNT I – EJECTMENT

27. Defendants restate and incorporate Paragraphs 1 through 26 above as if stated at length herein.
28. On or about November 21, 2002, Plaintiffs began harassing Defendants verbally and using their vehicles to block a driveway that was previously shared by the parties.
29. Defendants have lived on the property at 202 McNaul Street, Curwensville, Pennsylvania for approximately fourteen (14) years.
30. The driveway in question has been used by the Defendants and their predecessors in title well in excess of twenty-one (21) years to access a parking area located on the property. Through this continuous use, Defendants and their predecessors in title have acquired a prescriptive easement to access the parking area.
31. Prior to the filing of Plaintiffs' Compliant, the driveway in question was amicably shared by Defendants and Plaintiffs' predecessors in interest.
32. At all times prior to and since the filing of Plaintiffs' Complaint, Defendants have acted in an amicable and cooperative manner with regard to the driveway in question. Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely block the driveway in an attempt to intimidate Defendants.

33. Plaintiffs' actions have caused damage to the Defendants by prohibiting them from using and enjoying their property.

34. Plaintiffs' actions have caused damage to the Defendants by lowering their property value.

35. Plaintiffs' actions have caused damage to the Defendants, as they have no other means to access their property.

WHEREFORE, Defendants demand judgment in their favor and against the Plaintiffs in excess of twenty thousand dollars (\$20,000.00), plus interest and the cost of the suit.

COUNT II – EXPENSES, COSTS AND ATTORNEY'S FEES

36. Defendants restate and incorporate Paragraphs 1 through 35 above as if stated at length herein.

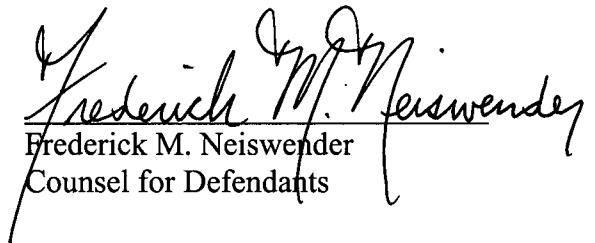
37. Defendants believe and therefore aver that Plaintiffs' Complaint is clearly without basis in fact or law, and was filed by Plaintiffs' solely for the purpose of causing expense, annoyance and harm to the Defendants.

38. As such, the conduct of Plaintiffs in commencing litigation as set forth in their Complaint is arbitrary, vexatious and in bad faith.

39. As a result, Defendants have been forced to retain counsel to defend this action, and are entitled to an award of counsel fees pursuant to 42 Pa. C.S.A. § 2503 (9).

WHEREFORE, Defendants demand judgment in their favor and against the Plaintiffs.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Defendants

WILLIAM J. DUFOUR and DARLENE L. DUFOUR hereby state that they are the Defendants in this action and that the statements of fact made in the foregoing Answer, New Matter and Counterclaim are true and correct upon personal knowledge. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 7/2/03

William J. Dufour
WILLIAM J. DUFOUR

DATE: 7/2/03

Darlene L. Dufour
DARLENE L. DUFOUR

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

TIMOTHY M. SEGRAVES, and
RANDI L. POWERS,
Plaintiffs

-VS-

WILLIAM J. DUFOUR and
DARLENE L. DUFOUR,
Defendants

*
*
*
*
*
*
*

No. 03-841-CD

Type of Action:
Civil

Type of Pleading:
Answer to Defendants' New
Matter and Counterclaim

Filed on Behalf of:
Plaintiffs

Counsel of Record for this
Party:

Brian K. Marshall, Esquire
Supreme Court I.D. 87331

The Law Offices of
Richard H. Milgrub
211 North Second Street
Clearfield, PA 16830
(814) 765-1717

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

FILED

AUG 05 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

TIMOTHY M. SEGRAVES, and *
RANDI L. POWERS, *
Plaintiffs *
*
-vs- * No. 03-841-CD
*
WILLIAM J. DUFOUR and *
DARLENE L. DUFOUR, *
Defendants *

ANSWER TO DEFENDANTS' NEW MATTER NEW MATTER
AND COUNTERCLAIM

AND NOW, come the Plaintiffs, Timothy M. Segraves and Randi L. Powers, by and through their attorney, Brian K. Marshall, Esquire, who respond to the Defendants' New Matter and Counterclaim as follows:

21. No response is required.
22. Admitted.
23. Denied. It is denied that the driveway in question has been used by the Defendants and their predecessors in title in excess of twenty-one (21) years to access a parking area on the property. It also is specifically denied that through continuous use, Defendants and their predecessors in title have acquired a prescriptive easement to access the parking area.
24. Admitted in part, denied in part. It is admitted that "on street" parking is prohibited, however it is specifically denied that Defendants have no other area in which to park on their property, and it is also specifically denied that Defendants have no other means to access their property.

