

03-1114-CD
JAMES. M. MCHUGH, et al. vs. ANN ZAZWORSKY

Date: 05/27/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:19 PM

ROA Report

Page 1 of 2

Case: 2003-01114-CD

Current Judge: Paul E. Cherry

James M. McHugh, Marie E. McHugh vs. Ann Zazworsky

District Justice Appeal

Date	Judge
07/31/2003 ✓ Filing: District Justice Appeals Paid by: John R. Carfley, Esq. Receipt number: 1863714 Dated: 07/31/2003 Amount: \$85.00 (Check)	No Judge
08/04/2003 ✓ Proof of Service of Notice of Appeal and Rule to File Complaint. filed.	No Judge
08/05/2003 ✓ Transcript From Justice Hawkins. filed.	No Judge
08/20/2003 ✓ Complaint filed by Atty. Naddeo No CC.	No Judge
08/25/2003 ✓ Certificate of Service of Complaint filed by Atty. Naddeo, 1 CC to Atty.	No Judge
09/04/2003 ✓ Praecipe For Entry Of Appearance On Behalf Of Defendant, ANN ZAZWORSKY. filed by s/David C. Mason, Esquire no cc Copy to CA	No Judge
09/10/2003 ✓ Certificate of Service, Notice of Default upon David C. Mason, Esq. filed by s/James A. Naddeo, Esquire 1 cc Atty Naddeo	No Judge
09/23/2003 ✓ Defendant's Answer, New Matter and Counter-Claim filed by s/David C. Mason, Esquire Verification s/Ann Zazworsky no cc	No Judge
✓ Certificate of Service, Defendant's Answer, New Matter and Counter-Claim, upon James A. Naddeo, Esq., filed by s/David C. Mason, Esq. No CC	Paul E. Cherry
10/13/2003 ✓ Answer To New Matter and Counterclaim and New Matter To Counterclaim. filed by s/James A. Naddeo, Esquire Verification s/James M. McHugh Certificate of Service 1 cc Atty Naddeo	No Judge
11/03/2003 ✓ Defendant's Reply to New Matter Raised to Counter-Claim filed by Atty. Mason. No cc.	No Judge
✓ Certificate of Service of Defendant's reply to New Matter Raised to Counter-Claim. filed by Atty. Mason. No cc.	No Judge
11/14/2003 ✓ Praecipe To List For Trial. filed by s/James A. Naddeo, Esq. Certificate of Service no cc Copy to C/A	No Judge
01/26/2004 ✓ ORDER, AND NOW, this 23rd day of January, 2004. re: Discovery deadline for providing reports to opposing party no later than 30 days prior to commencement of trial. Trial scheduled for March 24, 2004, 9:00 a.m. in Courtroom No. 2. Parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits. by the Court, s/PEC,J. 1 cc Atty Naddeo, Mason	Paul E. Cherry
03/02/2004 ✓ ORDER, AND NOW, this 2nd day of March, 2004, re: This matter be and Paul E. Cherry is hereby CONTINUED until the Spring Term of Civil Court. All Discovery including expert reports shall be provided to opposing counsel by no later than April 15, 2004, no further continuance shall be granted. by the Court, s/PEC, J. 1 cc Atty Naddeo, Mason	Paul E. Cherry
04/12/2004 ✓ Certificate of Service, Pre-Trial Statement upon James A. Naddeo, Esquire. filed by, s/David C. Mason, Esquire no cc	Paul E. Cherry
04/21/2004 ✓ ORDER, AND NOW, this 16th day of April, 2004, re: Pre-Trial Conference. by the Court, s/PEC,J. cc to Atty Naddeo, Mason	Paul E. Cherry
06/02/2004 ✓ Certificate of Service, Defendant's Trial Brief, upon: James A. Naddeo, Esquire. filed by, s/David C. Mason, Esquire no cc	Paul E. Cherry
06/15/2004 ✓ Order, NOW, this 14 day of June, 2004, following testimony taken in the above-captioned matter, Order of this Court that counsel supply the Court with proposed Findings of Fact, Conclusions of Law, and letter brief within twenty (20) days following receipt of the transcript. BY THE COURT: /s/Paul E. Cherry, Judge Two CC Attorney Naddeo One CC Attorney Mason	Paul E. Cherry

Date: 05/27/2005

Time: 02:19 PM

Page 2 of 2

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2003-01114-CD

Current Judge: Paul E. Cherry

James M. McHugh, Marie E. McHugh vs. Ann Zazworsky

District Justice Appeal

Date	Judge
08/11/2004	✓Transcript Of Proceedings Civil Nonjury Trial. Held before The Honorable Paul E. Cherry Paul E. Cherry, Judge on Monday, June 14, 2004.
05/27/2005	Opinion and Order, AND NOW, this 26th day of May, 2005, following a non-jury trial in the above-captioned matter, the Court hereby finds: 1. Plaintiffs Request for Ejectment is Granted 2. Plaintiffs request for compensatory damages in the amount of \$504.54 is granted 3. Plaintiffs request for compensatory damages to reimburse the costs of having their property surveyed is Denied 4. Plaintiffs request for punitive damages is Denied. BY THE COURT: /s/ Paul E. Cherry, Judge 2cc Law Library, 1CC Attys: Mason, Naddeo, D. Mikesell

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

vs.

ANN ZAZWORSKY,
an individual,

Defendant.

* No. 03-1114-CD

* TYPE OF PLEADING:
* PRAECIPE FOR ENTRY
* OF APPEARANCE
* FILED ON BEHALF OF:
* Defendant

* ATTORNEY FOR DEFENDANT:
* David C. Mason, Esquire
* Supreme Court ID #39180
* DAVID C. MASON LAW OFFICE
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

FILED

SEP 04 2003
m13:001 no cc
William A. Shaw
Prothonotary/Clerk of Courts
Copy CA

EPL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

*
*
*
*

Plaintiffs,

*

* No. 03-1114-CD

vs.

*

ANN ZAZWORSKY,
an individual

*

Defendant

*

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY OF SAID COURT:

Kindly enter my appearance on the behalf of the above named
Defendant.

DAVID C. MASON LAW OFFICE

DATED: 8/29/03

By: David C. Mason
David C. Mason, Esquire,
Attorney for Defendant

Prothonotary/Clerk, U.S. Courthouse
William A. Shaffer

AUG 25 2003

FILED

1
2

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JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

JAMES M. McHUGH and
MARIE E. McHUGH,
husband and wife,

Plaintiffs,

v.

* No. 03-1114-CD

ANN ZAZWORSKY,
an individual,

Defendant.

* Type of Pleading:

* Certificate of Service

* Filed on behalf of:

* Plaintiffs

* Counsel of Record for
this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

AUG 25 2003
010:45 AM
William A. Shaw
Prothonotary/Clerk of Courts
1 CENT TO ATTY

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Plaintiffs' Complaint filed in the above-captioned action was served on the following person and in the following manner on the 20th day of August, 2003:

First-Class Mail, Postage Prepaid

John R. Carfley, Esquire
222 Presqueisle Street
P. O. Box 249
Philipsburg, PA 16866


James A. Naddeo
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

DJ Name: Hon.

JAMES L. HAWKINS
Address: **251 SPRING STREET**
P.O. BOX 362
HOUTZDALE, PA
Telephone: **(814) 378-7160** **16651-0362**

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF: **MCHUGH, JAMES M, ET AL.** NAME and ADDRESS
P.O. BOX 302
SMITHMILL, PA 16680

DEFENDANT: **ZAZWORSKY, ANN** NAME and ADDRESS
P.O. BOX 235
SMITHMILL, PA 16680

Docket No.: **CV-0000065-03**
Date Filed: **6/12/03**



2003-1114-C0

JAMES L. HAWKINS
251 SPRING STREET
P.O. BOX 362
HOUTZDALE, PA 16651-0362

THIS IS TO NOTIFY YOU THAT:

Judgment:

FOR PLAINTIFF

Judgment was entered for: (Name) **MCHUGH, JAMES M, ET AL.**

Judgment was entered against: (Name) **ZAZWORSKY, ANN**

in the amount of \$ **3,865.54** on: (Date of Judgment) **7/14/03**

Defendants are jointly and severally liable. (Date & Time) _____

Damages will be assessed on:

This case dismissed without prejudice.

FILED
01/12/03
AUG 05 2003
WAS

Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ _____

William A. Shaw

Portion of Judgment for physical damages arising out of residential lease \$ _____

Amount of Judgment	\$ 3,781.04
Judgment Costs	\$ 84.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 3,865.54
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total \$ _____	

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR DISTRICT JUSTICES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE DISTRICT JUSTICE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE DISTRICT JUSTICE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

7-14-03 Date James L. Hawkins, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

7-24-03 Date James L. Hawkins, District Justice

My commission expires first Monday of January, 2006

SEAL

CLERKFIELD, PENNSYLVANIA 16830
P.O. BOX 552
21 1/2 EAST LOGUS STREET
ATTORNEY AT LAW
JAMES A. NADDEO

——— Lap over margin ———

FILED
AUG 20 2003
3:45 PM
NO CC
William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

*
*
* Type of Pleading:
*
* COMPLAINT
*
*
* Filed on behalf of:
* Plaintiffs
*
* Counsel of Record for
* this party:
*
*
* James A. Naddeo, Esq.
* Pa I.D. 06820
*
* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

AUG 20 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
*
v. * No. 03-1114-CD
*
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

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.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURT HOUSE
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

COMPLAINT

Count I - Ejectment

NOW COME the Plaintiffs, James M. McHugh and Marie E. McHugh, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That the Plaintiffs are James M. McHugh and Marie E. McHugh, husband and wife, who reside at 110 Church Street, P.O. Box 302, Smithmill, Pennsylvania 16680.
2. That the Defendant, Ann Zazworsky, is an adult individual whose address is P. O. Box 235, Smithmill, Pennsylvania 16680.
3. That the Plaintiffs, James M. McHugh and Marie E. McHugh, are the record owners of certain piece of property located in Gulich Township, Clearfield County, Pennsylvania, described as "The First Thereof" in a Deed from James M. McHugh dated March 20, 1993 and recorded in Clearfield County Deed and

Record Book 1519, page 510. A copy of the deed is attached hereto as Exhibit "A". The property is described as follows pursuant to a survey prepared by Hess & Fisher Engineers, Inc. dated April 4, 2003:

BEGINNING at a set $\frac{3}{4}$ " iron rebar; said point being the northwest corner of the property herein described; thence along the southern right of way line of Church Street these following courses and distances: North 52 degrees 42 minutes 46 seconds East, a distance of 52.50 feet to a point; North 50 degrees 09 minutes 18 seconds East, a distance of 54.50 feet to a set $\frac{3}{4}$ " iron rebar corner; thence along land of Ann Zazworsky, South 42 degrees 19 minutes 18 seconds East, a distance of 202.29 feet to a set $\frac{3}{4}$ " iron rebar corner; thence along land of Morroni Brothers Florists, Inc., South 46 degrees 43 minutes 42 seconds West, a distance of 107.00 feet to a set $\frac{3}{4}$ " iron rebar corner; thence along land of Dale T. and Brenda L. Keith, North 42 degrees 15 minutes 25 seconds West, a distance of 211.03 feet to a set $\frac{3}{4}$ " iron rebar corner, point, the place of beginning. CONTAINING 0.51 acres as shown on a plat titled "Plat of Lands of James M. and Marie E. McHugh, Gulich Township, Clearfield County, as prepared by Hess & Fisher Engineers, Inc., dated April 4, 2003.

4. That a copy of a map prepared by Hess & Fisher Engineers, Inc. is attached hereto as Exhibit "B".

5. That the Plaintiffs are currently in possession of the property described in Paragraph 3 hereof.

6. That the Defendant, Ann Zazworsky, challenges Plaintiffs' possession of the parcel of land described in Paragraph 3 hereof by virtue of the fact that she has entered upon property of the Plaintiffs and destroyed property of Plaintiffs located upon the property.

WHEREFORE, Plaintiffs request that this Court order the Defendant, Ann Zazworsky, to bring an action in ejectment within thirty days from entry of the order pursuant to Pa. R. C. P. No. 1066(b)(1), or be forever barred from asserting a claim to said parcel.

Count II - Damages

7. That the Plaintiffs incorporate Paragraphs 1 through 5 of this Complaint by reference and make them a part hereof.

8. That the Plaintiffs maintained two fire pits upon the property described in Paragraph 3 hereof.

9. That the Defendant entered upon the Plaintiffs property and destroyed the two fire pits.

10. That the cost of replacing and cleaning up the damages bricks of the fire pits is Four Hundred Fifty-Two and 50/100 (\$452.50) Dollars.

11. That the Plaintiffs were required to employ Hess & Fisher Engineers, Inc. to prepare a survey of the premises the cost of which was Three Thousand Two Hundred Sixty-Nine and 39/100 (\$3,269.39) Dollars.

WHEREFORE, Plaintiffs requests that this Court enter judgment in favor of Plaintiffs and against Defendant for money damages in the amount of Three thousand Seven hundred twenty-one and 89/100 (\$3,721.89) Dollars.

Count III - Damages

12. That the Plaintiffs incorporate Paragraphs 8 and 9 of the Second Count of their Complaint by reference and make them a part hereof.

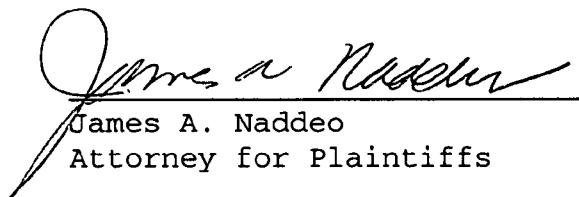
13. That the fire pits referred to in Paragraph 9 of Plaintiffs' Complaint were constructed approximately forty years prior to the date upon which Defendant entered Plaintiffs' premises and destroyed them.

14. That in the forty years prior to Defendant's entry upon Plaintiffs' premises, Defendant either resided in the adjoining property and/or was the owner of said property.

15. That the Defendant at all times knew or had reason to know that the fire pits destroyed by her were on Plaintiffs' property.

16. That Defendant's trespass to Plaintiffs' property was intentional, malicious and exhibited a reckless indifference to the rights of others and conscious action to deliberately disregard those rights in that her conduct was outrageous under the circumstances.

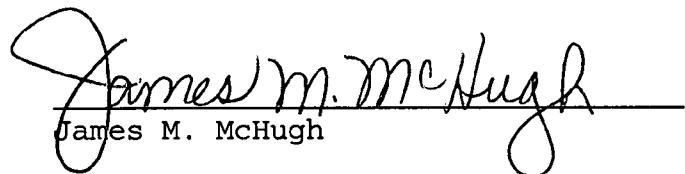
WHEREFORE, Plaintiffs respectfully request that Plaintiffs be awarded punitive damages.



James A. Naddeo
Attorney for Plaintiffs

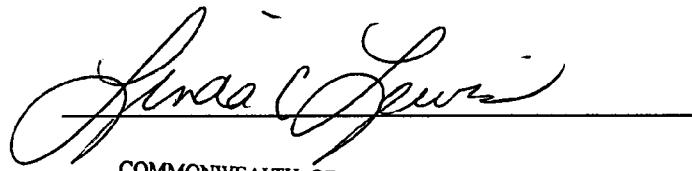
COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared JAMES M. McHUGH, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

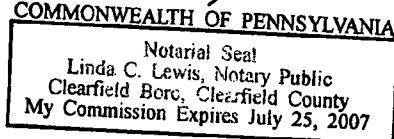


James M. McHugh

SWORN and SUBSCRIBED before me this 11th day of August, 2003.



Linda C. Lewis



County Parcel No. _____

CONFIDENTIAL

This Deed,

MADE the 26th day of March
in the year nineteen hundred and — Ninety-three (1993).

BETWEEN JAMES M. McHUGH, of P. O. Box 302, Smithmill, Pennsylvania, 16680, Grantor
and Party of the First Part,

AND

JAMES M. McHUGH and MARIE E. McHUGH, his wife, both of P. O. Box 302, Smithmill,
Pennsylvania, 16680, as tenants by the entireties, Grantees and Parties of the
Second Part.

WITNESSETH, That in consideration of

ONE (\$1.00) ————— Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantor ————— does ————— hereby grant
and convey to the said grantees, ————— their heirs and assigns, —————

ALL those tracts or lots of land situate in Gulich Township, Clearfield County,
Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: All that tract or lot of land situate in Gulich Township, near
Janesville, County of Clearfield, and State of Pennsylvania, bounded and described
as follows:

BEGINNING at a post on the public road leading to Janesville; thence by land of
Phillip Brzicksi South Fifty-eight degrees Thirty-nine minutes East (S 58° 39' E)
Two Hundred Five (205') feet to a post; thence North Thirty-one degrees Twenty-one
minutes East (N 31° 21' E) One Hundred Seven (107') feet to a post; thence by the
land of Jean Baptis Berroyer North Fifty-eight degrees Thirty-nine minutes West (N
58° 39' W) One Hundred Ninety-nine (199') feet to said public road leading to
Janesville; thence by same South Twenty-six degrees Seventeen minutes West (S 26°
17' W) Twenty-five (25') feet to a post; thence by same South Thirty-seven degrees
Twenty-seven minutes West (S 37° 27' W) to the place of beginning. CONTAINING One-
half (1/2) acre, more or less, and further identified by Clearfield County
Assessment No. 118-K16-511-00042.

THE SECOND THEREOF: BEGINNING at a point on the Township Road leading from Oak
Street to the Janesville-Ramey State Highway, joining the land of Andrew Kost,
formerly the land of Henry Thon, Sr.; thence South Twenty-five (25') feet along said
Township Road to a point joining the land of Steve Wulderk, formerly the land of
John Larganteen, Jr.; thence West along the said land of Steve Wulderk for Twenty-
five (25') feet to a post; thence North Twenty-five (25') feet along Steve Wulderk
land parallel with the Township Road to a point joining the land of Andrew Kost;
thence East Twenty-five (25') feet along the land of Andrew Kost to a point on the

EXHIBIT "A"

CONFIDENTIAL

Township Road and place of beginning. CONTAINING Six hundred Twenty-five (625') feet.

EXCEPTING AND RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

THE THIRD THEREOF: ALL that certain piece or parcel of land, situate in the Village of Janesville, Township of Gulich, County of Clearfield, and State of Pennsylvania, bounded and described as follows:

BEGINNING at a point on the Township road leading from Oak Street to the Janesville-Ramey State Highway joining the land of Albert Barto, formerly the land of Emial Belair and Mary Belair; thence along said Township Road South Forty-eight (48') feet to the land of Frank Soupart, formerly John Beryorer; thence by said land West Fifty (50') feet to a point at land of Stephen Wulderk; thence running along said land North Seventy-three (73') feet to a point at land of Andrew Kost; thence by said land, East Twenty-five (25') feet to a point on line of said land; thence South Twenty-five (25') feet, on a line parallel with the Township road or along the land of Albert Barto to a post; thence East Twenty-five (25') feet along the said land of Albert Barto to the point at the place of beginning on the said Township Road.

EXCEPTING and RESERVING from the above described premises that parcel or piece of land as was conveyed unto Frank Soupart and Rose Soupart, his wife, by deed of Albert Barto and Lucy Barto, his wife, dated June 25, 1973, and entered for record in Clearfield County Deed Book Volume 650, page 197.

This conveyance is subject to exceptions and reservations set forth in previous deeds of record.

