

03-1010-CD  
MONA J. RICHARDS, vs. JAMES A. BARNETT, et al

**SENDER: COMPLETE THIS SECTION**

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

**1. Article Addressed to:**

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

03-1010-CD

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature		<input type="checkbox"/> Agent
<b>X</b> <i>J.D. Nork</i>		<input type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery	
	10-19	
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No		
3. Service Type		
<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail		
<input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise		
<input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		

**2. Article Number**

(Transfer from service label)

7002 3150 0000 7855 4919

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

03-1010-CD

Mona Richards

vs

James A. Barnes

FILED  
6/1/00 (3)  
OCT 21 2004

William A. Shaw  
Prothonotary/Clerk of Courts

2003-1010-CB

FILED

OCT 18 2004

6 13:00

William A. Shaw  
Prothonotary

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

PITTSBURGH PA 15219

Postage	\$ 42.67
Certified Fee	\$2.30
Return Receipt Fee (Endorsement Required)	\$1.75
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 6.72

0830  
01 Postmark  
CLAYFIELD PA 16224  
10/18/2004  
03-1010-CB  
Oct 18 2004

See To:  
Superior Court of PA - Prothonotary  
Street, Apt. No.;  
or PO Box No. 1000 Grant Building  
City, State, ZIP+4 Pittsburgh, PA 15219

PS Form 3800, June 2002  
See Reverse for Instructions

7002 3150 0000 0000 7855 4919

\*\*\* ACTIVITY REPORT \*\*\*

Oct.18 '04 1:28

Tx. TOTAL PAGES 007461  
Rx. TOTAL PAGES 002973  
PRINT TOTAL PAGES 006836

No.	DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
-----	------	-------	------	---------	------	------	--------

Tx.

Rx.

Fredric J. Ammerman, P.J.  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Kim C. Kesner, Esq.  
23 N. Second Street  
Clearfield, PA 16830

Girard Kasubick, Esq.  
611 Brisbin Street  
Houtzdale, PA 16651

Mona J. Richards  
Vs.  
James A. Barnett and Sheila A. Fleck

Court No. 03-1010-CD; Superior Court No. 1555 WDA 2004

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on October 18, 2004.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

Date: 10/18/2004

**Clearfield County Court of Common Pleas**

User: BHUDSON

Time: 10:14 AM

**ROA Report**

Page 1 of 1

Case: 2003-01010-CD

Current Judge: Fredric Joseph Ammerman

Mona J. Richards vs. James A. Barnett, Sheila A. Fleck

Civil Other

Date	Judge	
07/09/2003	Filing: Civil Complaint Paid by: Kasubick, Girard (attorney for Richards, Mona J.) Receipt number: 1862917 Dated: 07/09/2003 Amount: \$85.00 (Check) 2 CC to Shff.	No Judge
08/21/2003	Defendant's Answer, New Matter & Counterclaim to Plaintiffs Complaint In Equity. filed by s/Kim C. Kesner, Esq. Verification, s/James A. Barnett s/Sheila A. Fleck Certificate of Service 3 cc Atty Kesner	No Judge
08/26/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
09/05/2003	Reply to New Matter and Counterclaim. filed by s/Girard Kasubick, Esquire Verification s/Mona J. Richards 2 cc to Atty	No Judge
11/24/2003	Certificate of Readiness and Praeclipe for Trial. filed by, s/Girard Kasubick, Esquire Certificate of Service no c	No Judge
01/26/2004	ORDER, NOW, this 22nd day of January, 2004, re: CA shall schedule 1/2 day Non-Jury Trial in the month of May, 2004. Approximately 3 to 4 weeks prior to date set CA shall further schedule a Status Conference. by the Court, s/FJA,P.J. 2 cc Atty Kasubick, Kesner	Fredric Joseph Ammerman
01/27/2004	ORDER,AND NOW, this 26th day of January, 2004, re: Status Conference scheduled for Mon., Apr. 26, 2004, at 9:30 a.m. and Civil Non-Jury Trial scheduled for 1/2 day for Mon., May 17, 2004, at 9:00 a.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 1 cc Atty Kasubick, Kesner	Fredric Joseph Ammerman
05/19/2004	ORDER, NOW, this 17th day of May, 2004, re: Counsel for Plaintiff shall have no more than 20 days from this date to submit appropriate Brief to the Court. Counsel for Defendants shall have no morethan 20 days following receipt of Plaintiff's Brief to respond in kind. by the Court, s/FJA, P.J. 1 cc Atty Kasubick, Kesner, Copy to C/A	Fredric Joseph Ammerman
08/12/2004	OPINION AND ORDER, Now this 11th day of August, 2004, it is the Order of this Court that the Plaintiff's Complaint filed on July 9, 2003 is hereby dismissed. BY THE COURT/s/Fredric J. Ammerman, President Judge. 2 Cert. Copies Atty Kesner, 2 Cert. Copies Atty. Kasubick, 2 copies to President Judge Ammerman, 1 copy to Court Administrator, 1 copy to Don Mikesell, Esq., 1 copy to Law Library.	Fredric Joseph Ammerman
09/07/2004	Filing: Appeal to High Court, on behalf of Plaintiff appeal to Superior Court of Pennsylvania, Paid by: Kasubick, Girard (attorney for Richards, Mona J.) Receipt number: 1886012 Dated: 09/07/2004 Amount: \$45.00 (Check). Proof Of Service, copy of Notice of Appeal upon the following: The Honorable Fredric J. Ammerman; Court Reporter's Office; Kim C. Kesner, Esq.; and David Meholic, Court Adminstrator. Filed by s/Girard Kasubick, Esquire. 1 CC & Check for \$60.00 to Superior Court.	Fredric Joseph Ammerman
09/17/2004	Appeal Docket Sheet # 1555 WDA 2004, from Superior Court, filed.	Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISIONMONA J. RICHARDS,  
Plaintiff

\*

\*

\*

vs.

\* No. 2003-1010-C.D.

\*

\*

\*

JAMES A. BARNETT and  
SHEILA A. FLECK,  
DefendantsOPINION and ORDER

This is an action in equity filed by Mona J. Richards (Mrs. Richards) against James A. Barnett and Sheila A. Fleck (Barnett & Fleck) seeking a permanent injunction directing Barnett & Fleck to remove a gate at the entrance of their driveway and a finding that she has the right to use the driveway. It has been long established that the issuance of an injunction is a matter within the sound discretion of the trial court. Borough of Cheswick v. Bechman, 352 Pa. 79, 42 A.2d 60 (Pa. 1945). The court which is to exercise discretion in the matter of the issuance of an injunction is the trial court and not the appellate court and the action of a trial court may be reversed on appeal only in the case of a clear abuse of discretion but not otherwise. Santoro v. Morse, 781 A.2d 1220 (Pa. Super. 2001).

An injunction is an extraordinary remedy which should be granted only with great caution; a court of equity should grant an injunction only when the rights and equity of the Plaintiff are clear and free from doubt and the harm sought to be remedied is great and irreparable. Cannon Brothers, Inc. v.

D'Agostino, 356 Pa. Super. 286, 514 A.2d 614 (Pa. Super. 1986). See also Rick v. Cramp, 357 Pa. 83, 53 A.2d 84 (Pa. 1947) ("The remedy by injunction is summary, peculiar and extraordinary, and ought not to be granted except for prevention of great and irreparable mischief.") 53 A.2d at page 88. Thus the burden in this case rests firmly and solely upon Mrs. Richards.

#### Findings of Fact

1. Mrs. Richards and Barnett & Fleck reside next to each other on Spruce Street in the Village of Madera. (Testimony of Thorp, Richards and Barnett; Joint Stipulation)
2. Mrs. Richards had her property surveyed in May of 2003 by David J. Thorp (Thorp) a Pennsylvania licensed surveyor. (Testimony of Thorp; Plaintiff's Exhibit "B")
3. Mrs. Richards claims rights to a strip of land beyond the eastern boundary of her property as set by Thorp. (Complaint and Mrs. Richard's Post-Trial Brief)
4. Thorp identified this area on his survey map as a "14 foot alley" (area in dispute). (Plaintiff's Exhibit "B")
5. A 14 foot wide road as plotted by Thorp would run very close to the western wall of the Barnett & Fleck house. (Testimony of Barnett; Photo DP-14)
6. Barnett & Fleck use a portion of the area in dispute as a driveway to their home. (Testimony of Barnett; Photos DP-14, 16, 17, 18)
7. When Barnett & Fleck bought their property and moved into their home in 1995, the area in dispute was covered in grass. (Testimony of Barnett; Photo DP-1)
8. In conjunction with their construction of an addition to their home in 2001, they removed the turf and graveled the driveway. (Testimony of Barnett; DP-2, 8)

9. To protect their young child, they gated the driveway at its entrance to Spruce Street in April of 2001. (Testimony of Barnett; DP-7, 9, 14, 18)

10. Both Mrs. Richards' property and that of Barnett & Fleck were once a part of a larger tract owned by Albert Shoff which he acquired in 1871. (Joint Stipulation of Facts, Paragraph 9)

11. Through the years since, the Shoff property has been subdivided into various lots. (Testimony of Thorp)

12. There is no recorded subdivision plan of the Shoff property. (Joint Stipulation of Facts, Paragraph 12)

13. There is no unrecorded subdivision plan of the Shoff property known to the parties or their counsel or Thorp. (Joint Stipulation of Facts, Paragraph 13; Testimony of Thorp)

14. There is no recorded plan, easement, grant or reservation or other document or unrecorded plan, easement, grant or reservation or other document known to the parties detailing the location or dimensions of any "alley" plotted by Thorp on his survey map. (Joint Stipulation of Facts, Paragraph 14)

15. The area in dispute is not a public street or alley and has never been laid out, opened, maintained or claimed as a municipal street or alley. (Joint Stipulation of Facts, Paragraph 15)

16. While deeds refer to the "Shoff Addition" there is no evidence that there was a subdivision plan for the "Shoff Addition". (Testimony of Thorp)

17. While Thorp was able to locate on the ground the boundaries of Mrs. Richards' property as a part of his retracement survey, he could not certify that her lot or any other lots in the block were conveyed in conformity with any subdivision plan.

18. While both Mrs. Richards' deed and Barnett & Flecks' deed refer to their respective properties as being bounded by an "alley", there is no recorded or unrecorded subdivision plan or other document of record or other evidence presented at trial confirming that it was the subdivider's intent that any reserved alley between the properties be 14 feet in width.

19. While Richards' deed and Barnett & Flecks' deed refer to their respective properties as being bounded by an "alley", there is no recorded or unrecorded subdivision plan or other document of record or other evidence presented at trial confirming that it was the subdivider's intent that the area in dispute be utilized by the lot owners rather than reserved to the subdivider.

20. In addition to Barnett & Flecks' gate and a dirt pile, the "alleys" plotted by Thorp within Richards' and Barnett & Flecks' block bounded by Spruce, Locust and Pine Streets and Pennsylvania State Route 2009 are obstructed at various locations, including by a shed on the Waple boundary and by trees in various locations. (Testimony of Thorp; Photos DP-15, 19, 20, 21)

21. None of the "alleys" plotted by Thorp are presently usable as a means of vehicular travel except for Barnett & Flecks' driveway. (Testimony of Thorp; Testimony of Barnett)

22. Mrs. Richards has access to her home from Locust street. (Testimony of Barnett; Photos DP-10, 11, 12, 13)

#### Conclusions of Law

1. Mrs. Richards has failed to sustain her burden for the issuance of a permanent injunction in this case.

2. Mrs. Richards has failed to establish a claim which is clear and free from doubt to an easement by implication to

the area in dispute. While the deeds to the two properties suggest that there may have been a subdivision plan for the "Shoff Addition" there is a lack of evidence to confirm the existence and particulars of any plan. There is also a lack of evidence to confirm that conveyancing was in accordance with any subdivision plan. Without a subdivision plan or proof that lots were deeded in accordance with the plan, this Court lacks the prerequisites for implying that the subdivider intended that areas between the lots be dedicated to the use of the lot owners. Because of the manner in which the subdividing was done in this case, it is equally conceivable that Albert Shoff, his heirs and assigns inadvertently retained fee title to these areas.

3. Assuming arguendo that Mrs. Richards has established a right to the area in dispute, she has failed to establish that the issuance of an injunction is necessary to prevent irreparable harm. To the contrary, Mrs. Richards has failed to establish that she would suffer any harm from the denial of an injunction as she has other access to her property. Moreover, the issuance of an injunction would concurrently open all of the "alleys" plotted by Thorp to all of the lot owners in the block if not in all areas within the "Shoff Addition" creating issues of maintenance and liability.

#### Legal Discussion

Mrs. Richards' case rises or falls upon her contention that she has an easement by implication in the area in dispute because her deed and Barnett & Flecks' deed refer to an "alley" as their common boundary. She makes no claim that she has an easement by grant, reservation or prescription.

According to Section 11.02(b) of Ladner's treatise Conveyancing in Pennsylvania, the general rule is that a

conveyance of land described as bounded by a street or road gives the grantee title to the middle of the road. It is notable that Mrs. Richards is not making this claim apparently because the area in dispute "is not a highway nor dedicated to public use..." rather than because "...the lots (were) not sold in accordance with the plan." In fact, to be successful here Mrs. Richards must prove that all of the lots in her block (in fact, all of the lots in the Shoff Addition) were conveyed in accordance with a subdivision plan that provides for 14 foot alleys.

Mrs. Richards cites four cases in her Brief for the proposition that the designation of a street or alley as a boundary in a conveyance creates an implied easement for the benefit of all of the lot owners in the subdivision of the street or alley. However, a careful review of the cases cited and other decisional law confirms that describing a parcel as being bounded by "an alley" without more is insufficient. As Mrs. Richards concedes on page 8 of her Brief, the Pennsylvania Supreme Court has made clear that an easement can be implied by a Court only where the circumstances make clear the intent of the subdivider. The Pennsylvania Supreme Court in Nord vs. Devault Contracting Company, Inc., 460 Pa. 647, 334 A.2d 276 (1975) stated:

Where descriptions in a deed refer to a driveway as a boundary, which is not a highway or dedicated to public use, the grantee does not take title in fee to the center of it, but by implication acquires an easement or right-of-way over lands. As we recognized in McAndrews... the above quoted rule is only a specific application of the general rule that an easement by implication arises only where that was the intent of the parties, shown by the terms of the grant and the surrounding circumstances...

334 A.2d at page 278.

The Pennsylvania Supreme Court in McAndrews v. Spencer, 447 Pa. 268, 290 A.2d 258 (1972) confirms that the evidence of the subdivider's intent must be clear and without doubt.

Where an easement or other right is not expressed and is sought to be implied as attached to the grant of the fee, the same must clearly appear from the intention of the parties as shown by the terms of the grants, the surroundings of the property and the other res gestae of the transaction.

290 A.2d at page 259. See also Taylor v. Gross, 195 Pa. Super. 225, 171 A.2d 613 (1961); Fitzell v. Phila., 211 Pa. 1, 60 A.2d 323.

In the case at bar, the evidence is lacking to determine the subdivider's intent. There is no subdivision plan recorded or available. Thorp was candid in conceding that there is no way that a surveyor or court can confirm whether the conveyancing in the block (or in the Shoff Addition generally) was in conformity with any particular subdivision plan. Mrs. Richards would have this Court adopt his survey plat as the governing plan. However, Thorp conceded that he cannot be certain to a reasonable degree of scientific certainty what was intended as to the area in dispute.

All of the cases cited by Mrs. Richards in her Brief can be distinguished because in all of them, to one extent or the other, the Court was able to discern the original subdivision plan. Therefore, the Court was able to construct by implication the subdivider's intent. Here, because so many requisites of a proper subdivision are lacking, the court would be forced to make a leap of faith to conclude that the subdivider intended an easement for the benefit of the lot owners between these parcels 14 feet in width. It is axiomatic that the court can imply terms. No court has the power to

construct terms that are completely lacking. In this case, it is as conceivable that the subdivision of the block occurred as it did without specific conformity to a subdivision plan and that therefore, Albert Shoff, his heirs and assigns inadvertently retained the area in dispute in fee.

In her Brief, Mrs. Richards contends that the Defendants, in order to be successful in this action must demonstrate "a legal right to the area blocked by their gate and pile of dirt..." However, the Defendants have no burden in this action. Mrs. Richards has the burden of showing that she has an enforceable interest to the area in dispute and upon such a showing that the issuance of an injunction is necessary. If she fails in meeting her burden, her action must be dismissed. She cannot meet this burden by shifting it to the Defendants.

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

MONA J. RICHARDS,  
Plaintiff

vs.

JAMES A. BARNETT and  
SHEILA A. FLECK,  
Defendants

\*

\*

\*

\* No. 2003-1010-C.D.

\*

\*

\*

ORDER

NOW, this 11<sup>th</sup> day of August, 2004, it is the Order of  
this Court that the Plaintiff's Complaint filed on July 9, 2003  
be and is hereby dismissed.

By the Court,

  
FREDRIC J. AMMERMAN  
PRESIDENT JUDGE

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

MONA J. RICHARDS, : No.: 2003-1010-CD  
Plaintiff :  
vs. : Type of Case: Civil  
JAMES A. BARNETT and :  
SHELIA A. FLECK, : Type of Pleading: Defendants' Pre-Trial  
Defendants : Memorandum  
: Filed on behalf of: Defendants  
: Counsel of Record for this Party:  
: Kim C. Kesner, Esquire  
: Supreme Ct. I.D. #28307  
: 23 North Second Street  
: Clearfield, PA 1683  
: (814) 765-1706  
: Other Counsel of Record:  
: Girard Kasubick, Esquire  
: Lehman & Kasubick  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

RECEIVED

JAN 15 2004

COURT ADMINISTRATOR'S  
OFFICE

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

MONA J. RICHARDS,	:	No.: 2003-1010-CD
Plaintiff	:	
	:	
vs.	:	
	:	
JAMES A. BARNETT and	:	
SHEILA A. FLECK,	:	
Defendants	:	

**DEFENDANTS' PRE-TRIAL MEMORANDUM**

TO: The Honorable Fredric J. Ammerman, President Judge

AND NOW, come Defendants, James A. Barnett and Sheila A. Fleck, by their attorney, Kim C. Kesner, Esquire, who file this Pre-Trial Statement in accordance with Local Rule 1306(A).

