

03-1366-CD
THOMAS F. JOSEPHSON, etal. vs. GINGER J. KENDRICK

Civil Other

Date		Judge
09/16/2003	Filing: Civil Complaint Paid by: Bell, F. Cortez III (attorney for Josephson, Thomas E.) Receipt number: 1866231 Dated: 09/16/2003 Amount: \$85.00 (Check) 5 CC to Atty.	No Judge
11/12/2003	Defendant's Answer With New Matter To Complaint. filed by, s/Stuart L. Hall, Esquire Verification s/Ginger J. Kendrick Certificate of Service 1 cc to Attorney	No Judge
12/24/2003	Answer to New Matter filed by Atty. Bell. 4 CC to Atty.	No Judge
06/25/2004	Praecipe for Listing of Non-Jury Civil Trial, filed by Atty. Bell 2 cert. to Atty. 1 cert. to C/A	No Judge
08/06/2004	Certificate of Service, Complaint, upon F. Cortez Bell, Esq. Filed by s/Stuart Paul E. Cherry L. Hall, Esq. No cc.	Paul E. Cherry
08/09/2004	Certificate of Service, Plaintiff's Pre-Trial Statement, on Stuart L. Hall, Esq., filed by s/ F. Cortez Bell, III, Esq., no cc	Paul E. Cherry
08/19/2004	ORDER, AND NOW, this 16th day of August, 2004, following Pre-Trial Conference, it is the ORDER of this Court: 3. Non-Jury Trial, scheduled for December 7, 2004, at 9:00 a.m. 4. View of the area is scheduled, November 18, 2004 at 9:30 a.m. at the Office of District Justice Redulla in Kylertown, PA (See Original for Discovery, Motions, Exhibits, Defendant's access to picture taking, details) By the Court, Paul E. Cherry, 1cc Attys Bell, Hall	Paul E. Cherry
11/03/2004	ORDER, filed Cert. to Atty. Bell & Atty. Hall AND NOW, this 2nd day of November, 2004, RE: View of the area scheduled for Nov. 18, is rescheduled to Nov. 22nd and 9:00 A.M. at the D.J. Rudella office in Kylertown.	Paul E. Cherry
12/09/2004	Order, AND NOW, this 7th day of December, 2004, following trial in the above-captioned matter, it is the ORDER of this Court that counsel provide the Court with brief within thirty days upon receipt of the transcript. Counsel will have ten days thereafter to file reply brief, if desired. BY THE COURT, /s/ Paul E. Cherry, Judge. 1CC Atty Bell, 1 CC Atty Hall.	Paul E. Cherry
06/06/2005	Transcript of Proceedings, held before Paul E. Cherry, Judge, on Tuesday Dec. 7, 2005, filed.	Paul E. Cherry

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

THOMAS E. JOSEPHSON and LISA A.
JOSEPHSON, husband and wife,
Plaintiffs

vs.

GINGER J. KENDRICK ,
Defendant

: No. 03-1366-CD
:
:
: Type of Case: Civil
:
: Type of Pleading:
: Complaint for Declaratory Judgment
:
:
: Filed on Behalf of:
: Thomas E. and Lisa A. Josephson,
: Plaintiffs
:
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
:
:
: Bell, Silberblatt & Wood
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA 16830
: Telephone: (814)765-5537
:
:

FILED

SEP 16 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS E. JOSEPHSON and LISA A.	:	
JOSEPHSON, husband and wife,	:	
Plaintiffs	:	
	:	
vs.	:	No.
	:	
	:	
GINGER J. KENDRICK ,	:	
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 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 WOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
(814)765-2641, ext. 5982

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

THOMAS E. JOSEPHSON and LISA A.	:	
JOSEPHSON, husband and wife,	:	
Plaintiffs	:	
	:	
vs.	:	No.
	:	
	:	
GINGER J. KENDRICK ,	:	
Defendant	:	

COMPLAINT FOR DECLARATORY JUDGMENT

AND NOW, comes the Plaintiffs, Thomas E. and Lisa A. Josephson, husband and wife, by and through their attorney, F. Cortez Bell, III, Esquire, who for their Complaint for Declaratory Judgment, sets forth and avers as follows:

1. That Plaintiffs, Thomas E. and Lisa A. Josephson, husband and wife, are adult individuals residing at 342 Thunder Alley, P.O. Box 27, Route 53, Drifting, Pennsylvania, 16834.
2. That Defendant, Ginger J. Kendrick, is a widow, residing at Box 215, Grassflat, Pennsylvania, 16839. She is the owner and possessor of a certain parcel of property located in Cooper Township, Clearfield County, Pennsylvania and adjoining the property of the Plaintiffs.
3. That all the real estate which is the subject of this matter is located within Cooper Township, Clearfield County, Pennsylvania.
4. That the Plaintiffs herein are the owners of a tract of land located in Cooper Township, Clearfield County, Pennsylvania which was obtained by deed dated July 19, 1993 consisting of 15.875 acres set forth in three (3) separate parcels. Said tract of land is identified as

Tax Map #S07-000-00029 and is found recorded at Deed Book 1550 at Page 534. Attached hereto and incorporated herein by reference as Exhibit A is a copy of said deed.

5. That the Defendant herein is the owner of a tract of land located in Cooper Township, Clearfield County, Pennsylvania which was obtained by deed dated May 21, 1974 consisting of 29.405 acres. Said tract of land is identified as Tax Map #S08-000-00062 and is found recorded at Deed Book 683 at Page 080. Attached hereto and incorporated herein by reference as Exhibit B is a copy of said deed.

6. That the Plaintiffs herein are also the owners of a tract of land located in Cooper Township, Clearfield County, Pennsylvania which was obtained by deed dated February 7, 1998 consisting of 10 acres. Said tract of land is identified as Tax Map #S07-000-00021 and is found recorded at Deed Book 1906 at Page 437. Attached hereto and incorporated herein by reference as Exhibit C is a copy of said deed.

7. That the Plaintiffs herein currently reside within a structure that was built upon that tract of land set forth in Paragraph 4 above.

8. That the residence of the Plaintiffs was built on that tract of land set forth in Paragraph 4 commencing in 1993.

9. That access to the tract of land set forth in Paragraph 4, upon which the Plaintiffs reside, is by way of a roadway known as Thunder Alley which passes through that property owned by the Defendant as set forth in Paragraph 5 above.

10. That throughout the time period of their residence, the Plaintiffs have solely obtained access to their property by way of said Thunder Alley.

11. That the Defendant, Ginger Kendrick consented to the placement of a water line through her property, along Thunder Alley, for the use of the Plaintiffs' residence in August 1994.

12. That the Plaintiffs had Moshannon Valley Cable install cable along the roadway, Thunder Alley, in 1994.

13. That the Plaintiffs had the roadway, Thunder Alley, improved in 1996 through the use of a dozer and the spreading of road material.

14. That the Plaintiffs, in the approximate time period of 2000, had the majority of the roadway, Thunder Alley, improved by the spreading of asphalt chippings by Moshannon Valley Excavating.

15. That the Plaintiffs have physically maintained the roadway, Thunder Alley, throughout the time period of their residence through plowing in the winter and various seasonal roadway repairs.

16. That the deed chain of the Plaintiffs and the Defendant trace back to a common Grantor in regard to the Ten (10) acre parcel and the Two and 7/8 (2 7/8) acre parcel of the Plaintiffs' total 15.875 acre tract.

17. That the Plaintiffs' Ten (10) acre portion of their total tract traces to Lewis Peiffer and his Estate which was distributed by Court decree dated April 7, 1930 to Joseph R. Shubert and Alice M. Shubert. Said decree is found within the Partition Docket of the Orphans' Court Division of Clearfield County in Petition Docket 4 at Page 437.

18. That the Plaintiffs' Two and seven-eighths (2 7/8) acre portion of their total tract traces to Lewis Peiffer who conveyed the same by deed dated October 20, 1927 to Frank Schneider. Said deed is found in Deed Book Volume 286 at Page 89.

19. That each of the tracts of land set forth in Paragraphs 17 and 18 above were part of a larger tract of land consisting of Forty-four and one half (44 ½) acres owned by said Lewis Peiffer which ultimately, through various conveyances, became that tract of land which is today the tract of land owned by the Defendant as is more fully set forth within Paragraph 5 of the instant Complaint.

20. That the Plaintiffs are also the owners of a separate tract of land as is more fully set forth within Paragraph 6 of the instant Complaint.

21. That said tract of land borders along Basin Run Road.

22. That the tract of land set forth within Paragraph 4 of this Complaint and Paragraph 6 of this Complaint, both owned by the Plaintiffs, do touch each other at the point of the southeastern portion of the tract set forth within Paragraph 6 of this Complaint with the northwestern portion of the tract set forth within Paragraph 4 of this Complaint.

23. That access to the Plaintiffs' residence located on that tract of ground set forth within Paragraph 4 of this Complaint can not be had as a result of Basin Run Road due to the existence of a strip mine cut and high wall which extends throughout almost the complete length of the Plaintiffs' property set forth within Paragraph 6 of this Complaint.

24. That in order for the Plaintiffs to access their residence as a result of Basin Run Road such would require that the Plaintiffs traverse a portion of their own property which is impossible to do because of the strip mine cut and high wall and the only means to avoid the same requires the Plaintiffs to travel through a portion of an adjacent property owned by River Hill Coal Company.

COUNT I - EASEMENT IMPLIED BY GRANT

25. That Paragraph 1 through Paragraph 24 of the instant Complaint for Declaratory Judgment are hereby incorporated herein by reference as if the same were set forth in full at length.

26. That at the time of the conveyances from Lewis Peiffer and the distribution by decree from the Estate of Lewis Peiffer the end result of the same was the creation of landlocked pieces of ground which by implication implied that access through the balance of the remaining tract of land held by the Grantor was also granted by implication.

27. That within the deed references found within the Defendant's chain of title, specifically the decree of distribution of the Estate of Lewis Peiffer, there is reference to the roadway's existence.

28. That the use of said roadway, referred to as Thunder Alley, has been continuously necessary and still is necessary to allow access to the property of the Plaintiffs wherein their residence is located.

WHEREFORE, it is respectfully requested that your Honorable Court grant a Declaratory Judgment finding that the Plaintiffs have an easement over the property of the Defendant as a result of an easement implied by grant.

COUNT II - EASEMENT BY NECESSITY

29. That Paragraph 1 through Paragraph 28 of the instant Complaint for Declaratory Judgment are hereby incorporated herein by reference as if the same were set forth in full at length.

30. That the property upon which the Plaintiffs' residence is located has no access to a public highway and the only access thereto is through that property currently owned by the

Defendant by that roadway commonly referred to as Thunder Alley.

31. That if access is not granted through the property of the Defendant, the Plaintiffs will be substantially harmed in that there would be no access available to them to their residence thereby causing them substantial economic loss and personal and emotion harm.

32. That the Plaintiffs are the parents of a daughter who, because of health conditions, requires continuous visitation by up to four (4) medical personnel and/or therapists on a daily basis all of whom would need the immediate access provided by the roadway, Thunder Alley, in order to properly care and treat said child.