The premises herein described as the Second Thereof, and the residue of the Third Thereof being further identified by Clearfield County Assessment No. 118-K16-511-35.1.

(Description continued on attached sheet)

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. Carter
..... *as to both*
..... *James M. McHugh*
..... *Marie E. McHugh*
..... *Marie E. McHugh*

This 30th day of March 1993.

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)

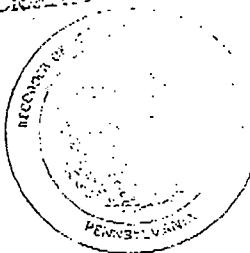
CONFIDENTIAL

(James M. McHugh to James M. McHugh, et ux Description Continued)

BEING the same premises as were conveyed unto James M. McHugh, Single, by deed of Mary Louise Moskel, Executrix of the Estate of Lucy Barto, dated June 14, 1990, and entered for record in Clearfield County Deeds and Records Volume 1347, Page 542. —

THIS IS A HUSBAND TO HUSBAND AND WIFE TRANSFER. —

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

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

IN WITNESS WHEREOF, said grantor has hereunto set his hand and seal the day and year first above-written.

Scaled and delivered in the presence of

Ronald E. Doster

James M. McHugh [Seal]
James M. McHugh

[Seal]

[Seal]

[Seal]

[Seal]

[Seal]

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee herein is as follows:
P. O. Box 302
Smithmill, PA 16680

Ronald E. Doster

Attorney or Agent for Grantee

N.T.S.

Commonwealth of Pennsylvania

{ ss.

County of CLEARFIELD

On this, the 20th day of March 1993, before me, a Notary Public, the undersigned officer, personally appeared JAMES M. McHUGH known to me (or satisfactorily proven) to be the person instrument, and acknowledged that he contained.

whose name is subscribed to the within executed the same for the purpose therein contained.

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

seal.

My Commission Expires

NOTARIAL SEAL

RONALD E. DOSTER, Notary Public
Clearfield County, Clearfield Co.
Commission Expires Mar. 23, 1993

Ronald E. Doster

CONFIDENTIAL

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 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

CLEARFIELD COUNTY

ENTERED OF RECORD

TIME 12:53 p.m. 3-22-23

BY Karen L. Starck

FEES 15.50

Karen L. Starck, Recorder

Commonwealth of Pennsylvania

County of } ss.

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

WITNESS my hand and official seal this day of , 19

Recorder of Deeds

Deed

WARRANTY DEED
The Plunkettown Co., Williamsport, Pa.JAMES M. McHUGH, Grantor and
Party of the First Part,
AND
JAMES M. McHUGH, et ux,
Grantees and Parties of the
Second Part.

Dated.....

For premises situated in Gulich,
Township, Clearfield County, Pennsylvania.

Consideration \$1.00

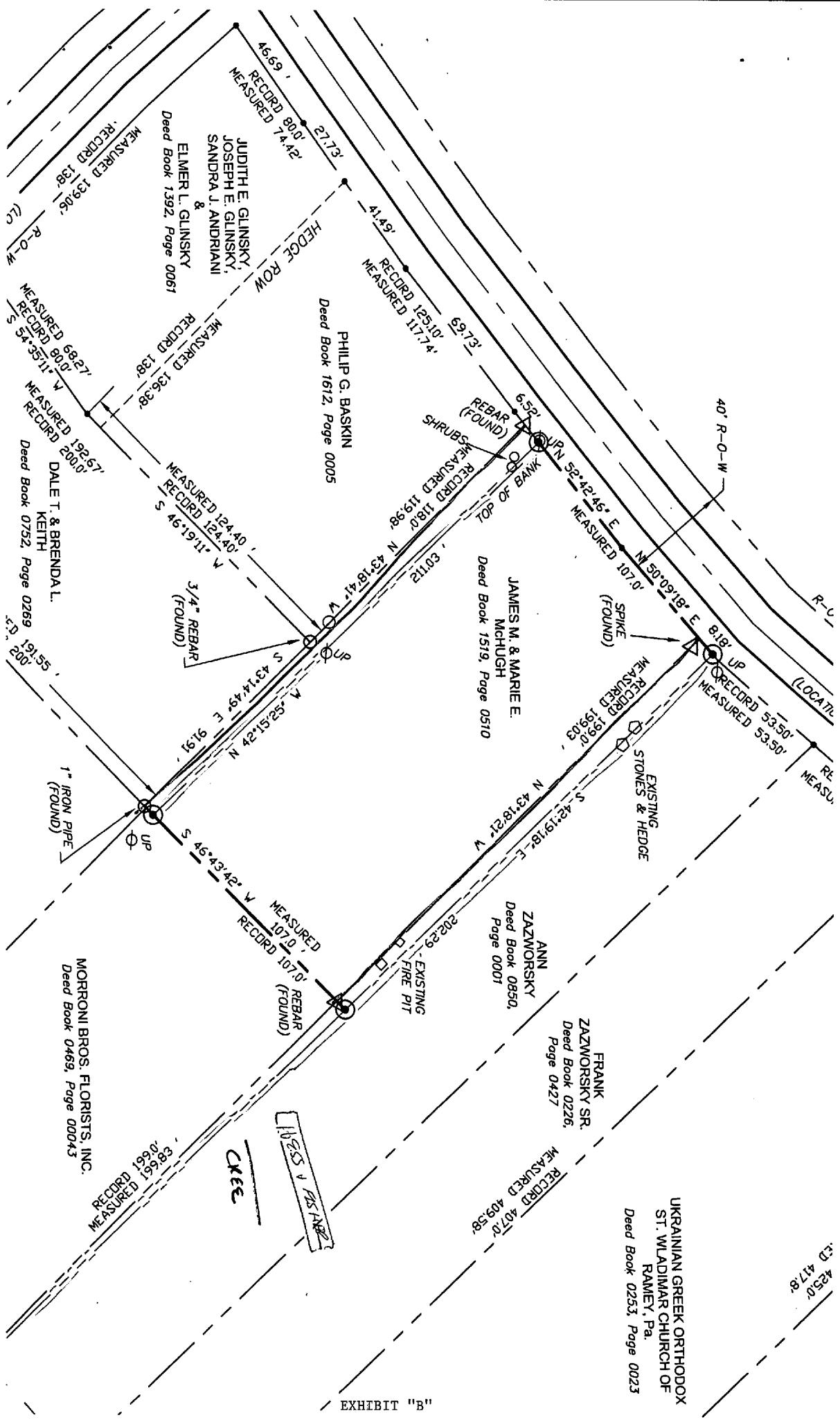
Recorded

Entered for Record in the Recorder's

Office of
County, the day of Tax. \$
19 Fees, \$
RecorderRONALD E. ARCHER
ATTORNEY AT LAW
MONTDALE, PENNSYLVANIA

Entered of Record 3-22-1993 12:53 p.m. Karen L. Starck, Recorder

REC'D FEB 19 1993 12:53 PM 1993 10 17 93



COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

JUDICIAL DISTRICT

46

NOTICE OF APPEAL

FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS NO.

03-1114-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT		PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT		
ANN ZAZWORSKY		MAG. DIST. NO. OR NAME OF D.J.		
ADDRESS OF APPELLANT	P. O. Box 235	CITY	STATE	ZIP CODE
DATE OF JUDGMENT	IN THE CASE OF (Plaintiff)	(Defendant)	COUNTY OF	
7/14/03	James M. McHugh et. al.	vs	Ann Zazworsky	
CLAIM NO.	SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT			
CV 19 0000065-03	<i>John L. Hawkins</i>			
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.</p> <p>This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p>If, appellant, was CLAIMANT, (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filling his NOTICE of APPEAL.</p>				
Signature of Prothonotary or Deputy				

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

PRAECLPICE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECLPICE: To Prothonotary

Enter rule upon James M. McHugh et. al.
Name of appellee(s)

(Common Pleas No. 03-1114-CD) within twenty (20) days after service of rule or after entry of judgment of non pros.

RULE: To James M. McHugh et. al., appellee(s).
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: 7-31, 2003

William A. Shaw
Signature of Prothonotary or Deputy

FILED

JUL 31 2003

William A. Shaw
Prothonotary

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

DJ Name: Hon.

JAMES L. HAWKINS
Address: **251 SPRING STREET**
P.O. BOX 362
HOUTZDALE, PA

Telephone: **(814) 378-7160**

16651-0362

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

MCHUGH, JAMES M, ET AL.
P.O. BOX 302
SMITHMILL, PA 16680

NAME and ADDRESS

DEFENDANT:

ZAZWORSKY, ANN
P.O. BOX 235
SMITHMILL, PA 16680

NAME and ADDRESS

VS.

Docket No.: **CV-0000065-03**
Date Filed: **6/12/03**



JAMES L. HAWKINS
251 SPRING STREET
P.O. BOX 362
HOUTZDALE, PA 16651-0362

THIS IS TO NOTIFY YOU THAT:

Judgment:

FOR PLAINTIFF

Judgment was entered for: (Name) **MCHUGH, JAMES M, ET AL.**

Judgment was entered against: (Name) **ZAZWORSKY, ANN**

in the amount of \$ **3,865.54** on: (Date of Judgment) **7/14/03**

Defendants are jointly and severally liable. (Date & Time) _____

Damages will be assessed on: _____

This case dismissed without prejudice. _____

Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ _____

Portion of Judgment for physical damages arising out of residential lease \$ _____

Amount of Judgment	\$ 3,781.04
Judgment Costs	\$ 84.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 3,865.54
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total \$ _____	

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR DISTRICT JUSTICES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE DISTRICT JUSTICE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE DISTRICT JUSTICE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

7-14-03 Date James L. Hawkins, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

7-24-03 Date James L. Hawkins, District Justice

My commission expires first Monday of January, 2006 .

SEAL

FILED

Copies & Other

JUL 31 2003

William A. Shaw
Prothonotary

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

JUDICIAL DISTRICT

46

NOTICE OF APPEAL

FROM

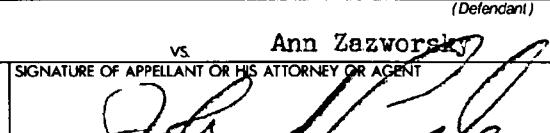
DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No.

03-1114-40

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT ANN ZAZWORSKY		MAG. DIST. NO. OR NAME OF D.J. James L. Hawkins 46-3-04	
ADDRESS OF APPELLANT P. O. Box 235		CITY Smithmill	STATE Pa.
DATE OF JUDGMENT 7/14/03	IN THE CASE OF (Plaintiff) James M. McHugh et. al.	(Defendant) vs Ann Zazworsky	
CLAIM NO. CV 19-0000065-03	SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT 		
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.</p> <p>This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p>		<p>If appellant was CLAIMANT (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.</p>	
<hr/> <p>Signature of Prothonotary or Deputy</p>			

PRAEICE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon James M. McHugh et. al., appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. 03-1114-CD) within twenty (20) days after service of notice of entry of judgment of non pros.

RULE: To James M. McHugh et. al., appellee(s).
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: 7-31, 2003

Signature of Prothonotary or Deputy

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

JUL 31 2003

Attest.

William L. Brown
Prothonotary/
Clark of Courts

COURT FILE

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

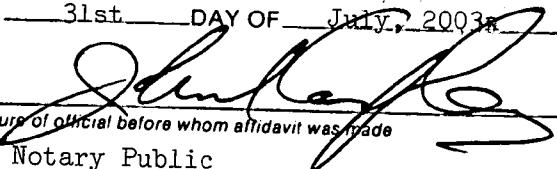
COUNTY OF Centre ; ss

AFFIDAVIT: I hereby swear or affirm that I served

a copy of the Notice of Appeal, Common Pleas No. 2003-114-CD, upon the District Justice designated therein on
(date of service) July 31, 2003, xx, by personal service by (certified) (registered) mail, sender's
receipt attached hereto, and upon the appellee, (name) James McHugh et. al., on
July 31, 2003, xx, by personal service by (certified) (registered) mail, sender's receipt attached hereto.
 and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom
the Rule was addressed on July 31, 2003, xx, by personal service by (certified) (registered)
mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS 31st DAY OF July, 2003


Signature of official before whom affidavit was made

Notary Public

Title of official

My commission expires on JOHN R. CARELY, NOTARY PUBLIC
PHILIPSBURG BORO., CENTRE COUNTY
MY COMMISSION EXPIRES APRIL 18, 2004

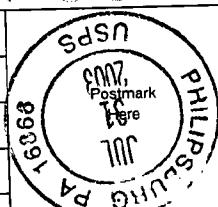

Signature of affiant



FILED

31114-61
AUG 04 2003 61
KPS

William A. Shaw
Prothonotary/Clerk of Courts

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
OFFICIAL USE	
9599 8594 0001 0010 0510 0002	Postage
	\$.37
	Certified Fee
	2.30
	Return Receipt Fee (Endorsement Required)
	1.75
Restricted Delivery Fee (Endorsement Required)	Total Postage & Fees
	\$ 4.42
	
Sent To James M. McHugh et. al. Street, Apt. No.; or PO Box No. 1. O. Box 302 City, State, ZIP+4 Smithmill, Pa., 16680	
PS Form 3800, January 2001	
See Reverse for Instruction	

JAMES A. NADDEO
ATTORNEY AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

ASSOCIATE
LINDA C. LEWIS

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@charterinternet.com

August 25, 2004

Marcy Kelley
Clearfield County Courthouse
Clearfield, PA 16830

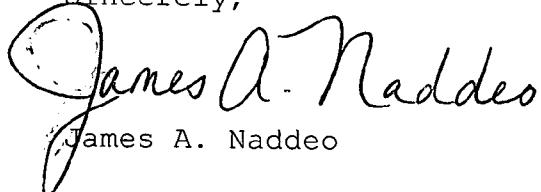
RECEIVED
AUG 25 2004

Re: McHugh v. Zazworsky
No. 03-1114-CD

Dear Ms. Kelley:

Enclosed is Plaintiffs' Letter Brief for the above captioned matter as per Judge Cherry's Order dated June 14, 2004. By copy of this letter, I am forwarding the same to Mr. Mason.

Sincerely,


James A. Naddeo

JAN/jlr

Enclosure

cc: Dave Mason, Esq. (w/ enc.)

RECEIVED

AUG 25 2004

COURT ADMINISTRATOR'S
OFFICE

①

book - ~~2604~~

831-04

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES M. MCHUGH, et al. :

VS. : NO. 03-1114-CD

ANN ZAZWORSKY :

O R D E R

NOW, this 14th day of June, 2004, following testimony taken in the above-captioned matter, it is the ORDER of this Court that counsel supply the Court with proposed Findings of Fact, Conclusions of Law and letter brief within twenty (20) days following receipt of the transcript.

BY THE COURT:

Judge

trans filed
8/1/04

letter brief from Madden 8/25
Mason 8/30

Date: 10/06/2004

Clearfield County Court of Common Pleas

User: MKELLEY

Time: 10:49 AM

ROA Report

Page 2 of 2

Case: 2003-01114-CD

Current Judge: Paul E. Cherry

James M. McHugh, Marie E. McHugh vs. Ann Zazworsky

District Justice Appeal

Date	Judge
08/11/2004	Transcript Of Proceedings Civil Nonjury Trial. Held before The Honorable Paul E. Cherry Paul E. Cherry, Judge on Monday, June 14, 2004.

Date: 10/06/2004

Clearfield County Court of Common Pleas

User: MKELLEY

Time: 10:49 AM

ROA Report

Page 1 of 2

Case: 2003-01114-CD

Current Judge: Paul E. Cherry

James M. McHugh, Marie E. McHugh vs. Ann Zazworsky

District Justice Appeal

Date		Judge
07/31/2003	Filing: District Justice Appeals Paid by: John R. Carfley, Esq. Receipt number: 1863714 Dated: 07/31/2003 Amount: \$85.00 (Check)	No Judge
08/04/2003	Proof of Service of Notice of Appeal and Rule to File Complaint. filed.	No Judge
08/05/2003	Transcript From Justice Hawkins. filed.	No Judge
08/20/2003	Complaint filed by Atty. Naddeo No CC.	No Judge
08/25/2003	Certificate of Service of Complaint filed by Atty. Naddeo, 1 CC to Atty.	No Judge
09/04/2003	Praecipe For Entry Of Appearance On Behalf Of Defendant, ANN ZAZWORSKY. filed by s/David C. Mason, Esquire no cc Copy to CA	No Judge
09/10/2003	Certificate of Service, Notice of Default upon David C. Mason, Esq. filed by s/James A. Naddeo, Esquire 1 cc Atty Naddeo	No Judge
09/23/2003	Defendant's Answer, New Matter and Counter-Claim filed by s/David C. Mason, Esquire Verification s/Ann Zazworsky no cc Certificate of Service, Defendant's Answer, New Matter and Counter-Claim, Paul E. Cherry upon James A. Naddeo, Esq., filed by s/David C. Mason, Esq. No CC	No Judge
10/13/2003	Answer To New Matter and Counterclaim and New Matter To Counterclaim. filed by s/James A. Naddeo, Esquire Verification s/James M. McHugh Certificate of Service 1 cc Atty Naddeo	No Judge
11/03/2003	Defendant's Reply to New Matter Raised to Counter-Claim filed by Atty. Mason. No cc. Certificate of Serviceof Defendant's reply to New Matter Raised to Counter-Claim. filed by Atty. Mason. No cc.	No Judge
11/14/2003	Praecipe To List For Trial. filed by s/James A. Naddeo, Esq. Certificate of Service no cc Copy to C/A	No Judge
01/26/2004	ORDER, AND NOW, this 23rd day of January, 2004, re: Discovery deadline for providing reports to opposing party no later than 30 days prior to commencement of trial. Trial scheduled for March 24, 2004, 9:00 a.m. in Courtroom No. 2. Parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits. by the Court, s/PEC,J. 1 cc Atty Naddeo, Mason	Paul E. Cherry
03/02/2004	ORDER, AND NOW, this 2nd day of March, 2004, re: This matter be and is hereby CONTINUED until the Spring Term of Civil Court. All Discovery including expert reports shall be provided to opposing counsel by no later than April 15, 2004, no further continuance shall be granted. by the Court, s/PEC, J. 1 cc Atty Naddeo, Mason	Paul E. Cherry
04/12/2004	Certificate of Service, Pre-Trial Statement upon James A. Naddeo, Esquire. Paul E. Cherry filed by, s/David C. Mason, Esquire no cc	Paul E. Cherry
04/21/2004	ORDER, AND NOW, this 16th day of April, 2004, re: Pre-Trial Conference. Paul E. Cherry by the Court, s/PEC,J. cc to Atty Naddeo, Mason	Paul E. Cherry
06/02/2004	Certificate of Service, Defendant's Trial Brief, upon: James A. Naddeo, Esquire. filed by, s/David C. Mason, Esquire no cc	Paul E. Cherry
06/15/2004	Order, NOW, this 14 day of June, 2004, following testimony taken in the above-captioned matter, Order of this Court that counsel supply the Court with proposed Findings of Fact, Conclusions of Law, and letter brief within twenty (20) days following receipt of the transcript. BY THE COURT: /s/Paul E. Cherry, Judge Two CC Attorney Naddeo One CC Attorney Mason	Paul E. Cherry

CLERAFFIELD, PENNSYLVANIA 16830
PO. BOX 552
211 1/2 EAST DOCUMENT STREET
ATTORNEY AT LAW
JAMES A. NADDEO

— Lap over margin —

FILED
O 3:36 PM
SEP 10 2003
FCC
Wm A. Shaw
Prothonotary/Clerk of Courts
Any nadeo

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *
*
*
* Type of Pleading:
*
* Certificate of Service
*
*
* Filed on behalf of:
* Plaintiffs
*
* Counsel of Record for
* this party:
*
*
* James A. Naddeo, Esq.
* Pa I.D. 06820
*
* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

SEP 10 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

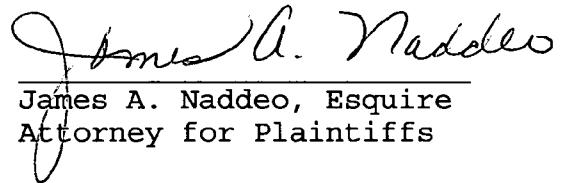
JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Default filed in the above-captioned action was served on the following person and in the following manner on the 10th day of September, 2003:

First-Class Mail, Postage Prepaid

David C. Mason, Esquire
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866



James A. Naddeo, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

vs.