25. Denied. It is specifically denied that prior to the filing of Plaintiffs' Complaint, the driveway was amicably shared by the Defendants and Plaintiffs and/or their predecessors in interest.

26. Denied. It is denied that at all times prior to and since the filing of Plaintiffs' Complaint, Defendants have acted in an amicable and cooperative manner with regard to the driveway in question. It is specifically denied that Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway. It is specifically denied that Plaintiffs routinely block the driveway in an attempt to intimidate the Defendants.

COUNTERCLAIM

AND NOW, come the Plaintiffs, Timothy M. Segraves and Randi L. Powers, by and through their attorney, Brian K. Marshall, Esquire, who answer the Defendants' Counterclaim as follows:

COUNT I - EJECTMENT

27. Plaintiffs restate and incorporate their answers to paragraphs 22 through 26 as if stated at length herein.

28. Denied. It is denied that on or about November 21, 2002, Plaintiffs began harassing Defendants verbally. It is further denied that Plaintiffs used their vehicles to block the driveway.

29. Admitted.

30. Denied. It is specifically denied that the driveway in question has been used by Defendants and their

THE LAW OFFICES OF
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211 NORTH SECOND STREET
CLEARFIELD, PA 16830

—
109 NORTH BRADY STREET
DUBOIS, PA 15801

predecessors in title well in excess of twenty-one (21) years. It is also specifically denied that Defendants and/or their predecessors in title have used the driveway continuously. It is also specifically denied that Defendants and/or their predecessors in title have acquired a prescriptive easement to access the parking area.

31. Denied. It is denied that prior to the filing of Plaintiffs' Complaint, the driveway was amicably shared by Defendants and Plaintiffs and/or their predecessors in title.

32. Denied. It is denied that at all times prior to and since the filing of the Plaintiffs' Complaint, Defendants have acted in an amicable and cooperative manner with regard to the driveway in question. It is specifically denied that Defendants have always provided sufficient space for the Plaintiffs to enter and exit the driveway. It is specifically denied that Plaintiffs routinely block the driveway in an attempt to intimidate the Defendants.

33. Denied. It is specifically denied that Plaintiffs' actions have caused any damage to the Defendants. Strict proof of damages is demanded at trial.

34. Denied. It is specifically denied that any all alleged actions by the Plaintiffs have caused any decrease in the Defendants' property value. Strict proof of damages is demanded at trial.

35. Denied. It is specifically denied that Plaintiffs' alleged actions have caused damage to the Defendants. It is also specifically denied that they have no other means to

access their property. Strict proof of damages is demanded at trial.

WHEREFORE, Plaintiffs request the Honorable Court enter judgment in their favor.

COUNT II - EXPENSES, COSTS AND ATTORNEY'S FEES

36. Plaintiffs restate and incorporate their answers to Paragraphs 22 through 35 as if stated at length herein.

37. Denied. It is specifically denied that the Plaintiffs' Complaint is without basis in fact or law. It is further specifically denied that Plaintiffs filed the suit for any improper purpose.

38. Denied. It is specifically denied that Plaintiffs commencement of this litigation is arbitrary, vexatious and in bad faith.

39. Denied. It is specifically denied that Defendants are entitled to an award of counsel fees pursuant to 42 Pa. C.S.A. § 2503 (9), or any other section or subsection of the Pennsylvania Statutes. Strict proof of damages is demanded at trial.

WHEREFORE, Plaintiffs request that the Court dismiss the Defendants' request for award of counsel fees.

Respectfully submitted,



Brian K. Marshall, Esquire
Attorney for Plaintiffs

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

VERIFICATION

We, Timothy M. Segraves and Randi L. Powers, verify that the statements made herein are true and correct. We understand that false statements herein are made subject to penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: 8/1/03

Timothy M. Segraves

Date: 8/1/03

Randi L. Powers

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

FILED
3:09 AM
AUG 05 2003
Amy Marshall
William A. Shaw
Prothonotary/Clerk of Courts

RICHARD H. MILCRUB
Attorney & Counselor at Law
211 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830

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

TIMOTHY M. SEGRAVES, and *
RANDI L. POWERS, *
Plaintiffs *
*
vs No. 03-841-CD
*
*
*
*
WILLIAM J. DUFOUR and
DARLENE L. DUFOUR,
Defendants *

Type of Pleading:

Certificate of Service

Filed on Behalf of:

Plaintiffs

Counsel of Record for this
Party:

Brian K. Marshall, Esquire
Supreme Court I.D. 87331

211 North Second Street
Clearfield, PA 16830
(814) 765-1717

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

FILED

AUG 06 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

TIMOTHY M. SEGRAVES, and	*
RANDI L. POWERS,	*
Plaintiffs	*
	*
-vs-	*
	No. 03-841-CD
	*
WILLIAM J. DUFOUR and	*
DARLENE L. DUFOUR,	*
Defendants	*

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Answer to Defendants' New Matter and Counterclaim in the above-captioned matter was served upon Frederick M. Neiswender, Esquire, 501 East Market Street, Clearfield, PA 16830, by regular U.S. mail this 6th day of August 2003.

