

05-122-CD
R. W. Smith vs. I. E. Ricketts et al

CKFRRS, Et al.

Wesley Smith et al v. Isaac Ricketts et al
2005-122-CD

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

R. WESLEY SMITH and SAMANTHA L. :
SMITH, his wife, :
Plaintiffs :
vs. : No. 05 - 122 - C.D.
: ACTION TO QUIET TITLE
ISAAC E. RICKETTS, MOUNTAIN CITY :
LUMBER COMPANY, JAMES FLYNN and :
JENNIE H. FLYNN, his wife, PATRICK : PRAECIPE FOR FINAL
FLYNN and CLARA FLYNN his wife, : JUDGMENT
ANTHONY FLYNN and MARY FLYNN, his :
Wife, WILLIAM WALLACE, THOMAS H. :
MURRAY, CLEARFIELD CREEK COAL :
COMPANY, and H. B. POWELL, their :
heirs, executors, administrators :
and assigns, :
Defendants :

Filed on behalf of
Plaintiffs

Counsel of Record for
this Party:

Carl A. Belin, Jr.
Attorney-at-Law
Pa. I.D. 06805

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FILED (6)
04/10/2005
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APR 18 2005

William A. Shaw
Prothonotary/Clerk of Courts

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wife, WILLIAM WALLACE, THOMAS H. :
MURRAY, CLEARFIELD CREEK COAL :
COMPANY, and H. B. POWELL, their :
heirs, executors, administrators :
and assigns, :
Defendants :

PRAECIPE FOR FINAL JUDGMENT

TO THE PROTHONOTARY:

Please enter final judgment against the Defendants in the
above-captioned case for failure to comply with the Order of Court
directing Defendants to file objections within thirty (30) days
from the entry of Order of judgment in favor of Plaintiffs.

BELIN & KUBISTA


Carl A. Belin, Jr., Esq.
Attorney for Plaintiffs

BELIN & KUBISTA
ATTORNEYS AT LAW
15 NORTH FRONT STREET
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CLEARFIELD, PENNSYLVANIA 16830

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JENNIE H. FLYNN, his wife, PATRICK : COMPLAINT
FLYNN and CLARA FLYNN his wife, :
ANTHONY FLYNN and MARY FLYNN, his :
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FILED
01/15/05 P.D. 95-00
1/27/05
JAN 27 2005

William A. Shaw
Prothonotary

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ACTION TO QUIET TITLE

NOTICE

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830

(814) 765-2641 Ex 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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Defendants :

COMPLAINT

NOW COMES, the Plaintiffs, and by and through their attorneys Belin & Kubista, bring the following action in quiet title, and in support thereof, allege as follows:

1. That the Plaintiffs are R. Wesley Smith and Samantha L. Smith, his wife, of Winslow Township, Jefferson County, Pennsylvania, with a mailing address of P.O. Box 39, Reynoldsville, Pennsylvania 15851.

2. The Defendants are: Isaac E. Ricketts, whose last known address is Beccaria Township, Clearfield County, Pennsylvania; Mountain City Lumber Company, whose last known address is Altoona, Blair County, Pennsylvania; James Flynn and Jennie H. Flynn, whose last known address is Charleston,

West Virginia; Patrick Flynn and Clara Flynn, whose last known address is Altoona, Blair County, Pennsylvania; Anthony Flynn and Mary Flynn, whose last known address is Clearfield County, Pennsylvania; William Wallace, whose last known address is believed to be Borough of Clearfield, Clearfield County, Pennsylvania; Thomas H. Murray, whose last known address is believed to be Borough of Clearfield, Clearfield County, Pennsylvania; Clearfield Creek Coal Company, whose last known address is believed to be Borough of Clearfield, Clearfield County, Pennsylvania; H. B. Powell, whose last known address is believed to be Borough of Clearfield, Clearfield County, Pennsylvania.

3. That the Plaintiffs are the owners of a tract of land identified in the Clearfield County Tax Maps as Parcel Number 101-J-16-29 and 101-J16-75, which are part of the same tract, which is located in Beccaria Township, Clearfield County, Clearfield, Pennsylvania, more particularly bounded and described as follows ("the premises"):

BOUNDED on the North by lands now or formerly of Blake McCoy; bounded on the East by lands now or formerly of Clair Semple and the First National Bank of Philipsburg; bounded on the South by lands now or formerly of Clair Rutter; and bounded on the West by lands now or formerly of Edna McCoy.

CONTAINING 90 acres, more or less.

EXCEPTING AND RESERVING, however, out of the above described property all the coal, oil, gas, fireclay, clay, rock and other minerals of whatever kind lying in, under and upon the described premises together with the right to explore and drill for said oil and gas and all mining and removal rights and privileges necessary to prospect, mine, remove and carry away all the coal, oil, gas, fireclay, clay, rock and other minerals.

4. That R. Wesley Smith and Samantha L. Smith acquired a one-half (1/2) interest in the part of the premises identified in the Clearfield County Tax Maps as 101-J16-29 by deed of Raymond A. Smith and Shirley B. Smith by deed dated June 28, 2001, and recorded in the Clearfield County Recorder of Deeds Office in Instrument Number 200110032.

5. That R. Wesley Smith and Samantha L. Smith acquired the part of the premises identified in the Clearfield County Tax Maps as 101-J16-75 by deed of Northern Counties Coal Co., Inc., dated May 3, 2002, and recorded in the Clearfield County Recorder of Deeds Office in Instrument Number 200207200.

6. That Northern Counties Coal Co., Inc., acquired the part of the premises identified in the Clearfield County Tax Maps as 101-J16-29 by deed of R. Wesley Smith, Samantha L. Smith, Raymond A. Smith and Shirley B. Smith dated December 13, 1991, and recorded in the Clearfield County Recorder of Deeds Office in Deeds and Records Book 1435, page 400.

7. That R. Wesley Smith, Samantha L. Smith, Raymond A. Smith, and Shirley B. Smith, acquired the entire premises by a deed from Genevieve A. Nelson et al. dated January 2, 1979, recorded in the Clearfield County Recorder of Deeds Office in Deed Book 775, page 076.

8. That the Grantors in the previous deed were the devisees of George T. Mullen who died on April 12, 1956, as the owner of one-half of the premises and, who, by his Last Will and Testament devised the premises to the Grantors, which Last Will and Testament of George T. Mullen is recorded in Clearfield County Register of Wills Office in Will Book 2, page 521. That George C. Mullen, one of the Grantors in the deed to the Smiths, was also vested of the other one-half interest in the premises by virtue of the hereinafter-mentioned deed in Paragraph 10, and as a result the deed to the Smiths set forth in Paragraph 7 conveyed the complete title to the premises.

10. That George T. Mullen and George C. Mullen became the owners of the premises by virtue of a Clearfield County Commissioner's deed dated May 27, 1942, which was recorded in the Clearfield County Recorder of Deeds Office in Deed Book 353, page 73.

11. That the Clearfield County Treasurer acquired title to the premises by virtue of a deed from the Clearfield County Treasurer dated April 10, 1936, for unpaid taxes for the

year of 1930 on 90 Acres of surface owned and assessed in the name of Isaac E. Ricketts which deed is recorded in the Clearfield County Recorder of Deeds Office in Deed Book 353, page 72.

12. That one of the purposes of this quiet title action is to extinguish any interest that Isaac E. Ricketts, his heirs and assigns, may have had in and to said premises due to lack of notice or any other defect in the tax sale referred to in Paragraphs 10 and 11 of the Complaint which are incorporated herein by reference, and to extinguish any interest or equity that Isaac E. Ricketts, his heirs and assigns, may have had in the premises following said tax sale.

13. That Isaac E. Ricketts acquired title to the premises by a deed from James Flynn and Jennie M. Flynn, his wife, in their own right and as partners doing business in the name of Mountain City Lumber Company, dated March 8, 1919, and recorded in the Clearfield County Recorder of Deeds Office in Deed Book 239, page 205.

14. That Isaac E. Ricketts also acquired title to the premises by virtue of a deed from the Clearfield County Commissioners dated May 24, 1919, and recorded in the Clearfield County Recorder of Deeds Office in Deed Book 239, page 205, for premises described as 95 Acres in Beccaria

Township which was assessed in the name of the Mountain City Lumber Company.

15. That the Clearfield County Commissioners acquired title to the tract by virtue of a deed from the Clearfield County Treasurer dated March 11, 1919, for unpaid taxes for a tract in the name of Mountain City Lumber Company for unpaid taxes for the years of 1916 and 1917, which is recorded in the Clearfield County Recorder of Deeds Office in Deed Book 239, page 204.

16. That James Flynn acquired title to the premises by virtue of a deed from the County Commissioners by deed dated June 23, 1915, recorded in the Clearfield County Recorder of Deeds Office in Deed Book 239, page 202, the premises described as a 95 Acre tract of surface assessed in the name of Mountain City Lumber Company.

17. That the Clearfield County Commissioners acquired title to the premises by virtue of a deed from the Clearfield County Treasurer by deed dated August 1, 1914, for unpaid taxes for the years 1912 and 1913 on 95 acres of surface in the name of Mountain City Lumber Company which deed is recorded in the Clearfield County Recorder of Deeds Office in Deed Book 239, page 201.

18. That it is one of the purposes of the quiet title is to extinguish any interest that Mountain City Lumber

Company, James Flynn, or Jennie H. Flynn, their heirs, successors, and assigns, may have had in and to said premises by virtue of the tax sales and redemption referred to in the various Treasurers deeds and County Commissioners deeds in Paragraphs 14, 15, 16, and 17 of the Complaint which are hereby incorporated by reference, and to extinguish any interest or equity that Mountain City Lumber Co., James Flynn or Jennie H. Flynn, their heirs successors, and assigns, may have had in the premises due to lack of notice or any other defect in the tax sale referred to in Paragraphs 14, 15, 16 and 17 of the Complaint which are hereby incorporated by reference, and to extinguish any interest or equity that Mountain City Lumber Company, James Flynn or Jennie H. Flynn, their heirs, successors and assigns, may have had in the premises following said tax sale.

19. That the premises were conveyed to Patrick Flynn as part of a 241 Acre tract by a deed from Dennis McCoy dated April 2, 1873, and recorded in the Clearfield County Recorder of Deeds Office in Deed Book 9, page 66.

20. That Patrick Flynn conveyed two (2) tracts from the 241 Acre tract to John McCoy by a deed dated April 27, 1877, and recorded in the Clearfield County Recorder of Deeds Office in Deed Book 10, page 298, leaving the premises as a residue of approximately 95 Acres.

21. That "P. & A. Flynn" was assessed as an unseated assessment with a tract of 154 Acres identified as the "Dennis McCoy" tract in the unseated assessment of Beccaria Township for the year of 1877 ("the assessment").

22. That a seated assessment in the name of Patrick Flynn was stricken in 1878 which showed 100 Acres as being assessed to P. Flynn and transferred to unseated assessment in the name of "P & A Flynn."

23. That the unseated assessment was changed in 1880 to 124 Acres as the notation that the assessment was reduced because 24 Acres was conveyed by Patrick Flynn to John McCoy.

24. That the unseated assessment was changed in 1886 to 100 Acres without notation in the "P. & A. Flynn" assessment.

25. That the assessment was transferred from P. & A. Flynn" to "Clearfield Creek Coal Co." in 1892; however, there are no deeds of record transferring title to the premises as set forth in the assessment records.

26. That a deed conveying the coal underlying the premises from Patrick Flynn and Clara Flynn, Anthony Flynn and his wife, Mary Flynn, and James Flynn and his wife Jennie Flynn, to William Wallace by a deed dated December 15, 1880, recorded in the Clearfield County Recorder of Deeds Office in Deed Book 41, page 566.

27. That William Wallace conveyed the coal underlying the premises to Clearfield Creek Coal Company by deed dated July 28, 1880, and recorded in the Clearfield County Recorder of Deeds Office in Deed Book 44, page 448.

28. That there also appears an unseated assessment in 1892 in the name of Thomas H. Murray for "100 acres surface of Dennis McCoy" which it is believed and averred was for the premises.

29. That in 1895 the unseated assessment of Clearfield Creek Coal Company has a notation that the "Thos. Murray" tract was transferred to H. B Powell.

30. That in 1895 an unseated assessment in the name of H. B. Powell appears as "100 acres surface from Clearfield Creek Coal Co., which it is believed and is averred for the premises.

31. That H. B. Powell joined in a timber agreement for the premises dated November 12, 1900, "as the holder of the legal title," which agreement is recorded in the Clearfield County Recorder of Deeds Office in Miscellaneous Book R, page 183.

32. That in the unseated assessment records for 1907, an assessment appears for "100 acres surface" in the name of "Mountain City Lumber Co." as being transferred from

"Clearfield Creek Coal Co." which it is believed and is averred was for the premises.

33. That the assessment of Mountain City Lumber Co. continued and was the basis for the tax sales set forth in paragraphs 14, 15, 16, and 17.

34. That while there were no deeds of record from Patrick Flynn to James Flynn and Jennie Flynn or Mountain City Lumber Co., the aforesaid assessments show the connection between Patrick Flynn, the chain of assessments, and the relationship between the aforesaid assessments to the recorded ownership in the property.

35. That it is one of the purposes of this quiet title action to extinguish any interest Patrick Flynn, his heirs and assigns, may have had in and to the premises by virtue of the tax sales and redemptions referred to in the various Treasurers deeds and County Commissioners deeds set forth in Paragraphs 14, 15, 16, and 17 of the Complaint which are incorporated herein by reference, and to extinguish any interest or equity that Patrick Flynn and his wife, Clara Flynn, their heirs and assigns, Anthony Flynn and his wife, Mary Flynn, their heirs and assigns, Mountain City Lumber Co., its successors and assigns, James Flynn or Jennie H. Flynn, their heirs and assigns, William Wallace, his heirs and assigns, Thomas H. Murray, his heirs and assigns, Clearfield

Creek Coal Company, its successors and assigns, and H. B. Powell, his heirs and assigns, may have had in the premises due to lack of notice or any other defect in the tax sale referred to in Paragraphs 14, 15, 16 and 17 of the Complaint which are incorporated herein by reference, and to extinguish any interest or equity that Patrick Flynn and his wife, Clara Flynn, their heirs and assigns, Anthony Flynn and his wife, Mary Flynn, their heirs and assigns, Mountain City Lumber Company, its successors and assigns, James Flynn or Jennie H. Flynn, their heirs and assigns, William Wallace, his heirs and assigns, Thomas H. Murray, his heirs and assigns, Clearfield Creek Coal Company, its successors and assigns, and H. B. Powell, his heirs and assigns, may have had in the premises following said tax sale.

36. One of the additional purposes of the quiet title action is to extinguish any interest Patrick Flynn and his wife, Clara Flynn, their heirs and assigns, Anthony Flynn and his wife, Mary Flynn, their heirs and assigns, Mountain City Lumber Company, its successors and assigns, James Flynn and Jennie H. Flynn, their heirs and assigns, William Wallace, his heirs and assigns, Thomas H. Murray, his heirs and assigns, Clearfield Creek Coal Company, its successors and assigns, and H. B. Powell, his heirs and assigns, may have had in the premises.

37. That the Plaintiffs and their predecessors in title have exercised adverse, continuous, visible, notorious, exclusive and hostile possession over the premises and have continued possession for a period in excess of 21 years.

38. That the Defendants and the Plaintiffs herein are the only persons or entities known to the Plaintiffs who have any interest in the said premises.

WHEREFORE, Plaintiffs request:

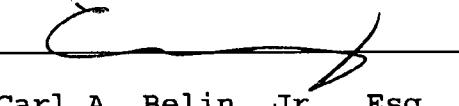
(a) That by decree of Your Honorable Court it may be declared that the Plaintiffs have acquired title to the premises and that they should be allowed to enjoy said properties in peace;

(b) That the Defendants within twenty (20) days from the receipt of the Complaint, institute an action of ejectment against the Plaintiffs and that otherwise the Defendants be perpetually enjoined from setting up any title to said premises; from impeaching, denying or in any way attacking the Plaintiffs' title to said premises, from issuing or maintaining an ejectment of said premises or any part thereof; and

(c) Such other relief as the court deems proper.

Respectfully Submitted,
BELIN & KUBISTA

By


Carl A. Belin, Jr., Esq.

COMMONWEALTH OF PENNSYLVANIA : :
: SS.
COUNTY OF CLEARFIELD : :

Before me the undersigned officer, personally appeared R. Wesley Smith and Samantha L. Smith, who being duly sworn according to law, depose and say that the facts set forth in the foregoing Complaint are true and correct to the best of their knowledge, information and belief.

R. Wesley Smith
R. Wesley Smith

Samantha L. Smith
Samantha L. Smith

Sworn and subscribed before me this 27th day of
January, 2005.

Susan M. Hartzfeld
Notary Public

NOTARIAL SEAL SUSAN M. HARTZFELD, NOTARY PUBLIC CLEARFIELD BORO., CLEARFIELD COUNTY MY COMMISSION EXPIRES AUGUST 16, 2005
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BELIN & KUBISTA
ATTORNEYS AT LAW
15 NORTH FRONT STREET
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CLEARFIELD, PENNSYLVANIA 16830

CP

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Counsel of Record for
this Party:

Carl A. Belin, Jr., Esq.
Pa. I.D. #08605

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FILED

01/15/05 A. 100 to attorney.

JAN 27 2005

William A. Shaw
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AFFIDAVIT

Carl A. Belin, Jr., Esquire, being duly sworn according to law, deposes and states that he is the attorney for the Plaintiffs and that he attempted to ascertain the identity, whereabouts, and addresses of Defendants Isaac E. Ricketts, Mountain City Lumber Company, James Flynn and Jennie H. Flynn, his wife, Patrick Flynn and Clara Flynn his wife, Anthony Flynn and Mary Flynn, his wife, William Wallace, Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators, and assigns.