ANN ZAZWORSKY,
an individual

Defendant

* TYPE OF PLEADING: DEFENDANT'S
* ANSWER, NEW MATTER AND
* COUNTER-CLAIM

* FILED ON BEHALF OF: Defendant

* COUNSEL OF RECORD FOR THIS
* PARTY:

* David C. Mason
* Superior Court I.D. 39180
* DAVID C. MASON LAW OFFICE
* P.O. Box 28
* Philipsburg PA 16866
* (814) 342-2240

* COUNSEL OF RECORD FOR
* PLAINTIFFS:

* James A. Naddeo, Esquire
* PA. I.D. #06820
* 211 ½ East Locust Street
* PO Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

SEP 23 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

* * * * No. 03-1114-CD

vs.

ANN ZAZWORSKY,
an individual

Defendant

NOTICE TO DEFEND

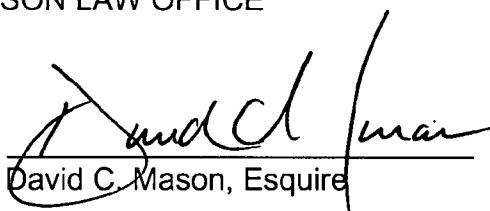
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Answer Containing New Matter and Counter-Claim are served, by entering a written appearance personally or by attorney and filing in writing with 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 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 AN LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

MASON LAW OFFICE

By:


David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

*
*
*
*
*
*
* No. 03-1114-CD

vs.

ANN ZAZWORSKY,
an individual

Defendant

*
*
*
*
*

**DEFENDANT'S ANSWER, NEW MATTER
AND COUNTER-CLAIM**

AND NOW, comes the Defendant, ANN ZAZWORSKY, by and through her attorney, DAVID C. MASON, ESQUIRE, and files the following Answer to Plaintiffs' Complaint:

1. ADMITTED.

2. ADMITTED.

3. ADMITTED IN PART AND DENIED IN PART. It is admitted that a document exists dated March 20, 1993, and purported to be recorded in Clearfield County Office of Recorder of Deeds in Deed and Record Book 1519 at Page 510. It is further admitted that a copy of that document is attached to Plaintiff's Complaint as Exhibit "A". It is denied that the metes and bounds description contained within the body of Paragraph 3 of Plaintiff's Complaint describes the same parcel of land as "The First Thereof" in the aforementioned document, for after reasonable investigation and research, answering Defendant is without

knowledge or information sufficient to form a belief as to the truth or falsity of said averment. Therefore, the same is denied and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

4. ADMITTED IN PART AND DENIED IN PART. It is admitted that attached to Plaintiffs' Complaint is a document identified as Exhibit "B". It is further admitted that this document purports to be a portion of a map. The author of this map is not disclosed on Exhibit "B". Accordingly, answering Defendant denies that Exhibit "B" was prepared by Hess & Fisher and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

5. DENIED AS STATED. It is strictly denied that the Plaintiff's are in possession of the whole of the lands described in Paragraph 3 of this Complaint and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

6. DENIED. It is denied that the Defendant, Ann Zazworsky, has entered upon the lands of the Plaintiffs. To the contrary, Defendant is the owner of these lands.

WHEREFORE, answering Defendant prays your Honorable Court for the entry of an Order dismissing Count I of Plaintiff's Complaint, with prejudice, and entering judgment in favor of the Defendant and against the Plaintiffs.

COUNT II

7. NO RESPONSE IS NECESSARY.

8. DENIED. It is strictly denied that the Plaintiffs maintain two (2) fire pits upon the property described in Paragraph 3 which they own. To the contrary, at one time there existed on lands of the Defendant two (2) fire pits which the Defendant has removed.

9. DENIED. It is strictly denied that the Defendant entered upon the land of the

Plaintiffs and destroyed the fire pits, as the said fire pits were present on lands of the Defendant. Strict proof of Plaintiffs' averment is demanded at the time of trial.

10. **DENIED.** After reasonable investigation, answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment contained in Paragraph 10 of Plaintiffs' Complaint. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

11. **DENIED.** After reasonable investigation, answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment contained in Paragraph 10 of Plaintiffs' Complaint. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further answer, it is averred that the survey is erroneous, unnecessary, and not a proper element of damages in a trespass case.

WHEREFORE, Defendant prays your Honorable Court for the entry of an Order dismissing Plaintiffs' Complaint, with prejudice, and entering judgment in favor of the Defendant and against the Plaintiffs.

COUNT III

12. NO RESPONSE IS NECESSARY.

13. **DENIED.** After reasonable investigation, the averment contained in Paragraph 13 that the fire pits described in Paragraph 9 of Plaintiff's Complaint were constructed approximately forty (40) years ago is denied as answering Defendant is without knowledge or information sufficient to form a belief as to the date when these fire pits were first constructed.

14. **DENIED.** The averment contained in Paragraph 14 of Plaintiffs' Complaint that

for forty (40) years Defendant resided in the adjoining property or was the owner of said property is denied, and strict proof is demanded at the time of trial. As of the time of the preparation of this Answer, answering Defendant is unsure what property Plaintiffs refer to as "adjoining property".

15. **DENIED.** It is strictly denied that the Defendant knew or had reason to know that the fire pits were on Plaintiffs' property. To the contrary, at all times relevant to this cause of action Defendant believed the fire pits to be constructed on her land and in fact, relied upon a true and accurate field survey of the premises conducted by a professional land surveyor.

16. **DENIED.** While the averments contained in Paragraph 16 constitute conclusions of law to which no response is necessary or required, to the extent a response is required, it is strictly denied that the Defendant trespassed on the Plaintiffs' property; that Defendant entered Plaintiffs' property; or that such entry onto Plaintiffs' property was intentional, malicious or exhibited a reckless indifference to the property rights of others; and it is also denied that Defendant's actions constituted "conscious action to deliberately disregard those rights". Furthermore, it is strictly denied that Defendant's conduct was outrageous under the circumstances.

WHEREFORE, Defendant prays your Honorable Court for the entry of an Order dismissing Plaintiffs' Complaint, with prejudice, and entering judgment in favor of the Defendant and against the Plaintiffs.

NEW MATTER

17. The Defendant is the owner of the lands on which these fire-pits were constructed.

18. The Defendant's deed for these premises is lodged of record in the Office for the Recording of Deeds of Clearfield County in Deeds and Records Book Volume 850 at page 1.

19. The Defendant's real property was the subject of a field survey conducted by George A. Cree, registered surveyor, on or about September 27, 2001, and this property is described as follows:

ALL that certain piece or parcel of ground situate in the Township of Gulich, County of Clearfield, and the State of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located on the Eastern side of T-541, Church Street, said pin being the Northern most corner of the property herein described; thence along the line of land of Frank Zazworsky, Sr., South 58 degrees 39 minutes 00 seconds East a distance of 203.50 feet to an iron pin; thence along the line of land of Frank Zazworsky, Sr., South 31 degrees 21 minutes 00 seconds West a distance of 53.50 feet to an iron pin; thence along the line of land of Jim and Marie McHugh North 58 degrees 39 minutes 00 seconds West a distance of 199.00 feet to a railroad spike; thence along the Eastern side of T-541, Church Street North 26 degrees 32 minutes 45 seconds East a distance of 53.69 feet to an iron pin and the point of beginning.

CONTAINING 0.247 acres more or less as shown on the Survey of Land for Ann Zazworsky as prepared by George A. Cree, Registered Surveyor.

20. The survey of the lands of the Defendant reveals that the fire-pits are clearly on the lands of the Defendant, not the lands of the Plaintiff.

WHEREFORE, Defendant prays for the entry of an order dismissing Plaintiffs' Complaint, and entering judgment in favor of Defendant, and against Plaintiffs.

COUNTER-CLAIM

ACTION TO QUIET TITLE PURSUANT TO

Pa. R. C. P. No. 1061

ANN ZAZWORSKY, Counter-Plaintiff, v.

JAMES M McHUGH and MARIE E. McHUGH, Counter-Defendants

Paragraphs 1 through 20 hereof are incorporated herein by reference.

22. Counter-Plaintiff Ann Zazworsky is in possession of the premises described in Paragraph 19 hereof.

23. Counter-Plaintiff is the owner of these premises by virtue of the deed referenced in Paragraph 18, hereof and as verified by the survey of her lands.

WHEREFORE, Counter-Plaintiff respectfully requests the following:

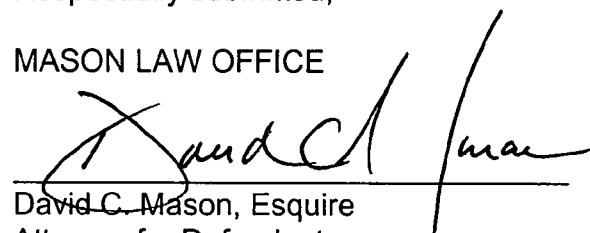
(a) That the Defendants, their heirs, administrators, executors, successors and assigns and all other persons having claim to the premises herein described be forever barred from asserting any right, title or interest in the land described herein inconsistent with the interest or title of Plaintiff.

(b) That an Order of Court be made declaring the Plaintiff to be the sole owner of a fee simple interest and to have exclusive possession of the premises described herein.

(c) Such further Order as may be necessary for the granting of further relief.

Respectfully submitted,

MASON LAW OFFICE



David C. Mason, Esquire
Attorney for Defendant

VERIFICATION

I certify that the facts set forth in the foregoing DEFENDANT'S ANSWER, NEW MATTER AND COUNTER-CLAIM is true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 PA. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 9/22/03

By: Ann Zazworsky
Ann Zazworsky

FILED NO. 10-5084
SEP 23 2003
WAS

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

vs.

ANN ZAZWORSKY,
an individual

Defendant

* TYPE OF PLEADING: CERTIFICATE
* OF SERVICE

* FILED ON BEHALF OF: Defendant

* COUNSEL OF RECORD FOR THIS
* PARTY:

* David C. Mason
* Superior Court I.D. 39180
* DAVID C. MASON LAW OFFICE
* P.O. Box 28
* Philipsburg PA 16866
* (814) 342-2240

* COUNSEL OF RECORD FOR
* PLAINTIFFS:

* James A. Naddeo, Esquire
* PA. I.D. #06820
* 211 1/2 East Locust Street
* PO Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

SEP 23 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

* No. 03-1114-CD

vs.

ANN ZAZWORSKY,
an individual

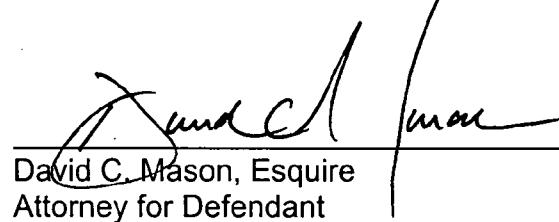
Defendant

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of the **DEFENDANT'S ANSWER, NEW MATTER AND COUNTER-CLAIM** filed in the above captioned action on the following by depositing the same in the U. S. Mail, postage prepaid and addressed as follows:

James A. Naddeo, Esquire
Attorney at Law
211 ½ East Locust Street
Marino Building
PO Box 552
Clearfield, PA 16830

DATED: 9-22-03



David C. Mason, Esquire
Attorney for Defendant

FILED
M 10 SD 84 NO
SEP 23 2003 CC
WES

William A. Shaw
Prothonotary/Clerk of Courts

CLERARFIELD, PENNSYLVANIA 16830
P.O. BOX 552
211 1/2 EAST LOGUET STREET
ATTORNEY AT LAW
JAMES A. NADDEO

Lap over margin

FILED
09/13/03
00-13
William A. Shaw
Prothonotary/Clerk of Courts
100
Amy Naddeo

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

*
*
* Type of Pleading:
*
* ANSWER TO NEW MATTER AND
* COUNTERCLAIM AND NEW
* MATTER TO COUNTERCLAIM
*
* Filed on behalf of:
* Plaintiffs
*
* Counsel of Record for
* this party:
*
*
* James A. Naddeo, Esq.
* Pa I.D. 06820
*
* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

OCT 13 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

NOTICE TO PLEAD

TO THE DEFENDANT:

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

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Plaintiffs

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

ANSWER TO NEW MATTER AND COUNTERCLAIM
AND NEW MATTER TO COUNTERCLAIM

NOW COME the Plaintiffs, James M. McHugh and Marie E. McHugh, and by their attorney, James A. Naddeo, Esquire, set forth the following:

ANSWER TO NEW MATTER

17. Denied. On the contrary, it is alleged that Plaintiffs are the owners of said property for the reasons set forth in their Complaint which is incorporated herein by reference.

18. Admitted.

19. Denied. After reasonable investigation Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of said averment.

20. Denied. After reasonable investigation Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of said averment.

ANSWER TO COUNTERCLAIM

21. No answer required.

22. Denied. On the contrary, it is alleged that Defendant in the Counterclaim, James M. McHugh, acquired the premises in 1990. In further answer thereto, it is alleged that from 1990 until March 2003 Counter-Defendants routinely used the fire pits claimed by Counter-Plaintiff to be upon her premises.

23. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is generally denied. To the contrary, it is alleged that the premises in question is owned by Counter-Defendants, James M. McHugh and Marie E. McHugh who have been in possession of said premises along with their predecessors in title for a period in excess of twenty-one (21) years.

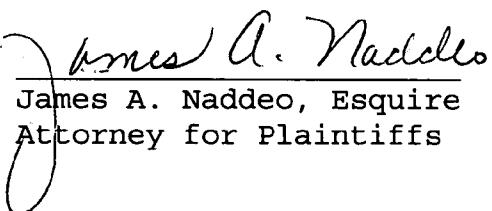
NEW MATTER TO COUNTERCLAIM

24. Plaintiffs and their predecessors in title have been in open, notorious and exclusive possession of the premises in dispute for a period in excess of twenty-one (21) years.

25. That the property has been the subject of a consent line evidenced by an old stone wall for a period in excess of twenty-one (21) years.

WHEREFORE, Plaintiffs claim judgment as set forth in their Complaint.

Respectfully submitted,


James A. Naddeo
James A. Naddeo, Esquire
Attorney for Plaintiffs

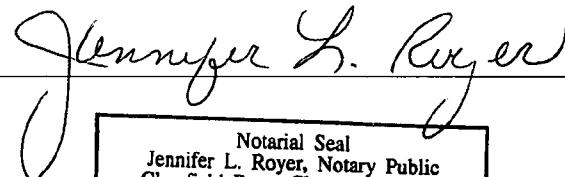
COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared JAMES M. McHUGH, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

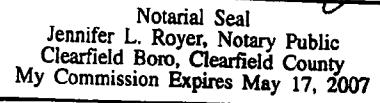


James M. McHugh

SWORN and SUBSCRIBED before me this 13th day of October, 2003.



Jennifer L. Royer



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

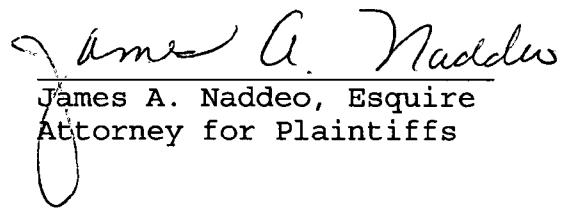
JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Answer to New Matter and Counterclaim and New Matter to Counterclaim filed in the above-captioned action was served on the following person and in the following manner on the 13th day of October, 2003:

First-Class Mail, Postage Prepaid

David C. Mason, Esquire
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866



James A. Naddeo, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

vs.

ANN ZAZWORSKY,
an individual

Defendant

* TYPE OF PLEADING: DEFENDANT'S
* REPLY TO NEW MATTER RAISED
* TO COUNTER-CLAIM

* FILED ON BEHALF OF: Defendant

* COUNSEL OF RECORD FOR THIS
* PARTY:

* David C. Mason
* Superior Court I.D. 39180
* DAVID C. MASON LAW OFFICE
* P.O. Box 28
* Philipsburg PA 16866
* (814) 342-2240

* COUNSEL OF RECORD FOR
* PLAINTIFFS:

* James A. Naddeo, Esquire
* PA. I.D. #06820
* 211 ½ East Locust Street
* PO Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

NOV 03 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

*
*
*
*
*
*
* No. 03-1114-CD

vs.

ANN ZAZWORSKY,
an individual

Defendant

*
*
*
*
*

**DEFENDANT'S REPLY TO NEW MATTER
RAISED TO COUNTER-CLAIM**

AND NOW, comes the Defendant, ANN ZAZWORSKY, by and through her attorney, DAVID C. MASON, ESQUIRE, and files the following Reply to New Matter Raised to Counter-Claim:

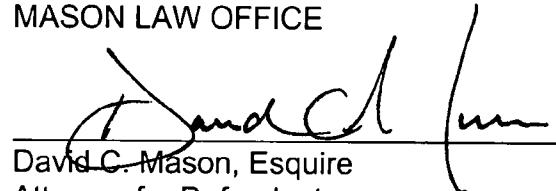
24. **DENIED.** It is strictly denied that Plaintiffs and/or their predecessors in title have been in open, notorious and exclusive possession of the disputed area for a period in excess of twenty one (21) years. To the contrary, and by way of further answer, it is averred that the lands in question shared a common owner within such time, or, for the purposes for alternative pleading, that title to the said premises were owned by members of the same family and therefore no adverse, hostile or notorious possession of the premises is possible. Strict proof of Plaintiffs' averment, to the extent deemed relevant, is demanded at the time of Trial.

25. **DENIED.** It is strictly denied that the property has been the subject of a consent line evidenced by an old stone wall for a period in excess of twenty one (21) years. By way of further answer, answering Defendant incorporates herein her reply contained in Paragraph 24. Strict proof of Plaintiffs' averment, to the extent deemed relevant, is demanded at the time of Trial.

WHEREFORE, Defendant prays your Honorable Court for the entry of an Order dismissing Plaintiffs' Complaint and entering judgment in her favor and against the Plaintiffs.

Respectfully submitted,

MASON LAW OFFICE



David C. Mason, Esquire
Attorney for Defendant

VERIFICATION

I, Ann Zazworsky do hereby verify that the facts set forth in the foregoing **REPLY TO NEW MATTER OF COUNTERCLAIM** are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED:

Ann Zazworsky

FILED NO
11-5689
NOV 6 3 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

*
*
*
*
*

Plaintiffs,

*
*
* No. 03-1114-CD
*
*

vs.