Date: 8/6/03



Brian K. Marshall
Attorney for Plaintiffs

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

FILED NO
3:03-CV-01618
AUG 06 2003

William A. Shaw
Prothonotary/Clerk of Courts

RICHARD H. MILGRUB

Attorney & Counselor at Law

211 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830

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

TIMOTHY M. SEGRAVES, and
RANDI L. POWERS,
Plaintiffs

*
*
*
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*
*
*
*

-vs-

No. 03-841-CD

WILLIAM J. DUFOUR and
DARLENE L. DUFOUR,
Defendants

Type of Action:
Civil

Type of Pleading:
Petition for a Rule Setting
Status Conference

Filed on Behalf of:
Plaintiffs

Counsel of Record for this
Party:

Brian K. Marshall, Esquire
Supreme Court I.D. 87331

The Law Offices of
Richard H. Milgrub
211 North Second Street
Clearfield, PA 16830
(814) 765-1717

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

FILED

SEP 10 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

TIMOTHY M. SEGRAVES, and *
RANDI L. POWERS, *
Plaintiffs *
*
-vs- * No. 03-841-CD
WILLIAM J. DUFOUR and *
DARLENE L. DUFOUR, *
Defendants *

PETITION FOR A RULE SETTING STATUS CONFERENCE

AND NOW, come Your Petitioners, Timothy M. Segraves and Randi L. Powers, by and through their attorney, Brian K. Marshall, Esquire, who petitions the Court to schedule a Status Conference in the above-captioned matter, and in support thereof avers as follows:

1. That Your Petitioners filed a Complaint in the above-captioned action.
2. That on or about July 7, 2003, the Respondents, William J. DuFour and Darlene L. DuFour, filed an Answer and New Matter in the above-captioned action.
3. That on or about August 1, 2003, Your Petitioners filed an Answer to the Respondents' New Matter.
4. That Your Petitioners believe that scheduling a Status Conference in the above-captioned action would be a beneficial use of the Court's time, and potentially lead to a settlement of the issues involved.

Respectfully submitted,

Brian K. Marshall
Brian K. Marshall, Esquire
Attorney for Plaintiffs

VERIFICATION

We, Timothy M. Segraves and Randi L. Powers, verify
that the statements made herein are true and correct. We
understand that false statements herein are made subject to
penalties of 18 Pa.C.S. §4904, relating to unsworn falsification
to authorities.

Date: 9/9/03

Timothy M. Segraves

Date: 9/9/03

Randi L. Powers

THE LAW OFFICES OF
RICHARD H. MILGRUS
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
CUBOIS, PA 15801

FILED
100
9/3/00
SEP 10 2000
Amy Marshall
EPA
William A. Shaw
Prothonotary/Clerk of Courts

RICHARD H. MILGRUB
Attorney & Counselor at Law
211 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830

CA

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

TIMOTHY M. SEGRAVES, and *
RANDI L. POWERS, *
Plaintiffs *
*
-vs- *
*
No. 03-841-CD
WILLIAM J. DUFOUR and *
DARLENE L. DUFOUR, *
Defendants *

ORDER

AND NOW, this 15th day of September, 2003, upon
Petition of the above-named Petitioners, it is hereby ORDERED
that a Status Conference will be held on the 8 day of
October, 2003, at 2:00 P.m. in the chambers of the
undersigned Judge.

BY THE COURT.

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

FILED

SEP 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED 1CC
07/15/2003
ATTY B. MARSHALL
SEP 15 2003
2003

William A. Shaw
Prothonotary/Clerk of Courts

RICHARD H. MILGRUB
Attorney & Counselor at Law

211 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830

FILED

MAR 22 2004

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY William A. Shaw
CIVIL TRIAL LISTING Prothonotary/Clerk of Courts

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

03-841-CD

DATE PRESENTED 03/22/04

CASE NUMBER TYPE TRIAL REQUESTED ESTIMATED TRIAL TIME

() Jury (X) Non-Jury
Date Complaint () Arbitration 1 Days
Filed: 06/09/2003

PLAINTIFF(S)

Timothy M. Segraves; Randi L. Powers ()

DEFENDANT(S)

William J. DuFour; Darlene L. DuFour ()

ADDITIONAL DEFENDANT(S)

Check Block if
a Minor is a
Party to the
Case

()

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

more than
\$ () yes () no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.