**A. Statement of Defense:** (Note: It is not possible to provide a complete Statement of the Defense(s) at this time because this case is not ready for trial. Discovery requested by Defendants (and promised by Plaintiff) has not yet been conducted. Therefore, Defendants reserve the right to Supplement this Pre-Trial Memorandum.)

Notwithstanding the limitations imposed by the procedural circumstances of this case, Defendants set forth the following on the claim(s) of Plaintiff and Defendants' intended defense(s).

The parties own adjoining parcels in the Village of Madera, Bigler Township, Clearfield County separated by an area which Plaintiff refers to in her Complaint as an "alley". Plaintiff concedes that the area in question is not a public road. See Reply, Paragraph 17. Bigler Township (nor any municipality) has never laid out, opened or maintained any alleys contiguous to or within the boundaries of Defendants' property.

Defendants possess the area and use it as their property. It was not readily used or usable for normal vehicular traffic until Defendants graded and improved it at their expense. After creating an access way, they gated it.

Plaintiff filed this action in equity seeking an order against Defendants "to remove the obstructions from the alleys in Madera, Bigler Township, Clearfield County, Pennsylvania and issue an injunction against Defendants on placing any future obstructions on said alleys."

In Paragraph 13 of Plaintiff's Complaint, she avers a concurrent right with Defendants "to use the alleys as a right-of-way and access..." Plaintiff claims no title or easement by grant to the area in question. Plaintiff claims no easement by prescription or implication. Plaintiff claims that all property owners within the area have the right to concurrent use of the area in dispute. See Reply, Paragraph 17.

The discovery to be conducted may be followed by a motion for summary judgment. However, Defendants' general defense at this point is that Plaintiffs cannot sustain an enforceable claim to the area in question.

**B. Exhibits to be Offered in Evidence**

For reasons explained above, Defendants cannot state at this point all exhibits to be offered in evidence. Defendants' exhibits may include:

1. A copy of Defendants Deed.
2. A title abstract confirming no record of any laying out or opening of the area in question by Bigler Township.
3. Copies of receipts for Defendants costs of construction on the area in question.

**C. Names and Addresses of all Witnesses Expected to be Called**

For reasons explained above, Defendants do not presently know all witnesses expected to be called in defense. Defendants' witnesses may include:

1. James A. Barnett  
P.O. Box 115  
Madera, PA 16661
2. Shelia A. Fleck  
P.O. Box 115  
Madera, PA 16661
3. Steve Kopilchak  
P.O. Box 318  
Madera, PA 16661
4. Jim Kukla  
1767 Old Erie Pike  
Philipsburg, PA 16866
5. Markay Harzinski  
Address presently unavailable
6. John Kuhn  
Ramey Road  
Houtzdale, PA 16651
7. Randy Mick, Bigler Township Supervisor  
P.O. Box 196  
Madera, PA 16661
8. Mona Richards (as on cross-examination)  
P.O. Box 535  
Madera, PA 16661
9. Note: Presently, Defendants have engaged no expert witnesses. Defendants may engage and call a) a title abstractor; and b) a surveyor dependent upon the results of discovery.

**D. Statement of Legal Theory of Defense**

For reasons explained above, it is impossible for the Defendants to state their theory(ies) of defense because the theory supporting Plaintiff's claim is indiscernible.

**E. Expected Evidentiary Problems**

Defendants are aware of none at this time.

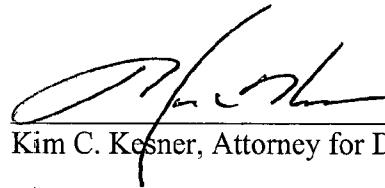
**F. List of Reasonably Possible Stipulations**

1. It is reasonably expected that counsel could stipulate to the authenticity and admissibility of deeds and other matters of record.

**G. Estimated Time for Trial**

One-half to one day.

Respectfully submitted:



Kim C. Kesner, Attorney for Defendants

23 North Second Street  
Clearfield, PA 16830  
(814) 765-1706

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

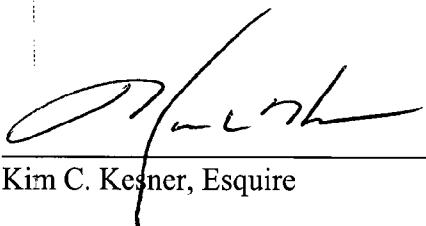
MONA J. RICHARDS, : No.: 2003-1010-CD  
Plaintiff :  
: :  
VS. : :  
: :  
JAMES A. BARNETT and :  
SHEILA A. FLECK, :  
Defendants : :

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on the 15<sup>th</sup> day of January,  
2004, I caused to be served a true and correct copy of the Defendants' Pre-Trial Memorandum  
on the following by U.S. First Class Mail, Postage Prepaid:

Girard Kasubick, Esquire  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 15651

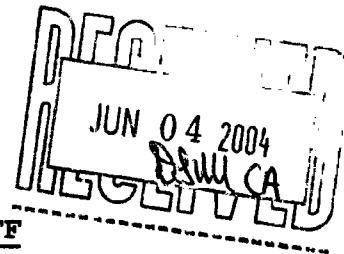
Date: 1-15-2004



\_\_\_\_\_  
Kim C. Kesner, Esquire

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

MONA J. RICHARDS, :  
Plaintiff : No.: 2003-1010-CD  
: :  
vs. :  
: :  
JAMES A. BARNETT :  
and SHEILA A. FLECK, :  
Defendants :  
: :



BRIEF OF PLAINTIFF

AND NOW COMES, Mona J. Richards, by and through her attorney, Girard Kasubick, Esq. and files the following Post-Trial Brief pursuant to Order of Court dated May 17, 2004.

1. HISTORY OF CASE:

In 2001 Defendants placed a gate on property between Plaintiff and Defendants property. Defendants also placed a pile of dirt on property between Plaintiff and Defendants property. Plaintiff claims these obstructions are on alleyways between the Parties properties which both Parties have the right to use. Defendants claim they can place these obstructions on their property.

On July 9, 2003 Plaintiff filed this action In Equity requesting an injunction for the Defendants to remove the obstructions from the alleyways. The Defendants filed an Answer, New Matter, and Counterclaim on August 18, 2003. Plaintiff filed its Reply to New Matter and Counterclaim on September 5, 2003. A non-jury trial was held before your Honorable Court on May 17, 2004. Prior to the non-jury trial the Parties agreed to a Joint Stipulation of Facts and Agreement on Admissibility of Exhibits (Joint Exhibit No. 1). This document was submitted for record at the trial.

At trial the only witnesses were Mona J. Richards, James A. Barnett and David J. Thorp, surveyor.

2. **STATEMENT OF QUESTIONS INVOLVED:**

a). Does Plaintiff, Mona J. Richards, have a right to use the area blocked by Defendants gate and pile of dirt for ingress, egress, and regress?

b). Have the Defendants shown a legal right to the area blocked by their gate and pile of dirt to the exclusion of everyone?

3. **ARGUMENTS:**

The Plaintiff owns five (5) tracts of land in the Village of Madera, Bigler Township, Clearfield County, Pennsylvania (Joint Exhibit No. 1, Stipulation of Facts 1-5). The five (5) tracts are known by Tax Map Nos. 103-K14-487-11, 103-K14-487-12, 103-K14-487-66, 103-K14-487-81, and 103-K14-487-65. The Defendants own one tract of land in Madera, Bigler Township, Clearfield County, Pennsylvania (Joint Exhibit No. 1, Stipulation of Facts 6-8). The Defendants' parcel is known by Tax Map No. 103-K14-487-13. The Parties properties are all within a town block bounded by public roads with Spruce Street on the South, Locust Street on the West, Pine Street on the North and PA State Route 2009 on the East. The only other landowner within this block is Dorothy L. Waple who owns the land in the Southeast corner of the block, Tax Map No. 103-K14-487-14.

The Joint Exhibit No. 1 and the exhibits attached thereto show the five (5) deeds of the Plaintiff (Exhibits 1 through 5) the one deed of the Defendant (Exhibit 6) and the Tax Assessment Map (Exhibit 7). Exhibit 8 to the Joint Exhibit is the deed out of which the Parties

properties common title can be traced back to. This common title Deed and Assignment assigns the property to Albert Shoff by assignment dated August 31, 1871 (Joint Exhibit No. 1, State of Fact 9).

The Parties have stipulated in the Joint Exhibit No. 1 that there is no plan recorded nor an unrecorded plan of the "Shoff Addition" referred to in various deeds (Joint Exhibit No. 1, Statement of Facts 12, 13 and 14). The Parties have stipulated that there is no public streets or alleys within the block mentioned above (Joint Exhibit No. 1, Stipulation of Fact 15).

Do note that all six of the Parties deed descriptions do mention boundaries along an alley within the block. Four of the Plaintiff's five deeds mention the "Shoff Addition" in the Village of Madera. One of Plaintiff's deeds and the Defendants deed does not mention the "Shoff Addition".

With this background of facts I will address the legal questions involved:

**a). Does Plaintiff, Mona J. Richards, have a right to use the area blocked by Defendants gate and pile of dirt for ingress, egress and regress?**

The testimony of the Plaintiffs surveyor, David J. Thorp, was that when you plotted the description of the Plaintiff's five deeds, the Defendants one deed, and the Waple deed the properties fit in nicely when you place an alley fourteen (14) feet in width on the bounders in deeds that call for an alley. Mr. Thorp testified that some of the deed descriptions in the Shoff Addition, although, none of the parties deeds, do note fourteen (14) feet in width alleys in the Shoff Addition. Mr. Thorp's testimony was that when you plot in the fourteen (14) foot wide alleys from the deeds in the block subject of this lawsuit there was still a foot or two additional left over.

Mr. Thorp also plotted in the location of the gate and the pile of dirt as shown on Plaintiff's Exhibit "B". These obstructions as shown on the map and testified to by Mr. Thorp are blocking the alleys referred to in the Shoff Addition property descriptions for the block subject of this action.

The Defendants have offered no testimony refuting Plaintiff's surveyor as to the location of any boundary lines for alleys or properties. The Defendants have offered no evidence that alleys do not exist between the parties property.

In conclusion, the alleys do exist where shown by Plaintiff's Exhibit "B". The issues then becomes what rights does Plaintiff have in these alleys.

A street or an alley named as a boundary in a description for a conveyance of land has been held to be a legal right to use said street or alley by the grantee as a right of way. The case of Maier v. Walborn & High, 84 Pa.Super 522, (1925) at page 524 states:

"We held in Barnes v. Phila, etc. R.R.Co. 27 Pa.Super 84, that the designation of a street as a boundary in a conveyance of land, whether opened or not, if it be on land of the Grantor, is an implied covenant by the Grantor that it shall be open for the use of the Grantee as a public way; . . ."

The Maier case, supra, on page 524 goes on further citing another case as follows:

"This was in accordance with the ruling of the Supreme Court in Quicksall v. Phila, 177 Pa. 301, 304 where it was said: 'The right passing to the purchaser (according to a plan of lots) is not the mere right that he may use the street, but that all persons may use it.'"

A more recent case of Jones v. Sedwick, 383 Pa. 120, 117 A.2d 709 (1955) at 383 Pa. 124 states:

"In a conveyance of land where a street or roadway is a named boundary the grantee acquires an easement to the use of such street or roadway if the grantor owns the fee:" (Citing Quicksall, supra, and Maier, supra, along with other cases).

In Jones v. Sedwick, supra, the Defendant placed an extension of a building on the fifty (50) foot wide street, but the Supreme Court affirmed the lower court ordering the Defendant to remove the existing structure. Also, the plan of lots in the Jones v. Sedwick, supra, was not recorded but the court did not find that this was required when deed of conveyance made a reference to the street or alley. That reference was sufficient notice to the Grantee that the street or alley existed.

Although no plan is recorded and no unrecorded plan has been found for Shoff's Addition to Madera the deed descriptions clearly refer to alleys and that is sufficient notice of the existence of the alleys for use by Plaintiff and Defendant. Neither party can prevent the other from using the alleys for ingress, egress, and regress to their properties. The Defendants offered no evidence refuting the existence of the alleys where shown by Plaintiffs surveyor.

The case of Nord v. Devault Contracting Company, Inc. 460 Pa. 647, 334 A.2<sup>nd</sup> 276 (1975), held that no easement by implication to use a street or roadway was granted and denied the right to use the street. The court in Nord, supra, however, clearly distinguished the facts in that

case from other cases granting the easement. The legal description in the deeds relevant in Nord, supra, did not mention bounders on a street or alley on the side in dispute. The property in the deeds were described only by courses and distances.

In Nord, supra, the Appellants who desired to use the street as a right of way relied on McAndrews v. Spencer, 447 Pa. 268, 290 A.2d. 258 (1972) to establish their right of easement. McAndrews, supra, 447 Pa. at page 270-271 states:

"Where descriptions in a deed refer to a driveway as a boundary, which is not a highway or dedicated to public use, the grantee does not take title in fee to the center of it but by implication acquires an easement or right of way over lands."

The reason the Nord court, supra, did not follow McAndrews, supra, is stated at 460 Pa. at 651:

"As we recognized in McAndrews, the above quoted rule is only a specific application of the general rule that an easement by implication arise only where that was the intent of the parties, as shown by the terms of the grant and the surrounding circumstances. . . Where the property is described by reference to abutting driveway, the natural inference and the normal expectation of the purchaser is that the owner of the property is entitled to use the driveway for ingress and egress."

Again in Nord, supra, there was no reference to abutting driveways, alleys or streets, but in McAndrews, supra, and in the present case the deed descriptions do refer to alleys as bounders along the sides in dispute. The case law is clear that when those references are made an easement by implication for ingress and egress is found. The case law also shows this is the case regardless of whether the alleys, streets, and driveways are public dedicated roads or not and whether or not the development or subdivision plans are recorded, unrecorded or not found.

The Plaintiff, Mona J. Richards, based on the facts presented clearly has the right to use the alleys referred to as bounders in her deeds for ingress and egress.

**b). Have the Defendants shown a legal right to the area blocked by their gate and pile of dirt to the exclusion of everyone?**

There is no question the Defendants have the right to use the alleys shown on Plaintiffs Exhibit "B" for ingress and egress under the same legal theory argued in issue a). above. But they do not have the right to exclusive use

denying other proper parties use of the disputed alleyways.

In the Defendants Counterclaim, Paragraph 18, they claim right title and interest to the area in controversy where the gate and pile of dirt are located. The Defendants offered no evidence showing the area in controversy is an area described in their deed. The Defendants deed (Joint Exhibit 1, Exhibit No. 6 thereto) describes a tract that has an alley on three sides and Spruce Street on the other side. The Defendants have no surveyor who testified that Plaintiffs surveyor is incorrect in his location of the parties properties or alleys between those properties. The gate and pile of dirt were shown by David J. Thorp's testimony to be on the alleyways, not on Defendants property. The Defendants offered no other evidence that they have title or interest in the area in controversy.

In Defendant's Counterclaim, Paragraph 19, they claim adverse possession of the area in controversy being the alleyways. The Defendants have placed the gate on the alleyway in 2001 and sometime thereabout placed the pile of dirt on the alleyway. The Defendants have definitely made improvements to the alley between Plaintiff and

Defendants property to the north of the gate. Defendants have placed gravel on the alleyway and graded it as shown by photographs (Defendants Exhibits 14, 15, 16, 17 and 18). The evidence shows these actions have only been done by Defendants since 2001 or three years ago which is well short of the 21 years necessary for adverse possession. The Defendants only acquired their property by deed dated 1995 and they offered no evidence at trial as to predecessors in title use of the alleys in controversy. The Defendants claim of Adverse Possession falls way short of the elements necessary under the law of actual, continuous, exclusive, visible, notorious, distinct and hostile possession for 21 years, Volume 1, Pennsylvania Law Encyclopedia, Adverse Possession §11.

Furthermore, the Plaintiff did not sit and do nothing. The Plaintiff by her attorney in late 2001 told Defendants of her claim to use the alley (Plaintiffs Exhibit "A").

Even if Defendants proved an adverse possession claim to ownership of the property, it would still be subject to the easement by implication under argument a). above.

The Defendants have not proven any ownership or interest in the area in controversy nor any adverse

possession claim of said alleyways subject of this dispute.

4. **CONCLUSION:**

The Plaintiff has an easement by implication for ingress and egress to the alleys shown on the survey of David J. Thorp, Plaintiffs Exhibit "B" and the Defendants should be ordered to remove the gate and pile of dirt and any other obstruction from such alleys between the parties properties which prevents use as a right of way for ingress and egress. Furthermore, Defendants should be enjoined from placing any other obstructions on said alleys in the future.

Respectfully Submitted,

  
Girard Kasubick  
Girard Kasubick, Esquire  
Attorney for Plaintiff,  
Mona J. Richards

Richards v Barnett 5/17/04  
03-1010-CD

Mona  
Richards

She moved into parcel 66 in 1942.  
map. was her husbands grandpds. got  
it for back taxes. later moved  
into # 11. 1986 They later bought  
# 12, in around 1979 or 80.  
D put up gate on 4/28/01.

Jim Thorpe. surveyor.

He found no "plan" for the  
Thorpe addition in the courthouse.

He did map & layout parties lots  
and alleys.

~~ShoF~~

ShoF addition.

Deeds indicate there is an  
alley. survey indicates there  
is a width between the 2  
properties. has nothing to indicate  
the measurement or distance of it.

TAX map has no alley b/t properties.

He used 14' as width b/c  
 The deeds show alley 14' between  
 Barnett & Wople properties

Δ theory is that even tho  
 when ~~plotted~~ the parties plots  
 and surveyed & there is a  
 14' gap between them, no ~~map~~  
 sub map exists. so it is likely that  
 the shffs reserved this ground  
 for themselves, i.e. This is as  
 likely as it being an alley open  
 to all of every one in the subdiv.

PL Rest. no is motions.