ANN ZAZWORSKY,
an individual

*
*
*

Defendant

* TYPE OF PLEADING: CERTIFICATE
* OF SERVICE
*
*

* FILED ON BEHALF OF: Defendant
*
*

* COUNSEL OF RECORD FOR THIS
* PARTY:

* David C. Mason
* Superior Court I.D. 39180
* DAVID C. MASON LAW OFFICE
* P.O. Box 28
* Philipsburg PA 16866
* (814) 342-2240
*

* COUNSEL OF RECORD FOR
* PLAINTIFFS:

* James A. Naddeo, Esquire
* PA. I.D. #06820
* 211 ½ East Locust Street
* PO Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

NOV 03 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

* No. 03-1114-CD

vs.

ANN ZAZWORSKY,
an individual

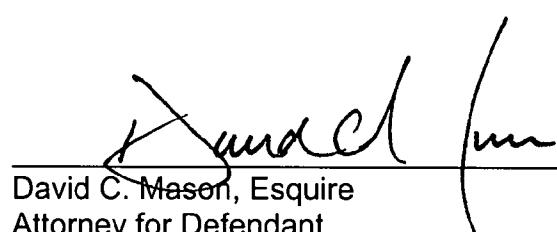
Defendant

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of the **DEFENDANT'S REPLY TO NEW MATTER RAISED TO COUNTER-CLAIM** filed in the above captioned action on the following by depositing the same in the U. S. Mail, postage prepaid and addressed as follows:

James A. Naddeo, Esquire
Attorney at Law
211 ½ East Locust Street
Marino Building
PO Box 552
Clearfield, PA 16830

DATED: 10-31-03



David C. Mason, Esquire
Attorney for Defendant

FILED NOV 03 2003
M 1654
BOSTON
NOV 03 2003

William A. Shaw
Prothonotary/Clerk of Courts

CLERAFFIELD, PENNSYLVANIA 16830
P.O. BOX 552
211 1/2 EAST LOGUS STREET
ATTORNEY AT LAW
JAMES A. NADDEO

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FILED NO CC
OCT 10 2003 COPY TO CJA
NOV 14 2003
William A. Shaw
Prothonotary/Clerk of Courts
62

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

JAMES M. McHUGH and
MARIE E. McHUGH,
husband and wife,

Plaintiffs,

v.

ANN ZAZWORSKY,
an individual,

Defendant.

*

*

*

*

*

NO. 03-1114-CD

*

*

*

*

Type of Pleading:

PRAECLYPE TO LIST

FOR TRIAL

Filed on behalf of:

Plaintiffs

Counsel of Record for

this party:

James A. Naddeo, Esq.

Pa I.D. 06820

211 1/2 E. Locust Street

P.O. Box 552

Clearfield, PA 16830

(814) 765-1601

FILED

NOV 14 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

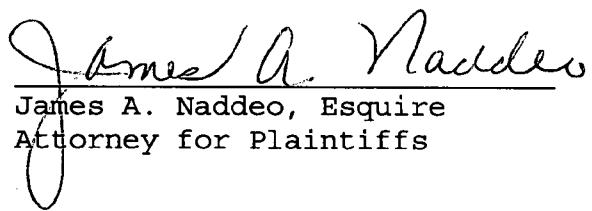
JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

PRAECIPE TO LIST FOR TRIAL

TO THE PROTHONOTARY:

Please place the above-captioned matter on the next list
for trial. In support thereof I certify the following:

1. There are no Motions outstanding.
2. Discovery has been completed and the case is ready
for trial.
3. The case is to be heard non-jury.
4. Notice of the Praecipe has been given to opposing
counsel.
5. The time for trial is estimated at one (1) day.


James A. Naddeo, Esquire
Attorney for Plaintiffs

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

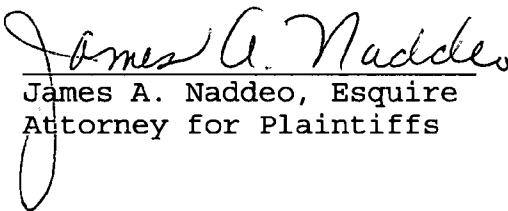
JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Praeclipe to List for Trial filed in the above-captioned action was served on the following person and in the following manner on the 14th day of November, 2003:

First-Class Mail, Postage Prepaid

David C. Mason, Esquire
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866



James A. Naddeo, Esquire
Attorney for Plaintiffs

62

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

JAMES M. McHUGH and : NO. 03-1114-CD
MARIE E. McHUGH, :
husband and wife :
V. :
ANN ZAZWORSKY, :
an individual :
:

ORDER

AND NOW, this 23rd day of January, 2004, following Pre-Trial Conference, it is
the ORDER of this Court:

1. The Discovery deadline for providing any and all reports to the opposing party shall be by and no later than thirty (30) days prior to the commencement of trial.
2. Trial in this matter is scheduled for March 24, 2004 at 9:00 A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
3. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

JAN 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

cc AMY MADERO

1/11/09 8:41 AM
JAN 26 2009

cc AMY MASON

W.A. Shaw

William A. Shaw

Prothonotary/Clerk of Courts

⑥

James A. Nadeo

Lap over margin

CLERAFFIELD, PENNSYLVANIA 16830

RO. BOX 552

ATTORNEY AT LAW

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

JAMES M. McHUGH and
MARIE E. McHUGH,
husband and wife,
Plaintiffs,

v.

ANN ZAZWORSKY,
an individual,
Defendant.

* No. 03-1114-CD

* Type of Pleading:

* **AMENDED PRE-TRIAL
MEMORANDUM**

* Filed on behalf of:
* Plaintiffs

* Counsel of Record for
* this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

RECEIVED

JAN 29 2004

COURT ADMINISTRATOR'S
OFFICE

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

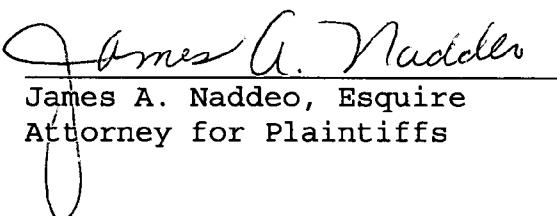
AMENDED PRE-TRIAL MEMORANDUM

NOW COME the Plaintiffs, JAMES M. McHUGH and MARIE E. McHUGH, and by their attorney, James A. Naddeo, Esquire, supplement their Pre-Trial Statement as follows:

III. Witnesses.

E. Mary Moskel, 129 Gates Avenue, Indiana, PA 15701 -
damage/liability.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Plaintiffs

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiffs' Amended Pre-Trial Memorandum filed in the above-captioned action was served on the following person and in the following manner on the 29th day of January, 2004:

First-Class Mail, Postage Prepaid

David C. Mason, Esquire
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866

James A. Naddeo
James A. Naddeo, Esquire
Attorney for Plaintiffs

(A)

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

JAMES M. McHUGH

V.

NO. 03-1114-CD

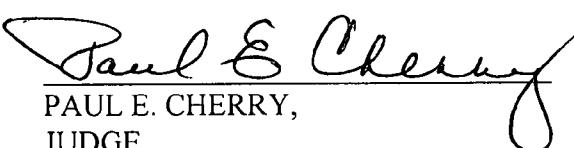
ANN ZAZWORSKY

ORDER

AND NOW, this 2nd day of March, 2004, upon consideration of the request for extension of time for submission of expert reports made by David C. Mason, Esquire, counsel for Defendant, and upon consideration of the letter received from James A. Naddeo, Esquire, counsel for Plaintiff opposing said request, but requesting a continuance of this matter should the extension of time be granted, it is the ORDFR of this Court that this matter be and is hereby continued until the spring term of Civil Court. The parties are advised that the Call of the Civil List is scheduled for April 1, 2004, with Pre-Trial Conferences to be held April 15, 2004.

All discovery including expert reports shall be provided to opposing counsel by no later than April 15, 2004. No further requests for continuance shall be granted.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

MAR 02 2004

William A. Shaw
Prothonotary

FILED

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MAR 02 2004

WAS

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

vs.

ANN ZAZWORSKY,
an individual

Defendant

*
* No. 03-1114-CD
*

*

*

*

*

*

*

*

*

*

*

* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE
*

* FILED ON BEHALF OF: Defendant

*

*

* COUNSEL OF RECORD FOR
* THIS PARTY:

* David C. Mason, Esq.
* MASON LAW OFFICE
* Supreme Court No. 39180
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

*

* COUNSEL OF RECORD FOR PLAINTIFFS

* James A. Naddeo, Esquire
* PA. I.D. #06820
* 211 1/2 East Locust Street
* PO Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED
04/12/04
APR 12 2004
cc
RECEIVED

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

*No. 03-1114-CD

Plaintiffs,

2

3

2

1

1

2

*

2

2

ANN ZAZWORSKY,
an individual

Defendant

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of **PRE-TRIAL STATEMENT** filed to the above captioned action, by faxing the same and also placing the same in the United States mail, postage prepaid and addressed as follows:

James A. Naddeo, Esquire
211 ½ East Locust Street
P.O. Box 552
Clearfield, PA 16830

DATED: 4-8-04

MASON LAW OFFICE

BY:

David C. Mason, Esquire

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

JAMES M. McHUGH and : NO. 03-1114-CD
MARIE E. McHUGH :
: :
V. : :
: :
ANN ZAZWORSKY : :

ORDER

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

1. The deadline for providing any and all outstanding discovery shall be by and no later than thirty (30) days prior to the commencement of trial.
2. Trial in this matter is scheduled for June 14, 2004 at 9:00 A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
3. Trial briefs shall be submitted to this Court by and no later than fourteen (14) days prior to the commencement of trial.
4. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

APR 21 2004
0111:55AM
William A. Shaw
Prothonotary/Clerk of Courts

ENT TO MADDOO
&
MASON

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

*
* No. 03-1114-CD
*

Plaintiffs,

*
*
*

vs.

ANN ZAZWORSKY,
an individual

Defendant

*
*
*
* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE
*

* FILED ON BEHALF OF: Defendant

*
*

* COUNSEL OF RECORD FOR
* THIS PARTY:

* David C. Mason, Esq.
* MASON LAW OFFICE
* Supreme Court No. 39180
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240
*

* COUNSEL OF RECORD FOR PLAINTIFFS

* James A. Naddeo, Esquire
* PA. I.D. #06820
* 211 ½ East Locust Street
* PO Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

JUN 02 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

*
*No. 03-1114-CD
*

Plaintiffs,

*

vs.

*

ANN ZAZWORSKY,
an individual

*

Defendant

*

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of **DEFENDANT'S TRIAL BRIEF** filed to the above captioned action, by faxing the same and also placing the same in the United States mail, postage prepaid and addressed as follows:

James A. Naddeo, Esquire
211 ½ East Locust Street
P.O. Box 552
Clearfield, PA 16830

DATED: 6-1-04

MASON LAW OFFICE

BY:

David C. Mason, Esquire

FILED NO
MAY 2004 cc
JUN 02 2004
W.A. Shaw
Prothonotary/Clerk of Courts

CLEARFIELD, PENNSYLVANIA 16830

P.O. BOX 552

ATTORNEY AT LAW

JAMES A. NADDEO

Lap over margin _____

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *
*
*
* Type of Pleading:
*
* **PLAINTIFFS' PRE-TRIAL**
* **STATEMENT**
*
* Filed on behalf of:
* Plaintiffs
*
* Counsel of Record for
* this party:
*
*
* James A. Naddeo, Esq.
* Pa I.D. 06820
*
* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

RECEIVED

JAN 15 2004

**COURT ADMINISTRATOR'S
OFFICE**

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

PRE-TRIAL MEMORANDUM

NOW COME the Plaintiffs, JAMES M. McHUGH and MARIE E. McHUGH, and by their attorney, James A. Naddeo, Esquire, set forth the following:

I. Factual Statement.

On or about June 2, 2003, Plaintiffs were the owners of a piece or parcel of land more fully described in a Deed to Plaintiffs dated March 20, 1993, and recorded in Deed Book 519, Page 510. Plaintiffs' property had various improvements including two fire pits constructed on the Southwest corner of their property. These fire pits were in place at the time Plaintiffs purchased the property and were regularly used by them from 1993 up to and including June 2, 2003.

On or about June 2, 2003, Defendant entered upon Plaintiffs' property and demolished the Plaintiffs' fire pits. Plaintiffs initiated an action through the district magistrate

to recover damage for the destruction to their property. Judgment was entered by the magistrate in favor of Plaintiffs in the amount of \$3,865.54. An appeal from the judgment was filed by Defendant on July 31, 2003.

Plaintiff filed a Complaint in Ejectment on August 20, 2003. In addition to ejectment, Plaintiffs' Complaint included counts for compensatory as well as punitive damages.

III. Exhibits.

A. Survey map prepared by Hess & Fisher. See attached.

B. Report of Wilson Fisher, Jr., PE, dated April 3, 2003. See attached.

C. Bill for engineering services.

D. Estimate to replace fire pits. See attached.

E. Photographs. See attached.

III. Witnesses.

A. James M. McHugh, 110 Church Street, Smithmill, PA 16680 - damage/liability.

B. Marie E. McHugh, 110 Church Street, Smithmill, PA 16680 - damage/liability.

C. Wilson Fisher, Jr., PE, 36 North Second Street, Clearfield, PA 16830 - damage/liability.

D. L.R. Day, Smithmill, PA - damage/liability.

IV. Legal Theory.

Plaintiffs contend that they have a right to immediate and exclusive possession of the property acquired by them in March 1993. Accordingly, Plaintiffs are entitled to a writ ejecting Defendant from the property described in the Hess & Fisher survey.

Defendant's conduct in entering upon Plaintiffs' property and destroying the improvements located thereon constitutes a willful and malicious trespass. Plaintiffs will seek both compensatory and punitive damages.

V. Damages.

- A. Cost of restoring fire pits - \$452.50.
- B. Survey cost - \$2,678.54.
- C. Punitive damages - unliquidated.

VI. Extraordinary Evidentiary Problems.

None

VII. Stipulations.

Cost of rebuilding fire pits and survey costs.

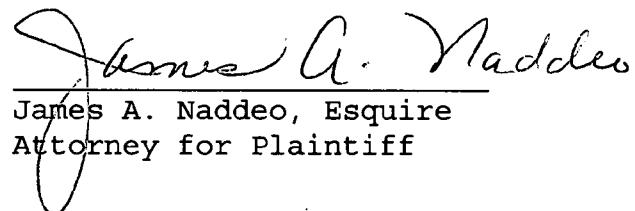
VIII. Special Points for Charge.

None

IX. Estimated Time for Trial.

One (1) day

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Plaintiff

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

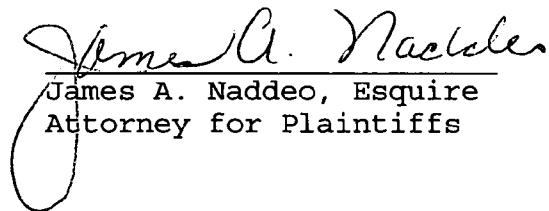
JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

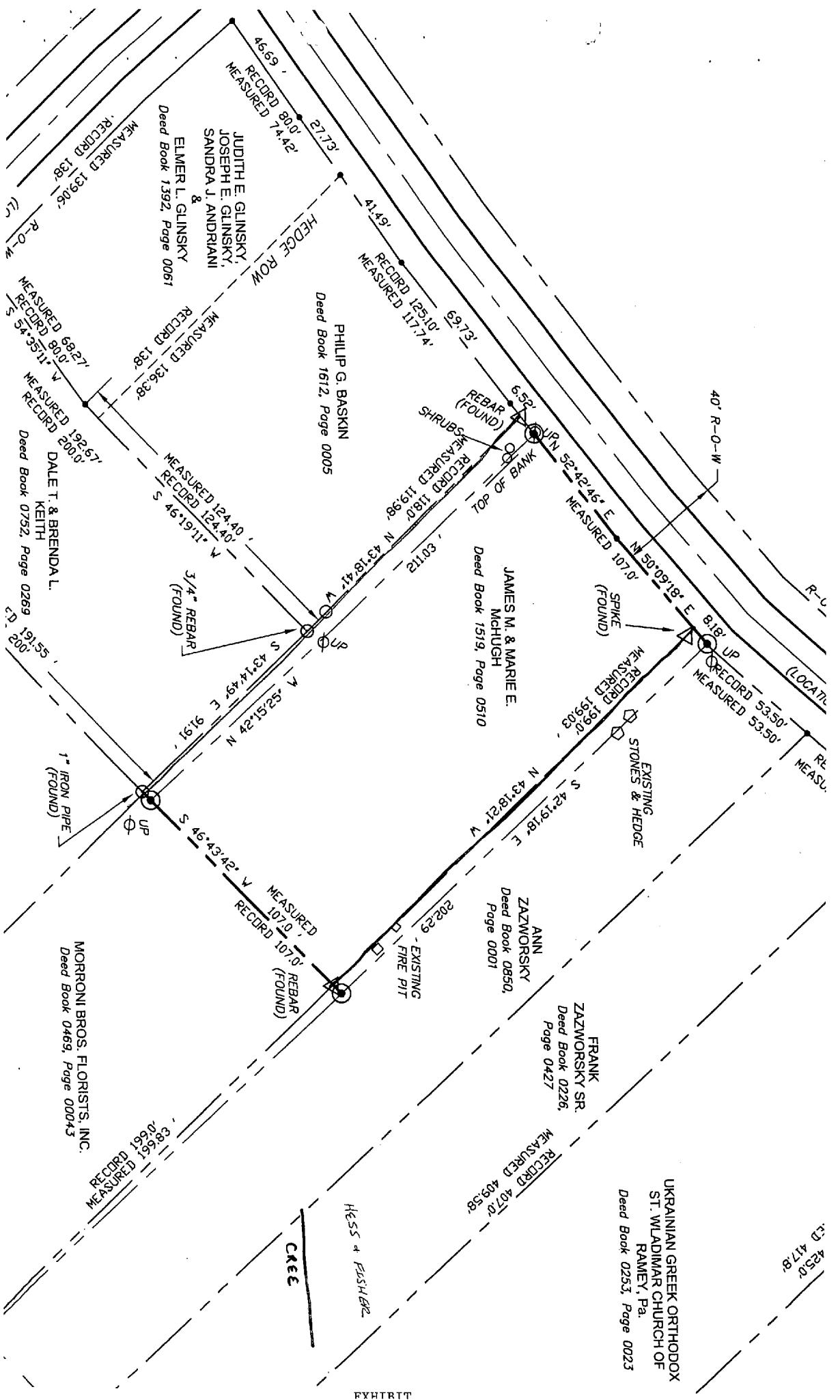
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiffs' Pre-Trial Statement filed in the above-captioned action was served on the following person and in the following manner on the 15th day of January, 2004:

First-Class Mail, Postage Prepaid

David C. Mason, Esquire
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866


James A. Naddeo
James A. Naddeo, Esquire
Attorney for Plaintiffs



HESS & FISHER ENGINEERS, INC.

Professional Engineers since 1940

36 NORTH SECOND STREET
CLEARFIELD, PA 16830

April 3, 2003

814-765-7541
800-720-7541
FAX 814-765-6488
www.hessfishereng.com

Mr. James McHugh
P. O. Box 302
Smithmill, PA 16680

Re: Property Boundary
Retracement Survey

Dear Mr. McHugh:

As a follow-up to our various discussions as supported by our research and field survey measurements, which included location of monuments and possession evidence within your neighborhood, we're pleased to provide you with the attached retracement survey map, plus the following facts and observations to support and substantiate our conclusions.