Brian K. Marshall

814-765-1717

FOR THE PLAINTIFF

TELEPHONE NUMBER

Fredrick N. Neiswender

814-765-6500

FOR THE DEFENDANT

TELEPHONE NUMBER

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

FILED NOCC

03/22/04
MAR 22 2004
copy to CIA

William A. Shaw
Prothonotary/Clerk of Courts

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

TIMOTHY M. SEGRAVES and :
RANDI L. POWERS, :
Plaintiffs, :
vs. : No. 03 - 841 - C.D.
WILLIAM J. DUFOUR and :
DARLENE L. DUFOUR, :
Defendants. :
8/9:45 AM

FILED *fm*

AUG 11 2004

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Pre-Trial Memorandum was made upon Timothy M. Segraves and Randi L. Powers, by mailing, first class, postage prepaid, a true copy to the office of their attorney of record, Brian K. Marshall, Esquire, on August 9, 2004, at the following address:

Brian K. Marshall, Esquire
211 North Second Street
Clearfield, Pennsylvania 16830

Frederick M. Neiswender
Frederick M. Neiswender, Esquire
Counsel for Defendants
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830

CA

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

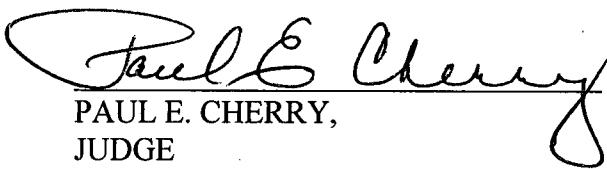
TIMOTHY M. SEGRAVES and	:	NO. 03-841-CD
RANDI L. POWERS	:	
V.	:	
	:	
WILLIAM J. DUFOUR and	:	
DARLENE L. DUFOUR	:	

ORDER

AND NOW, this 16TH day of August, 2004, following Pre-Trial Conference, it is
the ORDER of this Court:

1. Non-Jury Trial in this matter is scheduled for October 18, 2004 at 9:00 A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. A view of the area named in this action is scheduled for October 18, 2004 with the parties meeting at 8:30 A.M. at the Uni-Mart in Curwensville, Pennsylvania.
3. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

AUG 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

cc: Atty's B. Marshall, Versuender

Aug 19 2004

LAS

William A. Shaw
Prothonotary/Clerk of Courts

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

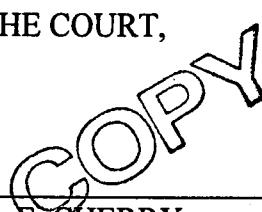
TIMOTHY M. SEGRAVES and : NO. 03-841-CD
RANDI L. POWERS :
V. :
: WILLIAM J. DUFOUR and :
DARLENE L. DUFOUR :
:

ORDER

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the ORDER of this Court:

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3. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

Segraes v Da Facci

3
Trial

Oct 18

→ Meet for view at
8:30 at
Monique Uni-Grant in Curves

→ Do outstanding discovery

1/2

Civil Pre-Trial Conference

Pre-Trial Conference Date: _____ Docket No. 03-841-CD

Case Caption: Timothy J. Segraves and Randi L. Powers
v.

William J. Dufour and Darlene L. Dufour

Attorney for Plaintiff: Brian Marshall

Attorney for Defendant: Fred Neiswender

INSTRUCTIONS:

Jury Selection: X

Trial Date(s): Oct 18

Prior to commencement of trial:

Outstanding Discovery _____ days Trial Briefs _____ days

Points of Charge _____ days Motions in Limine _____ days

Proposed Verdict Slip _____ days

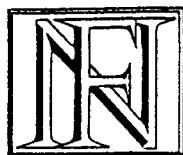
Exhibits Marked Prior to Trial: X Yes No

View required: X Yes No Date: Oct 18 8:30

Details: Uni Mount - Cressonville

NOTES:

Jeff Melt



FREDERICK M. NEISWENDER
ATTORNEY AND COUNSELLOR AT LAW

August 3, 2004

Mr. & Mrs. William J. DuFour
202 McNaul Street
Curwensville, PA 16833

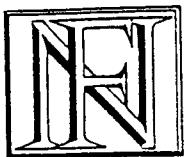
RE: Segraves and Powers v. DuFour, No. 03-841-CD.

FEES		HOURS	AMOUNT
01/15/03	Review of letter.	.25	25.00
02/10/03	Conference with Brian Marshall.	.25	25.00
06/09/03	Review of Complaint.	.50	50.00
06/13/03	Meeting with clients at residence.	1.50	150.00
06/30/03	Research.	1.00	100.00
07/07/03	Prepare Answer to Complaint.	2.00	200.00
08/05/03	Review Plaintiffs' Answer.	.25	25.00
10/08/03	Status Conference.	1.00	100.00
07/29/04	Attendance at call of the Civil Trial list.	1.00	100.00
01/15/03 – 08/03/04	Five (5) telephone calls @ .20 hours each.	<u>1.00</u>	<u>100.00</u>
Total Fees		8.75	\$875.00

Def's. D

Total Amount This Bill	875.00
Retainer Paid	(00.00)
Amount Previously Due	<u>00.00</u>
Balance Due	\$875.00

**** PAYMENT DUE UPON RECEIPT ****



FREDERICK M. NEISWENDER
ATTORNEY AND COUNSELLOR AT LAW

August 4, 2004

Mr. & Mrs. William J. DuFour
202 McNaul Street
Curwensville, PA 16833

Re: Segraves and Powers v. DuFour, No. 03-841-CD.