James Barnett - The "alley" was  
 mud & grass when he moved there  
 He used it. He paid the gravel

LAW OFFICES  
LEHMAN & KASUBICK

611 BRISBIN STREET, HOUTZDALE, PA 16651

Telephone (814) 378-7840  
Facsimile (814) 378-6231

December 6, 2001

James A. Barnett  
Sheila A. Fleck  
P.O. Box 115  
Madera, PA 16661

RE: Gate in alley

Dear Mr. Barnett and Ms. Fleck:

Please be advised that I represent Mona J. Richards. I am writing this to you on her behalf concerning a metal gate you have placed on an alley between Mrs. Richards property and your property. The gate is placed on the alley just North of where Spruce Street intersects with the alley. This alley is mentioned in Mrs. Richards deed and I would assume it is mentioned in your deed, however, I have not checked your deed at this time. The alley is shown on the assessment map also.

Under the law an alley within a plan or when referenced as part of a plan in deeds gives all parties owning property within the plan the right to use the streets and alleys designated as a right-a-way. Your gate placed on the alley prevents this.

My client has in the past used the alley for delivery trucks and for access for visitors to park in her vacant lot. By this letter we are asking that you remove the gate, so my client, her visitors and invitees can use the alley. Also, neither my client nor you are to leave parked vehicles or other obstructions on the alley hindering use.

Please contact my office or have your attorney do so concerning your position on this matter. If we do not hear from you or refuse our request we will proceed to file an Action in Equity to have the gate removed which will result in additional costs and expenses to both parties. Unless you can prove you own the alley and have terminated all rights of landowners in

James A. Barnett & Sheila A.Fleck  
Page 2 of 2  
December 6, 2001

the plan of this area of Madera to use the alley you are acting improperly by preventing others from using the alley.

If you or your attorney have any questions, please feel free to contact me.

Very truly yours,

LEHMAN & KASUBICK



Girard Kasubick

GK:lh

CC:Mona J. Richards



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

MONA J. RICHARDS, : No. 03-1010-CD

Plaintiff :

vs. :

JAMES A. BARNETT and SHELIA A.  
FLECK, :

Defendants :

**JOINT STIPULATION OF FACTS AND**  
**AGREEMENT ON ADMISSIBILITY**  
**OF EXHIBITS**

AND NOW, Plaintiff, Mona J. Richards by her attorney Girard Kasubick, Esquire and Defendants James A. Barnett and Shelia A. Fleck by their attorney Kim C. Kesner, Esquire and submit the following for the purposes of the non-jury trial in this matter on May 17, 2004:

**Joint Stipulation of Facts**

The parties stipulate to the following facts for the purposes of this Court's adjudication of this matter:

1. Plaintiff is the record owner and in possession of five (5) parcels in the Village of Madera, Bigler Township, Clearfield County.
2. One parcel is bounded on the South by Spruce Street and on the West by Locust Street and is identified for tax assessment purposes as Clearfield County Assessment Tax Map No. 103-K14-487-11 ("Parcel 11").
3. Parcel 11 is improved with a dwelling house and a garage and serves as Plaintiff's residence.
4. A second parcel adjoins Parcel 11 on the East, is unimproved and is identified as Tax Map No. 103-K14-487-12 ("Parcel 12").

5. The other three parcels lie to the North of Parcels 11 and 12 and are identified as Tax Map Numbers 103-K14-487-66 ("Parcel 66"), 103-K14-487-81 ("Parcel 81") and 103-K14-487-65 ("Parcel 65").

6. Defendants are the record owners and in possession of a parcel to the East of Plaintiff's Parcel 12 and to the South of Plaintiff's Parcels 81 and 65.

7. Defendants' parcel is improved with a dwelling house and garage and serves as Defendants' residence.

8. Defendants' parcel is identified for real estate tax assessment purposes as Map Number 103-K14-487-13 ("Parcel 13").

9. The six parcels all derive through a deed to Albert Shoff dated August 31, 1871 ("Shoff Deed").

10. The Shoff Deed recites that the premises conveyed were located in Woodward Township. However, Bigler Township was formed from Woodward Township in 1883 and the premises described in the Shoff Deed became a part of Bigler Township.

11. There is no subdivision plan of record of the premises described in the Shoff Deed.

12. While Defendants' Deeds for Parcels 11, 12, 66 and 81 refer to the "Shoff Addition" or "Shoffs Addition" to the Village of Madera, there is no recorded subdivision plan of the Shoff Addition and/or of a subdivision for the parties six parcels.

13. There is no unrecorded subdivision plan of the Shoff Addition or of the parties six parcels known to the parties or their counsel.

14. There is no recorded plan, easement, grant or reservation or other document or unrecorded plan, easement, grant or reservation or other document known to the parties detailing the location or dimensions of any "alley" referred to in Plaintiff and Defendants' deeds.

15. The area claimed by Plaintiff in her Complaint is not a public street or alley and has never been laid out, opened, maintained or claimed as a municipal street or alley.

**Agreement as to Admissibility of Exhibits**

The parties agree to the admission of the following exhibits without formal authentication:

- a. A photocopy of Plaintiff's Deed dated June 4, 1979 and recorded in Clearfield County Deed Book 783, page 427 to Parcel 11 annexed hereto as Exhibit No. 1.
- b. A photocopy of Plaintiff's Deed dated November 4, 1982 and recorded in Clearfield County Deed Book 863, page 277 to Parcel 12 annexed hereto as Exhibit No. 2.
- c. A photocopy of Plaintiff's Deed dated November 13, 1973 and recorded in Clearfield County Deed Book 663, page 239 to Parcel 66 annexed hereto as Exhibit No. 3.
- d. A photocopy of Plaintiff's Deed dated June 14, 1976 and recorded in Clearfield County Deed Book 722, page 306 to Parcel 81 annexed hereto as Exhibit No. 4.
- e. A photocopy of Plaintiff's Deed dated January 25, 1979 and recorded in Clearfield County Deed Book 776, page 037 to Parcel 65 annexed hereto as Exhibit No. 5.
- f. A photocopy of Defendants' Deed dated November 24, 1995 and recorded in Clearfield County Deeds and Records Book 1721, page 453 to Parcel 13 annexed hereto as Exhibit No. 6.
- g. A photocopy of a portion of the Clearfield County Assessment Tax Map showing the six parcels assessed to the parties, annexed hereto as Exhibit No. 7.
- h. A photocopy of the Shoff Deed dated August 31, 1871 and recorded in Clearfield County Deed Book 5, page 390, 391 and 392 annexed hereto as Exhibit No. 8.

In agreeing to the admission of these Exhibits without formal authentication, the parties do not stipulate and agree to the truth or accuracy of their contents except as stipulated herein before.

Respectfully Submitted,



Girard Kasubick, Attorney for Plaintiff



Kim C. Kesner, Attorney for Defendants

Dated: 5/13/04

# THIS INDEMNITY

Made the fourth day of June , in the year

Nineteen hundred and seventy-nine (1979)

Between JAMES W. MOBERG of 8 Nettle Creek Road, Fairport, New York and HARRY M. MOBERG of 2636 Oak Park Boulevard, Cuyahoga Falls, Ohio, Co-Executors under the Last Will and Testament of HARRY V. MOBERG, a/k/a HARRY MOBERG, deceased, hereinafter called the GRANTORS,

A

N

D

JOHN F. RICHARDS and MONA J. RICHARDS, husband and wife, as tenants by the entireties, Clearfield County, Pennsylvania, hereinafter called GRANTEEES.

Whereas, the said HARRY V. MOBERG, a/k/a HARRY MOBERG, deceased, was seized in fee of and in a certain messuage or tenement and tract of land, hereinafter described, and

WHEREAS, the said HARRY V. MOBERG, a/k/a HARRY MOBERG, departed this life the 23rd day of September, 1978, leaving a Last Will and Testament, dated the \_\_\_\_\_ day of \_\_\_\_\_, 1954, and proved and appearing of record in the Office of the Register of Wills in and for the County of Clearfield in Will Book 35, Page 229, by which he appointed the said James W. Moberg and Harry M. Moberg to be the Co-executors of his Last Will and Testament afroesaid and Letters Testamentary were issued to said James W. Moberg and Harry M. Moberg the 27th day of October, 1978.

956	COMMONWEALTH OF PENNSYLVANIA
	DEPARTMENT OF REVENUE
1	REALTY
0	TRANSFER JUL-679
0	TAX
	P.B.11352
120.00	

Now this Undersigned Witnesseth, That the said JAMES W. MOBERG  
and HARRY M. MOBERG, Co-executors as aforesaid,

for and in consideration of  
the sum of TWELVE THOUSAND (\$12,000.00) DOLLARS-----

lawful money of the United States, to them well and truly paid by the said  
JOHN S. RICHARDS and MONA J. RICHARDS, Grantees  
at and before the sealing and delivery hereof, the receipt whereof is hereby ac-  
knowledged, have granted, bargained, sold, aliened, released and confirmed,  
and by these presents do

grant, bargain, sell, alien, release and confirm unto the said JOHN S. RICHARDS  
and MONA J. RICHARDS, Grantees, as tenants by the entireties, their  
heirs and assigns,

ALL that certain lot or piece of ground situate in the Shoff  
Addition to the Village of Madera, Township of Bigler, County of  
Clearfield and State of Pennsylvania, known as Lot #32, bounded on  
the South by Spruce Street; on the West by Locust Street; on the  
North by an alley; and on the East by Lot #33. Fronting 50 feet on  
Spruce Street, and extending back at a uniform width, a distance of  
150 feet. Having erected thereon frame dwelling house and other out  
buildings.

EXCEPTING and RESERVING therefrom the coal and other minerals,  
as set forth in the deeds in the chain of title.

BEING the same premises which Harry V. Moberg granted and con-  
veyed to Harry V. Moberg and Nellie E. Moberg by deed dated June 2,  
1942 and recorded in the Office of the Recorder of Deeds of Clearfield  
County in Deed Book 343, Page 93. The said Nellie E. Moberg having  
died August 28, 1951, the above described premises did thereby  
vest in Harry V. Moberg, her surviving spouse.

STATE OF OHIO :  
COUNTY OF *Summit* : SS:

On this, the *11th* day of *June*, 1979, before me, the undersigned officer, personally appeared HARRY M. MOBERG, Co-executor under the Last Will and Testament of Harry V. Moberg, a/k/a Harry Moberg, deceased, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

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

*Joseph M. O'land - Attorney*  
*Term unexpiring per R.C. 147.03*

the ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever, of the said Harry V. Moberg, a/k/a Harry Moberg, at and immediately before the time of his decease

in law, equity, or otherwise howsoever, of, in, to, or out of the same.

**To have and to hold** the said lot or piece of ground above described, with the

hereditaments and premises hereby granted and conveyed, or mentioned and intended so to be, with the appurtenances, unto the said JOHN S. RICHARDS and MONA J. RICHARDS, Grantees, their heirs

and assigns, to and for the only proper use and behoof of the said JOHN S. RICHARDS and MONA J. RICHARDS, Grantees, their heirs

and assigns forever.

And the said JAMES W. MOBERG and HARRY M. MOBERG, Co-executors as aforesaid, do

covenant, promise and agree, to and with the said JOHN S. RICHARDS and MONA J. RICHARDS, Grantees, their heirs

and assigns, that they the said JAMES W. MOBERG and HARRY M. MOBERG, Co-executors as aforesaid

have not done, committed, or knowingly or willingly suffered to be done or committed, any act, matter or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, are, shall, or may be impeached, charged or incumbered, in title, charge, estate, or otherwise howsoever.

**In Witness Whereof**, the said JAMES W. MOBERG and HARRY M. MOBERG, Co-executors have hereunto set their hands and seals the day and year first above written.

**Signed, Sealed and Delivered**  
In the Presence of

CLEARFIELD CO. SS  
ENTERED OF RECORD

Time 11:39 AM 7-4-79

By Ronald E. Cichy

Fees \$0.00

Cecil A. Burns, Recorder

EXHIBIT NO. 1  
Page 4 of 5

James W. Moberg  
James W. Moberg, Co-executor  
under the Last Will and Testament  
of Harry V. Moberg, a/k/a  
Harry Moberg, deceased

Harry M. Moberg  
Harry M. Moberg, Co-executor  
under the Last Will and Testament of  
Harry V. Moberg, a/k/a Harry Moberg  
deceased.

County of Clearfield

SS

On this, the 6<sup>th</sup> day of June, 1979, before me  
 the undersigned officer, personally appeared JAMES W. MOBERG, Co-executor under  
 the Last Will and Testament of Harry V. Moberg, a/k/a Harry Moberg,  
 deceased,

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within  
 instrument, and acknowledged that he executed the same for the purpose therein contained.

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

MY COMMISSION EXPIRES  
1/30/81  
 ELAINE R. BILNER

Notary Public in the State of New York  
 KIERNAN COUNTY, N.Y.  
 Commission Expires March 30, 1981.

I, Elaine R. Bilner,  
 Notary Public, do hereby certify, that the precise address of the grantee is  
Madera, Pa

Ronald E. Archer  
Attorney for Grantee

JAMES W. MOBERG and HARRY H.  
 MOBERG, Co-executors under the  
 Last Will and Testament of  
 HARRY V. MOBERG, a/k/a HARRY  
 MOBERG, deceased

TO  
 JOHN S. RICHARDS and MONA J.  
 RICHARDS, his wife

Dated, June 4

1979



Entered of Record July 6 1979, 11:39 AM Cecil Burns, Recorder

County of Clearfield

SS

Recorded on this 6<sup>th</sup> day of July, A.D. 1979,

in the Recorder's Office of said County  
 in DEED Book Vol. 283 PAGE 427.

Given under my hand and seal of the said office  
 the date above written.

My Commission Expires  
 First Monday in January 1980

Carl Burns  
 RECORDER

# This Deed,

MADE the — 4th — day of — November —  
in the year nineteen hundred and — eighty-two —

BETWEEN FRANCIS CAPITOS and MONA CAPITOS, his wife, both of Madera,  
Clearfield County, Pennsylvania, Grantors and Parties of the  
First Part.

AND

JOHN F. RICHARDS and MONA J. RICHARDS, his wife, both of Madera,  
Clearfield County, Pennsylvania, Grantees and Parties of the  
Second Part, as tenants by the entireties.

WITNESSETH, That in consideration of

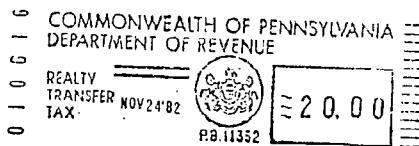
\* \* \* \* \* TWO THOUSAND (\$2,000.00) \* \* \* \* \* Dollars,  
in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant  
and convey to the said grantees, —their heirs and assigns. —

ALL that certain lot or piece of ground situate in the Shoff  
Addition to the Village of Madera, bounded and described  
as follows:

BEGINNING at a point at the Southwest corner of an  
alley on the North side of Spruce Street; thence  
along Spruce Street North 80 degrees West 50 feet  
to the Southeast corner of Lot No. 32, now owned by  
Harry Moberg; thence North 10 degrees East along  
the line of Lot No. 32, 150 feet to an alley; thence  
along the line of said alley South 80 degrees East  
50 feet to an alley; thence along said alley South  
10 degrees West 150 feet to place of beginning, being  
known as Lot No. 33 in the Shoff Addition to the  
Village of Madera, having erected thereon a frame  
dwelling.

BEING the same premises as were granted and conveyed  
unto the Grantors herein by deed of Patricia J. Hawkins,  
single, dated August 18, 1964 and entered of record in  
the Office for the Recording of Deeds of Clearfield  
County, Pennsylvania, in Deed Book Volume 558, page 319. —

VG 202-273



## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", 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:

*Ronald E. Archer* *John F. Richards*  
Ronald E. Archer *John F. Richards*  
- as to both *Mona J. Richards*  
Mona J. Richards

This 22nd day of November, 1982.

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, 1985, as amended.)

... the said grantor s will — specially — WARRANT AND FOREVER DEFEND the property hereby conveyed.

IN WITNESS WHEREOF, said grantor s ha ve hereunto set—their- hand and seal , the

day and year first above-written.

Sealed and delivered in the presence of

Ronald E. Archer  
as to both

Francis Capitos  
FRANCIS CAPITOS (SEAL)  
Mona Capitos  
MONA CAPITOS (SEAL)  
..... (SEAL)  
..... (SEAL)  
..... (SEAL)

CERTIFICATE OF RESIDENCE

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

Madera, Pa. 16661

Ronald E. Archer  
Attorney or Agent for Grantee

Commonwealth of Pennsylvania  
County of Clearfield } SS:

On this, the 22<sup>nd</sup> day of November 1982, before me, — a Notary Public — the undersigned officer, personally appeared — FRANCIS CAPITOS & MONA CAPITOS — known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument, and acknowledged that — they — executed the same for the purpose therein contained.

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

Ronald E. Archer  
RONALD E. ARCHER, Notary Public  
Hazleton, Clearfield Co., Pa.  
My Commission Expires March 23, 1983

Commonwealth of Pennsylvania  
County of } SS:

On this, the day of 19 , before me  
the undersigned officer, personally appeared  
known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument, and acknowledged that — executed the same for the purpose therein contained.

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

My Commission Expires

State of \_\_\_\_\_ }  
 County of \_\_\_\_\_ } SS:

On this, the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, before me  
 the undersigned officer, personally appeared  
 known to me (or satisfactorily proven) to be the person  
 instrument, and acknowledged that  
 contained.

whose name \_\_\_\_\_ subscribed to the within  
 executed the same for the purpose therein

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

.....  
 My Commission Expires

State of \_\_\_\_\_ }  
 County of \_\_\_\_\_ } SS:

On this, the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, before me  
 the undersigned officer, personally appeared  
 known to me (or satisfactorily proven) to be the person  
 instrument, and acknowledged that  
 contained.

whose name \_\_\_\_\_ subscribed to the within  
 executed the same for the purpose therein

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

.....  
 My Commission Expires

**Deed**

WARENTY DEED — Published and Sold by  
 The Philadelphia Co., Williamsport, Pa.  
 \_\_\_\_\_  
 FRANCIS CAPITOS & MONA CAPITOS,  
 Grantors and Parties of the First  
 Part. — AND —  
 JOHN F. RICHARDS & MONA J. RICHARDS,  
 Grantees and Parties of the Second  
 Part.

Dated November 4, 1982.  
 For Premises located in the  
 Village of Madera, Clearfield  
 County, Pennsylvania.