The preponderance of the evidence supports our findings, as developed from your neighborhood as well as the easterly and westerly side of your property, along Church Street, as:

1. To the west of your property and between the Baskin lot and that owned by Glinsky and others is a well-established hedgerow. Deed records and survey maps call for the hedgerow separating the two properties as a monument. The hedgerow still exists and provides an excellent point of reference. (See attached Orange Mulhollen's survey map, plus the deed of Baskin).
2. In a discussion on April 5, 2003 with Mary Louis Moskel, the daughter of Lucy Barto [Mrs. Barto being the predecessor in title to your property], Mrs. Moskel mentioned that her mom's brother had a trailer on the ground now owned by Ann Zazworsky and it was always understood by the family that the hitch of uncle's trailer was at or over the property line onto her mother's property by approximately 1 foot. [The old photograph that you have of you in front of your pickup truck and the trailer in the background gives credence to this observation.]

However, since it was Mrs. Barto's brother, it was not an issue. Mary acquired the trailer from her uncle, through inheritance. She subsequently sold it to Ann Zazworsky when Ann moved back to the neighborhood. She and Annie were playmates throughout their childhood and grew up together. The Zazworsky's lived on the east side of the Uncle. Unfortunately, the Zazworsky homestead deteriorated so when Ann moved back to the area upon her retirement, she acquired the trailer and subsequently placed a double-wide on the property.

Mrs. Moskel remembers the stone block wall on the east side of the driveway. She said it was built by her parents and it was definitely on her parent's property. Additionally, she said there was a hedgerow/fence at or about the stone wall that they planted. The hedgerow was also on their property. She stated that the firepits were clearly on their property. She also noted that when the Morroni's built the greenhouse at the rear of her parent's property they built it slightly on her mom's ground. Both Mr. Morroni, as well as her mom, knew this and discussed it. Her mom told Mr. Morroni that she didn't have a problem with the encroachment, as long as the Morroni's kept the area at or about the greenhouse clean and neat, which they did over the years.

3. To the east, along the township road, George Mandrick has two well-aged and established corner monuments that fit extremely well with his deed call, as well as his observation as a long-term resident that those are indeed his long-standing corners. These monuments are consistent with those called for in his deed (1968), plus the survey of Bernard Lucas Associates (1968) [see attached].
4. The property owned by Metro Betza, immediately west of George Mandrick's property was acquired by Betza in 1921 (see attached deed). Mr. Betza's property was surveyed, along with that of the Ukrainian Orthodox Church and the Ukrainian Citizen's Club, [the Church and Club properties were apparently partitioned at that time] by Bernard Lucas and

Associates in 1966 (see attached survey map). Our findings are consistent with the record, with the minor exception of the distance along the southern property bound (+3.22 ft. deviation from the record).

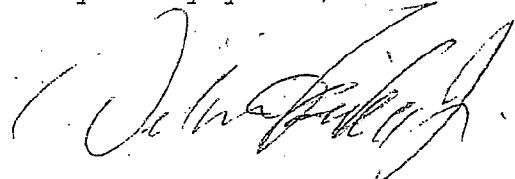
5. Holding the hedgerow, Mandrick's monuments, Betza and the Ukrainian Church, we've reconstructed the properties along the township road (including yours) consistent with the deed calls (record), and our field measurements of possession evidence. There are slight distance and bearing variations between the record and field measurements, but not beyond expectations relative to the precision of measurements made by earlier surveyors with their optical equipment.
6. The possession evidence along your property line with Baskin supports the line location at the top of the bank created by the cut excavation for Mr. Baskin's driveway. There is an old utility pole at the top of the bank, which is very close to the property line. The survey map prepared by Mulhollen supports that conclusion. Also, common driveway/road construction practice is to possess to the top of the bank or cut slope for maintenance needs.
7. Reconstruction of the various property metes and bounds along the township road also clarifies the location of the property line metes and bounds for the Morroni Brothers property, directly south of the Keith property, i.e. your extended property line along Baskin and Keith as it progresses between two Morroni parcels.
8. Whereas, the survey reconstruction efforts by George and Clark Cree are consistent with the principals of land surveying by location of monuments and of possession evidence, the origin of Cree's survey was to the south within an undeveloped and unoccupied portion of the neighborhood. The Cree's gave a significant credence and weight to monuments found there and used them to extrapolate property lines into the developed neighborhood to the north.

Lacking other evidence in the neighborhood, this approach is reasonable. However, we've spent time and effort within the neighborhood seeking out and locating monumentation and possession evidence established by many years of occupancy and understanding between owners of the developed properties. We thereby believe that our findings have greater merit and weight.

9. Various possession evidence internal to the neighborhood fits our reconstruction, as: (a) The Baskin driveway and cut bank to the McHugh property, (b) The possession evidence along the eastern side of the McHugh property, (c) Morroni's Greenhouse on its own property, and (d) The Downs' house on its own property.

If you have any questions, please call.

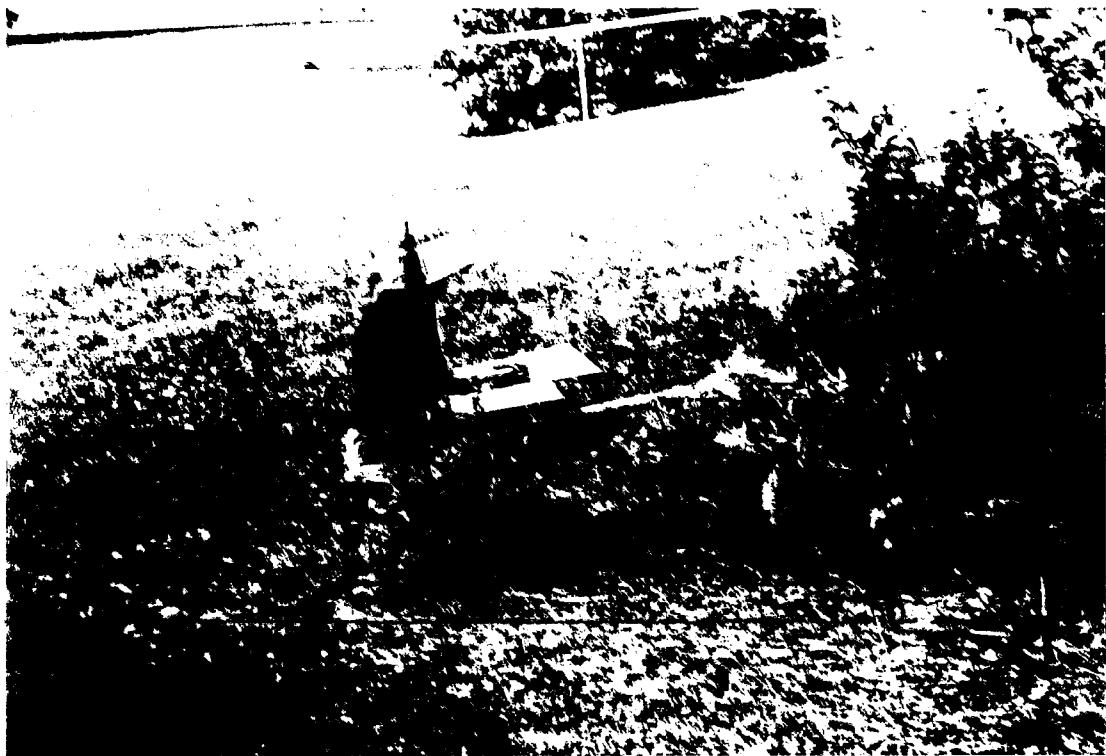
Very truly yours,



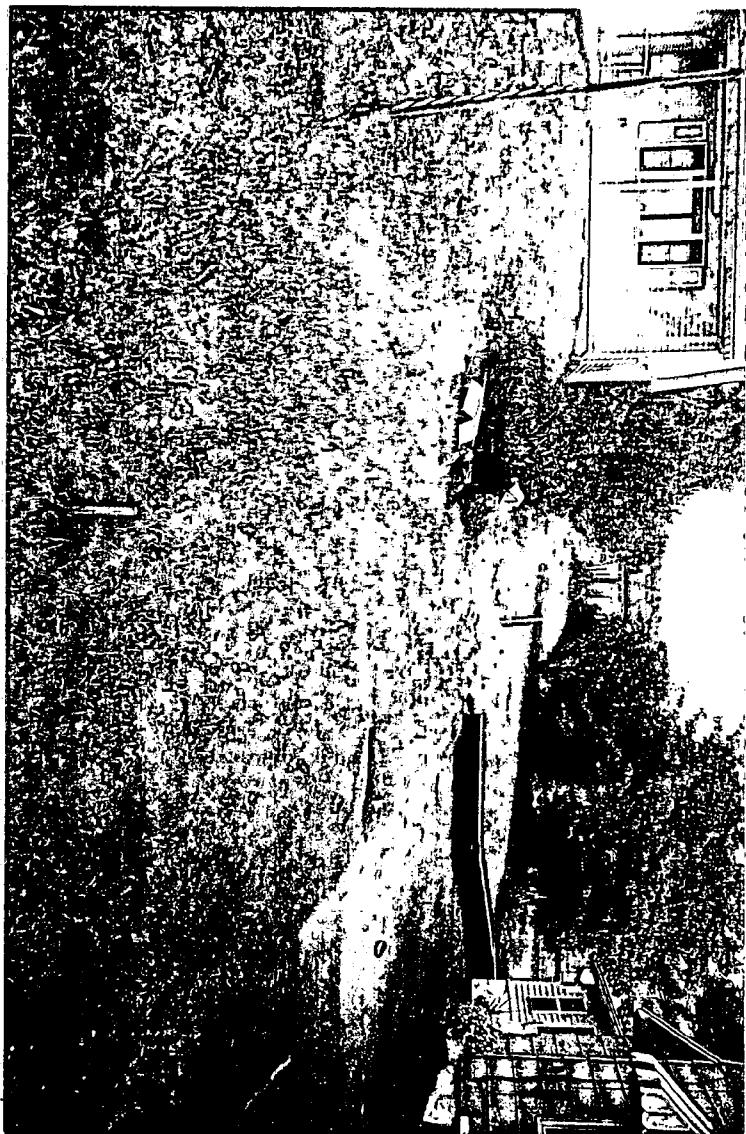
Wilson Fisher, Jr.,
P.E., P.L.S.

WF:tlc
cc: Clark Cree, PLS
File ✓
Mydoc.McHugh.PRJ









Fax

To: Atty. James Naddeo

From: Marie & Jim McHugh

Fax: 765-8142

Pages: 2 including cover sheet

Phone:

Date: 1/14/2004

Re: Estimate for fire pits

CC:

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Attached is the estimate for the fire pits from R.L. Daye. If you have any questions, please call me at 378-8131 or 378-6074.

* 30 Years of Experience

R. L. DAYE
GENERAL CONTRACTOR

(814) 378-7318

(Answering Machine)

PLUMBING, ALUMINUM, ELECTRICAL,
OLD AND NEW HOMESRte. 453, P.O. Box 267
Smithmill, PA 16680-0267

CAMPGROUND

Rte. #453, Janesville, PA

NAME Jim & Marie FinebaughADDRESS Church StreetTOWN Janesville (Smithmill) PA 16680DATE January 8, '03PHONE 378-6074DATE WANTED ASAP

ESTIMATE OF MATERIAL AND LABOR REQUIRED		MATERIAL	LABOR
42	8" Cement Plate & concrete	\$75.00	
<i>Note: Because of no easy access to back of property. Damaged material & new material must be wheelbarrowed to & from truck. (Ft. approx. 75')</i>			
<i>* Only easy access to rear is through the back of yard on neighbors property to left of Jim Finebaugh's property.</i>			
①	Labor for Picard easy to remove damaged & build new feet.		\$215.00 \$215.00
②	Labor for easy access to remove damaged & build new feet.		\$158.00
<i>Material must be paid in advance!</i>			
<i>Note:</i>			

ESTIMATE SHEET and REPAIR ORDER

This estimate is based on our inspection and does not cover additional material or labor which may be required after the work has been started. After the work has started, damaged material which was not evident on first inspection, may be discovered. Naturally this estimate cannot cover such contingencies. This estimate is for immediate acceptance. Estimates and pricing on material is only valid for 30 days from date signed.

NOTE: Please see opposite side for "Notice of Cancellation"

This work authorized by: _____

TOTALS

6% SA Tax

4 50

GRAND TOTAL

79 50 373 00

ASSOCIATE
LINDA C. LEWIS

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
MARINO BUILDING
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@iqnetsys.net

January 15, 2004

Marcy Kelley, Deputy Court Adm.
Office of Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: McHugh vs. Zazworsky
No. 03-1114-CD

Dear Ms. Kelley:

Enclosed is Plaintiffs' Pre-Trial Statement. By copy of this letter, I am forwarding same to counsel of record.

Sincerely,

James A. Naddeo

James A. Naddeo

JAN/jlr

Enclosure

cc: David C. Mason, Esquire (w/ enc.)

RECEIVED

JAN 15 2004

**COURT ADMINISTRATOR'S
OFFICE**

ASSOCIATE
LINDA C. LEWIS

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
MARINO BUILDING
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@iqnetsys.net

April 6, 2004

Marcy Kelley
Deputy Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

RE: McHugh vs. Zazworsky
No. 03-1114-CD

Dear Ms. Kelley:

Enclosed is Plaintiffs' Pre-Trial Statement. By copy of this letter, I am forwarding same to counsel of record.

Sincerely,

James A. Naddeo
James A. Naddeo

JAN/jlr

Enclosure

cc: David C. Mason, Esquire (w/ enc.)

RECEIVED

APR 06 2004

COURT ADMINISTRATOR'S
OFFICE

Leave over margin

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

JAMES M. McHUGH and
MARIE E. McHUGH,
husband and wife,
Plaintiffs,

v.

ANN ZAZWORSKY,
an individual,
Defendant.

No. 03-1114-CD

* Type of Pleading:

PRE-TRIAL MEMORANDUM

* Filed on behalf of:
* Plaintiffs

* * Counsel of Record f

* James A. Nadeo, Esq.
* Pa I.D. 06820

* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

RECEIVED

APR 06 2004

COURT ADMINISTRATOR'S
OFFICE

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

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

PRE-TRIAL MEMORANDUM

NOW COME the Plaintiffs, JAMES M. McHUGH and MARIE E. McHUGH, and by their attorney, James A. Naddeo, Esquire, set forth the following:

I. Factual Statement.

On or about June 2, 2003, Plaintiffs were the owners of a piece or parcel of land more fully described in a Deed to Plaintiffs dated March 20, 1993, and recorded in Deed Book 519, Page 510. Plaintiffs' property had various improvements including two fire pits constructed on the Southwest corner of their property. These fire pits were in place at the time Plaintiffs purchased the property and were regularly used by them from 1993 up to and including June 2, 2003.

On or about June 2, 2003, Defendant entered upon Plaintiffs' property and demolished the Plaintiffs' fire pits. Plaintiffs initiated an action through the district magistrate

to recover damage for the destruction to their property. Judgment was entered by the magistrate in favor of Plaintiffs in the amount of \$3,865.54. An appeal from the judgment was filed by Defendant on July 31, 2003.

Plaintiff filed a Complaint in Ejectment on August 20, 2003. In addition to ejectment, Plaintiffs' Complaint included counts for compensatory as well as punitive damages.

II. Exhibits.

A. Survey map prepared by Hess & Fisher. See attached.

B. Report of Wilson Fisher, Jr., PE, dated April 3, 2003. See attached.

C. Bill for engineering services.

D. Estimate to replace fire pits.

E. Photographs. See attached.

III. Witnesses.

A. James M. McHugh, 110 Church Street, Smithmill, PA 16680 - damage/liability.

B. Marie E. McHugh, 110 Church Street, Smithmill, PA 16680 - damage/liability.

✓C. Wilson Fisher, Jr., PE, 36 North Second Street, Clearfield, PA 16830 - damage/liability.

D. L.R. Day, Smithmill, PA - damage/liability.

E. ✓ Mary Moskel, 129 Gates Avenue, Indiana, PA 15701 -
liability.

F. ✓ Terry and Anna Mae Glasgow, Smithmill, PA 16680 -
liability.

IV. Legal Theory.

Plaintiffs contend that they have a right to immediate and exclusive possession of the property acquired by them in March 1993. Accordingly, Plaintiffs are entitled to a writ ejecting Defendant from the property described in the Hess & Fisher survey.

Defendant's conduct in entering upon Plaintiffs' property and destroying the improvements located thereon constitutes a willful and malicious trespass. Plaintiffs will seek both compensatory and punitive damages.

V. Damages.

- A. Cost of restoring fire pits - \$452.50.
- B. Survey cost - \$2,678.54.
- C. Punitive damages - unliquidated.

VI. Extraordinary Evidentiary Problems.

None

VII. Stipulations.

Cost of rebuilding fire pits and survey costs.

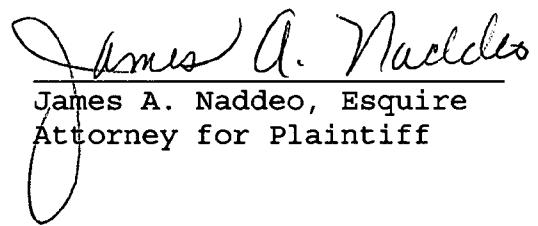
VIII. Special Points for Charge.