33. That the property owned by the Plaintiffs and the property owned by the Defendant and the chain of title associated with both the Plaintiffs and the Defendant arise from a common grantor or grantors, that being from Lewis Peiffer and/or the decree of distribution of the real estate of the Estate of Lewis Peiffer.

WHEREFORE, it is respectfully requested that your Honorable Court grant a Declaratory Judgment finding that the Plaintiffs have an easement over the property of the Defendant as a result of an easement by necessity.

COUNT III - PRESCRIPTIVE EASEMENT

34. That Paragraph 1 through Paragraph 33 of the instant Complaint for Declaratory Judgment are hereby incorporated herein by reference as if the same were set forth in full at length.

35. That the use of the roadway known as Thunder Alley by the Plaintiffs to access their property has been hostile, open, notorious and continuous as to the Defendant's property throughout the ownership of the Plaintiffs' tract of land set forth within Paragraph 4 of this

Complaint.

36. That the roadway known as Thunder Alley has been in existence since at least October 20, 1927 and has been the primary source of access to those tracts of land currently owned by the Plaintiffs.

37. That the Defendant has been aware and knows of the use of the roadway by the Plaintiffs as well as the use of a roadway by the predecessors of the Plaintiff within their chain of title.

38. That prior to the ownership of the tracts of land by the Plaintiffs there was previously upon the ground a house which ultimately burned and was destroyed by fire.

39. That the Plaintiffs would aver that in light of the previous use of the roadway by prior individuals within their chain of title, that the hostile, open, notorious and continuous use by the Plaintiffs and their predecessors in title exceeds the period of twenty-one (21) years.

WHEREFORE, it is respectfully requested that your Honorable Court grant a Declaratory Judgment finding that the Plaintiffs have an easement over the property of the Defendant as a result of a prescriptive easement.

COUNT IV - EASEMENT

40. That Paragraph 1 through Paragraph 39 of the instant Complaint for Declaratory Judgment are hereby incorporated herein by reference as if the same were set forth in full at length.

41. That during the time period of the Plaintiffs use of Thunder Alley as the means to obtain access to their residence, the Defendant has acquiesced to said use by allowing the Plaintiffs to use the roadway for the construction of their residence; by allowing the Plaintiffs to run

a water line along said roadway for purpose of their residence; by allowing the installation of cable along the roadway; by allowing the Plaintiffs to maintain the roadway including but not limited to the grading of the roadway with a dozer in 1996 and the covering of the roadway with asphalt chips in approximately the year 2000.

42. That the Defendant is at this point in time estopped from asserting any right to limit access to the Plaintiffs' property by said roadway as a result of her prior actions all of which have been relied upon by the Plaintiffs throughout the course of their ownership of their tract of land.

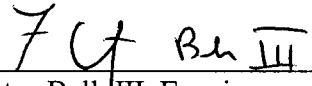
43. That the Plaintiffs will suffer irreparable financial harm as a result of any action taken by the Defendant which limits or ceases their access to the property upon which their residence is built.

WHEREFORE, it is respectfully requested that your Honorable Court grant a Declaratory Judgment finding that the Plaintiffs have an easement over the property of the Defendant as a result of an easement.

Respectfully submitted,

BELL, SILBERBLATT & WOOD

By:

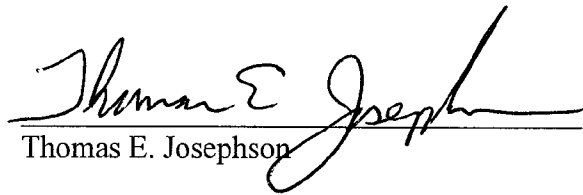


F. Cortez Bell, III, Esquire
Attorney for Plaintiffs

VERIFICATION

I, Thomas E. Josephson, verify that the statements made within the foregoing Complaint 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.A., Section 4904, relating to unsworn falsifications to authorities.

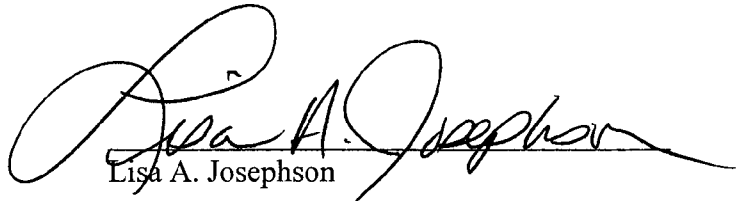
Date: September 11, 2003


Thomas E. Josephson

VERIFICATION

I, Lisa A. Josephson, verify that the statements made within the foregoing Complaint 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.A., Section 4904, relating to unsworn falsifications to authorities.

Date: Sept. 11, 2003


Lisa A. Josephson

Deed

Made the 19 day of July 1993

Between MICHAEL BUCUR and ETHEL BUCUR, his wife, of 26365 Pettibone Rd,
Oakwood Village, Bedford, Ohio 44146

And THOMAS EDWARD JOSEPHSON and LISA ANN JOSEPHSON, his wife, of
R.D. #2, Box 227A, Towanda, Pennsylvania 18848 as Tenants by
the Entireties.

(hereinafter called "Grantor")
(hereinafter called "Grantee")
Witnesseth, That in consideration of Eight Thousand and no/100 (\$8,000.00)-----

-----Dollars,
in hand paid, the receipt whereof is hereby acknowledged, Grantors do hereby grant and convey to
Grantee

All those three (3) pieces or parcels of land together with the buildings and
improvements thereon, situate in Cooper Township, Clearfield County, Pennsylvania
bounded and described as follows:

THE FIRST THEREOF: Beginning at an iron post on line of land now or formerly of
F.B. Polmar; thence South Eighty-five (85) degrees East Six Hundred Eight (608)
feet to an iron post on line now or formerly of J.C. Stinekechner; thence along
line now or formerly of J.C. Stinekechner five (5) degrees West Two Hundred Six
(206) feet to an iron post on the line of land now or formerly of Joseph
Schneider Estate; thence along line of Joseph Schneider Estate North Eighty-five
(85) degrees West Six Hundred Sixty-one (661) feet to an iron post; thence along
land now or formerly of Joseph Schneider Estate North Nineteen (19) degrees East
Two Hundred Thirteen (213) feet to an iron post and place of beginning. Containing
three (3) acres neat measure.

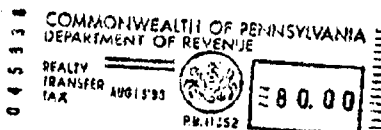
THE SECOND THEREOF: Beginning at an iron pin at the Northwest corner of the lot
now or formerly of Frank Schneider on the lands of now or formerly of F.B. Polmar;
thence West along said lands now or formerly of F.B. Polmar and W.M. Polmar thirty
eight (38) and seven-eighths (7/8) rods to an iron pin and lands now or formerly of
William Pfeiffer; thence South along said lands of now or formerly William
Pfeiffer, Two Hundred Six (206) feet to an iron pin; thence East through land now
or formerly of Frank Schneider two Hundred Thirteen (213) feet to an iron pin and
place of beginning. Containing two and seven-eighths (2 7/8) acres, more or less.

CONTINUED ON REVERSE

WES. BRANCH SCHOOL DISTRICT
1% REALTY TRANSFER TAX

AMOUNT \$ 80.00

PAID 8-18-93 KAREN L. STARCK
Date Agent



THE THIRD THEREOF: Beginning at an iron pin located at the Southeast corner of lands now or formerly of Frank Schneider et al, where the same joins a distance of Twelve Hundred Fifty (1250) feet to the lands now or formerly of William Peiffer and The Southwest corner of the lands now or formerly of Frank Schneider et al; thence South along the lands now or formerly of William Peiffer, a distance of three hundred fifty (350) feet to an iron pin; thence East through the lands now or formerly of Joseph R. Shubert, a distance of Twelve Hundred Fifty (1250) feet to an iron pin situate on the line of land now or formerly of Martin Folmar; thence along the line of land now or formerly of Martin Folmar a distance of Three Hundred Fifty (350) feet to an iron pin and the place of beginning, and containing ten (10) acres, more or less.

EXCEPTING AND RESERVING, however to the Grantors, all the minerals, coal, clay, oil, gas, in and under and upon the said premises, together with the rights to lease, remove or sell the same for the purpose of removal, provided, however, there shall be no removal of minerals by what is known as the strip mine method or surface mining.

BEING those same premises which were granted and conveyed unto Michael Bucur and Ethel Bucur by Deed dated July 14, 1967 as is recorded at the Office of the Register and Recorder of Clearfield County in Deed Book 531 at Page 299.

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 11:55 AM 8-18-93
BY Shirley B. L. III
FEES 18.50
Karen L. Starck, Recorder

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

STATE OF OHIO

COUNTY OF Cuyahoga

SS 270-22-8659

On this, the 9th day of ^{Aug.}~~July~~, 1993, before me, a notary public, in and for said county, personally appeared the above named MICHAEL BUCUR, who acknowledged that he did sign the foregoing instrument, and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Bedford, this 9th day of August, 1993.



Katherine J. McGee
Notary Public

KATHERINE J. MCGEE, Notary Public
State of Ohio
My Commission Expires Sept. 17, 1994

STATE OF OHIO

COUNTY OF Cuyahoga

SS 277-22-5332

On this, the 9th day of ^{Aug.}~~July~~, 1993, before me, a notary public, in and for said county, personally appeared the above named ETHAL BUCUR, who acknowledged that she did sign the foregoing instrument, and that the same is her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Bedford, this 9th day of August, 1993.



Katherine J. McGee
Notary Public

KATHERINE J. MCGEE, Notary Public
State of Ohio
My Commission Expires Sept. 17, 1994

Grantor covenant that it will warrant* specially the property hereby conveyed.

NOTICE—THIS DOCUMENT MAY NOT (DOES 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 (HAVE) THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY BE DONE 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 in the manner provided in Section 1 of the Act of July 17, 1937, P. L. 984, as amended.)

In Witness Whereof, said Grantors have hereunto set their hands and seals the day and year first above written.

Sealed and Delivered in the Presence of

Michael Bucur
Ethel Bucur
Ethel Bucur

NOTICE THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

WITNESS:

Commonwealth of Pennsylvania
County of _____ ss.

On this the _____ day of _____, A.D. 19____, 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 purposes therein contained. In Witness Whereof, I hereunto set my hand and official seal.

My commission expires _____

(Title of Officer.)


NOTE—Insertion of word "Generally" effects a General Warranty Deed. Insertion of word "Specially" effects a Special Warranty Deed. Act of Assembly, Pennsylvania, April 1, 1909, Section 4 and 5.

Certificate of Residence.

The undersigned hereby certifies that precise residence and complete post office address of the within

Grantee is: R.D. #2, Box 227A
Towanda, Pennsylvania 18848

F. C. B. III

Filed to 50-00 Underline 40-00 Copying 40-00 Recorded	Number		Page	From MICHAEL HICOR AND ETHEL HICOR	To THOMAS EDWARD JOSEPHSON AND LISA ANN JOSEPHSON	Fee, \$	F. O. Reg. Co. Fee, PA 1000
	Vol.						