Consideration ..... \$2,000.00  
 Recorded .....  
 Entered for Record in the Recorder's

Office of .....  
 County, the ..... day of Tax, \$  
 ..... 19... ..... 19... Fees, \$  
 ..... Records

RONALD E. ARCHER, ESQ.  
 711 HANNAH STREET  
 HOUTZDALE, PENNA. 16651  
 378-7641

Commonwealth of Pennsylvania  
 County of \_\_\_\_\_ } SS:

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in Deed  
 Book No. 863 Page 277

WITNESS my Hand and Official Seal this 27<sup>th</sup> day of

My Commission Expires  
 First Monday in January 1984

Recorder of Deeds

Entered of Record 1/24 1982, 3:15 PM Tim Morgan, Recorder

EXHIBIT NO. 2  
 Page 4 of 4

# This Indenture,

MADE THE 13th day of November in the year  
of our Lord one thousand nine hundred and seventy-three (1973)

BETWEEN CARL J. RICHARDS and MARIE RICHARDS, husband and wife,  
of Williamsburg, Pennsylvania, parties of the first part,

A N D

JOHN F. RICHARDS AND MONA J. RICHARDS, husband and wife, of  
the Village of Madera, Clearfield County, Pennsylvania.

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of  
parties of the second part,

One and .....00/ Dollars, lawful money  
of the United States of America, unto them well and truly paid by the said parties  
of the second part, at and before the sealing and delivery of these presents, the receipt whereof is  
hereby acknowledged, have remised, released and quit-claimed, and by these presents do  
remise, release and forever quit-claim unto the said parties of the second part, their  
heirs and assigns,

ALL that certain town lot or piece of land situate in Shoffs Addition  
to the Village of Madera and known in the General plot of Plan of  
said addition as Lot #46, County of Clearfield and State of Pennsylvania,  
bounded and described as follows:

BOUNDED on the East by Lot #47, on the South by an alley, on the West  
by Locust Street, on the North by Pine Street, said lot being 50 feet  
in width and 150 feet in length.

Being one of the same lots deeded to the said William A. Lord by the  
executors of the estate of John M. Chase (deceased) dated on the 20th  
day of March 1917.

Reserving all the coal and other minerals as reserved in the deed of  
the executors of the estate of the said John M. Chase (deceased) to  
William A. Lord.

BEING the same premises conveyed to Sara M. Richards by Deed of  
W. A. Lord et al dated April 21, 1917 and recorded in Clearfield  
County Deed Book 236, Page 249.

N. 663 M. 240

The premises herein described was sold for 1931 taxes to the Clearfield County Commissioners on April 10, 1936, said deed being recorded in Clearfield County Deed Book 344, Page 280, and was purchased by James P. Richards from the Clearfield County Commissioners on January 22, 1942 which deed is recorded in Clearfield County Deed Book 344, Page 281.

The Grantors herein, Carl J. Richards and Marie Richards, are two of the heirs of Sara M. Richards who executed this deed for the purpose of conveying whatever interest they may have in said property.

TOGETHER with all and singular the tenements, hereditaments and appurtenances to the same belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, property, claim and demand whatsoever, both in law and equity, of the said parties of the first part, of, in, to or out of the said premises, and every part and parcel thereof.

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said parties of the second part, thier heirs and assigns, to and for the only proper use and behoof of the said parties of the second part, thier heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part ha ve hereunto set thier hand s and seals the day and year first above written.

Signed, Sealed and Delivered  
in the Presence of

Carl J. Richards  
CARL J. RICHARDS  
Marie Richards  
MARIE RICHARDS



Received the day of the date of the above Indenture of the above named

the sum of Dollars,  
lawful money of the United States, being the consideration money above mentioned in full.

Witness:

\_\_\_\_\_  
\_\_\_\_\_

663 242

PAUL T. GARDNER  
Henry B. Hart

State of

County of Blair

On this, the 15<sup>th</sup>

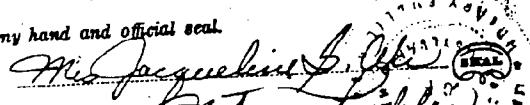
day of

{ October } ss.

, 1973, before me,

the undersigned officer, personally appeared Carl J. Richards and Marie Richards known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.



My signature is genuine 7/7/73

State of

County of

On this, the

day of

{ ss. } , 19 , before me,

the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that they executed same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.



AFFIDAVIT NO. 2324

Title of Officer.

CERTIFICATE OF RESIDENCE

I do hereby certify that the precise residence and complete post office address of the within named grantee is Village of Madera, Pennsylvania.

November 13,

1973

James A. Nadeo  
James A. Nadeo  
Attorney for Grantee

Deed

CARL J. RICHARDS and MARIE  
RICHARDS

A N D  
JOHN F. RICHARDS and MONA J.  
RICHARDS

Quit-Claim

CLEARFIELD CO. SS  
CLEARED FOR RECORD - 10/4-73  
ENTR'D C.F.R. 10/4-73  
Time 10:00  
By Bellin, Bellin, Nader  
Fee \$6.00  
Cecil A. Burns, Recorder

Entered of Record Nov 14 1973, 10:01 Cecil Burns Recorder

COMMONWEALTH OF PENNSYLVANIA

County of

RECORDED on this \_\_\_\_\_ day of \_\_\_\_\_

A. D. 19\_\_\_\_\_, in the Recorder's office of the said County, in Deed Book

Vol. \_\_\_\_\_, Page \_\_\_\_\_

Given under my hand and the seal of the said office, the date above written.

Recorder.

EXHIBIT NO. 3

Page 4 of 4

MAD  
of our  
BET  
pa

# This Deed,

MADE THE 14th day of June in the year  
of our Lord one thousand nine hundred seventy-six (1976)

BETWEEN

JAMES L. BLOOM and HELEN BLOOM, his wife, of R. D.  
Madera, Clearfield County, Pa., parties of the First Part,  
hereinafter called Grantors

and

JOHN RICHARDS and MONA RICHARDS, his wife, of  
Madera, Clearfield County, Pa., parties of the Second  
Part, hereinafter called Grantees

~~GRANTOR~~

~~GRANTEE~~

WITNESSETH, that in consideration of One and 00/100-----  
in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant  
and convey to the said grantees, as tenants by the entireties,

ALL that certain lot or piece of land situate in the Township of  
Bigler, Clearfield County, Pa., bounded and described as follows:

BEGINNING at a post where the Southwest corner of Lot No. 47  
corners with the Southeast corner of Lot No. 46 North seven and  
three-fourths (7 3/4) degrees East one hundred fifty (150) feet to  
a post on Pine Street; thence by Pine Street South eighty-two and  
one-fourth (82 1/4) degrees East one hundred ten (110) feet to a  
post at an alley; thence by said alley South six and one-half (6 1/2)  
degrees East one hundred fifty-five (155) feet and seven (7) inches  
to a post on an alley; thence by said alley North eighty-two and  
one-fourth (82 1/4) degrees West one hundred forty-seven (147)  
feet and three inches (3) to the place of beginning. Containing  
nineteen thousand two hundred (19,200) square feet.

EXCEPTING and RESERVING all the exceptions and reservations  
as contained in the chain of title.

BEING the same premises as vested in the Grantors by Will of  
Mertie E. Bloom, late of the Village of Madera, Pa.

Said lots being known as Lots No. 47, 48 and 49 in the Shoff Addition  
to the Village of Madera, Clearfield Co., Pa.

THIS IS A CORRECTION DEED.

AND the said grantor s hereby covenant and agree that they will warrant SPECIALLY the property hereby conveyed.

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.

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

Signed, Sealed and Delivered  
in the Presence of

*James L. Bloom* JAMES L. BLOOM

*HELEN BLOOM* HELEN BLOOM

*Helen Bloom* Helen Bloom

SEAL

SEAL

SEAL

SEAL

State of Pa. }  
County of Centre } ss.  
On this, the 23<sup>rd</sup> day of June, 1976, before me,  
the undersigned officer, personally appeared James L. Bloom and Helen Bloom, his wife,

known to me (or satisfactorily proven) to be the person s whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

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

*Catherine D. Leonard*  
Title of Officer.

CLERK OF COURT, CENTRE COUNTY, PA.  
CENTRE COUNTY, PA.

I do hereby certify that the precise residence and complete post office address of the within named grantee is Madera, Clearfield Co., Pa.

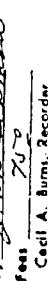
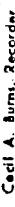
June 14, 1976

  
\_\_\_\_\_  
Attorney for grantee

AFFIDAVIT NO. 5560

Deed  
\_\_\_\_\_  
JAMES L. BLOOM and  
HELEN BLOOM, his wife  
and  
JOHN RICHARDS and MONA  
RICHARDS, his wife

WARRANTY

CLEARFIELD CO. SS  
ENTERED OF RECORD  
7-13-76  
By   
Cecil A. Burns, Recorder  
Fee   
Cecil A. Burns, Recorder

COMMONWEALTH OF PENNSYLVANIA

County of \_\_\_\_\_ } ss.

RECORDED on this \_\_\_\_\_ day of \_\_\_\_\_

A. D. 19\_\_\_\_, in the Recorder's Office of said County, in Deed Book

Vol. \_\_\_\_\_, Page \_\_\_\_\_

Given under my hand and the seal of the said office, the date above written.

\_\_\_\_\_, Recorder.

EXHIBIT NO. 4

**WARRANTY DEED**

Printed on Plankenhorns 100% Linen Record Paper

.VOL 776 PAGE 037

# This Deed,

MADE the — 25th — day of — January —  
in the year nineteen hundred and — seventy-nine. —

BETWEEN - JOHN F. RICHARDS and MONA J. RICHARDS, his wife, both of Madera, Clearfield County, Pennsylvania, Grantors and Parties of the First Part,

— AND —

JOHN F. RICHARDS and MONA J. RICHARDS, his wife, both of Madera, Clearfield County, Pennsylvania, as tenants by the entireties, Grantees and Parties of the Second Part. \_\_\_\_\_

WITNESSETH, That in consideration of

ALL that certain piece or parcel of ground situate in Madera, Clearfield County, Pennsylvania, bounded and described as follows, to wit: \_\_\_\_\_

BEGINNING at the Southwest corner of Pine Street and Township Road T-570; thence along said Pine Street North Eighty-one and One-half degrees West (N 81 $\frac{1}{2}$ ° W) One Hundred Eighteen (118') feet to an alley; thence along said alley South Six and One-half degrees East (S 6 $\frac{1}{2}$ ° E) One Hundred Fifty (150') feet to an alley; thence along said alley South Eighty-one and One-half degrees East (S 81 $\frac{1}{2}$ ° E) One Hundred Eighteen (118') feet to Township Road T-570; thence along said Township Road North Six and One-half degrees West (N 6 $\frac{1}{2}$ ° W) One Hundred Fifty (150') feet to point and place of beginning.

THIS IS A CORRECTIONAL DEED.

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", 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:

*W. J. Baugman* *John F. Richards*  
W. J. Baugman John F. Richards  
*Mona J. Richards* *Mona J. Richards*  
Mona J. Richards

This 27<sup>th</sup> day of JANUARY 1979

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, 1966, as amended.)

EXHIBIT NO. 5

Page 2 of 3

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

IN WITNESS WHEREOF, said grantors - ha-ve -hereunto set - the ir-hand's and seal's, the day and year first above-written.

Sealed and delivered in the presence of

<i>W. J. Baughman</i>	<i>John F. Richards</i> (seal)
<i>W. J. Baughman</i>	<i>Mona J. Richards</i> (seal)
.....	..... (seal)
.....	..... (seal)
.....	..... (seal)
.....	..... (seal)

**CERTIFICATE OF RESIDENCE**

I hereby certify, that the precise residence of the grantee is P. O. Box 535 herein is as follows:  
Madera, Penna. 16661 Ronald E. Parker  
 Attorney or Agent for Grantee

Commonwealth of Pennsylvania  
 County of CLEARFIELD } ss,

On this, the 27<sup>th</sup> day of January 19 79, before me, a Notary Public the undersigned officer, personally appeared JOHN F. RICHARDS and MONA J. RICHARDS known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Ronald E. Parker  
March 23, 1981  
 My Commission Expires

Commonwealth of Pennsylvania  
 County of } ss,

On this, the day of 19 , before me the undersigned officer, personally appeared known to me (or satisfactorily proven) to be the person instrument, and acknowledged that whose name subscribed to the within executed the same for the purpose therein contained.

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

CLEARFIELD CO. SS  
 ENTERED OF RECORD 1-31-79  
 Time 12:30 P.M.  
 By Ronald Parker, Atty.  
 Fees 1.00  
 Cecil A. Burns, Recorder

My Commission Expires

MAIL TO:  
LAW OFFICES OF  
DAVID C. MASON  
P. O. Box 28  
Philipsburg, PA 16866

THIS DEED

MADE the 24<sup>th</sup> day of November, in the year nineteen  
hundred and ninety-five (1995).

BETWEEN ROSE M. MISLOSKY, an individual, currently living at  
Spruce Street, Madera, Clearfield County, Pennsylvania, GRANTOR and  
Party of the First Part,

A

N

D

JAMES A. BARNETT, an individual, and SHEILA A. FLECK, an  
individual, currently of Winburne, Clearfield County, Pennsylvania,  
GRANTEEES and Party of the Second Part.

**WITNESSETH:** That for and in consideration of the sum  
of TWENTY FIVE THOUSAND AND NO/100----- (\$25,000.00)--DOLLARS,  
in hand paid, the receipt whereof is hereby acknowledged, the said  
GRANTOR does hereby grant and convey to the said GRANTEEES,  
their heirs and assigns,

ALL that certain piece, parcel or tract of land situate in the  
Village of Madera, Township of Bigler, County of Clearfield and  
Commonwealth of Pennsylvania, bounded and described as follows:

VOL 1721 PAGE 454

BEGINNING at an alley on the North side of Spruce Street; thence along said alley North nine and one-half (9 1/2) degrees West one hundred and fifty-nine (159) feet to a post; thence North eighty-one and one-half (81 1/2) degrees West along said alley; thence eighty-seven and one-half (87 1/2) feet to a post and alley; thence along alley South eight (8) degrees West one hundred and fifty (150) feet to Spruce Street, thence along Spruce Street North eighty-one and one-half (81 1/2) degrees East one hundred and thirty-five (135) feet to the place of beginning. Having erected thereon a frame dwelling house and a frame garage.

BEING the same premises which were conveyed by deed of Richard F. Washek and Mina J. Washek to Pete J. Mislosky, deceased on 1/14 day of January, 1974 and Rose M. Mislosky, his wife, as tenants by the entirieties on February 18, 1971 in Deed Book Volume 572 at Page 381.

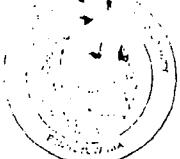
BUYER ALSO UNDERSTANDS THAT THERE IS NO COMMUNITY OR PUBLIC SEWAGE SYSTEM AVAILABLE TO THE WITHIN PROPERTY. A PERMIT FOR ANY NEW INDIVIDUAL SEWAGE SYSTEM, OR ANY REPAIRS TO ANY EXISTING INDIVIDUAL SEWAGE SYSTEM, WILL HAVE TO BE OBTAINED FROM THE LOCAL AGENCY DESIGNATED AS PROVIDED IN THE PENNSYLVANIA SEWAGE FACILITIES ACT.

TOGETHER with all and singular the buildings and improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title and interest, property, claim and demand whatsoever of the said Grantors, their heirs and assigns, in law, equity, or otherwise, howsoever, in and to the same, and every part thereof.

TO HAVE AND TO HOLD the said lot or piece of ground above described, with the messuage or tenement thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the Grantees, their heirs and assigns, to and for the only proper use and behoof of the said Grantees, their heirs and assigns, forever.

UNDER AND SUBJECT, NEVERTHELESS, to all exceptions, reservations, conditions and restrictions as contained in prior Deeds in the chain of title.

I hereby CERTIFY that this document is recorded in the Recorder's Office of Clearfield County, Pennsylvania.



*Karen L. Starck*  
Karen L. Starck  
Recorder of Deeds

CLEARFIELD COUNTY  
RECORDER OF DEEDS  
TIME 12/14/95  
BY Daniel J. Thompson  
FEES 13.50  
Karen L Starck, Recorder

662 B

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", 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:

*John A. Parrot* .....  
*Shelia Fleck* .....

This ... 4th ... day of ... December ... 1965 .....

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.)

MOSHANNO VALLEY SCHOOL DISTRICT  
1% REALTY TRANSFER TAX

AMOUNT \$ 250.00  
PAID 10-4-95 KAREN L. STARCK  
Date Agent

VOL 1721 PAGE 456

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

IN WITNESS WHEREOF, said Grantor has hereunto set her hand  
and seal , the day and year first above written.

Sealed and delivered  
in the presence of

*Kristina D. Helferty*

*Rose M. Mislosky* (SEAL)  
Rose M. Mislosky

(SEAL)

(SEAL)

(SEAL)

CERTIFICATE OF RESIDENCE

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

P.O. Box 202  
Winburne, PA 16877

11 C.R.D.H.A.  
COMMONWEALTH OF PENNSYLVANIA

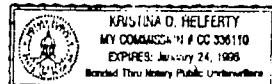
COUNTY OF CENTRE :ss:

*David L. Kraske*  
Attorney for Grantee

On this, the 24th day of November , 1995, before me,  
a Notary Public, personally appeared ROSE M. MISLOSKY known to me  
(or satisfactorily proven) to be the person whose name is  
subscribed to the within instrument, and acknowledged that she  
executed the same for the purpose therein contained.