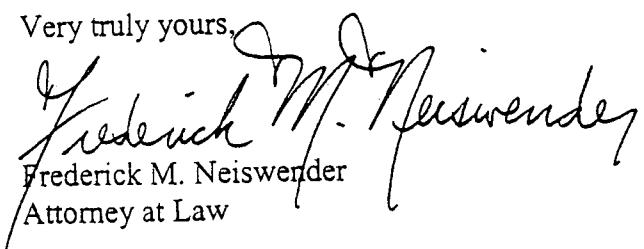
Dear Bill and Darlene:

Enclosed please find an Invoice for legal work done on your behalf in the above matter. On July 29, 2004, I attended the call of the Civil Trial list for the Fall Term. I will be attending a Pre-trial Conference for this case on August 16, 2004.

Although I am trying to settle this case amicably, your neighbors do not seem to be interested in sharing the alley. More than likely this case will go to a Non-jury Trial before Judge Cherry in September or October. As you know, preparing for trial is time consuming so I will require a retainer of two thousand dollars (\$2000.00) for my representation of you through the trial. The retainer is payable prior to my preparation for the trial.

Should you have questions or need additional information, do not hesitate to contact me.

Very truly yours,


Frederick M. Neiswender
Attorney at Law

Enclosure

Def.'s E

RECEIPT

DATE Oct. 5, 2005 NO. 12345678

FROM Darlene & William DuFour \$ 2,000.00

Two Thousand and ~~XX~~ 100 — DOLLARS

FOR RENT
 FOR TRIAL RETAINER

ACCT.	<u>2,873.00</u>	<input checked="" type="checkbox"/> CASH	FROM <u>J. P. Fensender</u>	TO <u>1152</u>
PAID	<u>2,000.00</u>	<input type="radio"/> CHECK		
DUE	<u>875.00</u>	<input type="radio"/> MONEY ORDER		

Def.'s F

4
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

TIMOTHY M. SEGRAVES, and *
RANDI L. POWERS, *
Plaintiffs *
*
-vs- * No. 03-841-CD
*
WILLIAM J. DUFOUR and *
DARLENE L. DUFOUR, *
Defendants *

Type of Pleading:
Pre-Trial Statement

RECEIVED

AUG 09 2004

~~COURT~~ ADMINISTRATOR'S
OFFICE

Filed on Behalf of:
Plaintiffs:
Timothy M. Segraves and
Randi L. Powers

Counsel of Record for this
Party:

Brian K. Marshall, Esquire
Supreme Court I.D. 87331

211 North Second Street
Clearfield, PA 16830
(814) 765-1717

THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

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

TIMOTHY M. SEGRAVES, and *
RANDI L. POWERS, *
Plaintiffs *
*
-vs- * No. 03-841-CD
*
WILLIAM J. DUFOUR and *
DARLENE L. DUFOUR, *
Defendants *

PRE-TRIAL STATEMENT

AND NOW, comes the Plaintiffs, Timothy M. Segraves and Randi L. Powers, by and through their attorney, Brian K. Marshall, Esquire, who puts forth the following Pre-Trial Statement, pursuant to the Form of Pre-Trial Memorandum for Clearfield County, and avers as follows:

1 This case is regarding a driveway dispute. In the year 2002, all on street parking on McNaul Street near the Plaintiffs' and Defendants' adjacent residences was outlawed. As such, this left the Plaintiffs with only their driveway in which to park. The Plaintiffs' driveway, as it has been used for a period well in excess of twenty-one (21) years by the Plaintiffs, and their predecessors in title, has encroached upon the Defendants' property by several feet. The Plaintiffs are certain that this has occurred for a period well in excess of twenty-one (21) years because the Plaintiff, Randi L. Powers, with the exception of a brief period in the 1980's, has lived in that home for her entire life. Further, the use of this driveway by the Plaintiffs, and their predecessors in title, was in an adverse, open, notorious, continuous, and uninterrupted manner.

Following the outlaw of parking on McNaul Street, on or about November 21, 2002, the Defendants abruptly began parking their vehicle immediately on the property line so as to deny the Plaintiffs access and reasonable use of the driveway that the Plaintiffs and their predecessors have been using for a period in excess of twenty-one (21) years.

Further, it is not possible to move the gravel driveway, because of the small parcels of land in this neighborhood, and by virtue of the fact that there is a guide wire from a telephone pole that is anchored in the narrow strip of grass between the Plaintiffs' home and their driveway.