Commonwealth of Pennsylvania } ss.
County of _____

Recorded on the _____ day of _____
A. D. 19 _____, in the Recorder's Office of the said County, in Deed Book,
Vol. _____, page _____
Given under my hand and seal of the said office.

Recorder.
Entered of Record *Aug 12 1902*

This Deed,

MADE THE 21st day of May in the year
of our Lord one thousand nine hundred seventy-four (1974)

BETWEEN

ROBERT LEE KENDRICK and GINGER JOAN KENDRICK,
his wife, of Box 215, Grassflat, Pennsylvania, parties of
the First Part,

and

hereinafter called "Grantor s."

ROBERT LEE KENDRICK and GINGER JOAN KENDRICK,
his wife, of Box 215, Grassflat, Pennsylvania, parties of
the Second Part, as tenants by the entireties,

hereinafter called "Grantee s.":

WITNESSETH, that in consideration of One and 00/100-----
-----(\$1.00) Dollars,
in hand paid, the receipt whereof is hereby acknowledged, the said grantor s. do hereby grant
and convey to the said grantee s.,

ALL the following described tracts of parcels of land, together with
the improvements thereon, situate in the Township of Cooper, Clear-
field County, Pa., bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post on line of J. Snyder;
thence East forty-two (42) perches to a post on line of Samuel Christ;
thence South along said line one hundred (100) perches to a post on line
of Latimer Taylor; thence West forty-two (42) perches to a post; thence
North one hundred (100) perches to a post and the place of beginning.
Containing twenty-five (25) acres, more or less, and being part of a
larger tract of land surveyed in pursuance of a warrant dated January 8,
1793, in the name of Wollard Morris, and which by deed dated November 8,
1882, recorded in Deed Book 25, page 89, amongst the records of Clear-
field County, Pa., became vested in Lewis Peiffer, now deceased.

EXCEPTING and RESERVING therefrom all of the coal and other minerals
as set forth in deed of Lewis Peiffer to John G. Reading, dated August 24,
1882, and recorded in Deed Book 25, page 124, in Clearfield Co., Pa.,

ALSO EXCEPTING and RESERVING therefrom a certain lot or piece of
land conveyed by Lewis Peiffer to Raid Holt, bounded and described as
follows: From that part of land of Lewis Peiffer that corners at Jos:
Snyders and Jas. Steinkelnner and Bituminous Coal Co. on same line
twenty-nine (29) perches ten (10) feet to corner of part and their beginning
of lot of Raid Holt from said corner West ten (10) perches to post on lands
of Lewis Peiffer; thence South fourteen (14) perches on lands of George
Shubert; thence East ten (10) perches on lands of Lewis Peiffer to post;
thence fourteen (14) perches on lands of Bituminous Coal Co. to place of
beginning. Containing three fourths (3/4) acres and twenty (20) perches or
one hundred forty (140) perches neat measure in said lot;

ALSO EXCEPTING and RESERVING therefrom a certain lot or piece of
land as conveyed by Lewis Peiffer to George Shubert, bounded and described
as follows: BEGINNING at the West corner of Raid Holt West fourteen (14)
perches to a post; thence South by lands of Lewis Peiffer fourteen (14) perches
to a post; East by lands of Lewis Peiffer fourteen (14) perches to a post;
thence West on land of Raid Holt fourteen (14) perches to a post and the place
of beginning. Containing one (1) acre and thirty-six (36) perches, reserving

One (1) perch wide and fourteen (14) perches in length between said lot and Raid Holt for road purposes, and recorded in Clearfield Co., Pa., in Deed Book 87, page 80;

ALSO EXCEPTING and RESERVING therefrom a certain lot or piece of land as conveyed by Lewis Peiffer to the heirs of the Estate of the Late Joseph and Barbara Schneider and Joseph H. Schneider as described as follows: ALL that parcel beginning at the Northeast corner of Nicholas Schullers first lot and the Northwest corner of lands of Lewis Peiffer; thence East along said lands of Lewis Peiffer, twenty-five and five eighths ($25 \frac{5}{8}$) rods to the middle of private road; thence along said road three and one-half ($3 \frac{1}{2}$) rods to the middle of private road; thence along said road three and one-half ($3 \frac{1}{2}$) rods to the middle of State Road; thence Southwest along middle of said State Road six and one-half ($6 \frac{1}{2}$) rods to lot of Nicholas Schuller; thence North along said lot of Nicholas Schuller fourteen (14) rods to the place of beginning and containing one and one-third ($1 \frac{1}{3}$) acres. Recorded in Clearfield Co., Pa., in Deed book 285, page 446;

ALSO EXCEPTING and RESERVING therefrom a certain lot or piece of land as conveyed by Lewis Peiffer to Harry Ardry, bounded and described as follows: BEGINNING at the Southeast corner of lands of Lewis Peiffer at an alley; thence along said alley West eleven (11) perches to a post; thence North along lands of Lewis Peiffer twenty-eight (28) perches to a post; thence along lands of E. A. Hershey eleven (11) perches to a post; thence South along the lands of the Clearfield Bituminous Coal Corp. twenty-eight (28) perches to a post; and place of beginning; said deed being recorded in Clearfield County, Pennsylvania, in Deed Book 253, page 54.

THE SECOND THEREOF: ALL that certain tract or piece of land as conveyed by Nicholas Peiffer, et al, to Lewis Peiffer, situate in the Township of Cooper, Clearfield County, Pa., bounded and described as follows, to wit: (Part of the survey in the name of William Morris)

BEGINNING at a post in the North Line of said William Morris survey forty-three (43) perches from its Northeast corner; thence South one (1) degree West one hundred two (102) perches to a post; thence north eighty-nine (89) degrees West forty-two and one half ($42 \frac{1}{2}$) perches to a post, a corner of other land of the Grantor herein; thence North one (1) degree one hundred two (102) perches to a post; thence South eighty-eight (88) degrees East forty-three (43) perches to the place of beginning. Containing twenty-six (26) acres, more or less. Which said land was conveyed to Lewis Peiffer by deed recorded at Clearfield, Pa., in Deed Book 23, page 139.

THE THIRD THEREOF: ALL that certain tract or piece of land situate in Township of Cooper, Clearfield County, Pa., bounded and described as follows, to wit:

BEGINNING at stones corner of land of F. D. Valimont and J. Folmer; thence North eighty-five (85) degrees West six hundred fifty-eight (658) feet to a post; thence along Margaret Wood land North four (4) degrees forty-five (45) minutes East thirty-seven hundred and seventy (3770) feet to corner of land of B. D. Schoonover; thence South eighty-five (85) degrees twenty (20) minutes East six hundred sixty-six (666) feet to a post; thence South four (4) degrees fifty-two (52) minutes West thirty-seven hundred and seventy four (3774) feet to stones and place of beginning. Containing fifty-seven and thirty-three one hundredths ($57 \frac{33}{100}$) acres, and which land was conveyed to Lewis Peiffer by deed recorded at Clearfield, Pa., in Deed Book 161, page 429 and in Deed Book 206, page 86.

EXCEPTING and RESERVING therefrom all of the coal, gas and other minerals as set forth in the reservations contained in deed recorded in Deed Book 161, page 429.

THE FOURTH THEREOF: ALL that certain tract or piece of land situate in Township of Cooper, Clearfield County, Pa., bounded and described as follows, to wit: Being all of Lot No. 6 of the N. Folmer Estate;

BEGINNING on the line of purpart No. 5 at a post; thence South five (5) degrees West fifty-nine (59) perches to a post on old line of Jos. C. Steinkirchner (now Martin Folmer) South eighty-five (85) degrees East thirty-two and two tenths (32.2) perches to a post; thence North five (5) degrees East fifty-nine (59) perches to a post; thence North eighty-five (85) degrees West thirty two and two tenths (32.2) perches to a post and place of beginning. Containing twelve and one fourth (12 1/4) acres. All minerals rights reserved and excepted therefrom and being the same premises conveyed to Lewis Peiffer by deed recorded at Clearfield, Pa., in Deed Book 285, page 447.

THE FIFTH THEREOF: ALL that certain tract or piece of land situate in the Township of Cooper, Clearfield County, Pa., bounded and described as follows, to wit:

BEGINNING at an iron pin, same marking the Southeast corner of the lands of Frank Schneider; thence West along said lands of Frank Schneider forty (40) rods to iron pin; thence North nineteen (19) degrees East two hundred thirteen (213) feet to iron pin along the lands of F. B. Folmer; thence West along said lands of F. B. Folmer and William M. Folmer thirty-eight and seven eighths (38 7/8) rods to iron pin and the lands of William Peiffer; thence South along said lands of William Peiffer eighty-six (86) rods to iron pin; thence East through the lands of Joseph and Barbara Schneider Estate twenty (20) rods to middle of private road; thence South along said private road twenty-seven and one-half (27 1/2) rods to lands of Lewis Peiffer; thence along said lands of Lewis Peiffer eight (8) rods to middle of State Highway; thence along said State Highway fifty-seven and one-half (57 1/2) rods to lands of Martin Folmer; thence North along said lands of Martin Folmer eighty and one-third (80 1/3) rods to an iron pin and place of beginning. Containing forty-four and one half (44 1/2) acres, more or less, and being the lands conveyed to Lewis Peiffer in Deed Book 285, page 448, Clearfield Co., Pa.

EXCEPTING and RESERVING therefrom the following described piece of land, to wit: BEGINNING at an iron pin at the Northwest corner of lot of Frank Schneider in the land of F. B. Folmer; thence West along said lands of F. B. Folmer and W. N. Folmer thirty-eight and seven eighths (38 7/8) rods to William Peiffer lands two hundred six (206) feet to iron pin; thence East through lands of Lewis Peiffer thirty-five and seven eighths (35 7/8) rods to lands of Frank Schneider; thence North nineteen (19) degrees East along said lands of Frank Schneider two hundred thirteen (213) feet to iron pin and place of beginning; and containing two and seven eighths (2 7/8) acres, as described in deed recorded in Clearfield, Pa., in Deed Book 286, page 89. BEING the same premises conveyed by George Zetts, widower, to Andrew G. Zetts by deed dated May 15, 1943, as recorded in the office of the Recorder of Deeds, Clearfield, Pa., in Deed Book 350, page 314.

BEING all the same premises as vested in Robert Kendrick, the grantor, by deed dated March 16, 1946, and recorded in Deed Book 374, page 312, in the office of the Recorder of Deeds, Clearfield County, Pa.

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

the property hereby conveyed.

This document may not sell, convey, transfer, include or insure the title to the coal and right of support underneath the surface land described or referred to herein, and the owner or owners of such coal may have the complete legal right to remove all of such coal, and, in that connection, damage may result to the surface of the land, and any house, building or other structure on or in such land. The inclusion of this notice does not enlarge, restrict or modify any legal rights or estates otherwise created, transferred, excepted or reserved by this instrument.