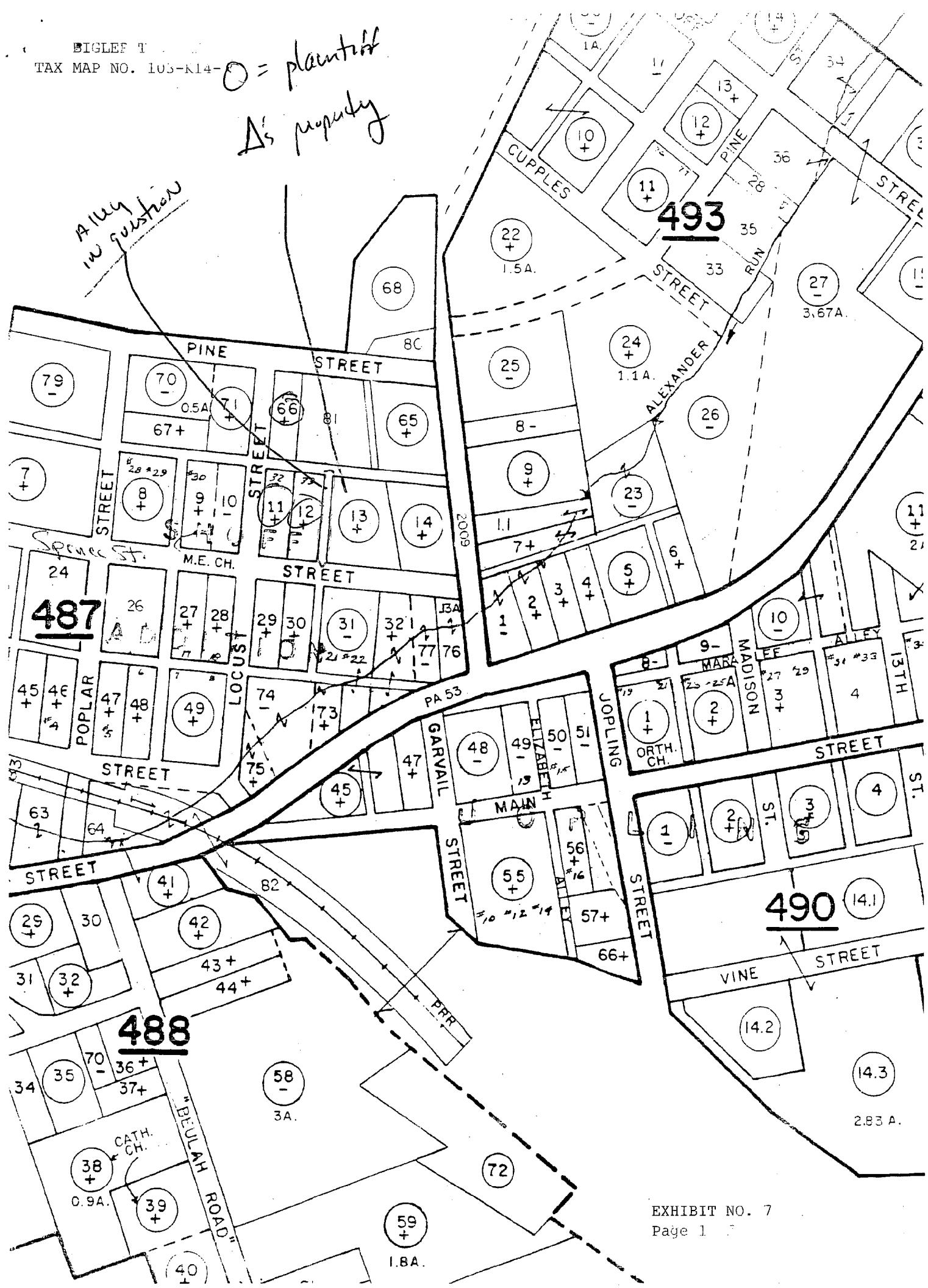
IN WITNESS WHEREOF, I have hereunto set my hand and official  
seal the day and year first above written.

*Kristina D. Helferty*  
N.P.



Entered at Record Dec 4 1995 12:04pm Karen L. Storch, Recorder

O = plaintiff  
A's property



may be recorded, although it leaves my hand and seal this resolution, my

جعفر بن محبث

۱۷۰

## Chloride of Zinc

Before we go to see of the Peace in our Poor People's Country  
for many years. Now Mrs. Elizabeth wife of Mr. H. H. Miller who is in the form of  
being a full age and by her command expands out of her former husband  
and she. Continues of the foregoing statement given first made fully known  
to me. Also now that she and voluntarily out of her own free will and  
desire and for her own and said deliver the same without any condition or compul-  
sion and I understand -

Dear Mr. and Mrs. Disney. Thank you very much for your kind and

Enclosed are the following Discs. 2-6 A. 2-137; all

John O'Farrell Esq.

## Reviews of Eng.

الله  
بسم الله الرحمن الرحيم

that he cause or command an assaile to be made upon a Writ of Execution, which sale shall have the same effect as if the execution had been regularly and properly issued and set or made up in the name of Venadore Buxton, issued out of said Court, which command he refused, and for want of money and the like, remitted the same to the money in the said Writ mentioned at its day and place on the said Writ, and as therein it was commanded; and that the residue of the Execution of said Writ, upon a certain Schedule or organization which Schedule or organization it was found that the said lessee and lessee of the above described property... of said Writ, upon the said Writ, the same aforesaid, remitted, was not of a due yearly value beyond all reprises sufficient with the sum of two years to satisfy the damage in the said Writ mentioned. And whereas by certain Writs of Sheriff to me the said Sheriff directed sold at Sheriff's Sale for the sum of January one thousand eight hundred and sixty nine. It was commanded that the premises above described with the appurtenances thereto placed to sale, and should have that money before the judges of Sheriff at a Sheriff's Court, and that there be in laid the Writs of Execution and remitted to the said Wm. Peery and Wiel for their debts and damages aforesaid. The premises aforesaid, and Sheriff having given due and legal notice of the time and place of sale by advertisement in the public newspaper, and by handbills set up on the premises and in the most public places in my jurisdiction, did on Monday the fifth day of August, one thousand eight hundred and sixty nine, and premises above described with the appurtenances thereto by public notice or otherwise and continue the said sale until Tuesday the 16th day of August, during which sold the same by State Stalder, being the highest and best bidder and at the highest and best price bidder for the same. It is now agreed that the said premises above aforesaid shall be sold for and in consideration of the sum of forty dollars to me in hand paid by said State Stalder at and before the sealing and delivery thereof the receipt whereof I do hereby acknowledge have granted the said and by these presents according to the direction of said Wm. Peery and Wiel and by these presents agreed and the sum of and the sum of the Commonwealth in which the same are situated to be granted, bargained and sold unto the said State Stalder, all that a certain piece of land situate in Woodward Township, Clearfield County, Pennsylvania, bounded and described as follows: Beginning at a Post Tree twelve rods from a ridge; thence west seven and one half acres East Eighty-five perches to a ridge; thence south Twenty-five East fifteen perches to stones; thence south Thirtynine degrees East twenty-one rods to Chestnut; thence East Sixty perches to a knoll; thence south Thirty degrees East Twenty perches to a slender tree; thence, south two acres to a Post tree; thence south Forty-four degrees East Forty-five perches to a Chestnut; thence south Thirty-five degrees East Forty-six perches to the line of Tournal Road; thence north, the said road, the following courses and distances to a line or the boundary of a tract of land to wit: West Sixty perches, South, Sixty-eight acres East Sixty-five perches South, Twenty-five acres East Sixty perches, South, Thirtynine acres East Sixty perches, South, Thirtynine acres East Forty-three perches; South, Thirty-one acres East Sixty perches; South, Forty-three acres East Thirtynine perches to stones. At the last of these, agreeably to Fifty-four perches to uponsaid line; thence North, Eighty-one perches, South, perches, being a ridge to east or place of beginning, and having a knoll before particularly described; together with all and singular the buildings, fixtures, rights, liberties, pastures, hereditaments and appurtenances whatsoever, whatsoever beginning or in anywise appertaining, and the reversion, rents, and other, and all the premises and for the time of the lease, and the hold, of the same.

unto James St. John & his heirs and assigns to and for the use and benefit of the said John St. John & his heirs and assigns for ever use and benefit for the uses aforesaid. The said Sheriff, his heirs & assigns will pay him and afford him the execution of his assignments in the year of our Lord one thousand eight hundred and one and fifteen.

John St. John

or his heirs and assigns

1871

John St. John

Received the day of the note of the above written in full  
from the above named John St. John the  
above consideration money in full —

John St. John

Count on the eighteenth day of April anno Domini one thousand eight hundred and  
ninety nine and tenth year of the Commonwealth of Pennsylvania page 1495. Certified  
under my hand and the seal of the said Court this 1<sup>st</sup> day of April 1871.

A. C. Taylor

Assignment

J. B. St. John  
15  
Albert St. John  
made on board of  
Faygoing boat  
John St. John

John St. John by his presents that John St. John doth grant  
to his wife and his wife for and in consideration  
of the sum of One Thousand Dollars to him in hand paid by Albert St. John  
the receipt whereof is hereby acknowledged have granted bargained  
assigned and set over and by these presents doth hereby grant  
subassign transfer and set over unto his said Albert St. John  
heirs and assigns all that the within mentioned tenement  
more or less of land situate in Woodward Township above  
County of Pennsylvania containing Ninetyone acres as within described together  
with all and singular buildings, hereditaments and appurtenances thereto  
belonging or in anywise appertaining to have and to hold the same unto  
said Albert St. John his heirs and assigns forever. It is so verily and sealed  
Thirty first day of August 1871.

John St. John

John St. John

J. B. St. John

John St. John

State of Pennsylvania

Borough of Newfield On the 30th August 1871 before me Robert  
H. Davis a notary public in and for said County personally John St. John and his wife and  
both of his acknowledged the above assignment to be their act and deed and doth  
hereby acknowledge the same as such. And also said J. St. John being of full age and sound  
mind except from inward but usually methinks friendly melancholy did then  
doe and say that she did sign and as her act and deed and of her more  
will and record acknowledge above written Assignment without any reservation  
or compulsion of her said husband witness my hand and seal  
dated the 30th August 1871.

John St. John

John St. John

John St. John

John St. John  
John St. John

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

MONA J. RICHARDS,  
Plaintiff

vs.

JAMES A. BARNETT  
and SHEILA A. FLECK,  
Defendants

: No.: 2003-1010-CD  
: Type of Case: Civil  
: Type of Pleading:  
: Pre-Trial Memorandum  
: Filed on behalf of:  
: Plaintiff  
: Counsel of Record for  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

Plaintiff May 7<sup>th</sup>, 2004  
Briefs (June 7<sup>th</sup>)  
PL - 20 days  
D - 20 days thereafter (June 28)  
RECEIVED

JAN 15 2004

COURT ADMINISTRATOR'S  
OFFICE

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

MONA J. RICHARDS, :  
Plaintiff : No.: 2003-1010-CD  
vs. :  
: In Equity  
: JAMES A. BARNETT :  
and SHEILA A. FLECK, :  
Defendants :  
:

**PRE-TRIAL MEMORANDUM**

AND NOW, comes Mona J. Richards, Plaintiff, by her attorney, Girard Kasubick, Esq., and files the following Pre-Trial Memorandum under 46 J.D.R.C.P. §212.4(e):

1. **STATEMENT OF THE CASE:**

The Plaintiff brings this action seeking removal of a gate and other obstructions on alleyways in the Town of Madera, Bigler Township, Clearfield County, Pennsylvania, placed on said alleyways by the Defendants.

Plaintiff requests an order for Defendants to remove the gate and other obstructions and an injunction from placing future obstructions.

The Plaintiff is the owner of several tracts of land in Madera, Bigler Township, Clearfield County, Pennsylvania, known by Tax Map Nos. 103-K14-487-11, 103-K14-487-12, 103-K14-487-66, 103-K14-487-81, and 103-K14-

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

MONA J. RICHARDS, :  
Plaintiff : No.: 2003-1010-CD  
:  
vs. : In Equity  
:  
JAMES A. BARNETT :  
and SHEILA A. FLECK, :  
Defendants :  
:

**PRE-TRIAL MEMORANDUM**

AND NOW, comes Mona J. Richards, Plaintiff, by her attorney, Girard Kasubick, Esq., and files the following Pre-Trial Memorandum under 46 J.D.R.C.P. §212.4(e):

1. **STATEMENT OF THE CASE:**

The Plaintiff brings this action seeking removal of a gate and other obstructions on alleyways in the Town of Madera, Bigler Township, Clearfield County, Pennsylvania, placed on said alleyways by the Defendants.

Plaintiff requests an order for Defendants to remove the gate and other obstructions and an injunction from placing future obstructions.

The Plaintiff is the owner of several tracts of land in Madera, Bigler Township, Clearfield County, Pennsylvania, known by Tax Map Nos. 103-K14-487-11, 103-K14-487-12, 103-K14-487-66, 103-K14-487-81, and 103-K14-

487-65. These tracts are adjacent, except for alleyways between some of them. The Defendants own a tract adjacent to some of Plaintiff's properties, known by Tax Map No. 103-K14-487-13. The only thing separating these properties are some alleyways in the Town of Madera.

In the year 2001, the Defendants placed a metal gate on one of the alleyways and at other times has placed piles of dirt on the alleyways which obstructs Plaintiff's use of the alleyways.

Plaintiff has no knowledge that these alleyways have been opened or maintained as part of the Bigler Township road system. The Plaintiff's deeds and the Defendant's deed does refer to the alleys in their legal descriptions.

2. EXHIBITS:

a). Plaintiff's deed on Tax Map No. 103-K14-487-11 recorded in Deed Book 783, Page 427.

b). Plaintiff's deed on Tax Map No. 103-K14-487-12 recorded in Deed Book 863, Page 277.

c). Plaintiff's deed on Tax Map No. 103-K14-487-66 recorded in Deed Book 663, Page 239.

d). Plaintiff's deed on Tax Map No. 103-K14-487-81 recorded in Deed Book 722, Page 306.

3. **WITNESSES:**

- a). Mona J. Richards - Fact Witness  
P.O. Box 535  
Madera, PA 16661
- b). Joseph H. Richards - Fact Witness  
97 Thomas Street  
Buffalo, NY 14206
- c). David J. Thorp, PLS - Expert Witness/Surveyor  
Curry and Associates  
207 South Third Street  
Clearfield, PA 16830

4. **LEGAL THEORY:**

The owners of real property within a plan have the right to use the streets and alleys on said plan (whether recorded plan or shown by deeds of record) as streets and alleys. Jones v. Sedwick, 383 Pa. 120; 117 A.2d 709(1955); Ulrich v. Grimes, 94 Pa. Super 313(1928); Maier, et al. v. Walborn and High, 84 Pa. Super 522(1925).

5. **DAMAGES:**

Plaintiff seeks no damages, but an Order for removal of all obstructions and an injunction on further obstructions.

6. **EXTRAORDINARY EVIDENCE OR UNUSUAL QUESTIONS OF LAW:**

None are anticipated.

7. **STIPULATIONS:**

Plaintiff is willing to Stipulate to the deeds of record and other exhibits listed in 2. above.

Plaintiff would consider stipulating to other documents or exhibits of Defendants' to be used at trial.

8. **TIME FOR TRIAL:**

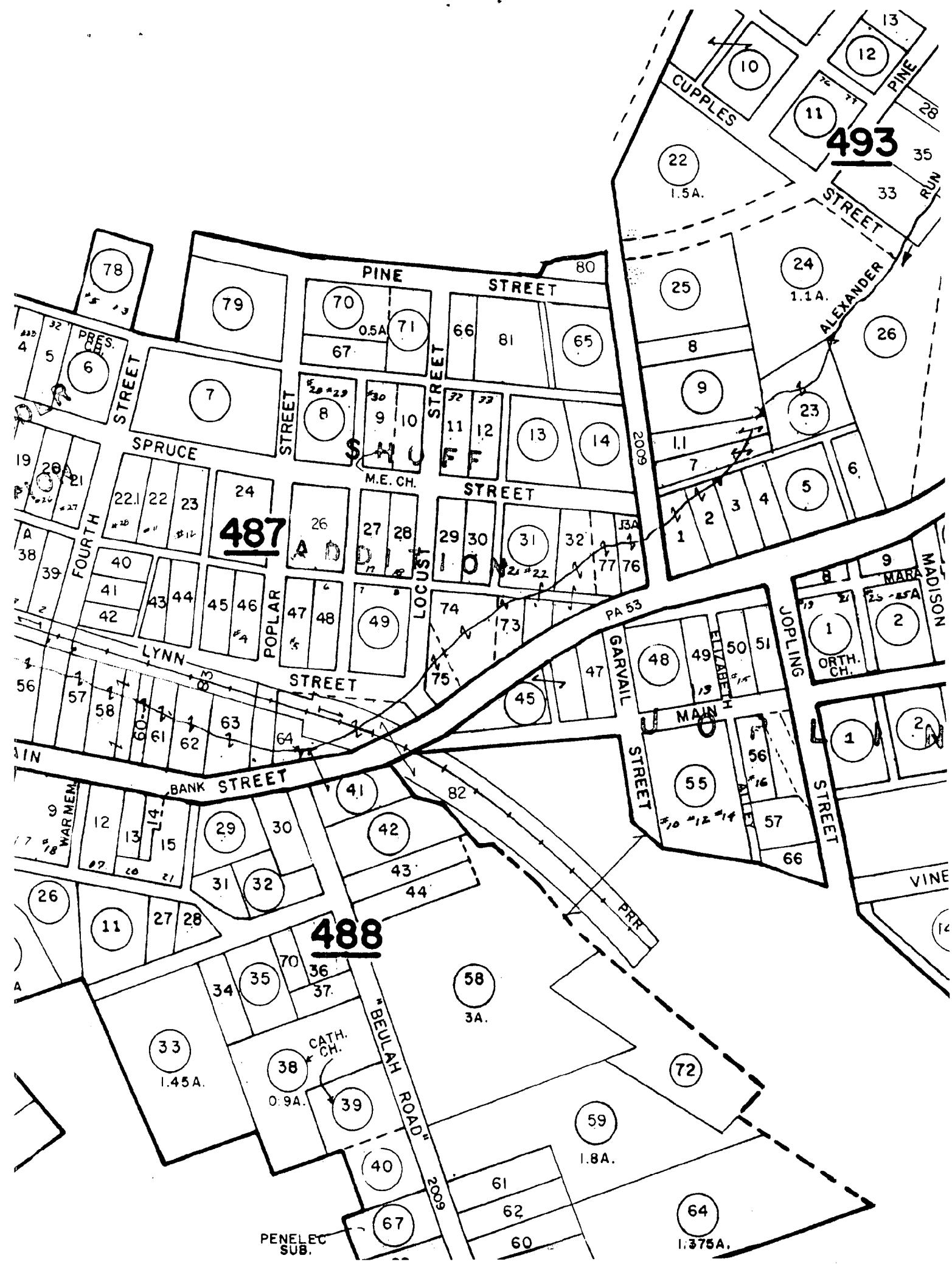
One-half (1/2) to one (1) day.

RESPECTFULLY SUBMITTED,

Date: 1/14/04

---

Girard Kasubick, Esq.  
Attorney for Plaintiff





Date: 10/01/2004

**Clearfield County Court of Common Pleas**

User: BHUDSON

Time: 09:53 AM

**ROA Report**

Page 1 of 1

Case: 2003-01010-CD

Current Judge: Fredric Joseph Ammerman

Mona J. Richards vs. James A. Barnett, Sheila A. Fleck

**Civil Other**

Date	Judge
07/09/2003	Filing: Civil Complaint Paid by: Kasubick, Girard (attorney for Richards, Mona J.) Receipt number: 1862917 Dated: 07/09/2003 Amount: \$85.00 (Check) 2 CC to Shff. 9
08/21/2003	Defendant's Answer, New Matter & Counterclaim to Plaintiffs Complaint In ② Equity. filed by s/Kim C. Kesner, Esq. Verification s/James A. Barnett s/Sheila A. Fleck Certificate of Service 3 cc Atty Kesner 7
08/26/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. ③ Hawkins, Sheriff by s/Marilyn Hamm 1
09/05/2003	Reply to New Matter and Counterclaim. filed by s/Girard Kasubick, Esquire Verification s/Mona J. Richards 2 cc to Atty ④ 6
11/24/2003	Certificate of Readiness and Praecipe for Trial. filed by, s/Girard Kasubick, Esquire Certificate of Service no c ⑤ 4
01/26/2004	ORDER, NOW, this 22nd day of January, 2004, re: CA shall schedule 1/2 day Non-Jury Trial in the month of May, 2004. Approximately 3 to 4 weeks prior to date set CA shall further schedule a Status Conference. by the Court, s/FJA,P.J. 2 cc Atty Kasubick, Kesner 1
01/27/2004	ORDER,AND NOW, this 26th day of January, 2004, re: Status Conference scheduled for Mon., Apr. 26, 2004, at 9:30 a.m. and Civil Non-Jury Trial ① scheduled for 1/2 day for Mon., May 17, 2004, at 9:00 a.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 1 cc Atty Kasubick, Kesner 1
05/19/2004	ORDER, NOW, this 17th day of May, 2004, re: Counsel for Plaintiff shall have no more than 20 days from this date to submit appropriate Brief to the Court. Counsel for Defendants shall have no morethan 20 days following receipt of Plaintiff's Brief to respond in kind. by the Court, s/FJA, P.J. 1 cc Atty Kasubick, Kesner, Copy to C/A ⑧ 1
08/12/2004	OPINION AND ORDER, Now this 11th day of August, 2004, it is the Order of this Court that the Plaintiff's Complaint filed on July 9, 2003 is hereby dismissed. BY THE COURT/s/Fredric J. Ammerman, President Judge. ⑨ 2 9 Cert. Copies Atty Kesner, 2 Cert. Copies Atty. Kasubick, 2 copies to President Judge Ammerman, 1 copy to Court Administrator, 1 copy to Don Mikesell, Esq., 1 copy to Law Library.
09/07/2004	Filing: Appeal to High Court, on behalf of Plaintiff appeal to Superior Court of Pennsylvania, Paid by: Kasubick, Girard (attorney for Richards, Mona J.) Receipt number: 1886012 Dated: 09/07/2004 Amount: \$45.00 (Check). Proof Of Service, copy of Notice of Appeal upon the following: The Honorable Fredric J. Ammerman; Court Reporter's Office; Kim C. Kesner, Esq., and David Meholic, Court Adminstrator. Filed by s/Girard Kasubick, Esquire. 1 CC & Check for \$60.00 to Superior Court. ⑩ 4
09/17/2004	Appeal Docket Sheet # 1555 WDA 2004, from Superior Court, filed. ⑪ 3

10:00 AM.

03-1010-CD

## Appeal Docket Sheet

Docket Number: 1555 WDA 2004

Page 1 of 3

September 14, 2004

Mona J. Richards, Appellant

v.

James A. Barnett and Sheila A. Fleck

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: September 10, 2004

Journal Number:

Case Category: Civil

Case Type: Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

### SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: September 28, 2004

Next Event Type: Original Record Received

Next Event Due Date: October 20, 2004

1555 WDA 2004

\* Record Only  
FILED

SEP 17 2004

11:30 AM

William A. Shaw

Prothonotary/Clerk of Courts

## Appeal Docket Sheet

Docket Number: 1555 WDA 2004

Page 2 of 3

September 14, 2004

Superior Court of Pennsylvania



## COUNSEL INFORMATION

Appellant Richards, Mona J.

Pro Se: Appoint Counsel Status:

IFP Status: No

## Appellant Attorney Information:

Attorney: Kasubick, Girard

Bar No.: 30109 Law Firm: Lehman &amp; Kasubick

Address: 611 Brisbin Street

Houtzdale, PA 16651

Phone No.: (814)378-7840 Fax No.: (814)378-6231

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Barnett, James A.

Pro Se: Appoint Counsel Status:

IFP Status:

## Appellee Attorney Information:

Attorney: Kesner, Kim C.

Bar No.: 28307 Law Firm: Clearfield County Solicitor's Office

Address: 23 N 2nd St

Clearfield, PA 16830

Phone No.: (814)765-1706 Fax No.: (814)765-7006

Receive Mail: Yes

E-Mail Address: attykesner@charterinternet.com

Receive E-Mail: No

Appellee Fleck, Sheila A.

Pro Se: Appoint Counsel Status:

IFP Status:

## Appellee Attorney Information:

Attorney: Kesner, Kim C.

Bar No.: 28307 Law Firm: Clearfield County Solicitor's Office

Address: 23 N 2nd St

Clearfield, PA 16830

Phone No.: (814)765-1706 Fax No.: (814)765-7006

Receive Mail: No

E-Mail Address: attykesner@charterinternet.com

Receive E-Mail: No

## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
9/10/04	Notice of Appeal	60.00	60.00	2004SPRWD001180

## Appeal Docket Sheet

Docket Number: 1555 WDA 2004

Page 3 of 3

September 14, 2004

## Superior Court of Pennsylvania



## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Civil  
 Date of OrderAppealed From: August 11, 2004 Judicial District: 46  
 Date Documents Received: September 10, 2004 Date Notice of Appeal Filed: September 7, 2004  
 Order Type: Order Entered OTN:  
 Judge: Ammerman, Fredric J. Lower Court Docket No.: 2003-1010-CD  
 President Judge

## ORIGINAL RECORD CONTENTS

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

Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
September 10, 2004	Notice of Appeal Filed	Appellant	Richards, Mona J.
September 14, 2004	Docketing Statement Exited (Civil)		Western District Filing Office

( ) ( )

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

---

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

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

**03-1010-CD**

**Mona J. Richards**  
**VS.**  
**James A. Barnett and Sheila A. Fleck**

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

The documents compromising the record have been numbered from **No. 1 to No. 11**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is  
October 18, 2004.

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

(seal)

Date: 10/13/2004

Time: 01:04 PM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2003-01010-CD

Current Judge: Fredric Joseph Ammerman

Mona J. Richards vs. James A. Barnett, Sheila A. Fleck

Civil Other

Date	Judge
07/09/2003	Filing: Civil Complaint Paid by: Kasubick, Girard (attorney for Richards, Mona J.) Receipt number: 1862917 Dated: 07/09/2003 Amount: \$85.00 (Check) 2 CC to Shff.
08/21/2003	Defendant's Answer, New Matter & Counterclaim to Plaintiffs Complaint In Equity. filed by s/Kim C. Kesner, Esq. Verification s/James A. Barnett s/Sheila A. Fleck Certificate of Service 3 cc Atty Kesner
08/26/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm
09/05/2003	Reply to New Matter and Counterclaim. filed by s/Girard Kasubick, Esquire Verification s/Mona J. Richards 2 cc to Atty
11/24/2003	Certificate of Readiness and Praeclipe for Trial. filed by, s/Girard Kasubick, Esquire Certificate of Service no c
01/26/2004	ORDER, NOW, this 22nd day of January, 2004, re: CA shall schedule 1/2 Fredric Joseph Ammerman day Non-Jury Trial in the month of May, 2004. Approximately 3 to 4 weeks prior to date set CA shall further schedule a Status Conference. by the Court, s/FJA,P.J. 2 cc Atty Kasubick, Kesner
01/27/2004	ORDER,AND NOW, this 26th day of January, 2004, re: Status Conference Fredric Joseph Ammerman scheduled for Mon., Apr. 26, 2004, at 9:30 a.m. and Civil Non-Jury Trial scheduled for 1/2 day for Mon., May 17, 2004, at 9:00 a.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 1 cc Atty Kasubick, Kesner
05/19/2004	ORDER, NOW, this 17th day of May, 2004, re: Counsel for Plaintiff shall have no more than 20 days from this date to submit appropriate Brief to the Court. Counsel for Defendants shall have no morethan 20 days following receipt of Plaintiff's Brief to respond in kind. by the Court, s/FJA, P.J. 1 cc Atty Kasubick, Kesner, Copy to C/A
08/12/2004	OPINION AND ORDER, Now this 11th day of August, 2004, it is the Order of this Court that the Plaintiff's Complaint filed on July 9, 2003 is hereby dismissed. BY THE COURT/s/Fredric J. Ammerman, President Judge. 2 Cert. Copies Atty Kesner, 2 Cert. Copies Atty. Kasubick, 2 copies to President Judge Ammerman, 1 copy to Court Administrator, 1 copy to Don Mikesell, Esq., 1 copy to Law Library.
09/07/2004	Filing: Appeal to High Court, on behalf of Plaintiff appeal to Superior Court of Pennsylvania, Paid by: Kasubick, Girard (attorney for Richards, Mona J.) Receipt number: 1886012 Dated: 09/07/2004 Amount: \$45.00 (Check). Proof Of Service, copy of Notice of Appeal upon the following: The Honorable Fredric J. Ammerman; Court Reporter's Office; Kim C. Kesner, Esq.; and David Meholic, Court Adminstrator. Filed by s/Girard Kasubick, Esquire. 1 CC & Check for \$60.00 to Superior Court.
09/17/2004	Appeal Docket Sheet # 1555 WDA 2004, from Superior Court, filed. Fredric Joseph Ammerman

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

OCT 13 2004

Attest.

*William B. Hause*  
Prothonotary/  
Clerk of Courts

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

*No. 03-1010-CD*

*Mona J. Richards*

*VS.*

*James A. Barnett and Sheila A. Fleck*

<i>ITEM NO.</i>	<i>DATE OF FILING</i>	<i>NAME OF DOCUMENT</i>	<i>NO. OF PAGES</i>
01	07/09/03	Complaint	09
02	08/21/03	Defendant's Answer, New Matter & Counterclaim to Plaintiff's Complaint in Equity	07
03	08/26/03	Sheriff Return	01
04	09/05/03	Reply to New Matter and Counterclaim	06
05	11/24/03	Certificate of Readiness and Praecipe for Trial	04
06	01/26/04	Order, CA to schedule Non-Jury Trial	01
07	01/27/04	Order, Re: Status Conference scheduled and Non-Jury Trial scheduled	01
08	05/19/04	Order, Re: submission of briefs	01
09	08/12/04	Opinion and Order	09
10	09/07/04	Appeal to High Court on behalf of Plaintiff	04
11	09/17/04	Appeal Docket Sheet, Superior Court Number 1555 WDA 2004	03

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

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

**Mona J. Richards**

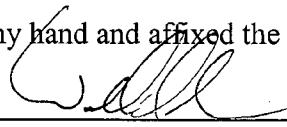
VS.

**James A. Barnett and Sheila A. Fleck**

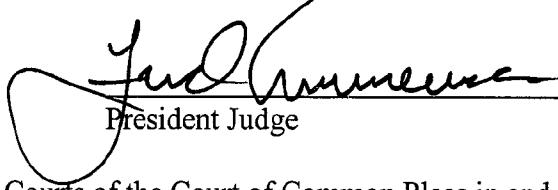
**03-1010-CD**

So full and entire as the same remains of record before the said Court, at **No. 03-1010-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 13<sup>th</sup> Day of October, 2004.

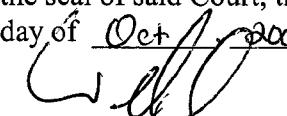
  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

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

  
\_\_\_\_\_  
President Judge

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

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 18 day of Oct., 2004

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

**Appeal Docket Sheet**

Superior Court of Pennsylvania

**Docket Number: 1555 WDA 2004****Page 1 of 3****September 14, 2004**

Mona J. Richards, Appellant

V.

James A. Barnett and Sheila A. Fleck

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: September 10, 2004

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Trespass

**Consolidated Docket Nos.:****Related Docket Nos.:****SCHEDULED EVENT**

Next Event Type: Docketing Statement Received

Next Event Due Date: September 28, 2004

Next Event Type: Original Record Received

Next Event Due Date: October 20, 2004

FILED  
SEP 17 2004  
William A. Shaw  
Prothonotary/Clerk of Courts

## Appeal Docket Sheet

Docket Number: 1555 WDA 2004

Page 2 of 3

September 14, 2004

Superior Court of Pennsylvania



## COUNSEL INFORMATION

**Appellant** Richards, Mona J.  
 Pro Se: Appoint Counsel Status:  
 IFP Status: No

**Appellant Attorney Information:**

Attorney: Kasubick, Girard  
 Bar No.: 30109 Law Firm: Lehman & Kasubick  
 Address: 611 Brisbin Street  
 Houtzdale, PA 16651  
 Phone No.: (814)378-7840 Fax No.: (814)378-6231  
 Receive Mail: Yes  
 E-Mail Address:  
 Receive E-Mail: No

**Appellee** Barnett, James A.  
 Pro Se: Appoint Counsel Status:  
 IFP Status:

**Appellee Attorney Information:**

Attorney: Kesner, Kim C.  
 Bar No.: 28307 Law Firm: Clearfield County Solicitor's Office  
 Address: 23 N 2nd St  
 Clearfield, PA 16830  
 Phone No.: (814)765-1706 Fax No.: (814)765-7006  
 Receive Mail: Yes  
 E-Mail Address: attykesner@charterinternet.com  
 Receive E-Mail: No

**Appellee** Fleck, Sheila A.  
 Pro Se: Appoint Counsel Status:  
 IFP Status:

**Appellee Attorney Information:**

Attorney: Kesner, Kim C.  
 Bar No.: 28307 Law Firm: Clearfield County Solicitor's Office  
 Address: 23 N 2nd St  
 Clearfield, PA 16830  
 Phone No.: (814)765-1706 Fax No.: (814)765-7006  
 Receive Mail: No  
 E-Mail Address: attykesner@charterinternet.com  
 Receive E-Mail: No

## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
9/10/04	Notice of Appeal	60.00	60.00	2004SPRWD001180

## Appeal Docket Sheet

Docket Number: 1555 WDA 2004

Page 3 of 3

September 14, 2004

Superior Court of Pennsylvania



## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Civil  
 Date of OrderAppealed From: August 11, 2004 Judicial District: 46  
 Date Documents Received: September 10, 2004 Date Notice of Appeal Filed: September 7, 2004  
 Order Type: Order Entered OTN:  
 Judge: Ammerman, Fredric J. Lower Court Docket No.: 2003-1010-CD  
 President Judge

## ORIGINAL RECORD CONTENTS

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

Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
September 10, 2004	Notice of Appeal Filed	Appellant	Richards, Mona J.
September 14, 2004	Docketing Statement Exited (Civil)		Western District Filing Office

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

MONA J. RICHARDS,  
Plaintiff

vs.

JAMES A. BARNETT  
and SHEILA A. FLECK,  
Defendants

: No.: 2003-1010-CD  
: Type of Case: Civil  
: Type of Pleading:  
: Notice of Appeal and  
: Proof of Service  
: Filed on behalf of:  
: Plaintiff  
: Counsel of Record for  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

50  
FILED 1cc@ck.for  
0/2.00/01 \$160.00 to  
SEP 07 2004 Superior Court

William A. Shaw  
Prothonotary/Clerk of Courts  
Atty pd. 45.00

#10

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

MONA J. RICHARDS, :  
Plaintiff :  
: No.: 2003-1010-CD  
vs. :  
: :  
JAMES A. BARNETT :  
and SHEILA A. FLECK, :  
Defendants :  
:

NOTICE OF APPEAL

Notice is hereby given that Mona J. Richards, Plaintiff above named, hereby appeals to the Superior Court of Pennsylvania from the Order entered by the Court in this matter on the 11<sup>th</sup> day of August, 2004. This Order has been entered in the docket as evidenced by the attached copy of the docket entries.

Respectfully submitted,



Dated: 09/07/2004

Girard Kasubick, Esq.,  
Attorney for Plaintiff  
LEHMAN & KASUBICK  
611 Brisbin Street  
Houtzdale, PA 16651  
(814) 378-7840

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

MONA J. RICHARDS, :  
Plaintiff :  
: No.: 2003-1010-CD  
vs. :  
: JAMES A. BARNETT :  
and SHEILA A. FLECK, :  
Defendants :  
:

**PROOF OF SERVICE**

I hereby certify that I, Girard Kasubick, Esq.,  
mailed a copy of the Notice of Appeal in the above  
captioned matter by regular U.S. mail on September 7,  
2004, upon the following persons at the following  
addresses:

The Honorable Fredric J. Ammerman  
CLEARFIELD COUNTY COURTHOUSE  
230 East Market Street  
Clearfield, PA 16830

Court Reporter's Office CLEARFIELD COUNTY COURTHOUSE 230 East Market Street Clearfield, PA 16830	David Meholick Court Administrator CLEARFIELD COUNTY COURTHOUSE 230 East Market Street Clearfield, PA 16830
---	---

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

  
Girard Kasubick, Esquire,  
Attorney for Plaintiffs

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

MONA J. RICHARDS,  
Plaintiff

vs.