He further avers that he caused an abstractor to search the real estate and estate records of Clearfield County and that no

listings were found in the name of Defendants Anthony Flynn and Mary Flynn, or Clearfield Creek Coal Company; that an estate was found for Isaac E. Ricketts, but the estate records did not disclose the date of death but a will was admitted to probate on May 18, 1931, there are no other records of any other administration of the estate; that an estate was found for Thomas H. Murray whose date of death was December 8, 1916, which estate was administered and concluded but no reference was found in the record to the premises or any relationship to Anthony Flynn, Mary Flynn, Patrick Flynn, Clara Flynn, James Flynn, Jennie H. Flynn, or Mountain City Lumber Company; that an estate was found for William Wallace whose date of death was May 2, 1931, but no administration of the estate was conducted nor was there any reference made in the record to the premises or any relationship to Anthony Flynn, Mary Flynn, Patrick Flynn, Clara Flynn, James Flynn, Jennie H. Flynn, or Mountain City Lumber Company; that an estate was found for H. B. Powell, whose date of death was July 14, 1937, but no administration of the estate was found in the records nor was there any reference in the record to the premises or any relationship to Anthony Flynn, Mary Flynn, Patrick Flynn, Clara Flynn, James Flynn or Jennie H. Flynn, or Mountain City Lumber Company; and the current real estate and estate records of Clearfield County and that no listings in the name of Defendants, Isaac E. Ricketts, Anthony Flynn and Mary Flynn, William Wallace,

Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators and assigns were found; that phone directories were consulted in Clearfield, Pennsylvania, and no listings were found for Isaac E. Ricketts, Anthony Flynn and Mary Flynn, William Wallace, Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators and assigns; that the city directories, the tax records, or the indices in the Clearfield County Recorder of Deeds Office were searched and no addresses or recent transactions in the name of Defendants Isaac E. Ricketts, Anthony Flynn and Mary Flynn, William Wallace, Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators and assigns, were found; that phone directories were consulted in Altoona, Pennsylvania, and no listings were found for Mountain City Lumber Company, Patrick Flynn and Clara Flynn, their heirs, executors, administrators and assigns; and that the city directories, the tax records, and no addresses or recent transactions in the name of Mountain City Lumber Company, Patrick Flynn and Clara Flynn, their heirs, executors, administrators and assigns, were found; that phone directories were consulted in Charleston, West Virginia, and no listings were found for James Flynn and Jennie H. Flynn, their heirs, executors, administrators and assigns; and that the city directories, the tax records, or the indices in the Charleston, West Virginia, were searched and no

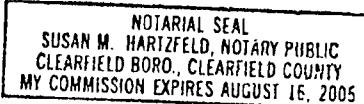
addresses or recent transactions in the name of James Flynn and Jennie H. Flynn, their heirs, executors, administrators and assigns, were found.

Based upon the foregoing search, personal service cannot be made upon Defendants Isaac E. Ricketts, Mountain City Lumber Company, James Flynn and Jennie H. Flynn, his wife, Patrick Flynn and Clara Flynn his wife, Anthony Flynn and Mary Flynn, his wife, William Wallace, Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators and assigns, and it is necessary that service be made by publication.


Carl A. Belin, Jr., Esquire
Attorney for Plaintiffs

Sworn and subscribed before me this 27th day of
January, 2005.


Susan M. Harizfeld
Notary Public



BELIN & KUBISTA
ATTORNEYS AT LAW
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Counsel of Record for
This Party:
Carl A. Belin, Jr., Esq.
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FILED
01/15/55 BPA 100-1078

JAN 27 2005

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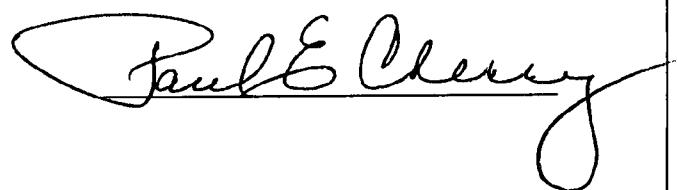
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and assigns, :
Defendants :

ORDER

AND NOW, to wit: this 27th day of January, 2005,
upon consideration of the foregoing Motion, the Plaintiffs are
granted leave to make service of the Complaint on the Defendants,
Isaac E. Ricketts, Mountain City Lumber Company, James Flynn and
Jennie H. Flynn, his wife, Patrick Flynn and Clara Flynn his wife,
Anthony Flynn and Mary Flynn, his wife, William Wallace, Thomas H.
Murray, Clearfield Creek Coal Company, and H. B. Powell, their
heirs, executors, administrators and assigns, by general
publication one time in *The Progress* and the *Clearfield County*
Legal Journal, Clearfield, Pennsylvania not less than thirty (30)
days prior to March 17, 2005, the date set for hearing of said

Complaint in Courtroom No. 2 at Clearfield, Pennsylvania at
11:00 o'clock A.m.

BY THE COURT,

A handwritten signature in black ink, enclosed in an oval. The signature reads "Paul E. Cherry".

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

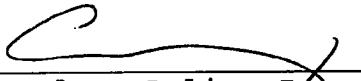
R. WESLEY SMITH and SAMANTHA L. :
SMITH, his wife, :
Plaintiffs :
vs. : No. 05 - - C.D.
: ACTION TO QUIET TITLE
ISAAC E. RICKETTS, MOUNTAIN CITY :
LUMBER COMPANY, JAMES FLYNN and :
JENNIE H. FLYNN, his wife, PATRICK :
FLYNN and CLARA FLYNN his wife, :
ANTHONY FLYNN and MARY FLYNN, his :
Wife, WILLIAM WALLACE, THOMAS H. :
MURRAY, CLEARFIELD CREEK COAL :
COMPANY, and H. B. POWELL, their :
heirs, executors, administrators :
and assigns, :
Defendants :

MOTION FOR PUBLICATION

AND NOW, to wit: January 27, 2005, an affidavit
having been executed and filed on behalf of the Plaintiffs that the
Defendants Isaac E. Ricketts, Mountain City Lumber Company, James
Flynn and Jennie H. Flynn, his wife, Patrick Flynn and Clara Flynn
his wife, Anthony Flynn and Mary Flynn, his wife, William Wallace,
Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell,
their heirs, executors, administrators, and assigns, present
whereabouts are unknown, that Plaintiffs, by their attorneys, Belin
& Kubista, move the Court for leave to serve the complaint on
Defendants Isaac E. Ricketts, Mountain City Lumber Company, James
Flynn and Jennie H. Flynn, his wife, Patrick Flynn and Clara Flynn

his wife, Anthony Flynn and Mary Flynn, his wife, William Wallace, Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators and assigns, by publication in *The Progress* and the *Clearfield County Legal Journal*, Clearfield, Pennsylvania one (1) time.

BELIN & KUBISTA


Carl A. Belin, Jr., Esquire

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

Please put in
files. Thanks.

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

R. WESLEY SMITH and SAMANTHA L. :
SMITH, his wife, :
Plaintiffs :
vs. : : No. 05 - 122 - C.D.
: : ACTION TO QUIET TITLE
ISAAC E. RICKETTS, MOUNTAIN CITY :
LUMBER COMPANY, JAMES FLYNN and : : AFFIDAVIT OF SERVICE
JENNIE H. FLYNN, his wife, PATRICK :
FLYNN and CLARA FLYNN his wife, :
ANTHONY FLYNN and MARY FLYNN, his :
wife, WILLIAM WALLACE, THOMAS H. :
MURRAY, CLEARFIELD CREEK COAL :
COMPANY, and H. B. POWELL, their :
heirs, executors, administrators :
and assigns, :
Defendants :

Filed on behalf of
Plaintiffs

Counsel of Record for
this Party:

Carl A. Belin, Jr., Esq.
Pa. I.D. #08605

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

MAR 07 2005
o/2:00a
William A. Shaw
Prothonotary/Clerk of Courts

b. C/C

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

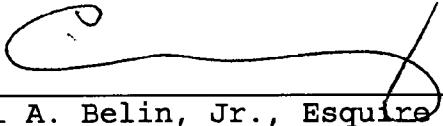
R. WESLEY SMITH and SAMANTHA L. :
SMITH, his wife, :
Plaintiffs :
vs. : No. 05 - 122 - C.D.
: ACTION TO QUIET TITLE
ISAAC E. RICKETTS, MOUNTAIN CITY :
LUMBER COMPANY, JAMES FLYNN and :
JENNIE H. FLYNN, his wife, PATRICK :
FLYNN and CLARA FLYNN his wife, :
ANTHONY FLYNN and MARY FLYNN, his :
wife, WILLIAM WALLACE, THOMAS H. :
MURRAY, CLEARFIELD CREEK COAL :
COMPANY, and H. B. POWELL, their :
heirs, executors, administrators :
and assigns, :
Defendants :

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

CARL A. BELIN, JR., attorney for the above named Plaintiffs,
being duly sworn according to law, deposes and states that Notice
of the Quiet Title Action was served upon Defendants, Isaac E.
Ricketts, Mountain City Lumber Company, James Flynn and Jennie H.
Flynn, his wife, Patrick Flynn and Clara Flynn his wife, Anthony
Flynn and Mary Flynn, his wife, William Wallace, Thomas H. Murray,
Clearfield Creek Coal Company, and H. B. Powell, their heirs,
executors, administrators, and assigns, by publication in *The
Progress*, a newspaper, on January 31, 2005, as evidenced by the

Proof of Publication dated February 1, 2005, attached hereto, AND
by publication in the *Clearfield County Legal Journal*, Clearfield,
on February 4, 2005, as evidenced by the Proof of Publication dated
February 7, 2005, attached hereto.

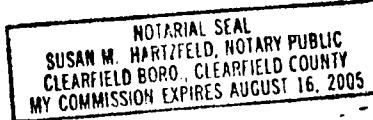


Carl A. Belin, Jr., Esquire

SWORN AND SUBSCRIBED before me this 7th day of March,
2005.



Susan M. Hartzfeld
Notary Public



IN THE COURT
OF COMMON PLEAS
LEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION
No. 05-122-C.D.
INTO TO QUIET TITLE
LEY SMITH and
THAL. SMITH, his wife

E. RICKETTS,
TAIN CITY
R COMPANY,
FLYNN and
H. FLYNN, his wife,
K FLYNN and
FLYNN, his wife,
NY FLYNN and
LYNN, his wife,
M WALLACE,
ASH. MURRAY,
FIELD CREEK
COMPANY,
B. Powell,
ers, executors,
trators and assigns,
ants

ACE RICKETTS, MOUNTAIN LUMBER COMPANY, FLYNN AND JENNIE H. HIS WIFE, PATRICK AND CLARA FLYNN, HIS ANTHONY FLYNN AND FLYNN, HIS WIFE, WILHELMINA WALLACE, THOMAS H. H. CLEARFIELD CREEK COMPANY, AND H. B. POTTER, THEIR HEIRS, EXECUTORS, ADMINISTRATORS AND TRUSTEES.

NOTICE
I wish to defend, you must
make a written appearance personally
or by your attorney and file your de-
fense or objections in writing with
me. You are warned that if
you do not do so, the case may pro-
ceed against you and a judgment
will be entered against you without
notice for the relief re-
quested by the Plaintiffs. You may
lose money or property or other
things important to you. IF YOU DO
NOT WANT TO HAVE A LAWYER OR CAN-
NOT AFFORD ONE, GO TO OR-
GANIZE ONE THE OFFICE SET-
UP BELOW TO FIND OUT
IF YOU CAN GET LEGAL

Administrator, Clearfield
Courthouse, 1 North Sec-
reet, Clearfield, Pennsylva-
nia (814) 765-2641 Ext.

are hereby notified that an
o Quiet Title to premises
d in the Clearfield County
ips as Parcel Numbers
6-29 and 101-J16-75,
re part of the same tract,
located in Beccaria Town-
Clearfield County, Clearfield,
vania, more particularly
and described as follows:
DED on the North by lands
formerly of Blake McCoy,
d on the East by lands now
of Clair Semple and the
entral Bank of Philipsburg.

bounded on the South by lands now or formerly of Clair Rutter; and bounded on the West by lands now or formerly of Edna McCoy.

CONTAINING 90 acres, more or less.
EXCEPTING AND RESERVING, however, out of the above described property all the coal, oil, gas, fireclay, clay, rock and other minerals of whatever kind lying in, under and upon the described premises together with the right to explore and drill for said oil and gas and all mining and removal rights and privileges necessary to prospect, mine, remove and carry away all the coal, oil, gas, fireclay, clay, rock and other minerals.

clay, rock and other minerals. That the purposes of this Quiet Title Action include the following: to extinguish any interest that Isaac E. Ricketts, his heirs and assigns, may have had in and to said premises due to lack of notice or any other defect in the tax sale referred to in Paragraphs 10 and 11 of the Complaint which are incorporated herein by reference, and to extinguish any interest or equity that Isaac E. Ricketts, his heirs and assigns, may have had in the premises following said tax sale; to extinguish any interest that Mountain City Lumber Company, James Flynn, or Jennie H. Flynn, their heirs, successors, and assigns, may have in and to said premises by virtue of the tax sales

premises by virtue of the tax sales and redemption referred to in the various Treasurers deeds and County Commissioners deeds in Paragraphs 14, 15, 16, and 17 of the Complaint which are hereby incorporated by reference, and to extinguish any interest or equity that Mountain City Lumber Co., James Flynn or Jennie H. Flynn, their heirs, successors, and assigns, may have had in the premises due to lack of notice or any other defect in the tax sale referred to in Paragraphs 14, 15, 16 and 17 of the Complaint which are hereby incorporated by reference, and to extinguish any interest or equity that Mountain City Lumber Company, James Flynn of Jennie H. Flynn, their heirs, successors and assigns, may have had in the premises following said tax sale; to extinguish any interest Patrick Flynn, his heirs and assigns, may have had in and to the premises by virtue of the tax sales and redemptions referred to in the various Treasurers deeds and County Commissioners deeds set forth in Paragraphs 14, 15, 16, and 17 of the Complaint which are incorporated herein by reference, and to extinguish any interest or equity that Patrick Flynn and his wife, Clara Flynn, their heirs and as-
WHEREUPON said Court ordered that notice of said action and the facts thereto be served on the Defendants Isaac E. Ricketts, Mountain City Lumber Company, James Flynn and Jennie H. Flynn, his wife, Patrick Flynn and Clara Flynn, his wife, Anthony Flynn and Mary Flynn, his wife, William Wallace, Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators and assigns, by the Plaintiffs by advertisement requiring Defendants Isaac E. Ricketts, Mountain City Lumber Company, James Flynn and Jennie H. Flynn, his wife, Patrick Flynn and Clara Flynn, his wife, Anthony Flynn and Mary Flynn, his wife, William Wallace, Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators and assigns, to answer the said complaint within twenty (20) days from the date of this publication. For failure to comply, a judgment will be taken by application of Plaintiffs before the Court at a hearing to be held on March 17, 2005, at 11:00 A.M., at the Clearfield County Courthouse, Courtroom No. 2, Clearfield, Pennsylvania.
BELIN & KUBISTA, Attorneys at

signs, Anthony Flynn and his wife, Mary Flynn, their heirs and assigns, Mountain City Lumber Co., its successors and assigns, James Flynn or Jennie H. Flynn, their heirs and assigns, William Wallace, his heirs and assigns, Thomas H. Murfy, his heirs and assigns, Clearfield Creek
Law, 15 North Front Street, Clearfield, Pennsylvania. Attorneys for Plaintiffs. 1:31-1d-b

PROOF OF PUBLICATION

STATE OF PENNSYLVANIA :
COUNTY OF CLEARFIELD : SS:

On this 1st day of February

before me, the subscriber, a Notary Public in and for said County and State, personally appeared Margaret E. Krebs, who being duly sworn according to law, deposes and says that she is the President of The Progressive Publishing Company, Inc., and Associate Publisher of The Progress, a daily newspaper published at Clearfield, in the County of Clearfield and State of Pennsylvania, and established April 5, 1913, and that the annexed is a true copy of a notice or advertisement published in said publication in

the regular issues of January 31, 2005

And that the affiant is not interested in the subject matter of the notice or advertising, and that all of the allegations of this statement as to the time, place, and character of publication are true.

Margaret C. Trebits
Sworn and subscribed to before me the day and year aforesaid.

Notary Public Clearfield, Pa.

My Commission Expires
October 31, 2007

Notarial Seal
Cheryl J. Robison, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires Oct. 31, 2007
Member, Pennsylvania Association of Notaries Public

1:31-1d-b

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I. Baney
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your service.
and Friends

Cpl. Marvin W. Lumadue
Served in Korea 1953-1955
Friends and Family

MSG
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Great N
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Your Lou

PROOF OF PUBLICATION

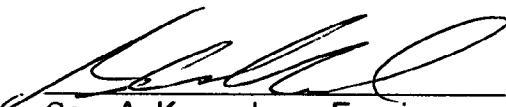
STATE OF PENNSYLVANIA :

:

COUNTY OF CLEARFIELD :

:

On this 7th day of February AD 2005, before me, the subscriber, a Notary Public in and for said County and State, personally appeared Gary A. Knaresboro editor of the Clearfield County Legal Journal of the Courts of Clearfield County, and that the annexed is a true copy of the notice or advertisement published in said publication in the regular issues of Week of February 4, 2005. Vol. 17, No. 5. And that all of the allegations of this statement as to the time, place, and character of the publication are true.



Gary A. Knaresboro, Esquire
Editor

Sworn and subscribed to before me the day and year aforesaid.

Sharon J. Pusey
Notary Public
My Commission Expires

NOTARIAL SEAL
SHARON J. PUSEY, Notary Public
Clearfield, Clearfield County, PA
My Commission Expires APRIL 7, 2007

Belin & Kubista
15 North Front Street
PO Box 1
Clearfield PA 16830

issues of material fact shall be held on May 2, 2005 (motions court) in Courtroom No. 4 at the Blair County Courthouse

(5) Service of this Petition shall be made on Respondent pursuant to the November 30, 2004, Order of this Court.

BY THE COURT:

/s/ Thomas G. Peoples, Jr., P.J.
John W. Heslop, Jr., Esquire GOLD-
STEIN, HESLOP, STEELE, CLAPPER &
OSWALT, 414 N. Logan Boulevard, Altoona,
PA 16602.

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

R. WESLEY SMITH and SAMANTHA L. SMITH, his wife, Plaintiffs VS. ISAAC E. RICKETTS, MOUNTAIN CITY LUMBER COMPANY, JAMES FLYNN and JENNIE H. FLYNN, his wife, PATRICK FLYNN and CLARA FLYNN his wife, ANTHONY FLYNN and MARY FLYNN, his Wife, WILLIAM WALLACE, THOMAS H. MURRAY, CLEARFIELD CREEK COAL COMPANY, and H. B. POWELL, their heirs, executors, administrators and assigns, Defendants

No. 05 - 122 - C.D.

ACTION TO QUIET TITLE

TO: ISAAC E. RICKETTS, MOUNTAIN CITY LUMBER COMPANY, JAMES FLYNN AND JENNIE H. FLYNN, HIS WIFE, PATRICK FLYNN AND CLARA FLYNN HIS WIFE, ANTHONY FLYNN AND MARY FLYNN, HIS WIFE, WILLIAM WALLACE, THOMAS H. MURRAY, CLEARFIELD CREEK COAL COMPANY, AND H. B. POWELL, THEIR HEIRS, EXECUTORS, ADMINISTRATORS AND ASSIGNS:

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiffs. You may lose money or property or other rights important to you. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator, Clearfield County Courthouse, 1 North Second Street, Clearfield, Pennsylvania 16830 (814) 765-2641 Ex. 5982.

You are hereby notified that an Action to Quiet Title to premises identified in the

Clearfield County Tax Maps as Parcel Numbers 101-J-16-29 and 101-J-16-75, which are part of the same tract, which is located in Beccaria Township, Clearfield County, Clearfield, Pennsylvania, more particularly bounded and described as follows:

BOUNDED on the North by lands now or formerly of Blake McCoy; bounded on the East by lands now or formerly of Clair Semple and the First National Bank of Philipsburg; bounded on the South by lands now or formerly of Clair Rutter; and bounded on the West by lands now or formerly of Edna McCoy.

CONTAINING 90 acres, more or less.

EXCEPTING AND RESERVING, however, out of the above described property all the coal, oil, gas, fireclay, clay, rock and other minerals of whatever kind lying in, under and upon the described premises together with the right to explore and drill for said oil and gas and all mining and removal rights and privileges necessary to prospect, mine, remove and carry away all the coal, oil, gas, fireclay, clay, rock and other minerals.

That the purposes of this Quiet Title Action include the following: to extinguish any interest that Isaac E. Ricketts, his heirs and assigns, may have had in and to said premises due to lack of notice or any other defect in the tax sale referred to in Paragraphs 10 and 11 of the Complaint which are incorporated herein by reference, and to extinguish any interest or equity that Isaac E. Ricketts, his heirs and assigns, may have had in the premises following said tax sale; to extinguish any interest that Mountain City Lumber Company, James Flynn, or Jennie H. Flynn, their heirs, successors, and assigns, may have had in and to said premises by virtue of the tax sales and redemption referred to in the various Treasurers deeds and County Commissioners deeds in Paragraphs 14, 15, 16, and 17 of the Complaint which are hereby incorporated by reference, and to extinguish any interest or equity that Mountain City Lumber Co., James Flynn or Jennie H. Flynn, their heirs successors, and assigns, may have had in the premises due to lack of notice or any other defect in the tax sale referred to in Paragraphs 14, 15, 16 and 17 of the Complaint which are hereby incorporated by reference, and to extinguish any interest or equity that Mountain City Lumber Company, James Flynn or Jennie H. Flynn, their heirs, successors and assigns, may have had in the premises following said tax sale; to extinguish any interest Patrick Flynn, his heirs and assigns, may have had in and to the premises by virtue of the tax sales and redemptions referred to in the various Treasurers deeds and County Commissioners deeds set forth in

Paragraphs 14, 15, 16, and 17 of the Complaint which are incorporated herein by reference, and to extinguish any interest or equity that Patrick Flynn and his wife, Clara Flynn, their heirs and assigns, Anthony Flynn and his wife, Mary Flynn, their heirs and assigns, Mountain City Lumber Co., its successors and assigns, James Flynn or Jennie H. Flynn, their heirs and assigns, William Wallace, his heirs and assigns, Thomas H. Murray, his heirs and assigns, Clearfield Creek Coal Company, its successors and assigns, and H. B. Powell, his heirs and assigns, may have had in the premises due to lack of notice or any other defect in the tax sale referred to in Paragraphs 14, 15, 16 and 17 of the Complaint which are incorporated herein by reference, and to extinguish any interest or equity that Patrick Flynn and his wife, Clara Flynn, their heirs and assigns, Anthony Flynn and his wife, Mary Flynn, their heirs and assigns, Mountain City Lumber Company, its successors and assigns, James Flynn or Jennie H. Flynn, their heirs and assigns, William Wallace, his heirs and assigns, Thomas H. Murray, his heirs and assigns, Clearfield Creek Coal Company, its successors and assigns, and H. B. Powell, his heirs and assigns, may have had in the premises following said tax sale; to extinguish any interest Patrick Flynn and his wife, Clara Flynn, their heirs and assigns, Anthony Flynn and his wife, Mary Flynn, their heirs and assigns, Mountain City Lumber Company, its successors and assigns, James Flynn and Jennie H. Flynn, their heirs and assigns, William Wallace, his heirs and assigns, Thomas H. Murray, his heirs and assigns, Clearfield Creek Coal Company, its successors and assigns, and H. B. Powell, his heirs and assigns, may have had in the premises.

WHEREUPON said Court ordered that notice of said action and the facts thereto be served on the Defendants Isaac E. Ricketts, Mountain City Lumber Company, James Flynn and Jennie H. Flynn, his wife, Patrick Flynn and Clara Flynn his wife, Anthony Flynn and Mary Flynn, his wife, William Wallace, Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators and assigns, by the Plaintiffs by advertisement requiring Defendants Isaac E. Ricketts, Mountain City Lumber Company, James Flynn and Jennie H. Flynn, his wife, Patrick Flynn and Clara Flynn his wife, Anthony Flynn and Mary Flynn, his wife, William Wallace, Thomas H. Murray, Clearfield Creek Coal Company, and H. B. Powell, their heirs, executors, administrators and assigns, to answer the said complaint within twenty (20) days from the date of this publication. For failure to comply, a

judgment will be taken by application of Plaintiffs before the Court at a hearing to be held on March 17, 2005, at 11:00 A.M., at the Clearfield County Courthouse, Courtroom No. 2, Clearfield, Pennsylvania. BELIN & KUBISTA, Attorneys at Law, 15 North Front Street, Clearfield, Pennsylvania, Attorneys for Plaintiffs.

SHERIFF'S SALE OF VALUABLE REAL ESTATE

BY VIRTUE OF: Execution issued out of the Court of Common Pleas of Clearfield County, Pennsylvania and to me directed, there will be exposed to public sale in the Sheriff's Office in the Court House in the Borough of Clearfield on FRIDAY, MARCH 4, 2005 at 10:00 A.M.

THE FOLLOWING DESCRIBED PROPERTY TO WIT: (SEE ATTACHED DESCRIPTION) TERMS OF SALE

The Price or sum at which the property shall be struck off must be paid at the time of sale or such other arrangements made as will be approved, otherwise the property will be immediately put up and sold again at the expense and risk of the person to whom it was struck off and who in case of deficiency of such resale shall make good for the same and in no instance will the deed be presented for confirmation unless the money is actually paid to the Sheriff.

TO all parties in interest and claimants: A schedule of distribution will be filed by the Sheriff in his office the first Monday following the date of the sale and distribution will be made in accordance with the schedule unless exceptions are filed within ten (10) days thereafter.

All that certain property situated in the Borough of Irvona, in the County of Clearfield, and the Commonwealth of Pennsylvania, being described as follows:

Being more fully described in a deed dated 03/06/1996 and recorded 03/12/1996, among the land records of the county and state set forth above, in Deed Book 1743, page 102. Parcel # 11-H16-353-112. Having erected thereon a dwelling known as 238 Hopkins Street, Irvona, PA 16656.

Being the same premise which Alwine Queen their deed dated 03/06/1996 and recorded on 03/12/1996 in the Recorder of Deeds Office in Clearfield County, Pennsylvania in deed book volume 1743, page 102, granted and conveyed unto David L. Queen and Mary A. Queen.

SEIZED, taken in execution to be sold as the property of DAVID L. QUEEN AND MARY A. QUEEN, at the suit of NATIONAL CITY HOME LOAN SERVICES, INC F/K/A ALTEGRA MORTGAGE COMPANY, ASSIGNEE OF PARKWAY MORTGAGE,

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

R. WESLEY SMITH and SAMANTHA L. :
SMITH, his wife, :
Plaintiffs :
vs. : No. 05 - 122 - C.D.
: ACTION TO QUIET TITLE
ISAAC E. RICKETTS, MOUNTAIN CITY :
LUMBER COMPANY, JAMES FLYNN and :
JENNIE H. FLYNN, his wife, PATRICK :
FLYNN and CLARA FLYNN his wife, :
ANTHONY FLYNN and MARY FLYNN, his :
wife, WILLIAM WALLACE, THOMAS H. :
MURRAY, CLEARFIELD CREEK COAL :
COMPANY, and H. B. POWELL, their :
heirs, executors, administrators :
and assigns, :
Defendants :

cc
011-0484 Atty Belin
MAR 17 2005 (for service)
GK
William A. Smith,
Prothonotary Clerk of Courts

ORDER

AND NOW, this 17th day of March, 2005, an Affidavit of Service
of the Complaint with Notice to Defend having been filed stating
that the complaint and notice was served on all Defendants by
publication, and no responsive pleading having been filed by said
Defendants, the Defendants having not appeared in person or by
attorney upon motion of Carl A. Belin, Jr., Attorney for
Plaintiffs, it is the **ORDER** of this Court that title to said
premises is found to be vested in the Plaintiffs and that they be
allowed to enjoy said property in peace. Said property is
identified in the Clearfield County Tax Maps as Parcel Numbers 101-
J-16-29 and 101-J16-75, which are part of the same tract, which is
located in Beccaria Township, Clearfield County, Clearfield

Pennsylvania, more particularly bounded and described as follows:

BOUNDED on the North by lands now or formerly of Blake McCoy; bounded on the East by lands now or formerly of Clair Semple and the First National Bank of Philipsburg; bounded on the South by lands now or formerly of Clair Rutter; and bounded on the West by lands now or formerly of Edna McCoy.

CONTAINING 90 acres, more or less.

EXCEPTING AND RESERVING, however, out of the above described property all the coal, oil, gas, fireclay, clay, rock and other minerals of whatever kind lying in, under and upon the described premises together with the right to explore and drill for said oil and gas and all mining and removal rights and privileges necessary to prospect, mine, remove and carry away all the coal, oil, gas, fireclay, clay, rock and other minerals.

It is the FURTHER ORDER of this Court that unless the Defendants file a responsive pleading to the complaint or institute an action in ejectment within thirty (30) days of the date hereof, the Defendants shall be forever barred from asserting any right, lien, title or interest in the land inconsistent with the interest of the claim of the Plaintiffs set forth in their Complaint. If Defendants fail to take such action within the thirty (30) day period, the Prothonotary on Praecept of the Plaintiffs shall enter final judgment against Defendants.

BY THE COURT,