The Plaintiffs became owners of their property by deed recorded at 200306628 in the Office of Recorder of Deeds of Clearfield County. Plaintiffs prior predecessors in title are Jacqueline J. Shinafelt, who owned the property until March 22, 2003, by deed recorded at 200306627. The prior predecessors in title were Wilmer R. Lord and Marguerite B. Lord, who owned the property from April 26, 1955, by deed recorded in Deed Book Volume 442, Page 162, in the Office of Recorder of Deeds of Clearfield County. Wilmer Lord and Marguerite Lord were Plaintiff Randi Powers grandparents and both are deceased.

2 All exhibits to be entered into evidence include the following: various photographs taken of the subject premises in dispute; copies of the following deeds: deed from Jacqueline J. Shinafelt and Frederick G. Shinafelt to Randi Powers and Timothy Segraves, copy of deed from Marguerite B. Lord to Jacqueline J. Shinafelt and Frederick G. Shinafelt, copy of deed from James V. Marra and Elda M. Marra to Wilmer R. Lord and

Marguerite B. Lord; and photocopy of a survey performed by Yost surveying of Clearfield Pennsylvania.

3. Witnesses expected to be called include Randi Powers and Timothy Segraves, of 204 McNaul Street, Curwensville, Clearfield County, Pennsylvania; Ann Lutz, McNaul Street, Curwensville, Clearfield County, Pennsylvania; Harry and Betty Fye, McNaul Street, Curwensville, Clearfield County, Pennsylvania; and Samuel B. Yost, 168 Baneyville Road, Clearfield, Clearfield County, Pennsylvania. All previously listed witnesses are liability witnesses.

4. The legal theories upon which Plaintiffs rest their case includes prescriptive easement and trespass. Plaintiffs believe that they have established prescriptive easement rights to use the area of land in question. A prescriptive easement requires that Plaintiffs use the land in an open, continuous, notorious, adverse and uninterrupted fashion for a period in excess of twenty-one (21) years. Burkett v. Snyder, 369 Pa.Super. 519 (1987).

Plaintiffs further base their claim on the Common Law theory of trespass requires an unlawful entry onto the lands of another. Sebree v. Huntingdon Water Supply Company, 72 Pa.Super. 553 (1918).

5. Plaintiffs claim damages for their loss of use of their driveway from the period November 21, 2002, to the date of trial, including those times before they held title to the premises, as well as those times after they held title to the premises.

6. Plaintiffs do not foresee any extraordinary evidentiary issues.

7. Plaintiffs believe that Defendants will stipulate to the accuracy of the survey prepared by Yost surveying in November, 2002; Defendants would be expected to stipulate to the chain of title as set forth previously in the Pre-Trial Statement, as well as in Plaintiffs Complaint.

8. As this is a non-jury trial, no points for charge are necessary.

9. Plaintiffs estimate that the Trial would take one (1) day.

Respectfully submitted,



Brian K. Marshall, Esquire
Attorney for Defendant

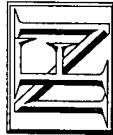
THE LAW OFFICES OF
RICHARD H. MILGRUB
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

②

FREDERICK M. NEISWENDER
ATTORNEY AND COUNSELLOR AT LAW

501 EAST MARKET STREET • SUITE 3
CLEARFIELD, PENNSYLVANIA 16830



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

TIMOTHY M. SEGRAVES and
RANDI L. POWERS,

Plaintiffs,

vs.

No. 03 - 841 - C.D.

WILLIAM J. DUFOUR and
DARLENE L. DUFOUR,

Defendants.

Type of case: Civil (Law)

Type of pleading: Pre-Trial Memorandum

RECEIVED

AUG 10 2004

COURT ADMINISTRATOR'S
OFFICE

Filed on behalf of: Defendants,
William J. DuFour and Darlene L. DuFour

Counsel for Defendants:
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

TIMOTHY M. SEGRAVES and
RANDI L. POWERS,
Plaintiffs,
vs.
WILLIAM J. DUFOUR and
DARLENE L. DUFOUR,
Defendants.
No. 03 - 841 - C.D.

PRE-TRIAL MEMORANDUM

A. STATEMENT OF THE CASE

This matter is brought before the Court as a dispute between the parties regarding the use of an alley that is nearly bisected lengthwise by the property line between the homes of Plaintiffs and Defendants. Both parties use the alley as a driveway. Plaintiffs in this matter are Timothy M. Segraves and Randi L. Powers of 204 McNaul Street, Curwensville, Pennsylvania [hereinafter "Plaintiffs"]. The Defendants are William J. DuFour and Darlene L. DuFour of 202 McNaul Street, Curwensville, Pennsylvania [hereinafter "Defendants"]. The Defendants have lived on the property at 202 McNaul Street for approximately fourteen (14) years.

On or about November 21, 2002, Plaintiffs began harassing Defendants verbally and using their vehicles to block the driveway that was previously shared by the parties. Defendants had provided sufficient space for the Plaintiffs to enter and exit the driveway; however, Plaintiffs routinely blocked the driveway in an attempt to intimidate Defendants. Defendants have no other area in which to park on their property and no other means to access their property as "on street" parking is prohibited. Plaintiffs' actions have caused damage to the Defendants by

prohibiting them from using and enjoying their property and by lowering their property value.

Plaintiffs asserted that since a larger portion of the alley was on their property, they had a controlling interest and could prohibit the Defendants from using the driveway. This dispute culminated with the filing of a Compliant on June 9, 2003.

In years past, Defendants and Plaintiffs' predecessors in interest amicably shared the driveway in question. Additionally, the driveway has been used by the Defendants and their predecessors in title in excess of twenty-one (21) years to access the above-mentioned parking area. Through their continuous use, Defendants maintain that they and their predecessors in title have acquired an easement through adverse possession as well as a prescriptive easement to access their parking area.

Defendants further aver that Plaintiffs' Complaint is clearly without basis in fact or law, and was filed by Plaintiffs solely for the purpose of causing expense, annoyance and harm to the Defendants. As such, Defendants contend that the conduct of Plaintiffs in commencing litigation as set forth in their Complaint is arbitrary, vexatious and in bad faith. As a result, Defendants have been forced to retain counsel to defend this action, and maintain that they are entitled to an award of counsel fees pursuant to 42 Pa. C.S.A. § 2503 (9).

B. EXHIBITS

1. Photographs of the property and driveway;
2. A video of the property and driveway;
3. Survey map of the property prepared by Samuel B. Yost;
4. Invoice for legal fees in the defense of the case;
5. Defendants reserve the right to offer additional exhibits with notice to counsel for

Plaintiffs.

C. WITNESSES

1. William J. DuFour, 202 McNaul Street, Curwensville, PA 16833;
2. Darlene L. DuFour, 202 McNaul Street, Curwensville, PA 16833;
3. Defendants reserve the right to call additional witnesses with notice to counsel for

Plaintiffs.

D. LEGAL THEORY FOR RECOVERY

Defendants assert that they are entitled to equal use of the common driveway in question. Through their continued use of the driveway, in conjunction with their predecessors in title, Defendants have acquired a right to use the driveway through adverse possession. Additionally, since Defendants have no other means to access their property, except through the use of the driveway, they are entitled to a prescriptive easement. By hindering Defendants use of the driveway, Plaintiffs have deprived Defendants of the use and enjoyment of their property and caused a corresponding decrease in the property value. This theory of recovery is based on the basic tenets of property and real estate law regarding easements and common driveways.

E. DAMAGES

Defendants seek monetary damages for lost use and enjoyment of their property, reduction in their property value and attorney's fees.

F. EVIDENTIARY PROBLEMS

No evidentiary problems are anticipated.

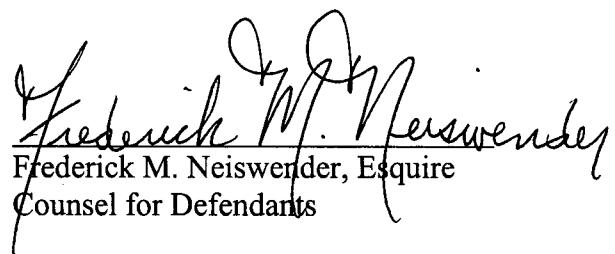
G. EXPECTED STIPULATIONS

Stipulations to the entry into evidence of the map and photographs are expected.

H. ESTIMATED TIME FOR TRIAL

One-half (1/2) to one (1) day.

Respectfully submitted,



Frederick M. Neiswender, Esquire
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

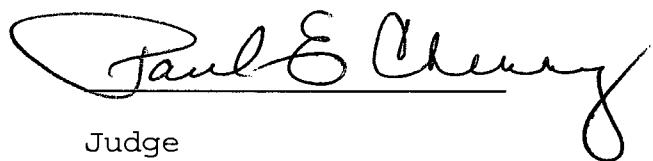
CIVIL DIVISION

TIMOTHY J. SEGRAVES and :
RANDI L. POWERS :
VS. : NO. 03-841-CD
WILLIAM J. DUFOUR and :
DARLENE L. DUFOUR :
CA

O R D E R

NOW, this 18th day of October, 2004, following testimony, it is the ORDER of this Court that counsel shall have no more than fifteen (15) days from this date to order preparation of the transcripts and, upon receipt of said transcripts, shall have no more than thirty (30) days in which to submit appropriate brief concerning all issues to the Court.

BY THE COURT:


Paul E. Cherry

Judge

FILED ^{1cc}
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OCT 19 2004
Attn: B. Marshall,
Neiswender

William A. Shaw
Prothonotary/Clerk of Courts

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

TIMOTHY M. SEGRAVES and	:	NO. 03-841-CD
RANDI L. POWERS,	:	
Plaintiff	:	
	:	
V.	:	

WILLIAM J. DUFOUR and
DARLENE L. DUFOUR,
Defendants

FILED

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William A. Shaw
Prothonotary/Clerk of Courts

OPINION

This matter comes before the Court upon the filing of a Complaint by Plaintiffs seeking Ejectment, Trespass and Injunctive Relief in an effort to enjoin the Defendants from the use of the common driveway located between the residences of both Plaintiffs and Defendants located at 202 and 204 McNaul Street in the Borough of Curwensville, Clearfield County, Pennsylvania. Following a view and non-jury trial and the timely receipt of Briefs, this matter is ripe for decision.

The first issue before this Court is whether Plaintiffs have met their burden on their claim of ejectment in establishing a prescriptive easement over the Defendants' property. To acquire a right or easement by prescription, the evidence and proof thereof must be clear and positive. Pittsburgh and Lake Erie R. Co. v. Stowe Township, 374 Pa. 54, 59, 96 A.2d, 892 (1953). A prescriptive easement is created by adverse, open, continuous, notorious and uninterrupted use of the land for a period of twenty-one (21) years. Boyd v. Teeple, 460 Pa. 91, 94 (1975), Burkett v. Snyder, 369 Pa. Super 519 (1988). In the case before this Court, Plaintiffs attempted to establish their right to a

prescriptive easement by tacking the rights they believe they have established onto their predecessors in interest which in the present case was the grandparents. However, this Court is satisfied that in order to tack their interest onto the predecessors in interest, Plaintiffs must prove that the predecessors in interest also met the requirements for a prescriptive easement. This Court finds that neither the Plaintiffs nor their predecessors in interest have met the requirements for a prescriptive easement over the Defendants' property. The testimony presented during trial showed that for many years the driveway in question was used amicably between neighbors. In fact, testimony presented set forth that the Defendant Dufour would maintain the common driveway by removing snow in the winter and maintaining it with gravel in the spring and summer months. It is quite clear to this Court that the relationship between the Lords and the Defendants was amicable in nature with neither the Lords nor the Defendants asserting an adverse or notorious claim against the property of the other.

A use based upon permission can not ripen into a prescriptive right unless the owner of the land is given clear notice that the character of the use has changed from a permissive use to an adverse one and the adverse use then continues for the full prescriptive period. Orth v. Werkheiser, 305 Pa. Super, 576, 451 A.2d 1026, 1028 (1982). This Court is satisfied that, in this case, the Lords and the Defendants maintained a relationship based upon mutual permission to use the driveway in question. Therefore, Plaintiffs cannot tack their adverse and notorious use upon the Lords. In addition, the testimony presented at trial sets forth that the residence owned by the Lords was vacant for a period the minimum of which was six (6) months following the death of Mrs. Lord. Therefore, the Court finds that this constitutes a break in the use

of the driveway in question by Plaintiffs and their predecessors in interest and thus, the Court finds that the Plaintiffs can not prove that use of the driveway was continuous for a period of twenty-one (21) years even if all other factors have been proven. As a result, Plaintiffs' claim of prescriptive easement and their action in ejectment must be denied.

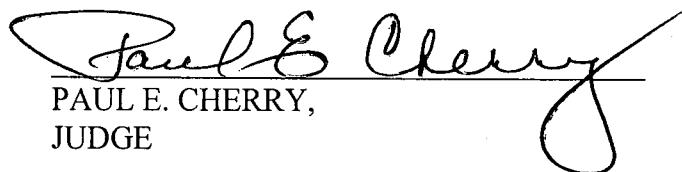
Additionally, the Court finds that neither party has met the requirements to establish a prescription easement. While there is no doubt that the parties to this action have an adverse relationship, there are still significant questions concerning the relationship of their predecessors in interest that have been left unanswered. Plaintiffs have failed to present evidence to show that the actions of the Defendants and their predecessors in interest were not equally adverse. Defendants have characterized the relationship with Plaintiffs' predecessors in interest as nothing less than amicable, neighborly and mutually permissive. The Court is satisfied that, regardless of which party's position is found to be credible concerning the adverse and notorious requirements necessary for prescriptive easement, the Court finds that neither party was able to establish a property right superior to the other. The Court finds that, under the circumstances, the shared use of the driveway by the parties is definitely in the best interest of equity and public policy. An Order by this Court ordering the parties to share the driveway is the safest and most equitable resolution to this matter without creating a great inconvenience and potential safety hazard to either of the parties.

The Defendants' request for counsel fees, expenses and costs are hereby denied. Based upon the above, the Court enters the following Order:

ORDER

AND NOW, this 29th day of December, 2005, it is the ORDER of this Court that Plaintiffs' claim that they have acquired a prescriptive easement shall be and is hereby DENIED. It is the further ORDER of this Court that the common driveway located between 202 McNaul Street and 204 McNaul Street, Curwensville Borough, Clearfield County, Pennsylvania shall be shared by the parties with neither party obstructing in any manner the ingress or egress of the other party. Defendants' request for reasonable expenses, counsel fees and costs are hereby DENIED.

BY THE COURT,



PAUL E. CHERRY,
JUDGE