JAMES A. BARNETT and  
SHEILA A. FLECK,  
Defendants

\*  
\*  
\*  
\*  
\*  
\*

No. 2003-1010-C.D.

FILED

AUG 12 2004

William A. Shaw  
Prothonotary/Clerk of Courts

OPINION and ORDER

This is an action in equity filed by Mona J. Richards (Mrs. Richards) against James A. Barnett and Sheila A. Fleck (Barnett & Fleck) seeking a permanent injunction directing Barnett & Fleck to remove a gate at the entrance of their driveway and a finding that she has the right to use the driveway. It has been long established that the issuance of an injunction is a matter within the sound discretion of the trial court. Borough of Cheswick v. Bechman, 352 Pa. 79, 42 A.2d 60 (Pa. 1945). The court which is to exercise discretion in the matter of the issuance of an injunction is the trial court and not the appellate court and the action of a trial court may be reversed on appeal only in the case of a clear abuse of discretion but not otherwise. Santoro v. Morse, 781 A.2d 1220 (Pa. Super. 2001).

An injunction is an extraordinary remedy which should be granted only with great caution; a court of equity should grant an injunction only when the rights and equity of the Plaintiff are clear and free from doubt and the harm sought to be remedied is great and irreparable. Cannon Brothers, Inc. v.

29

D'Agostino, 356 Pa. Super. 286, 514 A.2d 614 (Pa. Super. 1986). See also Rick v. Cramp, 357 Pa. 83, 53 A.2d 84 (Pa. 1947) ("The remedy by injunction is summary, peculiar and extraordinary, and ought not to be granted except for prevention of great and irreparable mischief.") 53 A.2d at page 88. Thus the burden in this case rests firmly and solely upon Mrs. Richards.

#### Findings of Fact

1. Mrs. Richards and Barnett & Fleck reside next to each other on Spruce Street in the Village of Madera. (Testimony of Thorp, Richards and Barnett; Joint Stipulation)

2. Mrs. Richards had her property surveyed in May of 2003 by David J. Thorp (Thorp) a Pennsylvania licensed surveyor. (Testimony of Thorp; Plaintiff's Exhibit "B")

3. Mrs. Richards claims rights to a strip of land beyond the eastern boundary of her property as set by Thorp. (Complaint and Mrs. Richard's Post-Trial Brief)

4. Thorp identified this area on his survey map as a "14 foot alley" (area in dispute). (Plaintiff's Exhibit "B")

5. A 14 foot wide road as plotted by Thorp would run very close to the western wall of the Barnett & Fleck house. (Testimony of Barnett; Photo DP-14)

6. Barnett & Fleck use a portion of the area in dispute as a driveway to their home. (Testimony of Barnett; Photos DP-14, 16, 17, 18)

7. When Barnett & Fleck bought their property and moved into their home in 1995, the area in dispute was covered in grass. (Testimony of Barnett; Photo DP-1)

8. In conjunction with their construction of an addition to their home in 2001, they removed the turf and graveled the driveway. (Testimony of Barnett; DP-2, 8)

9. To protect their young child, they gated the driveway at its entrance to Spruce Street in April of 2001. (Testimony of Barnett; DP-7, 9, 14, 18)

10. Both Mrs. Richards' property and that of Barnett & Fleck were once a part of a larger tract owned by Albert Shoff which he acquired in 1871. (Joint Stipulation of Facts, Paragraph 9)

11. Through the years since, the Shoff property has been subdivided into various lots. (Testimony of Thorp)

12. There is no recorded subdivision plan of the Shoff property. (Joint Stipulation of Facts, Paragraph 12)

13. There is no unrecorded subdivision plan of the Shoff property known to the parties or their counsel or Thorp. (Joint Stipulation of Facts, Paragraph 13; Testimony of Thorp)

14. There is no recorded plan, easement, grant or reservation or other document or unrecorded plan, easement, grant or reservation or other document known to the parties detailing the location or dimensions of any "alley" plotted by Thorp on his survey map. (Joint Stipulation of Facts, Paragraph 14)

15. The area in dispute is not a public street or alley and has never been laid out, opened, maintained or claimed as a municipal street or alley. (Joint Stipulation of Facts, Paragraph 15)

16. While deeds refer to the "Shoff Addition" there is no evidence that there was a subdivision plan for the "Shoff Addition". (Testimony of Thorp)

17. While Thorp was able to locate on the ground the boundaries of Mrs. Richards' property as a part of his retracement survey, he could not certify that her lot or any other lots in the block were conveyed in conformity with any subdivision plan.

18. While both Mrs. Richards' deed and Barnett & Flecks' deed refer to their respective properties as being bounded by an "alley", there is no recorded or unrecorded subdivision plan or other document of record or other evidence presented at trial confirming that it was the subdivider's intent that any reserved alley between the properties be 14 feet in width.

19. While Richards' deed and Barnett & Flecks' deed refer to their respective properties as being bounded by an "alley", there is no recorded or unrecorded subdivision plan or other document of record or other evidence presented at trial confirming that it was the subdivider's intent that the area in dispute be utilized by the lot owners rather than reserved to the subdivider.

20. In addition to Barnett & Flecks' gate and a dirt pile, the "alleys" plotted by Thorp within Richards' and Barnett & Flecks' block bounded by Spruce, Locust and Pine Streets and Pennsylvania State Route 2009 are obstructed at various locations, including by a shed on the Waple boundary and by trees in various locations. (Testimony of Thorp; Photos DP-15, 19, 20, 21)

21. None of the "alleys" plotted by Thorp are presently usable as a means of vehicular travel except for Barnett & Flecks' driveway. (Testimony of Thorp; Testimony of Barnett)

22. Mrs. Richards has access to her home from Locust street. (Testimony of Barnett; Photos DP-10, 11, 12, 13)

#### Conclusions of Law

1. Mrs. Richards has failed to sustain her burden for the issuance of a permanent injunction in this case.

2. Mrs. Richards has failed to establish a claim which is clear and free from doubt to an easement by implication to

the area in dispute. While the deeds to the two properties suggest that there may have been a subdivision plan for the "Shoff Addition" there is a lack of evidence to confirm the existence and particulars of any plan. There is also a lack of evidence to confirm that conveyancing was in accordance with any subdivision plan. Without a subdivision plan or proof that lots were deeded in accordance with the plan, this Court lacks the prerequisites for implying that the subdivider intended that areas between the lots be dedicated to the use of the lot owners. Because of the manner in which the subdividing was done in this case, it is equally conceivable that Albert Shoff, his heirs and assigns inadvertently retained fee title to these areas.

3. Assuming arguendo that Mrs. Richards has established a right to the area in dispute, she has failed to establish that the issuance of an injunction is necessary to prevent irreparable harm. To the contrary, Mrs. Richards has failed to establish that she would suffer any harm from the denial of an injunction as she has other access to her property. Moreover, the issuance of an injunction would concurrently open all of the "alleys" plotted by Thorp to all of the lot owners in the block if not in all areas within the "Shoff Addition" creating issues of maintenance and liability.

#### Legal Discussion

Mrs. Richards' case rises or falls upon her contention that she has an easement by implication in the area in dispute because her deed and Barnett & Flecks' deed refer to an "alley" as their common boundary. She makes no claim that she has an easement by grant, reservation or prescription.

According to Section 11.02(b) of Ladner's treatise Conveyancing in Pennsylvania, the general rule is that a

conveyance of land described as bounded by a street or road gives the grantee title to the middle of the road. It is notable that Mrs. Richards is not making this claim apparently because the area in dispute "is not a highway nor dedicated to public use..." rather than because "...the lots (were) not sold in accordance with the plan." In fact, to be successful here Mrs. Richards must prove that all of the lots in her block (in fact, all of the lots in the Shoff Addition) were conveyed in accordance with a subdivision plan that provides for 14 foot alleys.

Mrs. Richards cites four cases in her Brief for the proposition that the designation of a street or alley as a boundary in a conveyance creates an implied easement for the benefit of all of the lot owners in the subdivision of the street or alley. However, a careful review of the cases cited and other decisional law confirms that describing a parcel as being bounded by "an alley" without more is insufficient. As Mrs. Richards concedes on page 8 of her Brief, the Pennsylvania Supreme Court has made clear that an easement can be implied by a Court only where the circumstances make clear the intent of the subdivider. The Pennsylvania Supreme Court in Nord vs. Devault Contracting Company, Inc., 460 Pa. 647, 334 A.2d 276 (1975) stated:

Where descriptions in a deed refer to a driveway as a boundary, which is not a highway or dedicated to public use, the grantee does not take title in fee to the center of it, but by implication acquires an easement or right-of-way over lands. As we recognized in McAndrews... the above quoted rule is only a specific application of the general rule that an easement by implication arises only where that was the intent of the parties, shown by the terms of the grant and the surrounding circumstances...

334 A.2d at page 278.

The Pennsylvania Supreme Court in McAndrews v. Spencer, 447 Pa. 268, 290 A.2d 258 (1972) confirms that the evidence of the subdivider's intent must be clear and without doubt.

Where an easement or other right is not expressed and is sought to be implied as attached to the grant of the fee, the same must clearly appear from the intention of the parties as shown by the terms of the grants, the surroundings of the property and the other res jesta of the transaction.

290 A.2d at page 259. See also Taylor v. Gross, 195 Pa. Super. 225, 171 A.2d 613 (1961); Fitzell v. Phila., 211 Pa. 1, 60 A.2d 323.

In the case at bar, the evidence is lacking to determine the subdivider's intent. There is no subdivision plan recorded or available. Thorp was candid in conceding that there is no way that a surveyor or court can confirm whether the conveyancing in the block (or in the Shoff Addition generally) was in conformity with any particular subdivision plan. Mrs. Richards would have this Court adopt his survey plat as the governing plan. However, Thorp conceded that he cannot be certain to a reasonable degree of scientific certainty what was intended as to the area in dispute.

All of the cases cited by Mrs. Richards in her Brief can be distinguished because in all of them, to one extent or the other, the Court was able to discern the original subdivision plan. Therefore, the Court was able to construct by implication the subdivider's intent. Here, because so many requisites of a proper subdivision are lacking, the court would be forced to make a leap of faith to conclude that the subdivider intended an easement for the benefit of the lot owners between these parcels 14 feet in width. It is axiomatic that the court can imply terms. No court has the power to

construct terms that are completely lacking. In this case, it is as conceivable that the subdivision of the block occurred as it did without specific conformity to a subdivision plan and that therefore, Albert Shoff, his heirs and assigns inadvertently retained the area in dispute in fee.

In her Brief, Mrs. Richards contends that the Defendants, in order to be successful in this action must demonstrate "a legal right to the area blocked by their gate and pile of dirt..." However, the Defendants have no burden in this action. Mrs. Richards has the burden of showing that she has an enforceable interest to the area in dispute and upon such a showing that the issuance of an injunction is necessary. If she fails in meeting her burden, her action must be dismissed. She cannot meet this burden by shifting it to the Defendants.

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

MONA J. RICHARDS,  
Plaintiff

\*

\*

\*

vs.

\* No. 2003-1010-C.D.

\*

\*

\*

JAMES A. BARNETT and  
SHEILA A. FLECK,  
Defendants

ORDER

NOW, this 11<sup>th</sup> day of August, 2004, it is the Order of  
this Court that the Plaintiff's Complaint filed on July 9, 2003  
be and is hereby dismissed.

By the Court,



FREDRIC J. AMMERMAN  
PRESIDENT JUDGE

FILED  
01/12/1984  
AUG 12 2004

(EGK)

William A. Shaw  
2cc Atty Kneser Prothonotary/Clerk of Courts

2cc Atty Kasbwick

2 copies to President Judge Ammerman  
1 copy Court Administrator  
✓1 copy Don Mikesell, Esquire  
1 copy to Law Library

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

MONA J. RICHARDS :  
-vs- : No. 03-1010-CD  
JAMES A. BARNETT and :  
SHEILA A. FLECK :  
:

O R D E R

NOW, this 17th day of May, 2004, following the conclusion of Civil Non-Jury Trial, it is the ORDER of this Court that counsel for Plaintiff have no more than twenty (20) days from this date to submit appropriate brief to the Court. Counsel for Defendants shall have no more than twenty (20) days following receipt of Plaintiff's brief to respond in kind.

BY THE COURT,

  
\_\_\_\_\_  
President Judge

FILED

MAY 19 2004

William A. Shaw  
Prothonotary/Clerk of Courts

SS

**FILED**

1cc Amy Kasubick

10-216-04

MAY 19 2004

1cc Amy Kneser

William A. Shaw

Prothonotary/Clerk of Courts

Copy to CJA

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

MONA J. RICHARDS

vs.

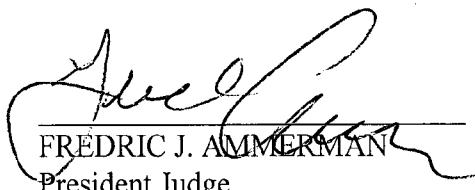
: No. 03-1010-CD

JAMES A. BARNETT and  
SHEILA A. FLECK

**ORDER**

AND NOW, this 26 day of January, 2004, it is the ORDER of the Court that status conference in the above matter has been scheduled for Monday, April 26, 2004 at 9:30 A.M., and Civil Non-Jury Trial is scheduled for one-half (1/2) day for Monday, May 17, 2004 at 9:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDERIC J. AMMERMAN

President Judge

**FILED**

JAN 27 2004

William A. Shaw  
Prothonotary

#7

FILED

2003 MA 1cc aetg Krasnick  
1cc aetg Krasnick  
JAN 27 2004

William A. Shaw  
Prothonotary

*KA*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED

JAN 26 2004

MONA J. RICHARDS,  
Plaintiff

\*  
\*  
\*

William A. Shaw  
Prothonotary/Clerk of Courts

vs.

\*  
\*  
\*

NO. 2003-1010-C.D.

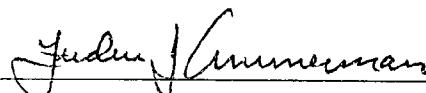
JAMES A. BARNETT and  
SHEILA A. FLECK,  
Defendants

\*  
\*  
\*

O R D E R

NOW, this 22<sup>nd</sup> day of January, 2004, following Pre-Trial Conference with counsel for the parties, it is the ORDER of this Court that the Court Administrator shall schedule the matter for a one half day Non-Jury Trial in the month of May, 2004. Approximately three to four weeks prior to the date set for the Non-Jury Trial the Court Administrator shall further schedule a status conference with counsel for the parties and the Court with the estimated time of the same to be thirty minutes.

By the Court,

  
\_\_\_\_\_  
FREDRIC J. AMMERMAN

President Judge

#6

FILED  
01/09/04  
JAN 26 2004  
2cc Amy Kesner  
William A. Shaw  
Prothonotary/Clerk of Courts  
WAS

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

MONA J. RICHARDS,  
Plaintiff  
vs.

JAMES A. BARNETT  
and SHEILA A. FLECK,  
Defendants

: No.: 2003-1010-CD  
: Type of Case: Civil  
: Type of Pleading:  
: Certificate of  
: Readiness and  
: Praeclipe for Trial  
: Filed on behalf of:  
: Plaintiff  
: Counsel of Record for  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

**FILED**

NOV 24 2003

William A. Shaw  
Prothonotary/Clerk of Courts

#5

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

MONA J. RICHARDS, :  
Plaintiff : No.: 2003-1010-CD  
vs. : In Equity  
JAMES A. BARNETT :  
and SHEILA A. FLECK, :  
Defendants :

CERTIFICATE OF READINESS

TO: William A. Shaw, Prothonotary

DATE PRESENTED: November 24, 2003

CASE NUMBER: 2003-1010-CD

Date Complaint Filed: July 9, 2003

TYPE OF TRIAL REQUESTED:

Jury  Non-Jury  Arbitration

ESTIMATED TRIAL TIME:

1/2 day

PLAINTIFF(S): Mona J. Richards  Check Block  
if a Minor  
is a Party  
to the Case

DEFENDANT(S): James A. Barnett   
and Sheila A. Fleck

ADDITIONAL

DEFENDANT(S): None

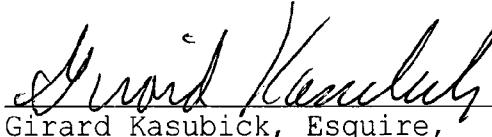
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

MONA J. RICHARDS, :  
Plaintiff : No.: 2003-1010-CD  
:  
vs. :  
:  
JAMES A. BARNETT :  
and SHEILA A. FLECK, :  
Defendants :  
:

CERTIFICATE OF SERVICE

I, Girard Kasubick, Esq., hereby certify that I served a true and correct copy of the Certificate of Readiness and Praeclipe for Trial by United States First Class Mail, postage prepaid, on November 24, 2003, on the following counsel of record:

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

  
\_\_\_\_\_  
Girard Kasubick, Esquire,  
Attorney for Plaintiff

FILED NO  
NOV 12 2003  
24 2003

William A. Shaw  
Prothonotary/Clerk of Courts

*WAS*

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

MONA J. RICHARDS, : No.: 2003-1010-CD  
Plaintiff : Type of Case: Civil  
vs. : Type of Pleading:  
JAMES A BARNETT : Reply To New Matter  
and SHEILA A. FLECK, : and Counterclaim  
Defendants : Filed on behalf of:  
 : Plaintiff  
 : Counsel of Record for  
 : This Party:  
 : Girard Kasubick, Esq.  
 : Supreme Court #30109  
 : LEHMAN & KASUBICK  
 : 611 Brisbin Street  
 : Houtzdale, PA 16651  
 : (814) 378-7840

**FILED**

SEP 05 2003

William A. Shaw  
Prothonotary/Clerk of Courts

#4

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

MONA J. RICHARDS, :  
Plaintiff : No.: 2003-1010-CD  
:  
vs. :  
:  
JAMES A. BARNETT :  
And SHEILA A. FLECK, :  
Defendants :  
:

**COMPLAINT**

AND NOW COMES, Plaintiff, MONA J. RICHARDS, by and through her attorney, Girard Kasubick, Esq., and files the following Reply To New Matter and Counterclaim:

**NEW MATTER**

15. Denied. The Plaintiff in Paragraph 7 of the Complaint locates the "alleys" as between Plaintiffs property and Defendants property. By further Answer attached hereto and marked Exhibit "A" is the survey of David J. Thorp, PLS showing the location of the alleys and the encroachments.