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

Signed, Sealed and Delivered
in the Presence of

ROBERT LEE KENDRICK

GINGER JOAN KENDRICK

State of Pennsylvania

County of Clearfield

On this, the Third

day of

WAXX JUNE

, 19 74, before me,

the undersigned officer, personally appeared Robert Lee Kendrick and Ginger Joan Kendrick,

his wife,

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

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

Magistrate-District 46-3-03

Title of Officer.

AFFIDAVIT NO. 3008

Entered of Record 6-19 1974 10:35 PM Bail & Bonds Recorder

VOL 1906 PAGE 437
WARRANTY DEED - 1998

PLANKENHORN CO., WILLIAMSPORT, PA

County Parcel No. _____

This Deed,

MADE the 7th day of February
in the year nineteen hundred and ninety-eight (1998).
BETWEEN JAMES E. FOX, JR., party of the First part, Grantor;

A N D

THOMAS E. JOSEPHSON and LISA A. JOSEPHSON, husband and wife, as Tenants by the Entireties, parties of the Second Part hereinafter referred to as Grantees.

WITNESSETH, That in consideration of Two Thousand Five Hundred and 00/100
(\$2,500.00) Dollars,
in hand paid, the receipt whereof is hereby acknowledged, the said grantor s do hereby grant
and convey to the said grantees.

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

BEGINNING at the corner of J. Schneider land; thence Westerly with lands of
Schneider, N. Peifer and George Krollman Twelve Hundred Twenty Five (1225) feet
to Township Road; thence Northerly along said Township Road Four Hundred Fifteen
(415) feet to a post; thence Easterly by lands of a former Grantor Eleven Hundred
(1100) feet to line of land of F.B. Folmar; thence Southerly with F.B. Folmar's
land Four Hundred Fifteen (415) feet to place of beginning. Containing Ten (10)
acres more or less.

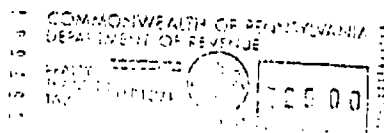
Being the same premises conveyed to the Grantor herein by Deed dated November 7,
1947 and recorded in the Office of the Recorder of Deeds at Deed Book 390, Page 78.

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

VOL 1906 PAGE 438



2-10-98
CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 1:53 PM
BY *Karen L. Starck*
FEES 13.00
Karen L. Starck, Recorder

WEST BRANCH SCHOOL DISTRICT
1% REALTY TRANSFER TAX
AMOUNT \$ 25.00
PAID 2-10-98 KAREN L. STARCK
Date Agent

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1986", 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:

Thomas E. Josephson
THOMAS E. JOSEPHSON
Lisa A. Josephson
LISA A. JOSEPHSON

This 7th day of February 1998

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. 253, approved September 10, 1965, as amended.)

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

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

Scaled and delivered in the presence of

James E. Fox, Jr. [Seal]
JAMES E. FOX, JR.

[Seal]

[Seal]

[Seal]

[Seal]

[Seal]

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantees herein is as follows: Route 53, Driffting, PA

Richard A. Ireland
Richard A. Ireland Attorney or Agent for Grantee

Commonwealth of Pennsylvania

County of Clearfield

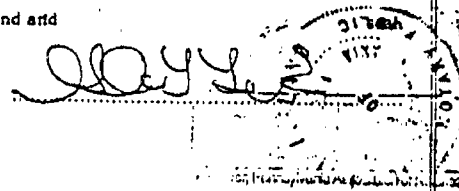
ss.

On this, the 7th day of February 1998, before me the undersigned officer, personally appeared James E. Fox, Jr.

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

IN WITNESS WHEREOF, I have hereunto set my hand and

My Commission Expires



VOL 1906 PAGE 440

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

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

*John TH 25.00
West Branch Feb. 12.00
Copper Top 12.00
Deed*

WARRANTY DEED
The Plantation Co., Williamsport, Pa.
JAMES E. FOX, JR.
TO
THOMAS E. JOSEPHSON & LISA A. JOSEPHSON

Dated
For
Consideration
Recorded
Entered for Record in the Recorder's
Office of
County, the day of Jan. 5
19 ..
Fees, \$
Recorder

Entered of Record 240 1991 1:53 PM Karen L. Storch, Recorder

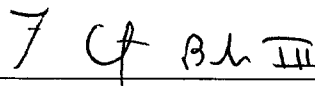
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

THOMAS E. JOSEPHSON and LISA A.	:	
JOSEPHSON, husband and wife,	:	
Plaintiffs	:	
	:	
vs.	:	No.
	:	
	:	
GINGER J. KENDRICK ,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Complaint for Declaratory Judgment upon the following person by mailing such copy first class mail, postage prepaid to:

Mr. Stuart L. Hall, Esquire
Snowiss, Steinberg, Faulkner & Hall, LLP
The Historic Carskaddon House
P.O. Box 5
333 North Vesper Street
Lock Haven, PA 17745



F. Cortez Bell, III, Esquire
Attorney for Plaintiffs

Date: September 16, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No.

THOMAS E. JOSEPHSON and LISA A.
JOSEPHSON, husband and wife,
Plaintiffs

VS.

GINGER J. KENDRICK,
Defendant

COMPLAINT FOR
DECLARATORY JUDGMENT

FILED

5cc

0/3/44
SEP 16 2003

Any Bed

Attg pd 85.00

William A. Shaw
Prothonotary/Clerk of Courts

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

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

THOMAS E. JOSEPHSON and LISA A.)
JOSEPHSON, husband and wife,)
Plaintiffs)

No.: 03-1366-CS

v.)

GINGER J. KENDRICK,)
Defendant)

NOTICE

To the within Plaintiffs:

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

SNOWISS, STEINBERG, FAULKNER & HALL, LLP

By


Stuart L. Hall, Esquire
Attorney for Defendant

FILED

NOV 12 2003

William A. Shaw
Prothonotary

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

THOMAS E. JOSEPHSON and LISA A.)
JOSEPHSON, husband and wife,)
Plaintiffs)

No.: 03-1366-CS

v.)

GINGER J. KENDRICK,)
Defendant)

DEFENDANT'S ANSWER WITH NEW MATTER TO COMPLAINT

1. It is admitted that Plaintiffs Thomas E. Josephson and Lisa A. Josephson are adults and are husband and wife and reside in Drifting, Pennsylvania. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the remaining averments in this paragraph and therefore, the averments are denied.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted in part, denied in part. It is admitted that Defendant is the owner of a tract of land located in Cooper Township, Clearfield County, Pennsylvania, which consists of 29.405 acres. It is further admitted that the tract is identified as Tax Map No. S08-000-00062. It is also admitted that a copy of a deed dated May 21, 1974 is recorded at Deed Book 683, Page 080. It is denied that the property was obtained on May 21, 1974. The property was obtained by Robert Kendrick on March 16, 1946.

6. Admitted.

7. Admitted in part, denied in part. It is admitted that Plaintiffs currently reside within a structure that was built upon land in Cooper Township, Clearfield County, Pennsylvania. After reasonable investigation, Defendant is without knowledge or

information sufficient to form a belief as to the remaining averment in this paragraph and therefore, the averment is denied.

8. Admitted in part, denied in part. It is admitted that Plaintiffs began building their residence in 1993. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the remaining averment and therefore, the averment is denied.

9. Admitted in part, denied in part. It is admitted that access to Plaintiffs' residence can be obtained by way of a roadway which passes through property owned by Defendant. It is denied that the roadway is the only way access can be had to Plaintiffs' residence. By way of further response, Plaintiffs' residence can be accessed without traveling on Defendant's property.

10. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied.

11. Denied. It is specifically denied that Defendant Ginger Kendrick consented to the placement of a water line through her property, along the roadway, for the use of Plaintiffs' residence in August of 1994.

12. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied.

13. Admitted in part, denied in part. It is admitted that Plaintiffs improved a portion of the roadway in 1996 through the use of a dozer and the spreading of road material. It is denied that Plaintiffs improved the entire length of the roadway.

14. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied.

15. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied.

16. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied.

17. Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied. By way of further response, the decree referenced in paragraph 17 described numerous tracts, none of which contain ten (10) acres. The deed from Joseph R. and Alice M. Shubert to Frank and Lena Schneider, which is recorded in Deed Book 311, Page 509, indicates that it conveys ten (10) acres but the deed does not contain a recital.

18. Admitted.

19. Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied. By way of further response, the deed from Joseph R. and Alice M. Shubert to Frank and Lena Schneider, recorded at Deed Book 311, Page 509, does not contain a recital.

20. Admitted.

21. Admitted.

22. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied.

23. Denied. It is specifically denied that access to Plaintiffs' residence cannot be had as a result of Basin Run Road.

24. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied. By way of further response, if the road from Basin Run Road to Plaintiffs' residence is not entirely on Plaintiffs' property, the existing road could be altered to enable Plaintiffs to access their property from Basin Run Road by traveling entirely on their property.

Count I. - Easement Implied by Grant

25. Paragraphs One (1) through Twenty-four (24) of this Answer with New Matter are hereby incorporated by this reference as if fully set forth.

26. The averments in this paragraph state legal conclusions to which no responses are required. To the extent responses are deemed required, the averments are denied.

27. Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied.

28. Denied. It is specifically denied that the roadway has been continuously necessary and is still necessary to allow access to the property of Plaintiffs where their residence is located.

THEREFORE, it is respectfully requested that this Honorable Court deny Plaintiffs' request for declaratory judgment.

Count II - Easement by Necessity

29. Paragraphs One (1) through Twenty-eighty (28) of this Answer with New Matter are hereby incorporated by reference as if fully set forth .

30. Denied. It is specifically denied that access to Plaintiffs' residence has no access to a public highway other than through the roadway on Defendant's property.

31. Denied. It is specifically denied that if access is not granted through the property of Defendant, Plaintiffs will be substantially harmed.

32. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and therefore, the averments are denied.

33. Denied. The averments in this paragraph are denied. By way of further response, the three (3) acre parcel does not trace back to Lewis Peiffer or the Estate of Lewis Peiffer. The 44 ½ acres were transferred to Lewis Peiffer by Deed dated October 20, 1927 and recorded in Deed Book 285, Page 448. The deed was from the heirs of Joseph and Barbara Schneider, by Joseph H. Schneider, Administrator, to Lewis Peiffer.

THEREFORE, it is respectfully requested that this Honorable Court deny Plaintiffs' request for declaratory judgment.

Count III - Prescriptive Easement

34. Paragraphs (1) through Thirty-three (33) of this Answer with New Matter are hereby incorporated by reference as if fully set forth.

35. The averments in this paragraph state legal conclusions to which no responses are required. To the extent responses are deemed required, it is specifically denied that the use of the roadway by the Plaintiffs has been hostile, open, notorious and continuous.

36. Denied.

37. Admitted in part, denied in part. It is admitted that Defendant knows of the use of the roadway by the Plaintiffs. It is denied that Defendant has been aware of the alleged use of the roadway by the predecessors of the Plaintiffs. By way of further responses, Defendant informed Plaintiffs in June of 2003 that Plaintiffs are not permitted to use this roadway.