None

IX. Estimated Time for Trial.

One (1) day

Respectfully submitted,


James A. Naddeo, Esquire
Attorney for Plaintiff

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

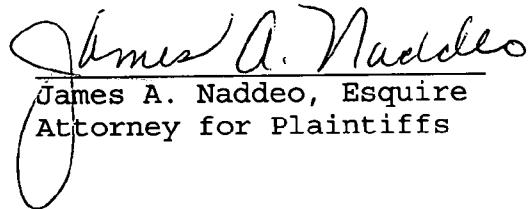
JAMES M. McHUGH and *
MARIE E. McHUGH, *
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v. * No. 03-1114-CD
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an individual, *
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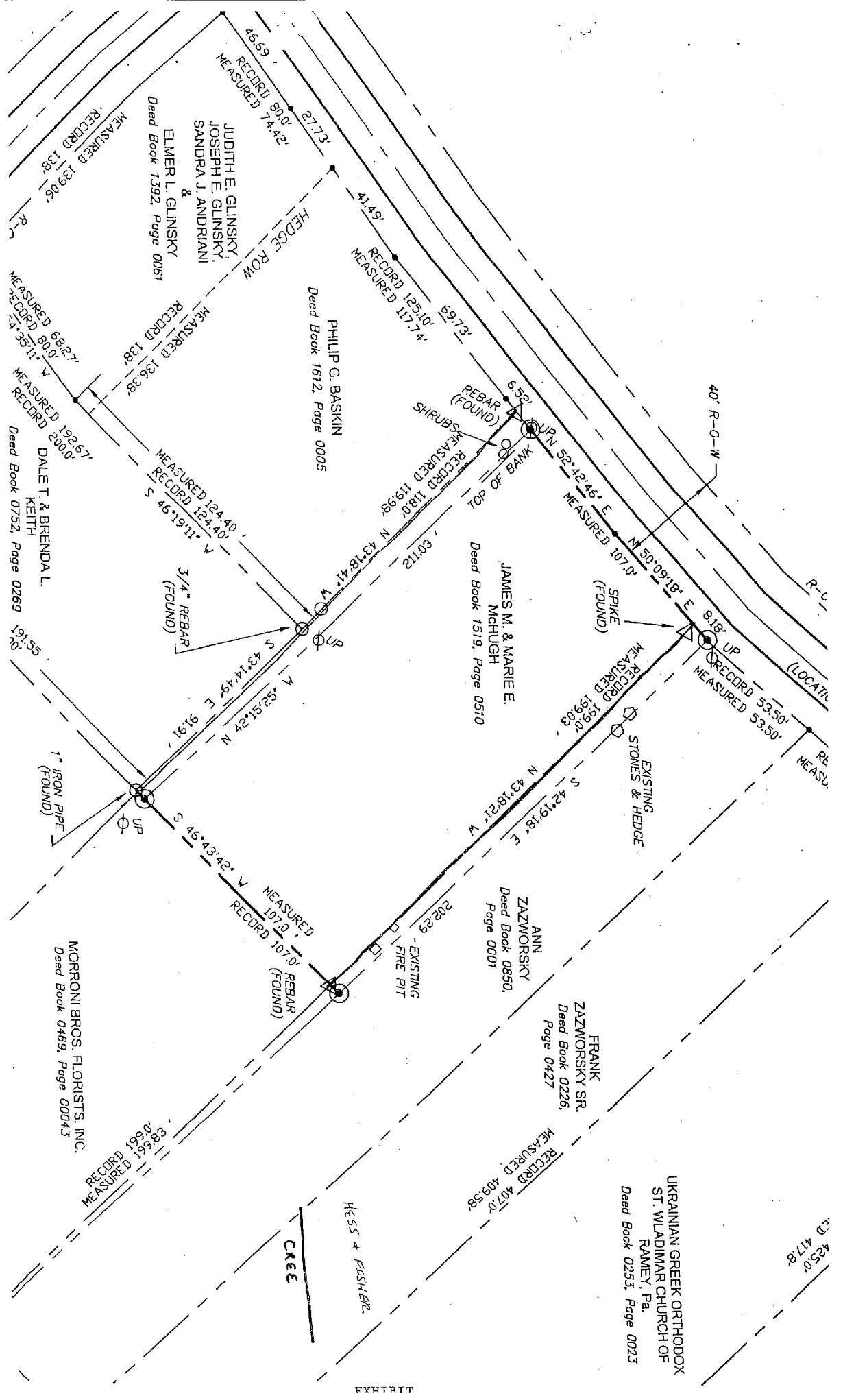
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiffs' Pre-Trial Memorandum filed in the above-captioned action was served on the following person and in the following manner on the 6th day of April, 2004:

First-Class Mail, Postage Prepaid

David C. Mason, Esquire
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866


James A. Naddeo, Esquire
Attorney for Plaintiffs



HESS & FISHER ENGINEERS, INC.

Professional Engineers since 1919

36 NORTH SECOND STREET
CLEARFIELD, PA 16830

April 3, 2003

814-765-7541
800-720-7541
FAX 814-765-6488
www.hessfishereng.com

Mr. James McHugh
P. O. Box 302
Smithmill, PA 16680

Re: Property Boundary
Retracement Survey

Dear Mr. McHugh:

As a follow-up to our various discussions as supported by our research and field survey measurements, which included location of monuments and possession evidence within your neighborhood, we're pleased to provide you with the attached retracement survey map, plus the following facts and observations to support and substantiate our conclusions.

The preponderance of the evidence supports our findings, as developed from your neighborhood as well as the easterly and westerly side of your property, along Church Street, as:

1. To the west of your property and between the Baskin lot and that owned by Glinsky and others is a well-established hedgerow. Deed records and survey maps call for the hedgerow separating the two properties as a monument. The hedgerow still exists and provides an excellent point of reference. (See attached Orange Mulhollen's survey map, plus the deed of Baskin).
2. In a discussion on April 5, 2003 with Mary Louis Moskel, the daughter of Lucy Barto [Mrs. Barto being the predecessor in title to your property], Mrs. Moskel mentioned that her mom's brother had a trailer on the ground now owned by Ann Zazworsky and it was always understood by the family that the hitch of uncle's trailer was at or over the property line onto her mother's property by approximately 1 foot. [The old photograph that you have of you in front of your pickup truck and the trailer in the background gives credence to this observation.]

However, since it was Mrs. Barto's brother, it was not an issue. Mary acquired the trailer from her uncle, through inheritance. She subsequently sold it to Ann Zazworsky when Ann moved back to the neighborhood. She and Annie were playmates throughout their childhood and grew up together. The Zazworsky's lived on the east side of the Uncle. Unfortunately, the Zazworsky homestead deteriorated so when Ann moved back to the area upon her retirement, she acquired the trailer and subsequently placed a double-wide on the property.

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3. To the east, along the township road, George Mandrick has two well-aged and established corner monuments that fit extremely well with his deed call, as well as his observation as a long-term resident that those are indeed his long-standing corners. These monuments are consistent with those called for in his deed (1968), plus the survey of Bernard Lucas Associates (1968) [see attached].
4. The property owned by Metro Betza, immediately west of George Mandrick's property was acquired by Betza in 1921 (see attached deed). Mr. Betza's property was surveyed, along with that of the Ukrainian Orthodox Church and the Ukrainian Citizen's Club, [the Church and Club properties were apparently partitioned at that time] by Bernard Lucas and

Associates in 1966 (see attached survey map). Our findings are consistent with the record, with the minor exception of the distance along the southern property bound (+3.22 ft. deviation from the record).

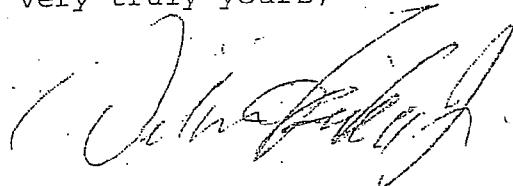
5. Holding the hedgerow, Mandrick's monuments, Betza and the Ukrainian Church, we've reconstructed the properties along the township road (including yours) consistent with the deed calls (record), and our field measurements of possession evidence. There are slight distance and bearing variations between the record and field measurements, but not beyond expectations relative to the precision of measurements made by earlier surveyors with their optical equipment.
6. The possession evidence along your property line with Baskin supports the line location at the top of the bank created by the cut excavation for Mr. Baskin's driveway. There is an old utility pole at the top of the bank, which is very close to the property line. The survey map prepared by Mulhollen supports that conclusion. Also, common driveway/road construction practice is to possess to the top of the bank or cut slope for maintenance needs.
7. Reconstruction of the various property metes and bounds along the township road also clarifies the location of the property line metes and bounds for the Morroni Brothers property, directly south of the Keith property, i.e. your extended property line along Baskin and Keith as it progresses between two Morroni parcels.
8. Whereas, the survey reconstruction efforts by George and Clark Cree are consistent with the principals of land surveying by location of monuments and of possession evidence, the origin of Cree's survey was to the south within an undeveloped and unoccupied portion of the neighborhood. The Cree's gave a significant credence and weight to monuments found there and used them to extrapolate property lines into the developed neighborhood to the north.

Lacking other evidence in the neighborhood, this approach is reasonable. However, we've spent time and effort within the neighborhood seeking out and locating monumentation and possession evidence established by many years of occupancy and understanding between owners of the developed properties. We thereby believe that our findings have greater merit and weight.

9. Various possession evidence internal to the neighborhood fits our reconstruction, as: (a) The Baskin driveway and cut bank to the McHugh property, (b) The possession evidence along the eastern side of the McHugh property, (c) Morroni's Greenhouse on its own property, and (d) The Downs' house on its own property.

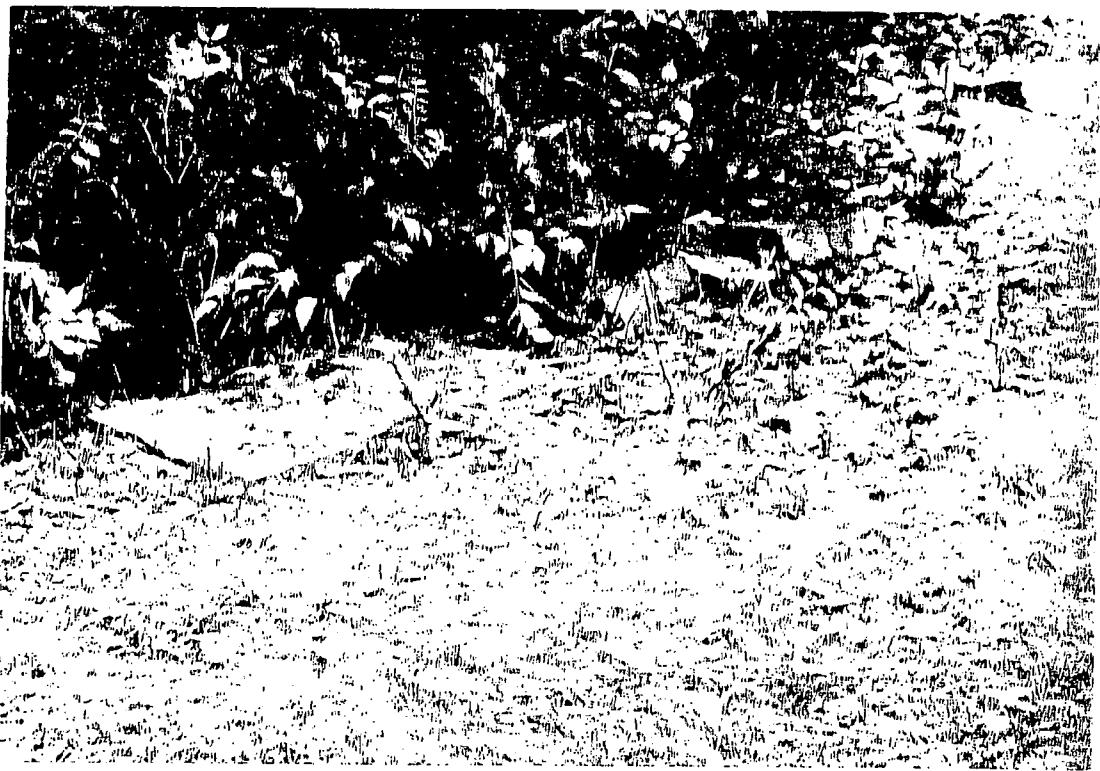
If you have any questions, please call..

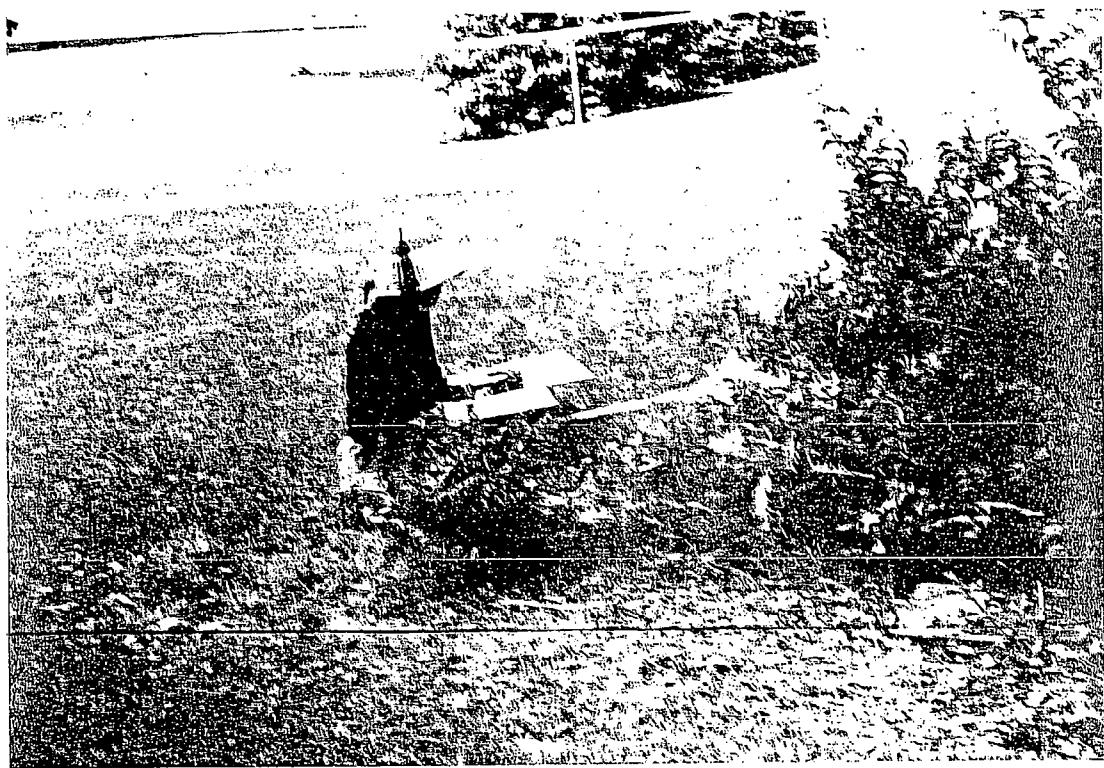
Very truly yours,

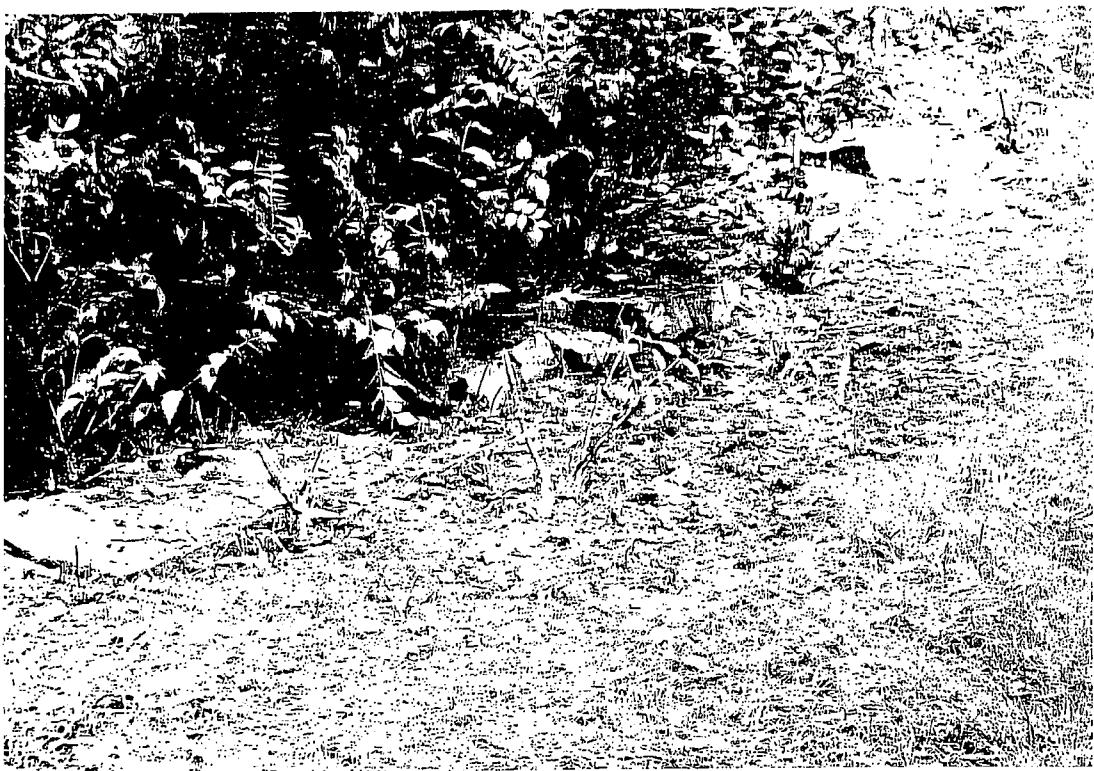


Wilson Fisher, Jr.
P.E., P.L.S.

WF:tlc
cc: Clark Cree, PLS
File ✓
Mydoc.McHugh.PRJ









Fax

To: Atty. James Naddedo **From:** Marie & Jim McHugh
Fax: 765-8142 **Pages:** 2 including cover sheet
Phone: **Date:** 1/14/2004
Re: Estimate for fire pits **CC:**

Urgent For Review Please Comment Please Reply Please Recycle

Attached is the estimate for the fire pits from R.L. Daye. If you have any questions, please call me at 378-8131 or 378-6074.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

vs.

ANN ZAZWORSKY,
an individual

Defendant

* TYPE OF PLEADING: DEFENDANT'S
* PRE-TRIAL MEMORANDUM

* FILED ON BEHALF OF: Defendant

RECEIVED

JAN 16 2004

**COURT ADMINISTRATOR'S
OFFICE.**

**COUNSEL OF RECORD FOR THIS
PARTY:**

David C. Mason

Superior Court I.D. 39180

DAVID C. MASON LAW OFFICE

P.O. Box 28

Philipsburg PA 16866

(814) 342-2240

COUNSEL OF RECORD

PLAINTIFFS;

James A. N.

PA. I.D. #06820

211 1/2 East Locu

PO Box 552

Clearfield, P

(814) 765-1601

(314) 763-1637

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

*
* No. 03-1114-CD
*
*

Plaintiffs,

*

vs.

*

ANN ZAZWORSKY,
an individual

*

Defendant

*

PRE-TRIAL MEMORANDUM
OF DEFENDANT

I. FACTS:

Plaintiffs and Defendant have a dispute over a property line. Each has had his property surveyed and the surveyors have arrived at different conclusions. Attached to Defendant's Pre-Trial Statement is a copy of the survey conducted by Clark Cree in September of 2001. This survey differs substantially from that performed by Hess and Fisher in April of 2003 for the Plaintiff.

This disputed area is occupied by two (2) "fire pits" where the Plaintiffs burn their trash up-wind from the Defendant's residence.

II. WITNESSES:

1. Anna Zazworsky
P. O. Box 235
Smithmill, PA 16680

2. Clark C. Cree, PLS
2417 Skyline Drive
Fallentimber, PA 16639

Defendant reserves the right to supplement this list upon reasonable notice to the Court and opposing counsel as additional individuals become identified through Discovery.

III. EXHIBITS:

1. Map, deeds of record, copies of other surveys, and other documents which may be developed during the Discovery of this case.

IV. LEGALTHEORY:

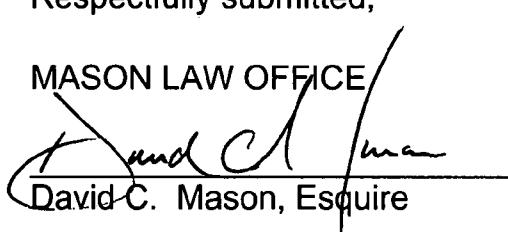
Defendant believes that this matter should be set down for trial as late as possible to enable the parties to engage in Discovery or meaningful settlement negotiations.