16. Denied. The Plaintiff has plead the facts in Paragraphs 3 through 14 of the Complaint which are incorporated herein by reference thereto which

establishes in deeds of records alleys between the parties property and Defendant has admitted the parties deeds refer to alleys as bounders by its Answer in Paragraph 7. The Plaintiffs legal theory does not need to be plead, but facts to establish a legal recovery must be plead. Therefore, this is a conclusion of law or fact for which no responsive pleading is required.

17. Denied. Plaintiff has made no claim of public right or that the alleys are Township alleys. Therefore, Bigler Township is not an indispensable party. Therefore, this is a conclusion of law or fact for which no responsive pleading is required. The Plaintiff claims that all property owners within the plan area have the right to use streets and alleys in the plan area as access to properties and as a right-of-way.

WHEREFORE, Plaintiff requests Your Honorable Court to enter judgment in favor of the Plaintiff and against the Defendants.

**COUNTERCLAIM**

18. Denied. Defendants have set forth no facts showing a right, title, claim or interest in the areas in controversy by showing a claim of title or adverse

possession and Plaintiff has no knowledge or information sufficient to form a belief as to this averment and proof the thereof is demanded. Furthermore, this is a conclusion of law or fact for which no responsive pleading is required.

19. Denied. The Defendant sets forth no facts of adverse possession. The only facts in the pleadings is the placement of a gate and pile of dirt in the area in controversy in 2001 or less than 3 years ago which does not create a legal adverse possession. Plaintiff had no knowledge or information of any other adverse possession claim facts to form a belief to this averment and proof thereof is demanded. Furthermore, this is a conclusion of law or fact for which no responsive pleading is required.

WHEREFORE, Plaintiff requests Your Honorable Court to enter judgment in favor of the Plaintiff and against the Defendants.

RESPECTFULLY SUBMITTED:



Girard Kasubick  
Girard Kasubick, Esquire  
Attorney for Plaintiff

**VERIFICATION**

I, the undersigned, verify that the statements made in the foregoing Reply To New Matter and Counterclaim are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Mona J. Richards



FILED

SEP 9 2003

09/27/03  
William A. Shaw

Prothonotary/Clerk of Courts

2 cct cgs D

In The Court of Common Pleas of Clearfield County, Pennsylvania

RICHARDS, MONA J.

VS.

BARNETT, JAMES A. & SHEILA A. FLECK

Sheriff Docket #

14287

03-1010-CD

COMPLAINT

**SHERIFF RETURNS**

NOW JULY 17, 2003 AT 11:15 AM SERVED THE WITHIN COMPLAINT ON JAMES A. BARNETT, DEFENDANT AT NORTH SECOND ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO KIM KESNER, ATTORNEY FOR DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS

NOW JULY 17, 2003 AT 11:15 A SERVED THE WITHIN COMPLAINT ON SHEILA A. FLECK, DEFENDANT AT NORTH SECOND ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO KIM KESNER, ATTORNEY FOR DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS

Return Costs

Cost	Description
56.61	SHERIFF HAWKINS PAID BY: ATTY CK# 10743
20.00	SURCHARGE PAID BY: ATTY CK# 10744

Sworn to Before Me This

26<sup>th</sup> Day Of August 2003

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

So Answers,

Chester Hawkins

Chester A. Hawkins  
Sheriff

**FILED**  
AUG 26 2003 9:23  
133-81

William A. Shaw  
Prothonotary/Clerk of Courts

43

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

MONA J. RICHARDS, : No.: 2003-1010-CD  
Plaintiff :  
vs. : Type of Case: Civil  
JAMES A. BARNETT and :  
SHELIA A. FLECK, : Type of Pleading: Defendant's Answer,  
Defendants : New Matter & Counterclaim to Plaintiffs  
: Complaint in Equity  
: Filed on behalf of: Defendants  
: Counsel of Record for this Party:  
: Kim C. Kesner, Esquire  
: Supreme Ct. I.D. #28307  
: 23 North Second Street  
: Clearfield, PA 1683  
: (814) 765-1706  
: Other Counsel of Record:  
: Girard Kasubick, Esquire  
: Lehman & Kasubick  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

FILED

AUG 18 2003

William A. Shaw  
Prothonotary/Clerk of Courts

2

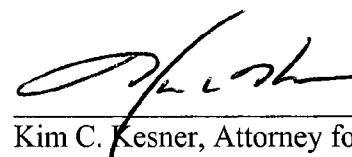
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MONA J. RICHARDS, : No.: 2003-1010-CD  
Plaintiff :  
: :  
vs. : :  
: :  
JAMES A. BARNETT and :  
SHEILA A. FLECK, :  
Defendants :  
:

**NOTICE TO PLEAD**

TO: Mona J. Richards

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.



Kim C. Kesner, Attorney for Defendant

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

MONA J. RICHARDS, : No.: 2003-1010-CD  
Plaintiff :  
: :  
vs. :  
: :  
JAMES A. BARNETT and :  
SHEILA A. FLECK, :  
Defendants :  
:

**DEFENDANTS' ANSWER, NEW MATTER AND COUNTERCLAIM**  
**TO PLAINTIFF'S COMPLAINT IN EQUITY**

AND NOW, comes the Defendants James A. Barnett and Sheila A. Fleck, by and through their attorney, Kim C. Kesner, Esquire and files the following:

**Answer**

1. Admitted.
2. Admitted.
3. Admitted.
4. Defendant lacks sufficient knowledge or information to form a reasonable belief as to the truth of the averments contained in Paragraph 4. There is no confirmation of the act and date of John F. Richards' death of record in Clearfield County and therefore, proof thereof is demanded.
5. Admitted.
6. It is admitted that the properties of Plaintiff and Defendants are adjacent. It is specifically denied that they are separated by a municipal alley. Bigler Township has never laid out, opened or maintained any alleys contiguous to or within the boundaries of Defendants' property and/or as depicted on the Clearfield County Assessment Map annexed to Plaintiff's Complaint as Exhibit "A".
7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. The averments contained in Paragraph 12 of Plaintiff's Complaint, to the extent they are relevant constitute conclusions of law to which no response is required. Furthermore, it is specifically denied that the Defendants' erection of a gate and other actions with regard to the area in dispute were unlawful.

13. The averments contained in Paragraph 13 of Plaintiff's Complaint, to the extent they are relevant constitute conclusions of law to which no response is required. Furthermore, it is specifically denied that the Defendants' erection of a gate and other actions with regard to the area in dispute were unlawful.

14. The averments contained in Paragraph 14 constitute a prayer for relief to which no response is required.

WHEREFORE, Defendants request Your Honorable Court to enter judgment in their favor against Plaintiff dismissing Plaintiff's Complaint.

**New Matter**

15. Plaintiff refers variously in her Complaint to the areas in controversy as "alleys". However, Plaintiff's Complaint fails to sufficiently describe or locate the areas in controversy.

16. Plaintiff seeks injunctive relief. Plaintiff's request for an injunction rises or falls on Paragraph 13 of the Complaint which avers "a right to use the alleys as a right-of-way and access..." Plaintiff's Complaint fails to plead the basis for this right.

17. To the extent that Plaintiff claims a public right in and to the disputed areas, Bigler Township is an indispensable party which has not been joined in this action.

WHEREFORE, Defendants request Your Honorable Court to enter judgment in their favor against Plaintiff dismissing Plaintiff's Complaint.

**Counterclaim**

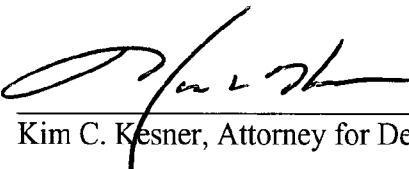
18. Defendants have and hold sufficient right, title, claim and interest in and to the areas in controversy such that their actions and conduct complained of in Plaintiff's Complaint are fully lawful and sustainable.

19. Defendants and/or their predecessors in title have exercised adverse possession, dominion and control of the areas in controversy for a period in excess of the statutory period, vesting title in and to the areas in controversy in Defendants.

WHEREFORE, Defendants request Your Honorable Court to enter judgment in their favor against Plaintiff as follows:

1. Acknowledging and/or declaring the right, title, claim and interest of Defendants in and to the areas in controversy free and clear of any claims of Plaintiff;
2. Quieting title in and to the areas in controversy in Defendants;
3. Enjoining Plaintiff's future interference with Defendants' right, title, claim and interest in and to the areas in controversy; and
4. Such other relief as this Court deems just and proper.

Respectfully submitted:



Kim C. Kesner, Attorney for Defendants

23 North Second Street  
Clearfield, PA 16830  
(814) 765-1706

## VERIFICATION

We, JAMES A. BARNETT and SHEILA A. FLECK, verify that the statements made in this Answer, New Matter and Counterclaim to Plaintiff's Complaint in Equity are true and correct to the best of our knowledge. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 , relating to unsworn falsification to authorities.

Date: 8-18-03

James A. Barnett

Sheila A. Fleck

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

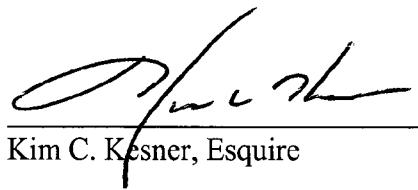
MONA J. RICHARDS, : No.: 2003-1010-CD  
Plaintiff :  
: :  
vs. : :  
: :  
JAMES A. BARNETT and : :  
SHEILA A. FLECK, : :  
Defendants : :

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on the 18<sup>th</sup> day of August,  
2003, I caused to be served a true and correct copy of the Defendants' Answer, New Matter and  
Counterclaim to Plaintiff's Complaint in Equity on the following by U.S. First Class Mail,  
Postage Prepaid:

Girard Kasubick, Esquire  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651

Date: 8-18-03

  
\_\_\_\_\_  
Kim C. Kesner, Esquire

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
NO. 03-1010-CD

MONA J. RICHARDS, Plaintiff

and

JAMES A. BARNETT and SHELLIA A.  
FLECK,  
Defendants

DEFENDANT'S ANSWER, NEW MATTER  
AND COUNTERCLAIM TO PLAINTIFFS'  
COMPLAINT IN EQUITY

FILED

3cc  
Aug 18 2003  
Amy Kesner

William A. Shaw  
Prothonotary/Clerk of Courts

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

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

MONA J. RICHARDS,  
Plaintiff

vs.

JAMES A. BARNETT  
and SHEILA A. FLECK,  
Defendants

: No.: 2003-1010-CJ  
: Type of Case: Civil  
: Type of Pleading:  
: Complaint  
: Filed on behalf of:  
: Plaintiff  
: Counsel of Record for  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

FILED

JUL 09 2003

William A. Shaw  
Prothonotary

#1

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

MONA J. RICHARDS, :  
Plaintiff : No.: 2003-  
: :  
vs. : In Equity  
: :  
JAMES A. BARNETT :  
And SHEILA A. FLECK, :  
Defendants :  
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this 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.

**David S. Meholic**  
Court Administrator's Office  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830  
(814) 765-2641 Ext. 5982

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

MONA J. RICHARDS, :  
Plaintiff : No.: 2003-  
: :  
vs. : In Equity  
: :  
JAMES A. BARNETT :  
And SHEILA A. FLECK, :  
Defendants :  
:

COMPLAINT

AND NOW COMES, Plaintiff, Mona J. Richards, by and through her attorney, Girard Kasubick, Esq., and files the following Complaint:

1. The Plaintiff is Mona J. Richards who resides at P.O. Box 535, Madera, PA 16661.

2. The Defendants are James A. Barnett and Sheila A. Fleck, who both reside at P.O. Box 115, Madera, PA 16661.

3. The Plaintiff is the owner of the contiguous tracts of land located in Madera, Bigler Township, Clearfield County, Pennsylvania as follows:

a). Tax Map Number 103-K14-487-11 conveyed to John F. Richards and Mona J. Richards by deed dated June 4, 1979 and recorded in Clearfield County Deed Book 783,

b). Tax Map Number 103-K14-487-12 conveyed to John F. Richards and Mona J. Richards by deed dated November 4, 1982 and recorded in Clearfield County Deed Book 863, Page 277.

c). Tax Map Number 103-K14-487-66 conveyed to John F. Richards and Mona J. Richards by deed dated November 13, 1973 and recorded in Clearfield County Deed Book 663, Page 239.

d). Tax Map Number 103-K14-487-81 conveyed to John Richards and Mona Richards by deed dated June 14, 1976 and recorded in Clearfield County Deed Book 722, Page 306.

e). Tax Map Number 103-K14-487-65 conveyed to John F. Richards and Mona J. Richards by deed dated January 25, 1979 and recorded in Clearfield County Deed Book 776, Page 37.

4. John F. Richards was the husband of Mona J. Richards and he died on July 28, 1992, vesting title in the properties described in Paragraph 3 above in Mona J. Richards.

5. The Defendants, James A. Barnett and Sheila A. Fleck, are the owners of a parcel of land in Madera, Bigler Township, Clearfield County, Pennsylvania, known by

Tax Map Number 103-K14-487-13 conveyed to them by deed dated November 24, 1995 and recorded in Clearfield County Deeds and Records Book 1721, Page 453.

6. The Defendants property set forth in Paragraph 5 above is contiguous to the Plaintiffs properties set forth in Paragraph 3 above, but separated by alleys as is shown on the Clearfield County Assessment Map attached hereto and marked Exhibit "A".

7. The Plaintiffs deeds and the Defendants deed referred to in Paragraphs 3 and 5 above refers to the alleys between Plaintiffs properties and Defendants property.

8. Sometime in the year 2001 the Defendants placed a metal gate which is locked just North of Spruce Street and on the alley which is between Tax Map Number 103-K14-487-12 owned by Plaintiff and Tax Map Number 103-K14-487-13 owned by Defendants marked in green on Exhibit "A" attached hereto.

9. The metal gate on the alley set forth in Paragraph 8 above prevents the use of the alley by Plaintiff and her guests and invitees and by other landowners.

10. Sometime in the year 2001 the Defendants placed a pile of dirt used as a barrier on the alley between Tax Map Number 103-K14-487-81 owned by Plaintiff and Tax Map Number 103-K14-487-13 owned by Defendants marked in red on Exhibit "A" attached hereto.

11. The dirt barrier on the alley set forth in Paragraph 10 above prevents use of the said alley by Plaintiff and her guests and invitees and by other landowners.

12. The Defendants have placed the gate and dirt pile on the alleys with no legal right to do so.

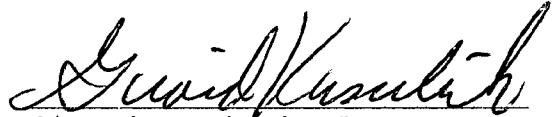
13. The Plaintiff and Defendants both have a right to use the alleys as a right-of-way and access, but Defendants have denied Plaintiff and other landowners the right to use said alleys by blocking them with a gate and dirt pile.

14. The Plaintiff requests that an Order be issued for Defendants to remove the gate and dirt pile and that an injunction be issued that Defendants not block or impede the alleys for right-of-way purposes.

WHEREFORE, Plaintiff request Your Honorable Court to enter judgment in favor of the Plaintiff and against the Defendants ordering the Defendants to remove the

obstructions from the alleys in Madera, Bigler Township, Clearfield County, Pennsylvania and issue an injunction against Defendants on placing any future obstructions on said alleys.

RESPECTFULLY SUBMITTED:



Girard Kasubick, Esq.  
Attorney for Plaintiff

VERIFICATION

I, the undersigned, verify that the statements made in the foregoing Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.



Mona J. Richards  
Mona J. Richards



FILED

Atty Kasebick

101-34684

JUL 8 2003

pd 85.00

2cc shff

William A. Shaw  
Prothonotary

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

1015 Grant Building  
Pittsburgh, Pennsylvania  
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND  
under  
PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:  
**ORIGINAL RECORD ALONG WITH CERTIFIED COPY OF SUPERIOR COURT ORDER.**

As remanded from said court in the following matter:  
**Mona Richards -v- James A. Barnett, etc.**  
**No. 1555 W.D.A. 2004**

**In the Court of Common Pleas, Clearfield County  
Civil Division, at No. 2003-1010-CD**

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is **December 13, 2004**

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

*Eleanor R. Valecko*

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: December 15, 2004

*William A. Shaw*

(Signature & Title)

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

**FILED** *copy*  
*m 12:30 PM to Superior Court*  
**DEC 15 2004** *EAK*

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**DEC 15 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

# In the Superior Court of Pennsylvania

Sitting at Pittsburgh

No. 1555

WESTERN DOCKET APPEAL, 2004

MONA J. RICHARDS, Appellant

-v-

JAMES A. BARNETT AND  
SHEILA A. FLECK

} Appeal from the Order Entered on 8-11-2004, In  
the Court of Common Pleas, by the Honorable  
Fredric J. Ammerman, Civil Division,  
of the County of Clearfield

No. 2003-1010-CD

FILED <sup>No</sup>  
*m/12/32/04* <sup>cc</sup>  
DEC 15 2004 <sup>EGK</sup>

Certified from the Record

William A. Shaw  
Prothonotary/Clerk of Courts

## ORDER

The Court hereby **SUA SPONTE DISMISSES** this appeal as no issues have been preserved for appellate review. See Pa.R.C.P. 227.1 (c)(2); see also L.B. Foster Co. v. Lane Enterprises, Inc., 710 A.2d 55 (Pa. 1998) ("If an issue has not been raised in a post-trial motion, it is waived for appeal purposes."); Krystal Dev. Corp. v. Rose, 704 A.2d 1102 (Pa. Super. 1997) (quashing an appeal taken directly from a nonjury verdict when the appellant failed to file post-trial motions); Baughman v. State Farm Mutual Auto Ins. Co., 656 A.2d 931 (Pa. Super. 1995) (quashing appeal taken directly from order, captioned as judgment, that was entered after a nonjury trial).

November 3, 2004

PER CURIAM

In Testimony Whereof,

I have hereunto set my hand and the seal of said Court at Pittsburgh,

PA. this

13TH

day of

DECEMBER

2003

*Eleana R. Valeck*  
Deputy Prothonotary