38. Admitted. By way of further response, the house was destroyed by fire many years before Plaintiffs began construction of their house.

39. The averments in this paragraph state legal conclusions to which no responses are required. To the extent responses are deemed required, it is specifically denied that there has been hostile, open, notorious and continuous use by Plaintiffs and their predecessors for a period in excess of 21 years.

THEREFORE, it is respectfully requested that this Honorable Court deny Plaintiffs request for declaratory judgment.

Count IV - Easement

40. Paragraphs One (1) through Thirty-nine (39) of this Answer with New Matter are hereby incorporated by reference as if fully set forth.

41. Admitted in part, denied in part. It is admitted that, until June of 2003, Defendant did not specifically prohibit Plaintiffs from using the roadway in questions. It is denied that Defendant consented to Plaintiffs running a water line along the roadway and it is denied that Plaintiffs consented to allowing the installation of cable to Plaintiffs' residence along the roadway. Likewise, it is denied that Defendant consented to Plaintiffs maintaining the roadway.

42. The averments in this paragraph state legal conclusions to which no responses are required. To the extent responses are deemed required, it is specifically denied that

Defendant is estopped from asserting any right to limit access to Plaintiffs' property as a result of any prior actions and/or inactions of Defendant.

43. The averments in this paragraph state legal conclusions to which no responses are required. To the extent responses are deemed required, it is specifically denied that Plaintiffs will suffer irreparable financial harm as a result of Defendant taking action to stop Plaintiffs use of the roadway on Defendant's property. By way of further response, Plaintiffs can presently access their property by way of a public road, Basin Run Road, without traveling on property owned by Defendant. If any excavation work is required to move the current road from Plaintiffs' residence to Basin Run Road in order for that road to be entirely on Plaintiffs' property, Plaintiffs are required to incur that expense and are not entitled to trespass on Defendant's property.

THEREFORE, it is respectfully requested that this Honorable Court deny Plaintiffs' request for declaratory judgment.

New Matter

44. Paragraphs One (1) through Forty-three (43) of this Answer with New Matter are hereby incorporated by reference as if fully set forth.

45. The Plaintiffs have failed to state a cause of action upon which relief can be granted.

46. Plaintiffs have failed to set forth facts sufficient to establish an easement should be implied by grant.

47. Plaintiffs have failed to set forth sufficient facts to demonstrate they are entitled to an easement by necessity.

48. Plaintiffs have failed to set forth facts sufficient to justify a prescriptive easement.

49. Plaintiffs have failed to set forth facts sufficient to warrant awarding Plaintiffs an easement over Defendant's property.

50. Any alleged easement which existed over the roadway in question prior to Plaintiffs' purchase of the property was extinguished by abandonment and cessation of purpose.

51. Accessing Plaintiffs' residence over the roadway in question is not one of actual necessity but is merely one of convenience for Plaintiffs.

52. An easement by prescription cannot be had where the use is permissive, no matter how long it may have continued.

53. Defendant reserves the right to assert all other affirmative defenses under the provisions of Pennsylvania Rule of Civil Procedure No. 1030 to the extent that further investigation or discovery reveals facts to show that any such defenses may be pertinent herein.

54. Any use by Plaintiffs of the road that is deemed to have been consented to by Defendant, was not hostile and notorious.

55. Plaintiffs at no time have paid for their use of the roadway.

56. At all times Plaintiffs used the roadway, Plaintiffs were aware they did not have a right-of-way or any right to use the roadway.

57. Plaintiffs knew at the time of purchasing their property that they did not have a right-of-way over Defendant's property.

58. Plaintiffs never requested a right-of-way from Defendant prior to building their home.


59. Defendant refused to sign an easement for the water line to Plaintiffs' residence.

60. A prescriptive easement may not be acquired through uninclosed woodland. 68
P.S. Section 411.

THEREFORE, Defendant Ginger J. Kendrick requests that this Court deny
Plaintiffs' request for declaratory judgment.

Respectfully Submitted,

SNOWISS, STEINBERG, FAULKNER & HALL, LLP

By 
Stuart L. Hall, Esquire
333 North Vesper Street
Lock Haven, PA 17745
(570) 748-2961
I.D. #72814

VERIFICATION

I, Ginger J. Kendrick, hereby state that the language of the foregoing Answer with New Matter is that of counsel and not necessarily my own; however, I have read the foregoing document and, to the extent it is based upon information that I have given to counsel, it is true and correct to the best of my knowledge, information, and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsifications to authorities.

Date:

November 10,
2003

Ginger J. Kendrick
Ginger J. Kendrick

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

THOMAS E. JOSEPHSON and LISA A.)
JOSEPHSON, husband and wife,)
Plaintiffs)

No.: 03-1366-CS

v.)

GINGER J. KENDRICK,)
Defendant)

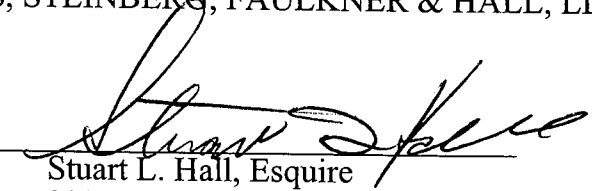
CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November, 2003, I served a copy of the foregoing Complaint upon F. Cortez Bell, Esquire, 318 East Locust Street, P. O. Box 670, Clearfield, Pennsylvania 16830, by United States first class mail, postage prepaid, the original being filed with the Prothonotary of the Court of Common Pleas of Clinton County, Pennsylvania.

Respectfully Submitted,

SNOWISS, STEINBERG, FAULKNER & HALL, LLP

By


Stuart L. Hall, Esquire
333 North Vesper Street
Lock Haven, PA 17745
(570) 748-2961
I.D. #72814

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

THOMAS E. JOSEPHSON and LISA A.	:	No. 03-1366-CD
JOSEPHSON, husband and wife,	:	
Plaintiffs	:	
	:	Type of Case: Civil
vs.	:	
	:	Type of Pleading:
	:	Answer to New Matter
GINGER J. KENDRICK ,	:	
Defendant	:	
	:	Filed on Behalf of:
	:	Thomas E. and Lisa A. Josephson,
	:	Plaintiffs
	:	
	:	Counsel of Record for this Party:
	:	F. Cortez Bell, III, Esquire
	:	I.D. #30183
	:	
	:	Bell, Silberblatt & Wood
	:	318 East Locust Street
	:	P.O. Box 670
	:	Clearfield, PA 16830
	:	Telephone: (814)765-5537
	:	
	:	

FILED

DEC 24 2003

William A. Shaw
Prothonotary

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

THOMAS E. JOSEPHSON and LISA A.	:	
JOSEPHSON, husband and wife,	:	
Plaintiffs	:	
	:	
vs.	:	No. 03-1366-CD
	:	
	:	
GINGER J. KENDRICK ,	:	
Defendant	:	

ANSWER TO NEW MATTER

NOW, comes the Plaintiffs, Thomas E. and Lisa A. Josephson, husband and wife, by and through their attorney, F. Cortez Bell, III, Esquire, who, for their Answer to New Matter respectfully sets forth and avers as follows:

44. Paragraph 44 of the Defendant's New Matter is simply an incorporating paragraph to which no response is necessary. To the extent that the Court would deem a response to be necessary, the Plaintiffs would deny any averments of the Defendant's Answer and New Matter contrary to the Plaintiffs' Complaint and demand strict proof of said denied averments at time of trial or hearing in this matter.

45. Paragraph 45 of the Defendant's New Matter would be denied. It would be specifically denied that the Plaintiffs have failed to state a cause of action upon which relief can be granted. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

46. Paragraph 46 of the Defendant's New Matter would be denied. It would be specifically denied that the Plaintiffs have failed to set forth facts sufficient to establish an

easement implied by grant. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

47. Paragraph 47 of the Defendant's New Matter would be denied. It would be specifically denied that the Plaintiffs have failed to set forth sufficient facts to demonstrate that they are entitled to an easement by necessity. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

48. Paragraph 48 of the Defendant's New Matter would be denied. It would be specifically denied that the Plaintiffs have failed to set forth facts sufficient to justify a prescriptive easement. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

49. Paragraph 49 of the Defendant's New Matter would be denied. It would be specifically denied that the Plaintiffs have failed to set forth facts sufficient to warrant awarding Plaintiffs' an easement over Defendant's property. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

50. Paragraph 50 of the Defendant's New Matter would be denied. It would be specifically denied that any alleged easement which may have existed over the roadway in question prior to the Plaintiffs' purchase of the property was extinguished by abandonment or cessation of purpose. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

51. Paragraph 51 of the Defendant's New Matter would be denied. It would be specifically denied that the accessing of Plaintiffs' residence over the roadway in question is not one of actual necessity but is merely one of convenience for the Plaintiffs. The Plaintiffs would

aver that the access to their residence as provided by the roadway in question is clearly one of necessity and not one of mere convenience. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

52. The averments of Paragraph 52 of this Defendant's New Matter set forth legal conclusions to which no response is required. To the extent a response is deemed required, it is specifically denied that an easement by prescription can not be had where the use is permissive, no matter how long it may have continued. Strict proof of any denied averments of Paragraph 52 would be demanded at time of trial or hearing in this matter.

53. Paragraph 53 of the Defendant's New Matter would be denied to the extent stated. Paragraph 53 of the Defendant's New Matter seeks to reserve the right to assert affirmative defenses pursuant to the provisions of the Pennsylvania Rules of Civil Procedure, Rule 1030 to the extent that the same may become relevant or be revealed during the course of the proceedings in this case. No specific response is deemed necessary to the averments of Paragraph 53 of the Defendant's New Matter. To the extent that a response would be deemed to be required it would be specifically denied that there are any affirmative defenses available to the Defendant pursuant to the Pennsylvania Rules of Civil Procedure, Rule 1030. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

54. Paragraph 54 of the Defendant's New Matter would be admitted in part and denied in part. It would be admitted that should the Defendant admit that use of the roadway was with her full consent and knowledge then the same was not hostile and notorious to her interest. Should the Defendant assert that the use of the roadway was not without her consent then it would be denied that the Plaintiffs use of the roadway was deemed to have been

consented to by the Defendant. Strict proof of the denied averments of Paragraph 54 of the New Matter would be demanded at time of trial or hearing in this matter.

55. Paragraph 55 of the Defendant's New Matter would be admitted to the extent stated. The Plaintiffs would aver that they have in essence paid for the use of the roadway by the making of various repairs thereto, by the tarring and chipping of the same, by the installation of a waterline within the boundaries of the roadway, by their snowplowing and other maintenance activities of the roadway during the course of their use. Strict proof of the averment that they have not paid for the use of the roadway would be demanded at time of trial or hearing in this matter.

56. Paragraph 56 of the Defendant's New Matter would be denied. It would be specifically denied that at the time the Plaintiffs used the roadway that they were not aware that they had a right of way or any right to use the roadway. To the contrary, the Plaintiffs would aver that their use of the roadway was consistent with their Complaint filed in this matter either contrary to the rights of the Defendant such that an adverse use of the roadway would have occurred or if the use was with the consent and full knowledge of the Defendant then the same was consented to and relied upon by the Plaintiffs to their detriment. Strict proof of the averments of Paragraph 56 of the New Matter would be demanded at time of trial or hearing in this matter.