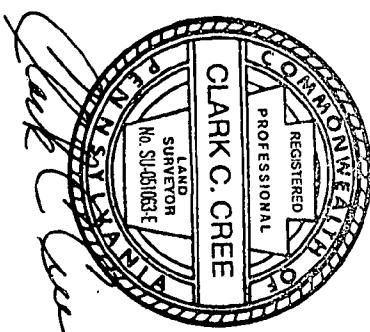
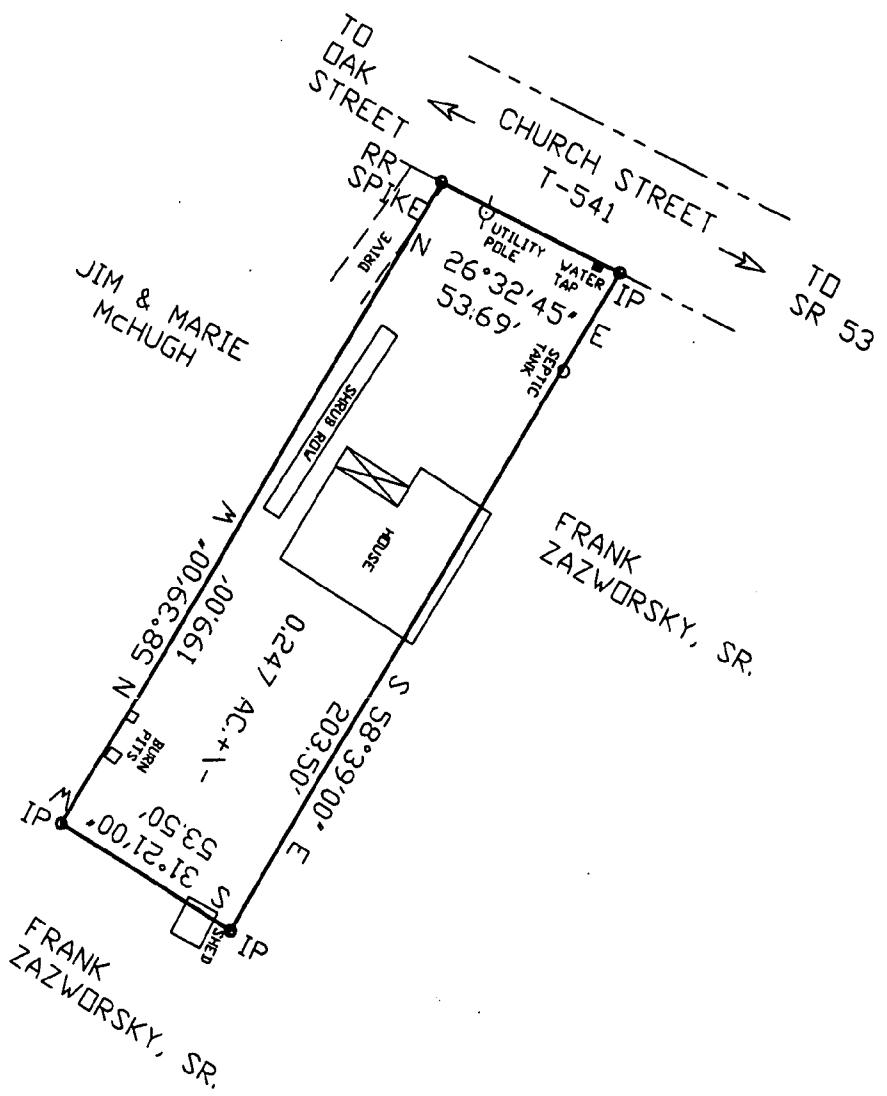
VI. TIME FOR TRIAL:

One-half (1/2) day.

Respectfully submitted,

MASON LAW OFFICE


David C. Mason, Esquire



Survey of Land for Ann Zazworsky			
Situate:	Gulich Township Clearfield Co., Penna.	Scale: 1"=50'	Drawn by: CCH FB#276
Prepared by:	GEORGE A. CREE, REGISTERED SURVEYOR 2417 SKYLINE DRIVE, FALLENTIMBER, PA 16639		
Date:	9/27/01	Job No. BF98301	

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

*
* No. 03-1114-CD
*
*

Plaintiffs,

*
*
*

vs.

*
*
*

ANN ZAZWORSKY,
an individual

Defendant

*
*
*

* TYPE OF PLEADING: CERTIFICATE OF
* SERVICE

*

* FILED ON BEHALF OF: Defendant

*

*

* COUNSEL OF RECORD FOR
* THIS PARTY:

* David C. Mason, Esq.
* MASON LAW OFFICE
* Supreme Court No. 39180
* P. O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240
*

* COUNSEL OF RECORD FOR PLAINTIFFS

* James A. Naddeo, Esquire
* PA. I.D. #06820
* 211 ½ East Locust Street
* PO Box 552
* Clearfield, PA 16830
* (814) 765-1601

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

vs.

ANN ZAZWORSKY,
an individual

Defendant

*
*No. 03-1114-CD

*

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*

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of **PRE-TRIAL MEMORANDUM OF DEFENDANT** filed to the above captioned action, by faxing the same and also placing the same in the United States mail, postage prepaid and addressed as follows:

James A. Naddeo, Esquire
211 ½ East Locust Street
P.O. Box 552
Clearfield, PA 16830

DATED: 1-16-04

MASON LAW OFFICE

BY: 

David C. Mason, Esquire

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

PRE-TRIAL STATEMENT

I. FACTS:

Plaintiffs have instituted this civil action seeking ejectment of the Defendant from a disputed strip of land, about 2 feet wide, and also seeking monetary damages in the approximate amount of \$450.00. Each party has had their property surveyed and the surveyors have arrived at different conclusions. Defendant's counter-claim is in the nature of an action to quiet the title to the disputed strip of land.

Attached to Defendant's Pre-Trial Statement is a copy of the survey conducted by Clark Cree in September of 2001 and the report of Mr. Cree dated March 16, 2004. This survey differs substantially from that performed by Hess and Fisher in April of 2003 for the Plaintiff.

This disputed area is occupied by two (2) "fire pits" where the Plaintiffs burn

their trash up-wind from the Defendant's residence, and Defendant is alleged to have destroyed the pits by knocking over the stacked cinder blocks.

II. WITNESSES:

1. Anna Zazworsky
P. O. Box 235
Smithmill, PA 16680

2. Clark C. Cree, PLS EXPERT REPORT ATTACHED.
2417 Skyline Drive
Fallentimber, PA 16639

Defendant reserves the right to supplement this list upon reasonable notice to the Court and opposing counsel as additional individuals become identified through Discovery.

III. EXHIBITS:

1. Map of the survey prepared by Clark Cree, report of Clark Cree, deeds of record, copies of other surveys, photographs of the area.

IV. LEGAL THEORY:

Plaintiff has the burden of proving, by a preponderance of the evidence, that their title to the disputed strip of land is superior to that of the Defendant. Defendant's surveyor and expert is expected to testify at trial in accordance with the written letter (attached) setting forth his research, reasoning and conclusions that the survey on which Plaintiff relies is erroneous, and Defendant is the owner of the

disputed tract.

TIME FOR TRIAL: One day.

Respectfully submitted,

MASON LAW OFFICE



A handwritten signature in black ink, appearing to read "David C. Mason, Esquire". The signature is fluid and cursive, with "David" and "C." on the left, "Mason" in the middle, and "Esquire" on the right. A horizontal line is drawn through the signature.

C:\Office\COURT\ZAZWORSKYPRETRIALSTMT040504.wpd\b:b

GEORGE A. CREE

Registered Surveyor
2417 Skyline Drive
Fallentimber, PA 16639
814-687-4257
March 12, 2004

David C. Mason, Esq.
409 North Front Street
P.O. Box 28
Philipsburg, PA. 16866

RE: Ann Zazworsky Boundary Survey

Dear Sir:

I am writing this letter in response to your request to prepare a letter outlining the basis for the survey I prepared for Ann Zazworsky.

In my research for deeds and surveys in this area, I found many surveys including the following:

No.	Owner	Parcel #	Surveyor	Date
1.)	V.F.W. Building	23	Orange L. Mulhollen	7/12/76
2.)	Morroni Bros. Florists, Inc.	58	George A. Cree	9/22/87
3.)	Elmer & Betty Glinsky	21	George A. Cree	8/18/94
4.)	Edward Bardi	30	Clark C. Cree	5/15/00
5.)	Henry Kemp	31	John A. Morroni	7/07/81
6.)	Dale & Brenda Keith	41	Hess & Fisher Engrs.	7/12/83
7.)	Morroni Bros. Florists, Inc.	various	George A. Cree	6/14/84
8.)	Raymond Massini	40	George A. Cree	5/25/94

(See attached partial copy of the tax map for the location of these parcels.)

To begin, the survey by Orange Mulhollen of the V.F.W. Building on Main Street was used with other information to prepare the Morroni Bros. Florists, Inc. survey by George A. Cree for parcel shown as # 58. This survey with additional deed information was also used by Mr. Cree to prepare the survey for Elmer & Betty Glinsky dated 8/18/94 on parcel # 59.

In addition to these surveys, I prepared a survey for Edward Bardi using these surveys and another one prepared by John Morroni for parcel # 31. All of these surveys have been tied together throughout the course of surveying in this area by the Cree Surveying Company.

This information also ties together with the deeds of record and field evidence to the survey of Dale & Brenda Keith, which was surveyed by Hess & Fisher Engrs. on July 12, 1983. The survey map, as well as the written description prepared by Hess & Fisher Engrs., shows the southern boundary of the Keith survey coinciding with the tract line between the D.K. Ramey Estate and the Flynn Estate. All of the surveys previously mentioned, also match extremely well with this line.

This same survey was tied into the survey for the Morroni Bros. Florists, Inc. by George A. Cree in June of 1984. At that time, existing fence and stone rows existed on the south and west lines of the Morroni property that also matched the deeds of record and the previously mentioned survey of Dale & Brenda Keith. The survey of the Morroni Bros. property also shows a partial location of the Morroni greenhouses. This location shows that the greenhouses did, in fact, encroach onto the Zazworsky property at that time. Mr. Morroni informed us at the time of this survey that he was aware of the encroachment, and it was not a problem with the neighbor.

In May of 1994, George A. Cree surveyed the Massini property. Mr. Massini was the predecessor in title to the current owner, Mr. Philip Baskin. At the time of this survey, the existing corners along the Keith parcel were still in place, and the hedge row along the Glinsky property was located along the line but inside the property of Massini. Again, this survey is in agreement with all of the surveys found in that area to that date.

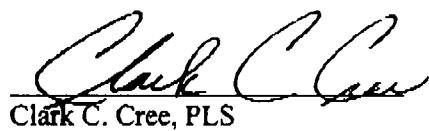
Based on all of this information, it would seem that the boundary line between the McHugh property and the Keith and Baskin property should be fixed as it existed in 1983, as shown on the Hess & Fisher survey and as shown on the survey of Morroni Brothers prepared by George Cree.

The additional information found by Hess & Fisher Engineers, Inc. as shown on their plan dated 4/4/03, shows two existing points found on the property of George & Margaret Mandrick. As this area of the town was developed after the portion involving the McHugh property, I am not sure what can be proven by this location. At a previous meeting with Mr. Fisher, he showed me a map of this undeveloped area with different distances than that of the deeds of record. This map, and its differences with the deeds of record, may show the reason for this discrepancy.

In any case, this information would not change the location of the D. K. Ramsey / Flynn tract line. Nor would it change the location of the Keith, Morroni Brothers, or Massini surveys as noted earlier in this letter.

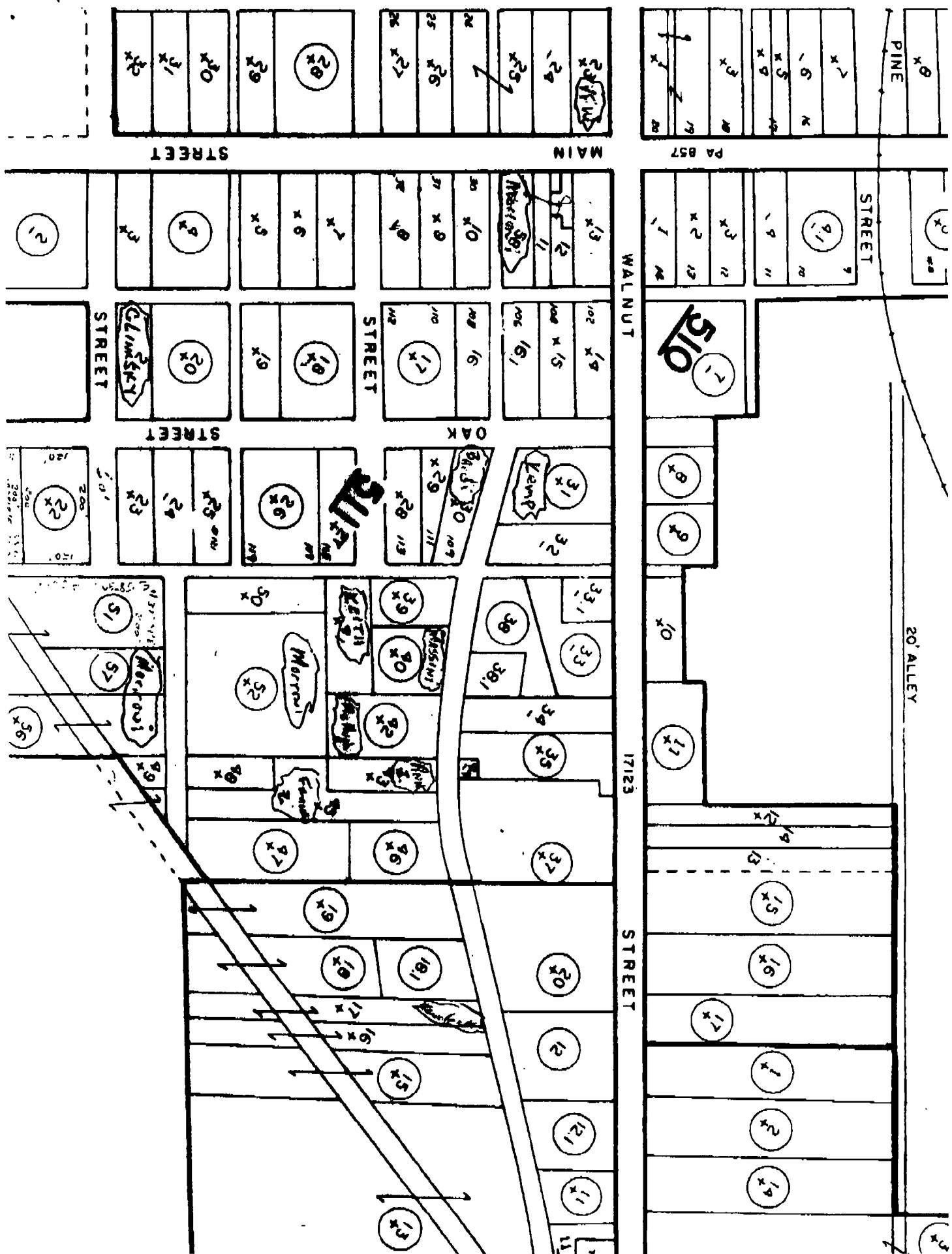
If you have any questions regarding this information, please feel free to contact me.

Sincerely,



Clark C. Cree

Clark C. Cree, PLS



DAVID C. MASON

Attorney at Law

409 NORTH FRONT STREET
P.O. Box 28
PHILIPSBURG, PENNSYLVANIA 16866
(814) 342-2240
FAX (814) 342-5318

April 8, 2004

Dave Meholick
Court Administrator
Clearfield County Courthouse, Suite 228
230 E. Market Street
Clearfield, PA 16830

In RE: McHugh v. Zazworsky
No. 03-1111-CD

Dear Dave:

Enclosed please find an original and one copy of the Pre-Trial Statement relative to the above captioned matter.

Very truly yours,

MASON LAW OFFICE



David C. Mason

DCM:blb
cc James A. Naddeo, Esquire

RECEIVED

APR 12 2004

COURT ADMINISTRATOR'S
OFFICE

FAX COVER SHEET

MASON LAW OFFICE
DAVID C. MASON, ESQUIRE
P.O. BOX 28, PHILIPSBURG, PA. 16866
TELEPHONE: (814) 342-2240
FAX: (814) 342-5318
Email: dmason@masonlawoffice.com

RECEIVED
4-1-04

DATE: 6-1-04

TIME: 11:50 A.M.

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Honorable Paul E. Cherry

FAX NUMBER: 765-7649

IN RE: McHugh v. Zajworsky

TOTAL NUMBER OF PAGES BEING SENT 5 (INCLUDING COVER SHEET)

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL THE PERSON BELOW
AS SOON AS POSSIBLE.

BARB

KAITY

KATHY

COMMENTS: _____

DAVID C. MASON

Attorney at Law

409 NORTH FRONT STREET
P.O. Box 28
PHILIPSBURG, PENNSYLVANIA 16866
(814) 342-2240
FAX (814) 342-5318

June 1, 2004

VIA FAX: 765-7649

Honorable Paul E. Cherry
Judge's Chambers
Clearfield County Courthouse
Clearfield, PA 16830

In Re: McHugh v. Zazworsky
No. 03-1114-CD

Dear Judge Cherry:

Enclosed please find Defendant's Trial Brief relative to the above captioned action. By copy of this letter, I am also providing a copy of the brief to Attorney Naddeo.

Very truly yours,

MASON LAW OFFICE



David C. Mason

DCM:bib
Enclosures
cc James A. Naddeo, Esquire
via fax: 765-8142
Ann Zazworsky

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

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

*
* No. 03-1114-CD

Plaintiffs,

vs.

ANN ZAZWORSKY,
an individual

Defendant *

TRIAL BRIEF

AND NOW comes the Defendant by and through her attorney and files the following Trial Brief in anticipation of trial on June 14, 2004.

BACKGROUND:

Plaintiff and Defendant are owners of adjoining lots in the Village of Smithmill, Gulich Township, Clearfield County, Pennsylvania. Each of the parties has retained a surveyor to establish the boundary line between the two lots. The surveys resulted in an overlap of 8.18 feet near the two homes, narrowing to 1.26 feet at the rear of the lot. Plaintiff filed an action in ejectment and Defendant filed an Answer and Counterclaim in the form of an Action to Quiet Title.

DISCUSSION:

The question of what is a boundary line is a matter of law, but where a

boundary line is actually located is a question for the trier of fact. Corbin v. Cowan, 716 A.2d 614, 1998 Pa. Super. A use will be deemed to be permissive in a variety of situations involving familial or fiduciary relationships. Where a familial relationship exists between the parties the use of the disputed land is not hostile. Where a familial relationship exists permissive use will be presumed. Watkins v. Watkins 775 A.2d 841, Pa. Super 2001.

The above points of law are not intended to be persuasive but rather adjudicative. The Court's decision will be based upon the testimony of the surveyors whose opinions conflict.

Respectfully submitted,

MASON LAW OFFICE


David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

*No. 03-1114-CD

Plaintiffs,

vs.

ANN ZAZWORSKY,
an individual

Defendant

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of **DEFENDANT'S TRIAL BRIEF** filed to the above captioned action, by faxing the same and also placing the same in the United States mail, postage prepaid and addressed as follows:

James A. Naddeo, Esquire
211 1/2 East Locust Street
P.O. Box 552
Clearfield, PA 16830

DATED: 6-1-04

MASON LAW OFFICE

BY:

David C. Mason, Esquire

DAVID C. MASON

Attorney at Law

409 NORTH FRONT STREET
P.O. Box 28
PHILIPSBURG, PENNSYLVANIA 16866
(814) 342-2240
FAX (814) 342-5318

June 1, 2004

RECEIVED
JUN 3 2004

VIA FAX: 765-7649

Honorable Paul E. Cherry
Judge's Chambers
Clearfield County Courthouse
Clearfield, PA 16830

In Re: McHugh v. Zazworsky
No. 03-1114-CD

Dear Judge Cherry:

Enclosed please find Defendant's Trial Brief relative to the above captioned action. By copy of this letter, I am also providing a copy of the brief to Attorney Naddeo.