57. Paragraph 57 of the Defendant's New Matter would be denied. It would be specifically denied that the Plaintiffs knew at the time of their purchasing of their property that they did not have a right of way over Defendant's property through or by the use of the roadway

in question. Strict proof of the denied averments of Paragraph 57 of the Defendant's New Matter would be demanded at time of trial or hearing in this matter.

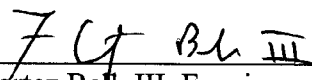
58. Paragraph 58 of the Defendant's New Matter would be admitted. It would be specifically admitted that the Plaintiffs never formally requested a right of way from the Defendant prior to building their home. It would be further averred by the Plaintiffs that no need existed for their requesting a right of way from the Defendant prior to the building of their residence.

59. Paragraph 59 of the Defendant's New Matter would be admitted to the extent stated. It would be specifically averred by the Plaintiffs that the Defendant was aware of the waterline installation and was contacted by Cooper Township Municipal Authority individuals in relations thereto. The Defendant did not sign an easement for the waterline on the basis that the Defendant believed that such was not required. The Defendant indicated that she wished the waterline to access the Plaintiffs' property on the existing right of way and did not want the right of way widened in any fashion or for any purpose. The Plaintiffs further contacted the Defendant at the point in time that the water line was being contemplated and laid and the Defendant indicated that she had no objection thereto but simply wanted to be aware of what was going on.

60. Paragraph 60 of the Defendant's New Matter sets forth a legal conclusion to which no response is required. To the extend that a response would be deemed necessary, the Plaintiffs would deny the averment specifically in regard to the instant case and would demand strict proof thereof at time of trial or hearing in this matter.

WHEREFORE, the Plaintiffs, Thomas E. and Lisa A. Josephson, respectfully request that your Honorable Court deny the various requests for relief set forth within the Defendant's New Matter and that your Honorable Court grant Plaintiffs' request for Declaratory Judgment.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

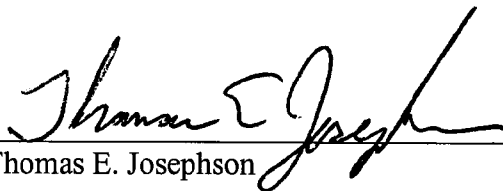


F. Cortez Bell, III, Esquire
Attorney for Plaintiffs

VERIFICATION

I, Thomas E. Josephson, verify that the statements made within the foregoing Answer to New Matter 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.A., Section 4904, relating to unsworn falsifications to authorities.

Date: 12/15/03

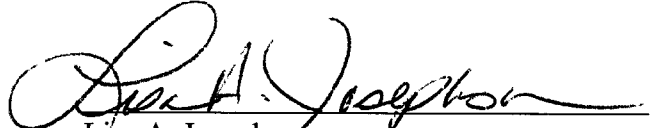

Thomas E. Josephson

VERIFICATION

I, Lisa A. Josephson, verify that the statements made within the foregoing Answer to New Matter 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.A., Section 4904, relating to unsworn falsifications to authorities.

Date:

12/15/03


Lisa A. Josephson

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

THOMAS E. JOSEPHSON and LISA A. :
JOSEPHSON, husband and wife, :
Plaintiffs :

vs. :

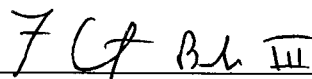
No. 03-1366-CD

GINGER J. KENDRICK , :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer to New
Matter upon the following person by mailing such copy first class mail, postage prepaid to:

Mr. Stuart L. Hall, Esquire
Snowiss, Steinberg, Faulkner & Hall, LLP
The Historic Carskaddon House
P.O. Box 5
333 North Vesper Street
Lock Haven, PA 17745



F. Cortez Bell, III, Esquire
Attorney for Plaintiffs

Date: December 24, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 03-1366-CD

THOMAS E. JOSEPHSON and LISA A.
JOSEPHSON, husband and wife,
Plaintiffs

vs.

GINGER J. KENDRICK,
Defendant

ANSWER TO NEW MATTER

FILED

at 10:30 AM 400 to title
DEC 24 2003

William A. Shaw
Prothonotary

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

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

THOMAS E. JOSEPHSON and LISA A.
JOSEPHSON, husband and wife,
Plaintiffs

vs.

GINGER J. KENDRICK,
Defendant

: No. 03-1366-CD

:
: Type of Case: Civil

:
: Type of Pleading:
: Praeipce for Listing of Non-Jury
: Civil Trial

:
: Filed on Behalf of:
: Thomas E. and Lisa A. Josephson,
: Plaintiffs

:
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183

:
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814)765-5537

FILED

JUN 25 2004

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William A. Shaw
Prothonotary

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1 case to CIA

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

THOMAS E. JOSEPHSON and LISA A. :
JOSEPHSON, husband and wife, :
Plaintiffs :

vs. :

No. 03-1366-CD

GINGER J. KENDRICK, :
Defendant :

PRAECIPE FOR LISTING OF NON-JURY CIVIL TRIAL

TO WILLIAM SHAW, PROTHONOTARY:

Please place the above case on the Non-Jury Civil Trial List. Estimated time for trial
is one (1) day.

By:

F C Bell III

F. Cortez Bell, III, Esquire
Attorney for Plaintiffs

Dated: June 25, 2004

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

THOMAS E. JOSEPHSON and LISA A. :
JOSEPHSON, husband and wife, :
Plaintiffs :

vs. :

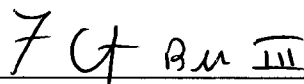
No. 03-1366-CD

GINGER J. KENDRICK, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Praecipe for Listing of Non-Jury Civil Trial upon the following person by mailing such copy first class mail, postage prepaid to:

Mr. Stuart L. Hall, Esquire
Snowiss, Steinberg, Faulkner & Hall, LLP
The Historic Carskaddon House
P.O. Box 5
333 North Vesper Street
Lock Haven, PA 17745



F. Cortez Bell, III, Esquire
Attorney for Plaintiffs

Date: June 25, 2004

C17

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

THOMAS E. JOSEPHSON and LISA A.)
JOSEPHSON, husband and wife,)
Plaintiffs)

No.: 03-1366-CS

v.)

GINGER J. KENDRICK,)
Defendant)

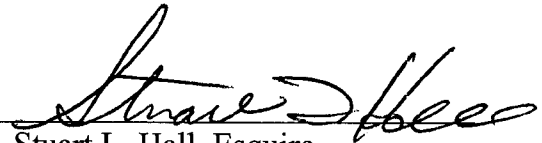
CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2004, I served a copy of the foregoing Complaint upon F. Cortez Bell, Esquire, P. O. Box 1088, Clearfield, Pennsylvania 16830, by United States first class mail, postage prepaid, the original being filed with the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania.

Respectfully Submitted,

SNOWISS, STEINBERG, FAULKNER & HALL, LLP

By



Stuart L. Hall, Esquire
333 North Vesper Street
Lock Haven, PA 17745
(570) 748-2961

FILED

01/31/04
AUG 06 2004

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

THOMAS E. JOSEPHSON and	:
LISA A JOSEPHSON,	:
Plaintiffs	:
	:
V.	: No: 03-1366-CD
	:
GINGER J. KENDRICK,	:
Defendant	:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Plaintiff's Pre-Trial Statement upon the following persons by mailing such copy first class mail, postage prepaid to:

Stuart L. Hall, Esquire
Snowiss, Steinberg, Faulkner & Hall, LLP
The Historic Carskaddon House
P.O. Box 5
333 N. Vesper Street
Lock Haven, PA. 17745

7 Cf Bell III
F. Cortez Bell, III, Esquire
Attorney for Plaintiff

Date: August 9, 2004

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William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS E. JOSEPHSON and
and LISA A. JOSEPHSON, husband
and wife

V.

GINGER J. KENDRICK

NO. 03-1366-CD

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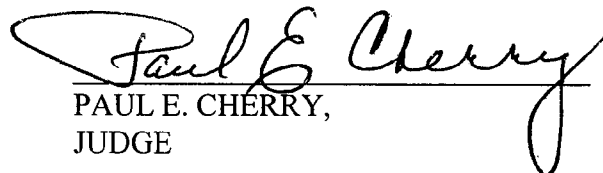
William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 16TH day of August, 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. All Motions shall be filed by and no later than thirty (30) days prior to the commencement of trial.
3. Non-Jury Trial in this matter is scheduled for December 7, 2004 at 9:00 A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania. Should additional time be required to complete trial, one-half day has been allotted for December 28, 2004 beginning at 9:00 A.M.
4. A view of the area named in this action is scheduled for November 18, 2004 at 9:30 A.M. with the parties meeting at the office of District Justice Rudella in Kylertown, Pennsylvania.
5. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.
6. Defendant is permitted access to Plaintiff's property for purpose of conducting a survey and/or the taking of pictures of the property with Defendant providing at least seven (7) days notice to Plaintiff's counsel.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

CA

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

THOMAS E. JOSEPHSON and
and LISA A. JOSEPHSON, husband
and wife

: NO. 03-1366-CD
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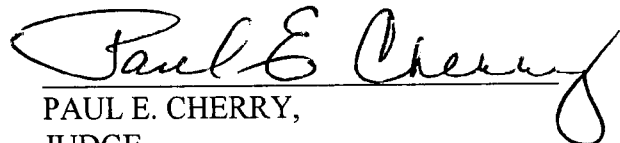
V.

GINGER J. KENDRICK

ORDER

AND NOW, this 2nd day of November, 2004, it is the ORDER of this Court that
the view of the area named in this action scheduled for November 18, 2004 be and is
hereby rescheduled to November 22, 2004 at 9:00 A.M. with the parties meeting at the
office of District Justice Rudella in Kylertown, Pennsylvania.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

(for)

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1cc atty Hall
NOV 03 2004

William J. Shaw
Prothonotary

CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

THOMAS E. JOSEPHSON and

:

LISA A. JOSEPHSON

:

VS.

: NO. 03-1366-CD

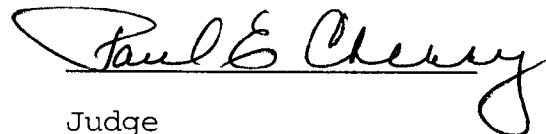
GINGER J. KENDRICK

:

O R D E R

AND NOW this 7th day of December, 2004, following trial in the above-captioned matter, it is the ORDER of this Court that counsel provide the Court with brief within thirty (30) days upon receipt of the transcript. Counsel will have ten (10) days thereafter to file reply brief, if desired.

BY THE COURT:


Judge

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Clerk of Court
100 City Hall
DEC 09 2004

William A. Shaw
Prothonotary

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

THOMAS E. JOSEPHSON and
LISA A. JOSEPHSON

NO. 03-1366-CD

V.

GINGER J. KENDRICK

FILED 2cc Any:
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JAN 17 2006 Hall

William A. Shaw 1cc D. M. Krsell
Prothonotary/Clerk of Courts
(without memo)
ER

OPINION

This matter comes before the Court upon the filing of a Complaint by Plaintiffs, Thomas E. Josephson and Lisa A. Josephson, husband and wife, seeking an easement implied by grant, prescriptive easement, easement by necessity and easement by implication of the area now commonly referred to as Thunder Alley, Cooper Township, Clearfield County, Pennsylvania. Following a view and Non-Jury Trial and the timely receipt of Briefs, this matter is ripe for decision.

The basic facts of this case appear to not be in dispute between the parties. The parties at the time of trial, admitted, by way of joint exhibits, copies of the various deeds of the parties as well as the title examinations which give rise to the ownership of properties involved in the current road dispute. The Plaintiffs are the owners of a tract of land located in Cooper Township, Clearfield County, Pennsylvania by deed dated July 19, 1993 consisting of 15.875 acres which are set forth in three separate parcels. Plaintiffs are also the owners of an additional tract of land located in Cooper Township by deed dated February 7, 1998 consisting of 10 acres. The Defendant, Ginger J. Kendrick, is the owner of an adjoining tract of land located in Cooper Township by deed dated May 21, 1974, consisting of 29.405 acres. The Court finds that the testimony presented clearly

established that the roadway in question has been in existence and has been in use by occupants of the properties since at least 1935. Defendant Kendrick admits to the roadways existence since 1956. It is abundantly clear to this Court that this matter was brought due to the naming of the roadway as Thunder Alley. The Defendant admitted to this Court that but for the naming of the roadway, the matter would not have been brought and she would not have taken the actions to cease the use of the disputed roadway.

The first issue before the Court is that Plaintiffs allege they may use the disputed roadway based upon an easement implied by grant. This assertion, that of easement implied by grant, arises from the at one time common ownership of the tracts of land involved in this matter. A review of the deeds and the chains of title introduced at trial reveal that the ownership of all tracts of property involved were at one time owned by an individual named Lewis Pfeiffer. Pfeiffer then conveyed several parcels which make up the parcels now owned by the Plaintiffs and the Defendant. The Court is satisfied that as a result of those conveyances, certain parcels were landlocked and that the landlocked parcels are included within the parcels of land now owned by the Plaintiffs. Furthermore, the Court notes that the deeds within Defendant Kendricks chain of title clearly make reference to the roadway in question as being along the border of the parcels. It is quite clear to this Court that the reference to the roadway at the time of the conveyance clearly established the existence of the roadway but also that the roadway was meant to serve as ingress and egress to those parcels now owned by the Plaintiffs. The Court finds that once the parcels were conveyed from a common grantor, there is implied therein that any landlocked parcels would, by implication, be provided with access across the lands of the Defendant to a point of entry. The Court is satisfied that the Plaintiffs clearly have

established their ability to make use of the roadway in question for their ingress and egress to their property.

The next issue before the Court is whether Plaintiffs have met their burden on their claim that a prescriptive easement over the Defendant's property has been established. To acquire a right or easement by prescription, the evidence and proof thereof must be clear and positive. Pittsburgh and Lake Erie R. Co. V. Stowe Township, 374 Pa. 54, 59, 96 A.2d, 892 (1953). A prescriptive easement is created by adverse, open, continuous, notorious and uninterrupted use of the land for a period of twenty-one (21) years. Boyd v. Teeple, 460 Pa. 91, 94, (1975), Burkett v. Snyder, 369 Pa. Super 519 (1988). "To establish a prescriptive easement, the proponent of the easement need not prove constant use of the property; the proponent of the easement may instead produce evidence of a settled course of conduct that indicates an attitude of mind on the part of those using the property that such use is the exercise of a property right." Moore v. Duran, 455 Pa. Super 124, 687 A.2d 822, 825 (1996). The use of one party can be tacked onto the use of the next person in order to obtain the twenty-one (21) years. Moore v. Duran, 455 Pa. Super 124, 687 A.2d 822, 825 (1996). The record at trial makes many references to the maintenance and repair of the roadway not only by the Plaintiffs' but also other individuals who have resided along the roadway. Electric cable, television, telephone and water lines have been placed along the roadway all which were done with the knowledge of the Defendant if not without her consent. The Court is satisfied that the conduct of all persons with regard to the roadway throughout the time that the roadway has been in existence has been conducted openly in the use of the roadway. Such action has either been without the consent of the Defendant, Kendrick, or at the very least, Defendant

Kendrick was aware of the action and took no action on her own to halt or cease the use being made of the roadway whether it being driving upon the roadway for purposes of ingress, egress, maintaining and repairing the roadway, plowing the roadway free of snow and/or the installation of the various utilities to serve the properties along the roadway. The Court is also satisfied that the testimony has established that the use has been continuous in that at all times the uses to which the roadway was put clearly establishes the intent to use the roadway for access as well as to allow continued enjoyment of Plaintiffs' property by the installation of the various utilities needed to serve Plaintiffs' property. The Court finds that the use has been uninterrupted over a period of time. Even from the time the former residence was burned down, the property was still accessed by various individuals including the Plaintiffs. The Court is satisfied that the Plaintiffs have clearly met their burden for the finding of an easement by prescription.

The next issue Plaintiffs raise for the Court's consideration is whether they have established an easement by implication. An easement by implication arises under similar circumstances as a prescriptive easement with the difference being that the one requires a lack of owners consent (prescriptive) and the other relies upon the owner's consent whether that has been expressed or more often than not, whether that arises simply because the owner is aware of the use but does nothing to stop or cease the use. The Court finds the Plaintiffs have met their burden to establish an easement by implication.

The last issue before the Court is whether Plaintiffs have established an easement by necessity. The testimony clearly establishes that Plaintiffs have no other reasonable access to reach their residence. Defendant claimed that since the Plaintiffs' are the owners of a second tract of land which they acquired in 1998, they now have alternative means of

access to their property from the area from Basin Run Road crossing over their own property and entering their residence property from a different entry way. The Court does not agree. The Court must look as to the practicality of gaining access to Plaintiffs' property from Basin Run Road. Testimony was presented at trial that Plaintiffs would have to expend over Twenty-Five Thousand (\$25,000.00) Dollars in an attempt to develop a roadway which would give them access to their residence from Basin Run Road. The Court notes that the area which Defendant asserts could be used as an alternative access consisted of a steep side wall of a stripping that would require extensive work and backfill in order to make a roadway. Defendant must show that the alterative route to extinguish any claim to an easement which the Plaintiffs may have to Thunder Alley. The Defendant must show that the alternate route must be a reasonable alternative. It is clear to this Court that the alterative route is cost prohibitive but, more importantly and more practically, it is physically impossible to construct a roadway in a manner which would provide safe and reasonable access to Plaintiffs' residence. The Court finds, based upon the above reasoning and the Court's view of the property, that there is no alterative route available for use by the Plaintiffs.

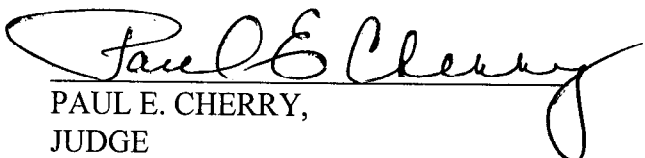
Defendant next asserts that as the roadway passes through unenclosed woodlands that by statute there can be no right-of-way established. (68 PS §411). The statute raised by Defendant was examined by this Court. The definition of woodlands was examined in light of the conditions that existed when the statute was passed. The Act was passed to protect the owners of large tracts to allow a defense against prescriptive easements which could often go undetected for periods of time or change in location over time. Various Courts within this Commonwealth have consistently held that it is the character of the

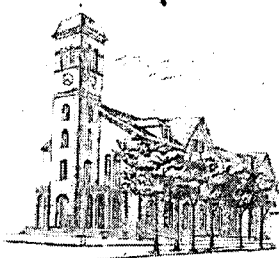
right-of-way itself which is determinative as to whether the statute applies rather than the nature of the property through which it runs. Tricker v. Pennsylvania Turnpike Commission, 717 A.2d 1078, 1082 , 1083 (Commonwealth Court 1989). The Court is satisfied that, based upon the testimony presented at trial, that the statute is inapplicable to the present case where the roadway in question first passes through open fields for the majority of its length and then passes through a small portion of wooded land some which is owned by the Plaintiffs. The Court finds that the statute does not apply to easements other than situations of prescriptive easements. The Court is satisfied that even if Defendant would be successful in its argument as to the applicability of the statute, it would only apply to prescriptive easements and would not preclude this Court from ruling in favor of the Plaintiffs on easement implied by grant, easement by necessity and easement by implication. Based upon the foregoing, the Court enters the following Order:

ORDER

AND NOW, this 16th day of January, 2006, it is the ORDER of this Court that an easement has been established by Plaintiffs of the roadway twenty-five (25) feet in width, over the property of the Defendant over that area commonly referred to as Thunder Alley, Cooper Township, Clearfield County, Pennsylvania and further finds that Plaintiffs shall use the roadway known as Thunder Alley, Cooper Township, Clearfield County, Pennsylvania for purposes of ingress and egress to their residence with neither party obstructing in any manner the ingress and egress of the other party.

BY THE COURT,


PAUL E. CHERRY,
JUDGE



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 11/7/06

_____ You are responsible for serving all appropriate parties.

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

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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COURT ADMINISTRATOR'S
OFFICE

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

THOMAS E. JOSEPHSON and LISA A.)
JOSEPHSON, husband and wife,)
Plaintiffs)

No.: 03-1366-CS

v.)

GINGER J. KENDRICK,)
Defendant)

 **ORIGINAL**

DEFENDANT'S PRE-TRIAL MEMORANDUM

1. **Brief Factual Statement.** Plaintiffs brought this declaratory judgment action, requesting the court to find that Plaintiffs have an easement over Defendant's property. Plaintiffs' complaint contains four counts, easement by implied grant, easement by necessity, prescriptive easement and easement. The property in question is unenclosed woodlands.

Defendant obtained her property on March 16, 1946 and has owned it continuously since that time. Plaintiffs obtained their property and began constructing a house in 1993. Plaintiffs have traveled over a gravel road on Defendant's property to access their house on a regular basis since that time.

Plaintiffs purchased a ten acre tract of ground in 1998, which connects to Plaintiffs' other property and has 415 feet of frontage on Basin Run Road, a township road.

Plaintiffs are able to access their property without entering Defendant's property.

Defendant never provided Plaintiffs with a right-of-way over her property nor do

Plaintiffs have any right to use the roadway crossing Defendant's property. At the time of purchasing their property, Plaintiffs knew they did not have a right-of-way to cross Defendant's property to access their property.

2. **Exhibits.** Title search documents including copies of deeds, plot plans, assessment map and topographical map showing the roadways in the area in question; videotapes and photographs.

3. **Names and Addresses of all Witnesses Expected to be Called.** Ginger J. Kendrick, P. O. Box 2, 15 Indiana Street, Grassflat, PA 16839; Jacqueline Wick and Thomas Wick, husband and wife, 109 North Fourth Street, Snow Shoe, PA 16874. All witnesses will testify concerning liability in this matter.

4. **Legal Theory upon Which Defense is Predicted.** Plaintiffs are not entitled to have any type of easement over Defendant's property. An easement implied on the grounds of necessity is always of strict necessity; it never exists as a mere matter of convenience. Possessky v. Diem, 440 Pa. Super. 387, 655 A.2d 1004 (1995). Further, an easement by necessity does not exist when an owner can get to his own property through his own land and the necessity must not be created by the party claiming the easement. Ogden v. Grove, 38 Pa. 487, Note 6 (1861). Plaintiffs can get to their residence from a public road without entering Defendant's property. Plaintiffs are not entitled to use Defendant's property merely because it is more convenient.

Plaintiffs cannot obtain an easement by prescription over Defendant's property

which is unenclosed woodlands.

Section 411 of Title 68 of the Pennsylvania Consolidated Statute reads,

No right-of-way shall be hereafter acquired by user, where such way passes through unenclosed woodlands but on clearing such woodland, the owner or owners shall be at liberty to enclose the same, as if no such way had been used through the same before such clearing or enclosure.

A property owner is not entitled to easement by prescription where easement claim consisted of right-of-way that traversed both open field and unenclosed woodlands. Tricker v. Pennsylvania Turnpike Commission, 717 A.2d 1078, Pa. Commw. 1998, appeal dn. 739 A.2d 547, 559 Pa. 684. Even where the factors necessary to obtain a prescriptive easement have been established, the acquisition of a prescriptive easement through unenclosed woodlands is prohibited by statute. Id.

Any easement which arguably existed was extinguished when Plaintiffs purchased the additional ten acres which connects their property to a public road. Dulaney v. Rohanna Iron and Metal Inc., 344 Pa. Super. 45, 495 A.2d 1389 (1985).

5. **Damages.** Not applicable.
6. **Evidentiary Problems.** None anticipated.
7. **Stipulations.** It is anticipated that the parties will stipulate to the chain of title for the properties involved in this matter.
8. **Points for Charge.** Not applicable.
9. **Estimate Time for Trial.** One (1) day.

10. **Other.**

Scheduling. Counsel for Defendant is currently scheduled for jury selection in Clinton County on September 17, and in Snyder County on October 11 and 12, 2004; counsel for Defendant is scheduled for trial in Clinton County on October 13, 14 and 15, 2004; counsel for Defendant is scheduled to attend court ordered depositions in Centre County on September 27, 28 and 29, October 18-22 and November 8-10, 2004.

View of Property. Defendant requests the opportunity to enter Plaintiff's property for the purpose of photographing the property and possibly obtaining a survey.

Respectively Submitted,

SNOWISS, STEINBERG, FAULKNER & HALL, LLP

By



Stuart L. Hall, Esquire
333 North Vesper Street
Lock Haven, PA 17745
(570) 748-2961

(C)

SNOWISS, STEINBERG, FAULKNER & HALL, LLP

ATTORNEYS AT LAW

ALVIN L. SNOWISS
DONALD L. FAULKNER
LEWIS G. STEINBERG
STUART L. HALL

THE HISTORIC CARSKADDON HOUSE
P. O. BOX 5
333 N. VESPER STREET
LOCK HAVEN, PENNSYLVANIA 17745

570-748-2961
800-624-9060
FAX 570-748-8182
law@ssfh.com
OF COUNSEL
MICHAEL K. HANNA, SR.

August 5, 2004

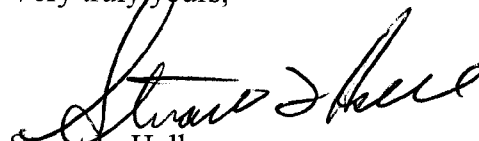
William Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Josephson, et al v. Kendrick
Clearfield County Civil Docket No. 03-1366

Dear Mr. Shaw:

Enclosed please find an original and one copy of Defendant's Pre-Trial Memorandum to be filed in the above referenced matter. Please time stamp the copy and return it to me in the enclosed self addressed stamped envelope. Thank you for your assistance with this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,


Stuart L. Hall

SLH:fmn

Enclosure

cc: F. Cortez Bell, III, Esquire w/Enclosure

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COURT ADMINISTRATORS
OFFICE

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

THOMAS E. JOSEPHSON and
LISA A JOSEPHSON,
Plaintiffs

V.

GINGER J. KENDRICK,
Defendant

: NO. 03-1366-CD
:
: Type of Case: Civil
:
: Type of Pleading:
: Plaintiffs Pre-Trial
: Statement
:
: Filed on Behalf of:
: Thomas E. Josephson
: Lisa A. Josephson,
: Plaintiffs
:
:
: Counsel of Record for This
: Party:
: F. Cortez Bell, III, Esq.
: I.D. #30183
:
: F. Cortez Bell, III, Esquire
: 318 East Locust Street
: P. O. Box 1088
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:
:

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AUG 09 2004

**COURT ADMINISTRATORS
OFFICE**

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

THOMAS E. JOSEPHSON and	:	
LISA A JOSEPHSON,	:	
Plaintiffs	:	
	:	
V.	:	No: 03-1366-CD
	:	
GINGER J. KENDRICK,	:	
Defendant	:	

PLAINTIFF'S PRE-TRIAL STATEMENT

NOW comes the Plaintiffs, Thomas E. Josephson and Lisa A. Josephson, by and through their attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth the Plaintiff's Pre-Trial Statement as follows:

STATEMENT OF THE CASE

This matter is before the Court as a result of a Complaint for Declaratory Judgment being filed on behalf of the Plaintiffs. The issue involved is the use of a roadway which bisects property owned by the Defendant and which is the sole means of access to the residence of the Plaintiffs. The Complaint sets forth several alternative basis for the Plaintiff's claim for use of the roadway in question. There are Counts based upon an Easement Implied by Grant; Easement by Necessity; Prescriptive Easement and Easement. The Plaintiffs originally purchased a tract of land in Cooper Township on July 19, 1993 for purpose of

construction of a residence for them to live in. At that time the sole source of access to the premises was the roadway which is the subject of the current dispute. Over the course of time after the residence was built, the Plaintiffs continued to use the road as their means of entering their property and made various improvements to the surface of the roadway in order to improve the access to their residence. In conjunction with the use of the roadway and the residence that had been built, the Plaintiffs constructed a waterline and had Moshannon Valley Cable install a cable line either within the boundaries of the roadway itself or along the roadway. All matters between the parties were fine until Clearfield County pursuant to the Enhanced 911 street naming attempted to name the roadway bisecting the Defendant's property. The officials at Clearfield County chose the name of Thunder Alley and the Defendant objected indicating that she wished the name to be named Kendrick as a result of her ownership of the property in the area. The Defendant had acquired the property which is bisected by the road by Deed obtained in 1974. The Plaintiffs objected to the name change at that point and as a result the instant dispute occurred. The Defendant, at one point, directed the physical blocking of the roadway on one occasion by the use of a gate that had been installed by the Defendant or others at her direction thereby not allowing access to the Plaintiffs residence and perhaps more importantly not allowing the therapists which

treat the Plaintiffs daughter to exit or enter the premises. The police became involved and the roadway was opened. The Defendant claims that the Plaintiffs have access to the property by means of a subsequent purchase of property in February 1998. There is currently no roadway over that property by which access can be had. The roadway in question according to Plaintiff's title search has been in existence and is referred to in the chain of title since at least 1930. The Plaintiffs have filed the instant action to have the Court resolve the dispute.

CASE LAW

The Plaintiffs do not believe that there are any issues which involve unusual statutory or case law. The matter seems to deal directly with the law of easements based upon grant, necessity or prescription. The Plaintiffs also question whether an easement is even necessary.

WITNESSES

A. Thomas E. Josephson, 342 Thunder Alley, Route 53, P.O. Box 27, Drifting, PA. 16834.

B. Lisa A. Josephson, 342 Thunder Alley, Route 53, P.O. 27, Drifting, PA. 16834.

C. Daniel Shive, Moshannon Valley Excavating & Contracting, P.O. Box 171, Drifting, PA. 16834.

D. Harry J. Shive, Moshannon Valley Excavating & Contracting, P.O. Box 171, Drifting, PA. 16834.

E. Stephen F. Biggans, 33 Thunder Alley, Drifting, PA. 16834.

F. Pamela Bizzarri, 10 North 6th Street, Philipsburg, PA. 16866. (Therapist)

G. Lawrence Cerifko, c/o Cooper Township Municipal Authority, P.O. Box 446, Winburne, PA. 16879.

H. The Plaintiffs may call any or all Defendant's witness as on cross examination

G. The Plaintiffs reserve the right to supplement this list of witnesses if additional witnesses become available prior to the date of the trial in this matter. The counsel for the Plaintiffs will immediately notify counsel for the Defendant should any such witnesses arise.

As there are no damages being claimed all witnesses noted above are as to liability relative to the existence of an easement or whether an easement is even needed as to the roadway.

DAMAGES

Neither the Plaintiffs nor the Defendants are seeking damages in this matter as the dispute concerns the use of a roadway.

EXHIBITS

A. Title Search records as to both the property owned by the Plaintiffs and the Defendant.

B. Various photographs of the roadway in question as well as the area in which the Defendant claims that the Plaintiffs have access through their own property.

C. Estimate from Moshannon Valley Excavating & Contracting for the construction of an alternative roadway. (Copy attached)

The Plaintiffs reserve the right to supplement this list of exhibits if additional exhibits become available prior to the date of the trial in this matter. Should any such exhibits be discovered the same will be immediately provided to counsel for the Defendant.

EVIDENTIARY PROBLEMS

No problems of an evidentiary nature are expected.

STIPULATIONS

It is anticipated that counsel for the parties can stipulate to the chain of title for the properties involved and the introduction of any exhibits related to the title searches if necessary.

POINTS FOR CHARGE

There are no points for charge necessary.

ESTIMATED TIME FOR TRIAL

One day.

Respectfully submitted,

F C Bell III

F. Cortez Bell, III, Esquire
Attorney for Plaintiff

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MOSHANNON VALLEY EXCAVATING & CONTRACTING

P. O. BOX 171 DRIFTING, PA. 16834

814-345-6570

January 28, 2004

Tom Sheehan

Po box 27, Drifting, Pa. 18834
345-572

345-5728

TERMS: 1 1/2 % after 30 days

03-08-C

"Estimate for building a home"			
300 board of plan.	\$75/ld	\$22,500.00	
600 wood doors	55/m.	3300.00	
		<u>\$25,800.00</u>	

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

NO: 03-1366-CD

THOMAS E. JOSEPHSON and
LISA A. JOSEPHSON,
PLAINTIFFS
V.
GINGER J. KENDRICK,
DEFENDANT

PRE TRIAL MEMORANDUM

F. CORTEZ BELL, III
ATTORNEY AT LAW
318 EAST LOCUST STREET
P.O. BOX 1088
CLEARFIELD, PA 16830