Very truly yours,

MASON LAW OFFICE

David C. Mason

David C. Mason

DCM:blb
Enclosures
cc James A. Naddeo, Esquire
via fax: 765-8142
Ann Zazworsky

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JAMES M. MCHUGH and
MARIE E. MCHUGH,
husband and wife,

Plaintiffs,

*
* No. 03-1114-CD
*
*

vs.

ANN ZAZWORSKY,
an individual

Defendant

TRIAL BRIEF

AND NOW comes the Defendant by and through her attorney and files the following Trial Brief in anticipation of trial on June 14, 2004.

BACKGROUND:

Plaintiff and Defendant are owners of adjoining lots in the Village of Smithmill, Gulich Township, Clearfield County, Pennsylvania. Each of the parties has retained a surveyor to establish the boundary line between the two lots. The surveys resulted in an overlap of 8.18 feet near the two homes, narrowing to 1.26 feet at the rear of the lot. Plaintiff filed an action in ejectment and Defendant filed an Answer and Counterclaim in the form of an Action to Quiet Title.

DISCUSSION:

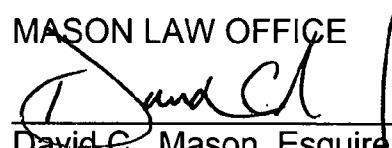
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The above points of law are not intended to be persuasive but rather adjudicative. The Court's decision will be based upon the testimony of the surveyors whose opinions conflict.

Respectfully submitted,

MASON LAW OFFICE


David C. Mason, Esquire

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

JAMES M. MCHUGH, et al.

:

VS.

: NO. 03-1114-CD

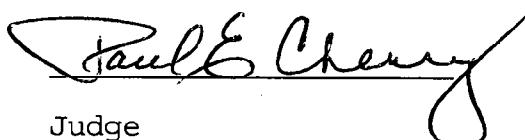
ANN ZAZWORSKY

:

O R D E R

NOW, this 14th day of June, 2004, following testimony taken in the above-captioned matter, it is the ORDER of this Court that counsel supply the Court with proposed Findings of Fact, Conclusions of Law and letter brief within twenty (20) days following receipt of the transcript.

BY THE COURT:



Judge

FILED

JUN 15 2004

William A. Shaw
Prothonotary

FILED

0 10:25 AM 2004
3cc to attorney
1 cc to May, Mason

JUN 15 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED

cc
Law
Library

MAY 27 2005

cc

Atlys:

William A. Shaw Mason
Prothonotary/Clerk of Courts Radle
D. Mikesell

(6K)

JAMES M. MCHUGH and
MARIE E. MCHUGH,
Husband and Wife,
Plaintiffs:

v.

No. 03-1114-CD

ANN ZAZWORSKY,
an individual,
Defendant.

O P I N I O N

This action comes before the Court as a result of a dispute between adjacent landowners James M. and Marie E. McHugh (Plaintiffs) and Ann Zazworsky (Defendant) concerning the location of the boundary line between the parties' respective properties located facing Church Street in Smithmall, Pennsylvania. Specifically, at issue is a portion of the border area extending the length of the respective properties from Church Street to the rear of the parties' respective properties (the disputed property). Located within this disputed strip of land is a stone wall, some vegetation consisting of Trumpet Vines and a line of Rose of Sharon bushes and the remnants of two "burn pits" that existed until June of 2003. Plaintiffs maintain that the stone wall, row of Rose of Sharon bushes and Trumpet vines are placed in such a manner as to demarcate the border between the properties (this line advocated for by Plaintiffs is hereafter referred to as "the Line"), thereby making the strip of land Plaintiffs' property and by extension locating the burn pits on Plaintiffs' property.

The Court scheduled this matter for a non-jury trial to be held on Monday, June 14 2004. Evidence adduced at trial consisted of testimony from Mary Moskel (the previous owner of the

properties in question), from James M. McHugh (Plaintiff-Husband), as well as the surveyors employed by Plaintiffs and Defendant. In addition to the parties' initial argument concentrating on competing surveys of the properties conducted at their request, Plaintiffs also argued for the recognition of the Line as a lawful boundary established via the doctrine of consentable line.

Subsequent to the conveyance of the parcels to each party, both properties in question were owned by Mary Moskel.¹ Plaintiffs purchased the property located at 110 Church Street, Smithmall, Pennsylvania from Mrs. Moskel on June 14, 1990; Defendant subsequently purchased the adjoining property.²

Testimony established at trial that sometime either in 2000 or 2001 Defendant first approached Plaintiffs and voiced a claim of ownership over the section of property at issue in this case. Plaintiff-Husband testified that at that time Defendant indicated she had engaged a firm to conduct a survey of her property and said survey (conducted by Mr. Clark C. Cree) indicated that the disputed section of property was in fact owned by her. Plaintiff-Husband testified that he indicated to Defendant that Plaintiffs intended to have a counter-survey conducted and that would not consider settled until a later point in time. Plaintiff-Husband further testified that even after this discussion in 2000 or 2001, Plaintiffs continued to utilize the disputed property in the same manner as they had previously, including using the burn pits to dispose of debris. This continued until 2003.

On or about June 2, 2003, Defendant entered the disputed section of property and demolished the two fire pits contained thereon. Plaintiffs subsequently initiated an action in Magisterial District Judge James L. Hawkins' court to recover for the destruction of the fire pits,

¹ It was established at trial that Mrs. Moskel inherited title to the property owned by Plaintiffs from her parents. She also inherited title to what is now Defendant's property from her uncle.

² The Court's examination of the record fails to indicate exactly when Defendant purchased the property at issue. It is apparent, however, that the purchase took place subsequent to the purchase of the McHugh parcel in 1990.

which Plaintiffs claim lay on their property. District Judge Hawkins granted judgment in favor of Plaintiffs in the amount of \$3,865.54³; Defendant appealed to the Clearfield County Court of Common Pleas on July 31, 2003.

Plaintiff commenced the present action on August 20, 2003 by filing a complaint containing a count for ejectment, as well as a count for compensatory damages for the reconstruction of the fire pits, a land survey and a count for punitive damages. For the following reasons the Court FINDS that the disputed section of property is in fact owned by Plaintiffs and therefore partially GRANTS Plaintiffs their requested relief. Plaintiffs' request for ejectment is HEREBY GRANTED, as is Plaintiffs request for compensatory damages in the amount of \$504.54, representing the replacement costs of the fire pits; Plaintiff's requests for compensatory damages for the costs of conducting the Fisher Survey and punitive damages are however, DENIED.

As noted, each party commissioned a survey of their respective properties. Predictably, these two surveys failed to agree as to the location of the boundary line between the parties' properties. The survey conducted on behalf of Plaintiffs (conducted by Mr. Wilson Fisher, Jr.) indicated that the boundary line was located consistent with location of the stone wall, Trumpet Vines and Rose of Sharon bushes; the survey conducted for Defendant by Mr. Cree on the other hand, indicated, as previously noted, that the boundary line was in fact several feet closer to Plaintiffs' residence and that the stone wall, Trumpet Vines, Rose of Sharon bushes and burn pits were in fact on Defendant's property.

It is the opinion of the Court that the fact that these competing surveys do not agree is, for the purpose of reaching a determination in this case, irrelevant. The Court feels that in order to

³ It appears that a breakdown of the award by District Judge Hawkins can be made as follows: an award of \$452.50 to compensate Plaintiffs for the costs of replacing the fire pits and an award of \$3,269.39 to compensate them for incurring the land survey.

reach a determination as to where the Line lay, it need look no further than the doctrine of consentable lines. The Court feels that, relying one the evidence adduced at trial, the boundary line between the parties' properties is located in a position as claimed by Plaintiffs, i.e. as demarcated by the stone wall, Trumpet Vines and Rose of Sharon bushes planted by Mr. Moskel's mother prior to 1961.⁴ In short, the Line is as Plaintiffs maintain it has been since at least 1961 and the burn pits therefore were (and currently are) on Plaintiffs' property.

There are two ways in which a boundary may be established through consentable line in Pennsylvania: (1) by dispute and compromise, or (2) by recognition and acquiescence. Schimp v. Allaman, 659 A.2d 1032, 1034 (Pa.Super. 1995). There was no evidence presented to the Court that would make the doctrine of consentable line by dispute and compromise applicable here; evidence adduced by Plaintiff at trial however, indicates that the doctrine of consentable line by recognition and acquiescence is applicable in the instant case, and it is on that basis that the Court makes its decision.

In her Proposed Findings of Fact and Conclusions of Law, Defendant attempts to rebut Plaintiffs' arguments regarding the establishment of a consentable line. She asserts that Plaintiffs have failed to prove the existence of a consentable line and argue “[that a] party who has asserted title by adverse possession must prove it affirmatively.” Interestingly enough, Defendant relies solely on the law of adverse possession to support her argument.

The Court feels that this reliance on case law pertaining to the doctrine of adverse possession is misplaced. The Court's decision is not based on the doctrine of adverse

⁴ The Court would also note that the Line is also consistent with where the Fisher survey places the disputed boundary line in this case. However, the Court is not merely adopting part of the Fisher Survey and leaving the rest. It is the Court's opinion that the Line was established with plaintiff of the Trumpet Vines and Rose of Sharon Bushes sometime prior to 1961. The fact that the Fisher Survey conforms to the Court's interpretation of the Line's location is coincidental and any reference to the line recognized in the survey is made for ease of reference (i.e. the maps are already drawn).

possession; rather, its decision to partially grant Plaintiffs' requested relief is rooted in the doctrine of consentable line. Admittedly, the two doctrines are related and to an extent are even similar, however, it is clear that they are not identical and that Plaintiffs may fulfill the requirements of the doctrine of consentable line while yet fall short of meeting the more stringent requirements of adverse possession. As the *en banc* Court explained in Niles v. Fall Creek Hunting Club, Inc., 545 A.2d 926 (Pa.Super. 1988), the doctrine of consentable line is a separate and distinct theory from that of traditional adverse possession, despite the fact that both involve a twenty-one year statute of limitation. *Id.* at 930. Here the evidence adduced at trial indicates to the Court that sometime prior to 1961 the previous owners of the parties' respective properties agreed that the boundary line between their two properties would be demarcated by the vestiges of a stone foundation (the stone wall reference previously and hereafter) as well as a line of Trumpet Vines and Rose of Sharon bushes.

The requirements for establishing a binding consentable line by recognition and acquiescence are: (1) a finding that each party has claimed the land on [his or her] side of the line as [his or her] own; and (2) a finding that this occupation has occurred for the statutory period of twenty-one years. Dimura v. Williams, 446 Pa. 316, 286 A.2d 370 (1972). It does not appear that there are any other requirements similar to the extensive prerequisites for making a successful adverse possession claim. Further, it is also not necessary that the parties specifically consented to the location of the line. Inn Le'Daerda, Inc. v. Marshall, 360 A.2d 209 (Pa.Super. 1976).

It is clear from the record that the predecessors-in-interest of the parties claimed and recognized the land on each side of the Line as their own. The testimony of Mrs. Moskel and Plaintiff-Husband established that the disputed section of property located on the side of the Line

closest to their residence (and containing the burn pits) was utilized and maintained by both the Plaintiffs and their predecessors in interest. It is clear too from the testimony at trial that the Line was first demarcated (by the recognition of the stonewall and planting of the Trumpet Vines and Rose of Sharon bushes by Mrs. Moskel's mother) sometime prior to Mrs. Moskel's leaving her parent's residence in 1961.

Aside from normal questioning under cross-examination, this evidence was not refuted by Defendant at trial. Defendant does assert in her post-trial brief that to assign a consentable line to the present circumstance would be an error and, as noted earlier, she cites to various requirements necessary to establish an adverse possession claim as barring any establishment of a consentable line in this case. However, as the Court noted previously, the doctrines of consentable line and adverse possession, while related, are distinct from one another. The burden necessary to create a consentable line is not as onerous as the one necessary to obtain title via adverse possession, and the Court believes Plaintiffs have met the requisite burden.

It is clear that the first requirement of the doctrine of consentable lines is established, i.e. the mutual recognition of the Line. In the present case the uncontested testimony of Mrs. Moskel established that her mother planted the Trumpet Vine and Rose of Sharon bushes sometime prior to 1961. Mrs. Moskel also testified that the clear intent of planting the Trumpet Vine and Rose of Sharon bushes was to supplement the stone wall and demarcate the boundary between the properties now occupied by Plaintiffs and Defendant. It is also clear from her testimony that subsequent to the planting of the vegetation by Mrs. Moskel's mother, the Line was always recognized as the boundary between the respective properties by the respective owners.

It is likewise evident from Mrs. Moskel's testimony that the second requirement of the doctrine of consentable lines has been met, i.e. that the recognition has taken place for the statutory period of 21 years. Mrs. Moskel was unable to provide an exact date at the planting of the Trumpet Vines and Rose of Sharon bushes, however, she did testify that it occurred prior to her marrying and leaving the residence in 1961. Therefore, even assuming that the vegetation was planted to demarcate the Line on the latest possible date prior to the departure of Mrs. Moskel (i.e. 1961), it is clear that the requisite statutory period of time would have run its course by 1982 at the latest.

Defendant argues that a consentable line could not have been established by virtue of the fact that the properties in question were owned by individual members of the same family at the time of the establishment of the Line. Again arguing on the basis of the doctrine of adverse possession, she argues that the fact that at the time Plaintiffs claim the Line was first recognized (i.e. by at least 1961), Plaintiffs property was owned by Mrs. Moskel's parents and Defendant's property was owned first by Mrs. Moskel's grandfather, then by her uncle and then finally by Mrs. Moskel herself. While this is true, it is not applicable to the instant case as the doctrine of consentable line is at issue, not adverse possession. In fact it would appear that the very nature of the doctrine of consentable line deems the identity of the property owners irrelevant as long as the requisite factors are met. The very nature of the doctrine centers on the avoidance of litigation and amiable settlement of disputes and is, in the Court's opinion, well suited for the settlement of familial disputes concerning property. Further, it would appear that the use of consentable lines has long been used in a familial context. Hunt v. Devlin, 8 Watts 403, 1839 WL 3602 (Pa. 1839).

It is also clear from the record that the properties in question were not occupied by the same parties for a twenty-one year period of time. Plaintiffs have occupied their residence since 1990; it would be necessary therefore for Plaintiffs to tack the periods of ownership of any predecessors-in-interest. Defendant claims that there is no privity of estate present in this case as there is no language in any deed purporting to establish the Line; therefore the establishment of a consentable line is not possible. However, it is again clear that privity of estate is not necessary, only that privity of possession is required in order to be able to tack prior periods of ownership in the context of establishing a consentable line. Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002). Since it is clear that previous owners of the properties recognized the Line, beginning at the very latest in 1961 and continuing for the requisite statutory period (i.e. 21 years), privity of possession on the part of any owner of the Plaintiffs' property clearly was present.

After a hearing of the evidence submitted over the course of the non-jury trial it is apparent to the Court that a consentable line exists in this case. It is clear from the evidence that was submitted during trial that the predecessors in interest of the parties recognized the stone wall, Trumpet Vines and Rose of Sharon bushes as clearly demarcating a line extending from Church Street and continuing to the rear of the properties in a straight line between the respective properties. Therefore, the Court issues the following Order:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES M. MCHUGH and
MARIE E. MCHUGH,
Husband and Wife,
Plaintiffs,:

v. : No. 03-1114-CD

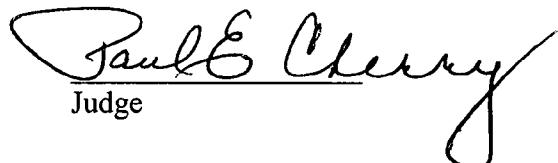
ANN ZAZWORSKY,
an individual,
Defendant.

O R D E R

AND NOW, this 26th day of May, 2005, following a non-jury trial in the above-captioned matter, the Court HEREBY FINDS AS FOLLOWS:

1. Plaintiffs Request for Ejectment is HEREBY GRANTED.
2. Plaintiffs request for compensatory damages in the amount of \$504.54 for the reconstruction of the fire pits is HEREBY GRANTED.
3. Plaintiffs request for compensatory damages to reimburse the costs of having their property surveyed is HEREBY DENIED.
4. Plaintiffs request for punitive damages is HEREBY DENIED.

By the Court


Paul E. Cherry
Judge

James A. NADDEO

CLERAFFIELD, PENNSYLVANIA 16830

207 EAST MARKET STREET

ATTORNEY AT LAW

P.O. BOX 552

— Lap over margin —

FILED

MAY 31 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES M. McHUGH and
MARIE E. McHUGH,
husband and wife,
Plaintiffs,

v.

ANN ZAZWORSKY,
an individual,
Defendant.

* No. 03-1114-CD

* Type of Pleading:

* PRAECIPE FOR ENTRY
OF JUDGMENT

* Filed on behalf of:
Plaintiffs

* Counsel of Record for
this party:

* James A. Naddeo, Esq.
Pa I.D. 06820

* 207 E. Market Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED *Atty Naddeo*
01/11/2005 pd.20.00
MAY 3 1 2005 1CC Atty Naddeo
William A. Shaw *Notice to Atty Mason*
Prothonotary/Clerk of Court *Statement to*
Atty Naddeo
(6B)

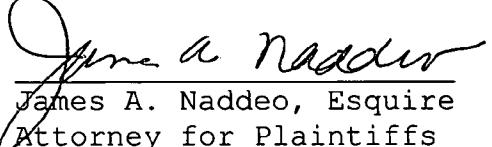
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

PRAECIPE FOR FINAL JUDGMENT

TO THE PROTHONOTARY:

Please enter judgment for Plaintiffs and against
Defendant in ejectment and for the sum of \$504.54 in accordance
with the Order of Court entered May 26, 2005.



James A. Naddeo, Esquire
Attorney for Plaintiffs

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

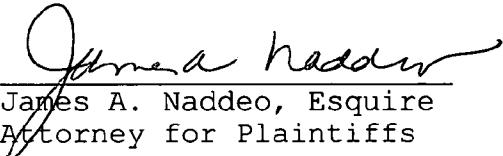
JAMES M. McHUGH and *
MARIE E. McHUGH, *
husband and wife, *
Plaintiffs, *
*
v. * No. 03-1114-CD
*
ANN ZAZWORSKY, *
an individual, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiffs' Praecipe for Final Judgment filed in the above-captioned action was served on the following person and in the following manner on the 31st day of May, 2005:

First-Class Mail, Postage Prepaid

David C. Mason, Esquire
409 North Front Street
P.O. Box 28
Philipsburg, PA 16866



James A. Naddeo, Esquire
Attorney for Plaintiffs

Copy

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

James M. McHugh Marie E. McHugh

Vs.

No. 2003-01114-CD

Ann Zazworsky

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered
against you in the amount of \$504.54 on May 31, 2005.

William A. Shaw
Prothonotary

William A. Shaw

Copy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
STATEMENT OF JUDGMENT

James M. McHugh
Marie E. McHugh
Plaintiff(s)

No.: 2003-01114-CD

Real Debt: \$504.54

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Ann Zazworsky
Defendant(s)

Entry: \$20.00

Instrument: Court Ordered Judgment

Date of Entry: May 31, 2005

Expires: May 31, 2010

Certified from the record this 31st day of May, 2005.

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney