

05-440-CD
T. Myers et al vs D. Ravid et al

Thomas Myers et al v. Dorothy Beverage
2005-440-CD

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

THOMAS A MYERS and ANN M.
MYERS,

Plaintiffs

Vs.

DOROTHY BEVERIDGE, ANTHONY
T. BEVERIDGE, and THERESA P.
BEVERIDGE,

Defendants

No. 05-440-CD

Type of Pleading:

COMPLAINT IN EJECTMENT

Filed on Behalf of:
PLAINTIFFS

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
190 West Park Avenue, Suite #5
DuBois, PA 15801
(814) 375-5598

FILED

3cc Atty
duBois
pd. 1:58.61
MAR 29 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS A. MYERS and ANN M.	:	No. _____
MYERS,	:	
	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA P.	:	
BEVERIDGE,	:	
	:	
Defendants	:	

COMPLAINT IN EJECTMENT

AND NOW, comes the Plaintiffs, Thomas A Myers and Ann M. Myers, by and through their attorney, Jeffrey S. DuBois, Esquire, who files this Complaint in Ejectment and in support thereof avers the following:

COUNT I - EJECTMENT

1. Plaintiffs, Thomas A. Myers and Ann M. Myers, are husband and wife residing at 1563 Old Turnpike Road, Allport, Clearfield County, Pennsylvania.
2. Defendant, Dorothy Beveridge, is an adult individual with property at 1535 Old Turnpike Road, Allport, Pennsylvania, 16821.
3. Defendants', Anthony T. Beveridge and Theresa P. Beveridge, husband and wife, are adult individuals with an address of 1535 Old Turnpike Road, Allport, Pennsylvania, 16821.

4. Plaintiffs are the owner of real property located in Allport, Clearfield County, and more particularly described as follows:

ALL THE HEREINAFTER described pieces of land, situate in the Village of Allport, Township of Morris, County of Clearfield and State of Pennsylvania, being bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post in line of a public road leading from Allport to Centre Hill; thence by line of said road South fifty-five degrees East one hundred eighty-eight feet to a post; thence South thirty-three and one-half degrees West one hundred ninety-five feet to a post; thence North fifty-two and one-half degrees West one hundred eighty-five and one-half feet to a post; thence along a line approximately North thirty-four degrees East one hundred eighty-five feet, more or less, to the place of beginning.

THE SECOND THEREOF: BEGINNING at a post in line of land formerly of William Rothrock and L. Lorenzen; thence along the line of said Lorenzen land, North thirty-four degrees East two hundred forty-one feet, more or less, to a post corner, and being the Northwest corner of land described in the first description herein contained; thence along line of land herein called "The First Thereof" South fifty-four degrees East three hundred seventy-eight feet to a post, be it more or less; thence South thirty-four degrees West two hundred forty-one feet, more or less, to a post; in line of land formerly of James Ardery; thence along line of same North fifty-two and one-half degrees West, three hundred seventy-eight feet, more or less, to a post and place of beginning.

SAVING AND RESERVING from the above a forty-foot street from the alley formerly of William Thompson's to the alley formerly of John Gill lot as also the two alleys which are outlets to the street.

5. Plaintiffs acquired said title to the above described real property on April 28, 1986 through a deed dated April 18, 1986, and recorded in the Clearfield County Recorder of Deeds on April 28, 1986, said deed from John W. Tippet and Sandra J. Tippet, and recorded in the Recorder of Deeds to Volume 1078, Page 128. A copy of said deed is enclosed and made a part hereof and attached hereto as Exhibit "A".

6. Plaintiffs property and Defendants property are adjacent and share a common boundary on two particular sides: The first, by a right-of-way, which is Plaintiffs

property, which borders the two respective properties, and also on the Northeastern boundary of Plaintiff's property.

7. Said right of way, which is part of Plaintiff's property, is partially graveled and partially dirt/grass.

8. On or about 1987, Defendants Anthony and Theresa Beveridge placed an addition on their home, and in so doing encroached on the right-of-way as referenced in paragraph six (6) herein.

9. Said addition extends over the property line of Defendants and on to the property of Plaintiffs.

10. In addition, on or about 1993, while a sewer line was being put in the referenced right of way, Defendants' unjustly and deceitfully crossed onto the Plaintiff's property to tap onto a lateral sewer line, again encroaching on the Plaintiff's property referenced as right-of-way in paragraph six (6).

11. Said actions by Defendants are an encroachment upon Plaintiffs property, the Defendants have done so unjustly, and Plaintiffs desire the encroachments to be removed.

12. Despite Plaintiffs repeated requests, Defendants have failed and refused to remove the addition and encroachment from Plaintiffs property.

13. Additionally, with respect to the Northeastern border of Plaintiffs property, that borders Defendant's property, during the 1990's, Defendants have erected sheds on the property of Plaintiff, and have cleared some of the area on Plaintiffs' property.

14. Since approximately the 1990's, Defendants have continued to have said sheds and other items on Plaintiffs property despite Plaintiffs objections to the same and their request to remove the same.

15. Despite Plaintiffs repeated objections of the sheds and items being there and, Plaintiffs requests to remove the same, Defendant has failed and refused to remove these sheds and items from Plaintiffs property.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to:

1. Enter judgment in favor of Plaintiffs and against Defendant for possession of the real property as set forth above;
2. To enter an Order directing Defendant to remove any and all sheds, personal property, shrubs, or other obstacles placed by her on Plaintiffs property;
3. To remove the addition which is on Plaintiffs property;
4. To disconnect the sewer taps which are on the Plaintiffs property; and,
5. Any other relief this Court deems equitable and just.

COUNT II – TRESPASS

16. Plaintiffs hereby incorporate by reference all of the averments contained in Count I above as if each were set forth hereunder.

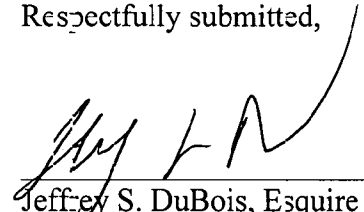
17. As a result of maintaining the addition onto Plaintiffs' property, Defendant has destroyed a portion of the right-of-way to Plaintiffs damage in an amount to be determined.

18. As a result of maintaining the above referenced sheds, items, and shrubs on Plaintiffs property, Defendant has destroyed a portion of Plaintiffs' property to Plaintiffs damage in an amount to be determined.

19. As a result of Defendants actions as set forth in paragraphs seventeen (17) and eighteen (18) herein, Defendant has deprived Plaintiff of the use and enjoyment of their property to Plaintiffs damage in an amount to be determined.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to enter a judgment in favor of Plaintiffs and against Defendant in an amount in excess of Twenty Five Thousand and 00/100 (\$25,000.00) Dollars.

Respectfully submitted,



Jeffrey S. DuBois, Esquire
Attorney for Plaintiffs

VERIFICATION

I, THOMAS A. MYERS and ANN M. MYERS, verify that the statements in the foregoing Complaint in Ejectment are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Thomas A. Myers

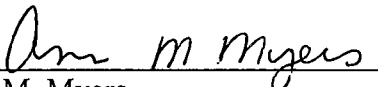
Ann M. Myers

VERIFICATION

I, THOMAS A. MYERS and ANN M. MYERS, verify that the statements in the foregoing Complaint in Ejectment are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.


Thomas A. Myers


Ann M. Myers

This Deed,

MADE the 18 day of April
in the year nineteen hundred and eighty-six (1986)-----
BETWEEN JOHN W. TIPPETT and SANDRA J. TIPPETT, his wife, of Allport, Clearfield
County, Pennsylvania, hereinafter referred to as Grantors-----

and

THOMAS A. MYERS and ANN M. MYERS, his wife, of Philipsburg, Clearfield County,
Pennsylvania, hereinafter referred to as Grantees-----

WITNESSETH, That in consideration of Fifty Five Thousand and NO/100 (\$55,000.00)-----
----- Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant
and convey to the said grantees, as tenants by the entireties,

ALL THE HEREINAFTER described pieces of land, situate in the Village of
Allport, Township of Morris, County of Clearfield and State of Pennsylvania,
being bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post in line of a public road
leading from Allport to Centre Hill; thence by line of said road South
fifty-five degrees East one hundred eighty-eight feet to a post; thence
South thirty-three and one-half degrees West one hundred ninety-five
feet to a post; thence North fifty-two and one-half degrees West one
hundred eighty-five and one-half feet to a post; thence along a line
approximately North thirty-four degrees East one hundred eighty-five feet,
more or less, to the place of beginning.

THE SECOND THEREOF: BEGINNING at a post in line of land formerly
of William Rothrock and L. Lorenzen; thence along the line of said
Lorenzen land, North thirty-four degrees East two hundred forty-one feet,
more or less, to a post corner, and being the Northwest corner of land
described in the first description herein contained; thence along line
of land herein called "The First Thereof" South fifty-four degrees East
three hundred seventy-eight feet to a post, be it more or less; thence South
thirty-four degrees West two hundred forty-one feet, more or less, to a
post; in line of land formerly of James Ardery; thence along line of same
North fifty-two and one-half degrees West, three hundred seventy-eight
feet, more or less, to a post and place of beginning.

SAVING AND RESERVING from the above a forty-foot street from the alley
formerly of William Thompson's to the alley formerly of John Gill lot as
also the two alleys which are outlets to the street.

BEING THE SAME premises which were granted and conveyed by deed
dated May 3, 1974 from Arden D. Kephart and Edwina M. Kephart to the Grantors
herein and recorded in Clearfield County at Deed Book 679, page 34 on May
8, 1974.

Exhibit "A"

WEST BRANCH SCHOOL DISTRICT
1% REALTY TRANSFER TAX

AMOUNT \$ 550.00

PAID 4-28-86 MICHAEL S. LYALL
Date Agent

0 2 5 3 6 7
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY TRANSFER TAX APR 29 '86
P.B. 11352

550.00

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

Donald F. Crumshaw + Thomas A. Myers
Thomas A. Myers
Ann M. Myers
Ann M. Myers

This 25th day of April - 1986

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

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

IN WITNESS WHEREOF, said grantors have hereunto set their hand and seals, the

day and year first above-written.

Sealed and delivered in the presence of

[Signature]

[Signature] (SEAL)
 John W. Tippet
[Signature] (SEAL)
 Sandra J. Tippet
 _____ (SEAL)
 _____ (SEAL)
 _____ (SEAL)
 _____ (SEAL)

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee *[Signature]* herein is as follows:

RD 1, Box 330
 Philipsburg, PA 16866

Attorney or Agent for Grantee

Commonwealth of Pennsylvania

County of *Centre* } SS:

On this, the *15* day of *April* 19*86*, before me

the undersigned officer, personally appeared John W. and Sandra J. Tippet

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

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

[Signature]
 MARY BETH BURGE, NOTARY PUBLIC
 My Commission Expires PHILIPSBURG BORO, CENTRE COUNTY
 MY COMMISSION EXPIRES MARCH 21, 1988
 Member, Pennsylvania Association of Notaries

Commonwealth of Pennsylvania

County of _____ } SS:

On this, the _____ day of _____ 19____, before me

the undersigned officer, personally appeared _____

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

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

My Commission Expires

State of

County of

SS:

On this, the _____ day of _____ 19____, before me
the undersigned officer, personally appeared

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

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

My Commission Expires _____

State of

County of

SS:

On this, the _____ day of _____ 19____, before me
the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person 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 _____

*Value 44
11/27/86 10:57 AM
29.50*

WARRANTY DEED — Published and Sold by
The Plunkhorn Co., Williamsport, Pa. 1

JOHN W. TIPPETT, et ux.
to
THOMAS A. MYERS, et ux.

Dated April 10, 1986

For pieces of land situate in
Allport, Morris Township,

Clearfield County, PA

Consideration \$55,000.00

Recorded

Entered for Record in the Recorder's

Office of _____	County, the _____	day of _____	19____	Tax \$ _____	Fees \$ _____
				Recorder	

JOHN W. BURGE
Attorney at Law
203 South Front St.
Phillipsburg, PA 16865
Phone (610) 342-5212

Commonwealth of Pennsylvania

County of

SS:

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in Deed

Book No. 1078, Page 128WITNESS my Hand and Official Seal this 28 day of _____ 1986

My Commission Expires _____
First Monday in January, 1988

Recorder of Deeds

Entered of Record 7-27 1986, 1:57 PM Michael R. Lytle, Recorder

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100362
NO: 05-440-CD
SERVICE # 1 OF 2
COMPLAINT IN EJECTMENT

PLAINTIFF: THOMAS A. MYERS & ANN M. MYERS

vs.

DEFENDANT: DOROTHY BEVERIDGE, ANTHONY T. BEVERIDGE and THERESA P. BEVERIDGE

SHERIFF RETURN

NOW, April 22, 2005 AT 12:00 PM SERVED THE WITHIN COMPLAINT IN EJECTMENT ON DOROTHY BEVERIDGE DEFENDANT AT 1535 OLD TURNPIKE ROAD, ALLPORT, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DOROTHY BEVERIDGE, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

FILED

APR 27 2005

0/3:05/
William A. Shaw

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100362
NO: 05-440-CD
SERVICE # 2 OF 2
COMPLAINT IN EJECTMENT

PLAINTIFF: THOMAS A. MYERS & ANN M. MYERS

vs.

DEFENDANT: DOROTHY BEVERIDGE, ANTHONY T. BEVERIDGE and THERESA P. BEVERIDGE

SHERIFF RETURN

NOW, April 25, 2005 AT 12:50 PM SERVED THE WITHIN COMPLAINT IN EJECTMENT ON ANTHONY T. BEVERIDGE and THERESA P. BEVERIDGE DEFENDANT AT Work: CLEARFIELD HOSPITAL, TURNPIKE AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO THERESA BEVERIDGE, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / HUNTER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100362
NO: 05-440-CD
SERVICES 2
COMPLAINT IN EJECTMENT

PLAINTIFF: THOMAS A. MYERS & ANN M. MYERS

vs.

DEFENDANT: DOROTHY BEVERIDGE, ANTHONY T. BEVERIDGE and THERESA P. BEVERIDGE

SHERIFF RETURN

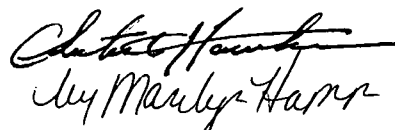
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	DUBOIS	1679	20.00
SHERIFF HAWKINS	DUBOIS	1679	39.33

Sworn to Before Me This

_____ Day of _____ 2005

So Answers,



Chester A. Hawkins
Sheriff

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

NO. 05-440-CD

IN EJECTMENT

Type of Pleading
ANSWER, NEW MATTER
AND COUNTERCLAIM

Filed on Behalf of:
Defendants

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED
MAY 18 2005
0/12:00 PM
William A. Shaw
Prothonotary/Clerk of Courts
v c/c

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

NOTICE TO PLEAD

TO: Thomas A. Myers and Ann M. Myers
C/O Jeffrey S. DuBois, Esquire
190 West Park Avenue, Suite #5
DuBois, PA 15801

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



Richard A. Bell, Esquire
Attorney for Defendants

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

THOMAS A. MYERS and ANN M MYERS
Plaintiffs

NO. 05-440-CD

vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

ANSWER, NEW MATTER AND COUNTERCLAIM

NOW COMES, the above named Defendants by their attorney, Richard A. Bell, Esquire, of Bell, Silberblatt & Wood and files the following, Answer, New Matter and Counterclaim:

COUNT I-EJECTMENT

1. Admitted.
2. Admitted except that Dorothy Beveridge is properly identified as Dorothy Beveridge-Drury, and her proper address is 1545 Old Turnpike Road, Allport, Pennsylvania 16821.
3. Admitted, except that Theresa P. Beveridge is properly identified as Theresa Polachek-Beveridge.
4. It is admitted that there is a Deed on record containing the description appearing in this paragraph, but whether the Plaintiffs became owners of the property upon receipt of that Deed, after reasonable investigation, the Defendants are without

knowledge sufficient to determine the truth of the averment and strict proof is demanded.

5. It is admitted that there is a Deed as identified in this paragraph, but whether Plaintiffs acquired title is something that the Defendants after reasonable investigation do not have enough knowledge to determine the truth of the averment and strict proof is demanded.

6. It is specifically denied that Plaintiffs' property and Defendants' property share a common boundary line. Rather, the two properties are separated by rights-of-way on the Southern and Western side of the Defendants' property.

7. It is denied that the right-of-way mentioned therein is part of Plaintiffs' property. It is admitted that there is a right-of-way which is partially graveled and partially grass, but this right-of-way has been available for the use of all property owners serviced by it, and it is not owned by either the Plaintiffs or the Defendants except as otherwise pled herein.

8. Paragraph eight is denied. It is denied that Defendants Anthony and Theresa Beveridge encroached upon the alley at any time, and in further answer it is alleged that the stated Defendants did some construction which resulted in what the Plaintiffs have alleged as encroachment, but the same was done prior to 1987.

9. The allegations to paragraph nine are specifically denied. It is denied that the Defendants have encroached at all on the property of the Plaintiffs.

10. The allegations of paragraph ten are denied, and it is alleged that the sewer line in question was run down through the alley right-of-way which is not Plaintiffs'

property.

11. Paragraph eleven does not require an answer being a conclusion of law, but to the extent that an answer is required the Defendants have never encroached on Plaintiffs' property.

12. The allegations to paragraph twelve are denied and it is specifically denied that the Plaintiffs at anytime requested the Defendants to remove the addition and it is further denied that the Defendants have encroached on the Plaintiffs' property.

13. If the allegations of paragraph thirteen refer to the forty foot street as shown on maps, it is denied that any part of that area is Plaintiffs' property. In further answer thereto Defendants or their predecessors in title did erect certain sheds on this property in the year 1976 and 1977. Further the Defendants or their predecessors in title have mowed the grass on that property since 1957 or earlier.

14. It is denied that Defendants have any items on Plaintiffs' property.

15. The allegations to paragraph fifteen are denied and it is stated that the Plaintiffs never objected to the presence of the sheds until recently and have not

requested the Defendants to remove the same. In further answer thereto Defendants state that the property referred to now belongs to the Defendants.

WHEREFORE, the Defendants respectfully requests that Count I of the Complaint be dismissed as to them.

COUNT II-TRESPASS

16. The answers to paragraphs one through fifteen are hereby incorporated by reference.

17. It is denied that the Defendants have maintained any construction or additions on Plaintiffs' property and therefore there is no right to claim damages.

18. It is denied that the Defendants have destroyed any portion of Plaintiffs' property.

19. The allegations to paragraph nineteen are specifically denied. Defendants have not deprived Plaintiffs of anything.

WHEREFORE, Defendants respectfully request that the Complaint of the Plaintiffs be dismissed as to them.

NEW MATTER

20. It is declared that the Plaintiffs do not own the property identified as a forty foot street or the alleyway between the Defendants' and the Plaintiffs' property. The Deed into the Plaintiffs specifically reserves both the forty foot street and the alleyways laying to the West and East of Defendants' property.

21. Defendants and their predecessors in title have treated the said forty foot street as their own and have possessed it adversely to claims of any other person by mowing the grass on the same since the year 1957 or earlier and by erecting certain sheds on the property in the year 1976 and 1977.

22. With reference to the twelve foot alley on the Western side of the Defendants' property separating it from the Plaintiffs' property, Dorothy Beveridge-Drury became an owner of this property in the year 1974 and she and her husband were using the alley at that time, and it has stayed in constant use since then, and was in use for many years prior to that date as access to the properties on both sides of the alley.

23. The alley separating the properties of the Plaintiffs and Defendants which has been identified as a twelve foot alley had approximately five feet of grass on that part next to the Defendants' property and the alley open to travel extended from that point Westerly to Plaintiffs' property. The Defendants or their predecessors in title occupied and used the five feet of grass strip as their own since at least the year 1974 and by their predecessors in title before that.

24. On May 26, 2004 the Defendants placed on record a Statement Of Claim By Adverse Possession to the area identified on the maps as a forty foot street in which the Defendants and their predecessors in title have possessed and occupied as their own. The Plaintiffs were notified of the recording of this instrument and took no action.

25. On January 3, 2005 the Defendants placed on record a Statement Of Claim By Adverse Possession to the portion between their house and the gravel part of the drive and the Plaintiffs were notified of the recording of this instrument and took no action until the present time.

26. Both Statements Of Claim By Adverse Possession were done in accordance with the provisions of the Act of May 31, 1901, P.L. 352, 60 P.S. § 81 et seq.

27. Beginning approximately April 2004 the Plaintiffs began to harass the Defendants by various actions including placing stakes in the middle of the alley right-of-way which the Defendants were entitled to use, driving their vehicles at a rapid rate of speed in close proximity to the homes of the Defendants, by trespassing on the Defendants' property, by exercising acts of possession on the Defendants' property, by accosting the Defendants when they are out of their house, by placing a string or rope down the middle of the alley right-of-way, and by generally making life miserable for the Defendants so that they feel they cannot come out of their houses during the evening.

COUNTER-CLAIM

28. As the result of the Plaintiffs' actions the Defendants have been deprived of the use of their property by the aggressive acts of the Plaintiffs in trespassing on the said property and claiming the right to own the right-of-ways which they do not have all to the detriment of the Defendants.

29. As a further result of the actions of the Plaintiffs, the health of Defendant Dorothy Beveridge-Drury has been adversely affected and as a further result of the actions of the Plaintiffs, all three Defendants have been deprived of the enjoyment of their life to the detriment of their happiness and well-being.

WHEREFORE, the Defendants respectfully request that your Honorable Court enter a Judgment in favor of the Defendants and against the Plaintiffs in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars.

Respectfully submitted,

BELL, SLBERBLATT & WOOD
By

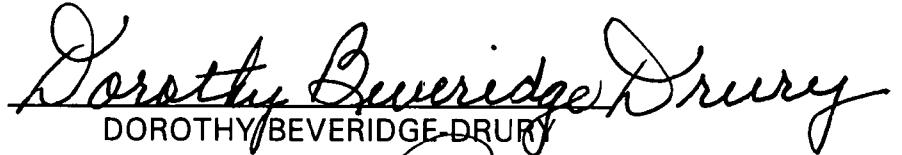
A handwritten signature in cursive script, appearing to read "Richard A. Bell", is written over a horizontal line.

Richard A. Bell, Esquire
Attorney for Defendants

VERIFICATION

WE, DOROTHY BEVERIDGE-DRURY, ANTHONY T. BEVERIDGE and THERESA POLACHEK-BEVERIDGE, Defendants, state that the statements in the within Answer, New Matter, and CounterClaim are true and correct to the best of our knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.

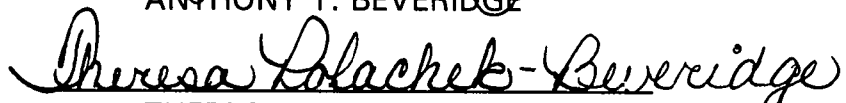
Dated: 5/17/05


DOROTHY BEVERIDGE-DRURY

Dated: 5/17/05


ANTHONY T. BEVERIDGE

Dated: 5/17/05


THERESA POLACHEK BEVERIDGE

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA F. BEVERIDGE
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of my ANSWER, NEW MATTER & COUNTERCLAIM prepared on behalf of the above named Defendants in the above matter was mailed the 18th day of May, 2005, by regular mail postage prepaid at the post office in Clearfield, PA 16830 to the following:

Jeffrey S. DuBois, Esquire
190 West Park Avenue, Suite #5
DuBois, PA 15801



Richard A. Bell, Esquire
Attorney for Defendants

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

THOMAS A. MYERS and ANN M.
MYERS,

Plaintiffs

Vs.

DOROTHY BEVERIDGE, ANTHONY
T. BEVERIDGE, and THERESA P.
BEVERIDGE,

Defendants

No. 05-440-CD

Type of Pleading:

**REPLY TO NEW MATTER
AND COUNTERCLAIM**

Filed on Behalf of:
PLAINTIFFS

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
190 West Park Avenue, Suite #5
DuBois, PA 15801
(814) 375-5598

FILED 300
01:35 PM
JUN 27 2005
Atty DuBois
68

William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS A. MYERS and ANN M.	:	No. 05-440-CD
MYERS,	:	
	:	
Plaintiffs	:	
	:	
	:	
Vs.	:	
	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA P.	:	
BEVERIDGE,	:	
	:	
Defendants	:	

REPLY TO NEW MATTER AND COUNTERCLAIM

AND NOW, comes the Plaintiffs, Thomas A. Myers and Ann M. Myers, by and through their attorney, Jeffrey S. DuBois, Esquire, who files this Reply to New Matter and Counterclaim and in support thereof avers the following:

20. Denied. It is specifically denied that Plaintiffs do not own the property in question, and on the contrary as set forth in Plaintiffs Complaint, Plaintiffs are the rightful owners of this property.

21. Denied. It is denied that Plaintiffs and their predecessors in title have treated the said forty (40) foot area as their own and have adversely possessed the same. On the contrary, said persons have not adversely possessed it, nor have they treated the same as their own, and Plaintiffs and Plaintiffs predecessors in title have treated said property as their own.

22. Admitted in part and denied in part. It is admitted that Defendants may use said property and have used said property as a right-of-way, but it is denied that the same is Defendants property, as the same is the property of Plaintiffs and the only right Defendants have is for the right to use said property for ingress and egress to their property.

23. Admitted in part and denied in part. It is admitted that said alleyway, or right-of-way, has been used by Defendants, but it is denied that Defendants have used said area, in particular the five (5) feet of grass strip, as their own, and the said area has been maintained as owned by Plaintiffs.

24. The averments set forth in Defendants paragraph 24 do not contain any factual averment to which a responsive pleading is required. By way of further answer, the statement of claim by adverse possession sets forth no legal significance and the same is therefore denied.

25. The averments set forth in Defendants paragraph 25 do not contain any factual averment to which a responsive pleading is required. By way of further answer, the statement of claim by adverse possession sets forth no legal significance and the same is therefore denied.

26. Defendants paragraph 26 sets forth a conclusion of law to which no responsive pleading is required. By way of further answer, as set forth above, said statements of claim by adverse possession are merely paper and pose no legal significance as to the facts of this case.

27. Denied. It is specifically denied Plaintiffs at any time have ever harassed Defendants in any manner. By way of further answer, Plaintiffs have simply informed

Defendants that the property is theirs, and it is Defendants, not Plaintiffs, who have been harassing the Plaintiffs in this particular case, and Plaintiffs have never in any way, shape, or form harassed Defendants.

COUNTERCLAIM

28. Denied. It is denied that Defendants have been deprived of any use of their property, and on the contrary, said property in question is the property of Plaintiffs and not Defendants, and therefore no detriment could have come to Defendants.

29. Denied. It is denied that any actions of Plaintiffs have caused any health problems with respect to Defendant Dorothy Beveridge-Drury, and it is further denied that Defendants have been deprived of any enjoyment of their life of happiness or well-being.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to dismiss Defendants Counterclaim and award Judgment in favor of Plaintiffs as set forth in Plaintiffs Complaint.

Respectfully submitted,

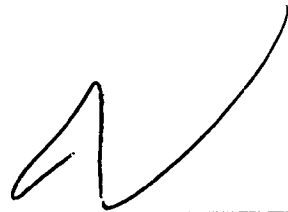
A handwritten signature in black ink, appearing to read 'Jeffrey S. DuBois', written over a horizontal line.

Jeffrey S. DuBois, Esquire
Attorney for Plaintiffs

VERIFICATION

I, JEFFREY S. DUBOIS, Esquire, verify that the statements in the foregoing Reply to New Matter and Counterclaim are true and correct to the best of my knowledge, information and belief. The undersigned is in possession of this information based on conversations with and representation of Plaintiffs. Plaintiffs are currently unavailable and a signed verification by Plaintiffs will be submitted as soon as Plaintiffs are in contact with the undersigned.

This statement and verification is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.



Jeffrey S. DuBois, Esquire

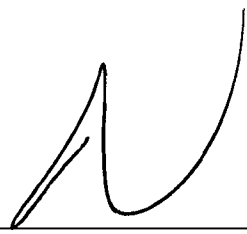
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

THOMAS A. MYERS and ANN M.	:	No. 05-440-CD
MYERS,	:	
	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA P.	:	
BEVERIDGE,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 27th day of June, 2005, I served a true and correct copy of the within Reply to New Matter and Counterclaim by first class mail, postage prepaid, on the following:

Richard A. Bell, Esquire
P.O. Box 670
Clearfield, PA 16830



Jeffrey S. DuBois

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

THOMAS A. MYERS and ANN M.
MYERS,

Plaintiffs

Vs.

DOROTHY BEVERIDGE, ANTHONY
T. BEVERIDGE, and THERESA P.
BEVERIDGE,

Defendants

No. 05-440-CD

Type of Pleading:

VERIFICATION

Filed on Behalf of:
PLAINTIFFS

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
190 West Park Avenue, Suite #5
DuBois, PA 15801
(814) 375-5598

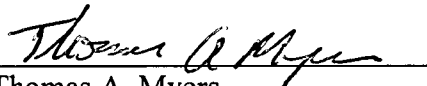
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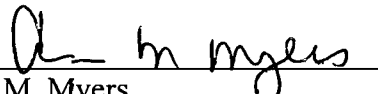
William A. Shaw
Prothonotary/Clerk of Courts

VERIFICATION

I, THOMAS A. MYERS and ANN M. MYERS, verify that the statements in the foregoing Complaint in Ejectment are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.


Thomas A. Myers


Ann M. Myers

CF

FILED 200
018:5730 Atty
OCT 31 2007 DuBois
William A. Shaw
Prothonotary/Clerk of Courts

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING**

CERTIFICATE OF READINESS		TO THE PROTHONOTARY
(To be executed by Trial Counsel Only)		DATE PRESENTED
CASE NUMBER 2005-440-CD	TYPE TRIAL REQUESTED () Jury (X) Non-jury	ESTIMATED TRIAL TIME
Date Complaint filed: 03/29/2005	() Arbitration	___ 1 ___ DAYS

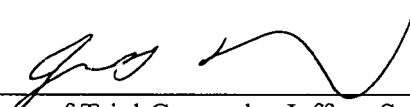
PLAINTIFF(S)

THOMAS A. MYERS and ANN M. MYERS ()
DEFENDANT(S)
DOROTHY BEVERIDGE, ANTHONY T. BEVERIDGE,
and THERESA P. BEVERIDGE () is a Party
ADDITIONAL DEFENDANT(S) to the Case

()	
JURY DEMAND FILED BY:	DATE JURY DEMAND FILED:
AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED	
In excess of: \$25,000.00	() Yes () No

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

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



Signature of Trial Counsel – Jeffrey S. DuBois, Esquire

COUNSEL WHO WILL ACTUALLY TRY THE CASE	
FOR THE PLAINTIFF Jeffrey S. DuBois, Esquire	TELEPHONE NO. 814-375-5598
FOR THE DEFENDANT Richard A. Bell, Esquire	TELEPHONE NO. 814-765-5537
FOR ADDITIONAL DEFENDANT	TELEPHONE NO.

1A

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

THOMAS A. MYERS and ANN M. MYERS,
Plaintiffs

vs.

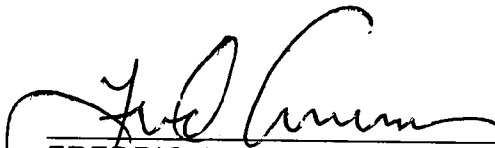
DOROTHY BEVERIDGE, ANTHONY T. BEVERIDGE
and THERESA P. BEVERIDGE,
Defendants

*
*
* NO. 05-440-CD
*
*
*

ORDER

AND NOW, this 15th day of November, 2007, it is the ORDER of the Court that a
Pre-Trial Conference in the above matter shall be held on the **21st day of December,**
2007, in Chambers at 11:00 o'clock a.m.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED *icc Arty!*
019:3451
NOV 16 2007 *Sub Po*
R. Bell
William A. Shaw
Prothonotary, Clerk of Courts *(OK)*

FILED

NOV 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/16/07

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) X Plaintiff(s) Attorney ____ Other

____ Defendant(s) X Defendant(s) Attorney

____ Special Instructions:

6A

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

THOMAS A. MYERS and
ANN M MYERS,
Plaintiff's

VS.

NO. 05-440-CD

DOROTHY BEVERIDGE, ANTHONY
T. BEVERIDGE and THERESA P.
BEVERIDGE,
Defendants

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FILED
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DEC 24 2007

ICC Arts.
D. B. B. B.
Bell
(6K)


ORDER

William A. Shaw
Prothonotary/Clerk of Courts

NOW this 21st day of December, 2007, following pre-trial conference among the Court and counsel for the various parties, it is the ORDER of this Court as follows:

1. One day civil non-jury trial is scheduled for the 8th day of April 2008 commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield Pennsylvania; and
2. The Defendant shall have no more than twenty (20) days from this date to file a Motion to List this matter for jury trial.

BY THE COURT.


FREDRIC J. AMMERMAN
President Judge

FILED

DEC 24 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12-24-07

☐ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

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

THOMAS A. MYERS and
ANN M. MYERS,

Plaintiffs

Vs.

DOROTHY BEVERIDGE, ANTHONY
T. BEVERIDGE, and THERESA P.
BEVERIDGE,

Defendants

No. 2005-440-CD

Type of Pleading:

MOTION FOR CONTINUANCE

Filed on Behalf of:
PLAINTIFFS

Counsel of Record For This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
190 West Park Avenue, Suite #5
DuBois, PA 15801
(814) 375-5598

FILED

03:55 P.M. GK

JAN 04 2008

3cc TO ATTY

William A. Shaw
Prothonotary/Clerk of Courts

CK

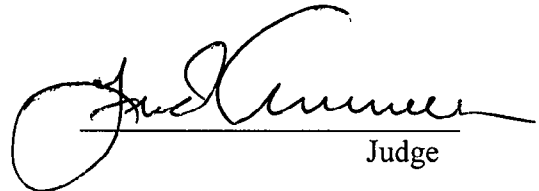
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL LAW

THOMAS A. MYERS and	:	No. 2005-440-CD
ANN M. MYERS,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA F	:	
BEVERIDGE,	:	
Defendants	:	

ORDER

AND NOW, in consideration of Plaintiffs Motion for Continuance,
IT IS HEREBY ORDERED AND DECREED that the non-jury Trial scheduled for April
8, 2008, is rescheduled for the 25th of April, 2008, at 9:00 o'clock
A.M. at the Clearfield County Courthouse, Courtroom No. 1.

BY THE COURT:


Judge
1-8-08

FILED 3ce
01/31/08 BY Amy Dubois
JAN 08 2008 (610)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JAN 08 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/8/08

☒ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

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

THOMAS A. MYERS and	:	No. 2005-440-CD
ANN M. MYERS,	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA P.	:	
BEVERIDGE,	:	
Defendants	:	

MOTION FOR CONTINUANCE

AND NOW, come the Plaintiffs, THOMAS A. MYERS and ANN M. MYERS, by and through their attorney, Jeffrey S. DuBois, Esquire, who files this Motion for Continuance, and in support thereof avers the following:

1. A civil non-jury Trial has been scheduled for April 8, 2008.
2. The undersigned misjudged the date he was to be on vacation as the undersigned thought he would be on vacation on Tuesday, April 1, 2008, but actually will be on vacation out of state on the second Tuesday, April 8, 2008, the date set for Trial.
3. The undersigned has contacted counsel for Defendants and he is agreeable to said continuance.
4. Therefore, Plaintiffs request the Trial to rescheduled to another date and time.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to continue the Non-Jury Trial to another date and time.

Respectfully submitted,



Jeffrey S. DuBois, Esquire
Attorney for Plaintiffs


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

THOMAS A. MYERS and	:	No. 2005-440-CD
ANN M. MYERS,	:	
	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA P.	:	
BEVERIDGE,	:	
	:	
Defendants	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 4th day of January, 2008, I served a true and correct copy of the within Motion for Continuance by first class mail, postage prepaid, on the following:

Richard A. Bell, Esquire
P.O. Box 670
Clearfield, PA 16830



Jeffrey S. DuBois

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

NO. 05-440-CD

IN EJECTMENT

Type of Pleading

MOTION FOR CONTINUANCE .

Filed on Behalf of:

Defendants

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED

0 11:57 a.m. GK

FEB 12 2008

William A. Shaw
Prothonotary/Clerk of Courts

NO CC

(GK)

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

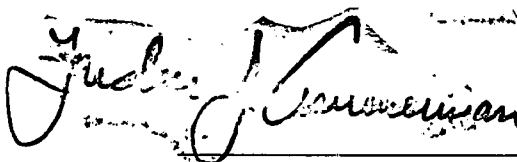
vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

ORDER OF COURT

AND NOW this 14th day of February, 2008, in consideration of the Defendants' Motion For Continuance, it is hereby Ordered and Decreed that the non-jury trial scheduled for April 25, 2008, is continued and rescheduled for the 13th day of May, 2008 at 9:00 o'clock A.M., at the Clearfield County Courthouse in Court Room No. 2

BY THE COURT



Fredric J. Ammerman, President Judge

FILED

012:56/61
FEB 14 2008

3cc

Any Bell

William A. Shaw
Prothonotary/Clerk of Courts

(6K)

FILED

FEB 14 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/14/08

☒ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

MOTION FOR CONTINUANCE

AND NOW this 12th day of February, 2008, comes the Defendants, Dorothy Beveridge, a/k/a Dorothy Beveridge Drury, Anthony T. Beveridge and Theresa P. Beveridge, by their attorney Richard A. Bell, Esquire and files this Motion For Continuance for the reasons given herein:

1. A non-jury trial was originally scheduled for this case on April 8, 2008, and by request of the Plaintiffs was changed by your Honorable Court to April 25, 2008.
2. The Defendants will all be away on April 25, 2008, and their presence and testimony is necessary at this trial.
3. Counsel for the Plaintiffs has no objection to this continuance.
4. The parties and their counsel will be available during the month of May 2008 with the exception of the date of May 8, 2008.

WHEREFORE, the Defendants respectfully requests that your Honorable Court continue the non-jury trial from April 25, 2008 to another date and time satisfactory with the Court.

Respectfully Submitted,

BELL, SILBERBLATT & WOOD

By



Richard A. Bell, Esquire
Attorney for Defendants

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD


vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of my Motion For Continuance prepared on behalf of the
above named Defendants in the above matter was mailed the 12th day of
February, 2008, by regular mail postage prepaid at the post office in
Clearfield, PA 16830 to the following:

Jeffrey S. DuBois, Esquire
210 McCracken Road
DuBois, PA 15801


Richard A. Eell, Esquire
Attorney for Defendants

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

THOMAS A. MYERS and
ANN M. MYERS,

Plaintiffs

Vs.

DOROTHY BEVERIDGE, ANTHONY
T. BEVERIDGE, and THERESA P.
BEVERIDGE,

Defendants

No. 2005-440-CD

Type of Pleading:

MOTION FOR CONTINUANCE

Filed on Behalf of:
PLAINTIFFS

Counsel of Record For This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
210 McCracker Run Road
DuBois, PA 15801
(814) 575-5598

FILED 2cc Atty
0/12:10am DuBois
MAR 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS A. MYERS and
ANN M. MYERS,

Plaintiffs

Vs.

DOROTHY BEVERIDGE, ANTHONY
T. BEVERIDGE, and THERESA P.
BEVERIDGE,

Defendants

No. 2005-440-CD

ORDER

AND NOW, in consideration of Plaintiffs Motion for Continuance,

IT IS HEREBY ORDERED AND DECREED that the non-jury Trial scheduled for May
13, 2008, is rescheduled for **May 19, 2008**, at 9:00 o'clock A.M. at the Clearfield County
Courthouse, Courtroom No. 1, Clearfield, Pennsylvania.

BY THE COURT:



Judge

3-7-08

FILED 2cc

0/4:00BT
MAR 07 2008

Atty DuBois

William A. Shaw
Prothonotary/Clerk of Courts

612

FILED

MAR 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/7/08

☒ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

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

THOMAS A. MYERS and	:	No. 2005-440-CD
ANN M. MYERS,	:	
	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA P.	:	
BEVERIDGE,	:	
	:	
Defendants	:	

MOTION FOR CONTINUANCE

AND NOW, come the Plaintiffs, THOMAS A. MYERS and ANN M. MYERS, by and through their attorney, Jeffrey S. DuBois, Esquire, who files this Motion for Continuance, and in support thereof avers the following:

1. A civil non-jury Trial had been scheduled for April 25, 2008, but a continuance was granted until May 13, 2008, due to the fact Defendants were going to be on vacation.
2. The undersigned was just informed by my clients that they will be out of the Country on a vacation which has been planned for a long time.
3. The undersigned has contacted counsel for Defendants and he is agreeable to said continuance.
4. Therefore, Plaintiffs request the Trial to rescheduled to another date and time.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to continue the Non-Jury Trial to another date and time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. DuBois', written over a horizontal line.

Jeffrey S. DuBois, Esquire
Attorney for Plaintiffs

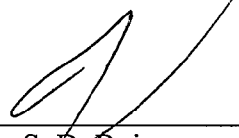
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL LAW

THOMAS A. MYERS and	:	No. 2005-440-CD
ANN M. MYERS,	:	
	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA P.	:	
BEVERIDGE,	:	
	:	
Defendants	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 7th day of March, 2008, I served a true and correct copy of the within Motion for Continuance by first class mail, postage prepaid, on the following:

Richard A. Bell, Esquire
P.O. Box 670
Clearfield, PA 16830



Jeffrey S. DuBois

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

NO. 05-440-CD

IN EJECTMENT

FILED

MAY 14 2008
0/16:40/CA
William A. Shaw
Prothonotary/Clerk of Courts
mo C/c @16

Type of Pleading

Notice and acknowledgment
Of Receipt of Subpoena by Mail

Filed on Behalf of:
Defendants

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

vs.

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

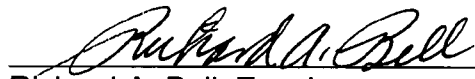
NOTICE AND ACKNOWLEDGMENT OF
RECEIPT OF SUBPOENA BY MAIL

To: KENNETH L. SHOPE

The enclosed subpoena is served pursuant to Pennsylvania Rule of Civil Procedure 234.2(b)(3). Complete the acknowledgment part of this form and return the copy of the completed form to the sender in the enclosed self-addressed stamped envelope.

Sign and date the acknowledgment. If you are served on behalf of a partnership, unincorporated association, corporation or similar entity, indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive the subpoena, indicate under your signature your authority.

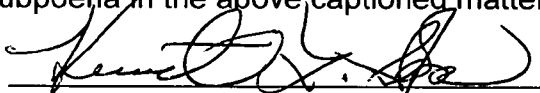
Date Notice Mailed: May 9, 2008


Richard A. Bell, Esquire

ACKNOWLEDGMENT OF RECEIPT OF SUBPOENA

I acknowledge receipt of a copy of the subpoena in the above captioned matter.

Date: 12 MAY 2008


Kenneth L. Shope

self
Relationship to entity or authority to
receive the subpoena

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NC. 05-440-CD

vs.

IN EJECTMENT

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

Type of Pleading
RETURN OF SERVICE OF
SUBPOENA - HELEN WILLETT

Filed on Behalf of:
Defendants

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED
9/11/10
MAY 15 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

vs.

IN EJECTMENT

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

RETURN OF SERVICE

On the 13 day of May, 2008, I Anthony T. Beveridge
served Helen Willett with the foregoing subpoena by:

Personal Service

I verify that the statements in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 5/13/08

Anthony T. Beveridge
(Signature)

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

vs.

IN EJECTMENT

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

Type of Pleading
RETURN OF SERVICE OF
SUBPOENA - CHARLES MEDZIE

Filed on Behalf of:
Defendants

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #C3808
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED *no cc*
05/11/06
MAY 15 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

vs.

IN EJECTMENT

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

RETURN OF SERVICE

On the 13 day of may, 2008, I Anthony T. Beveridge
served Charles Medzie with the foregoing subpoena by:

Personal Service

I verify that the statements in this return of service are true and correct. I
understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A.
§ 4904 relating to unsworn falsification to authorities.

Date: 5/13/08

Anthony T. Beveridge
(Signature)

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

vs.

IN EJECTMENT

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

Type of Pleading
RETURN OF SERVICE OF
SUBPOENA - MILDRED O'CONNOR

Filed on Behalf of:
Defendants

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED NO CC
0/11:10/07
MAY 15 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS A. MYERS and ANN M. MYERS
Plaintiffs

NO. 05-440-CD

vs.

IN EJECTMENT

DOROTHY BEVERIDGE, ANTHONY T.
BEVERIDGE and THERESA P. BEVERIDGE
Defendants

RETURN OF SERVICE

On the 13 day of may, 2008, I Anthony T. Beveridge
served Mildred O'Connor with the foregoing subpoena by:

Personal Service

I verify that the statements in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 5/13/08

Anthony T. Beveridge
(Signature)

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

THOMAS A. MYERS and
ANN M. MYERS,

Plaintiffs

Vs.

DOROTHY BEVERIDGE, ANTHONY
T. BEVERIDGE, and THERESA P.
BEVERIDGE,

Defendants

No. 2005-440-CD

Type of Pleading:

**PETITION FOR CONTEMPT
AND ENFORCEMENT OF
AGREEMENT**

Filed on Behalf of:
PLAINTIFFS

Counsel of Record For This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
210 McCracken Run Road
DuBois, PA 15801
(814) 375-5598

FILED 3CC
SEP 11 2005
Atty. DuBois
(610)

William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS A. MYERS and
ANN M. MYERS,

Plaintiffs

Vs.

DOROTHY BEVERIDGE, ANTHONY
T. BEVERIDGE, and THERESA P.
BEVERIDGE,

Defendants

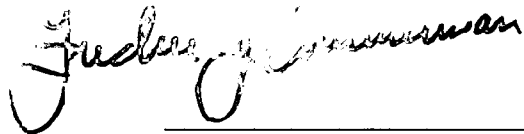
No. 2005-440-CD

ORDER

AND NOW, this 5th day of September, 2008, in consideration of
Plaintiff's Petition for Contempt and Enforcement of Agreement,

IT IS HEREBY ORDERED AND DECREED that a Contempt Hearing
scheduled for the 10th day of October, 2008, at 1:30 o'clock
9.M. at the Clearfield County Courthouse, Room 1, Clearfield, Pennsylvania.

BY THE COURT:



Judge

FILED 300
010-30001
SEP 05 2008
Atty DuBois
CK

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/5/08

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

FILED

SEP 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS A. MYERS and	:	No. 2005-440-CD
ANN M. MYERS,	:	
	:	
Plaintiffs	:	
	:	
Vs.	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA P.	:	
BEVERIDGE,	:	
	:	
Defendants	:	

PETITION FOR CONTEMPT AND ENFORCEMENT OF AGREEMENT

AND NOW, come the Plaintiffs, THOMAS A. MYERS and ANN M. MYERS, by and through their attorney, Jeffrey S. DuBois, Esquire, who files this Motion for Contempt and Enforcement of Agreement, and in support thereof avers the following:

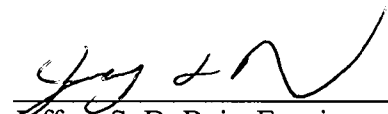
1. The parties hereto were involved in a land dispute which was scheduled for a non jury Trial in front of the Honorable Judge Charles C. Brown, specially presiding, which was held on May 19, 2008.
2. At said Trial, the parties came to a mutual agreement to resolve the case.
3. Pursuant to the Agreement, each side agreed to perform certain tasks to effectuate the parties' agreement. In particular, Plaintiffs were to remove the string that was along the right-of-way and pull said string back approximately two (2) feet towards their home. Plaintiffs did this within a week after the Trial.
4. Defendants, in consideration of the property transferred to them, were to place all of the sheds onto the "new" property agreed to by the parties, and were to remove all other items which were sitting on the property of Plaintiffs, and

finally were to remove the railroad ties next to their house and which encroached onto the subject right-of-way.

5. To date, Defendants have failed to do any of the above.
6. Despite repeated requests by Plaintiffs' Counsel to Defendants' Counsel, Defendants have still failed to abide by the Court Order and perform the acts required of them.
7. It is Petitioners' request that the Defendants be made responsible to perform all acts to which they had agreed to do at the non jury Trial.
8. The Petitioners have incurred Seven Hundred Fifty (\$750.00) dollars in attorney's fees in bringing this action.

WHEREFORE, Petitioners respectfully request this Honorable Court to hold Defendants in Contempt and force them to comply with the parties' prior agreement, and to award Petitioners attorneys fees and costs.

Respectfully Submitted,



Jeffrey S. DuBois, Esquire
Attorney for Petitioners


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

THOMAS A. MYERS and	:	No. 2005-440-CD
ANN M. MYERS,	:	
	:	
Plaintiffs	:	
	:	
Vs	:	
	:	
DOROTHY BEVERIDGE, ANTHONY	:	
T. BEVERIDGE, and THERESA P.	:	
BEVERIDGE,	:	
	:	
Defendants	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 29th day of August, 2008, I served a true and correct copy of the within Motion for Contempt and Enforcement of Agreement by first class mail, postage prepaid, on the following:

Richard A. Bel., Esquire
P.O. Box 670
Clearfield, PA 16830



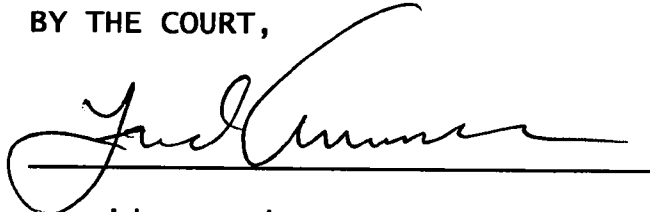
Jeffrey S. DuBois

settlement. He shall prepare the deed and provide the same to counsel for the Defendants for review within no more than forty-five (45) days from this date;

3. The rain spouting that was described during the hearing shall be shortened by Defendant Anthony T. Beveridge to the extent that it no longer extends or encroaches upon the right-of-way in question. The same thirty (30) day deadline shall apply;

4. Under the circumstances regarding the confusion surrounding the settlement, the Plaintiffs' request for attorney fees is denied.

BY THE COURT,

A handwritten signature in cursive script, appearing to read "Fred K. ...", is written over a horizontal line.

President Judge

7.6

FILED

OCT 13 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/13/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) X Plaintiff(s) Attorney Other

Defendant(s) X Defendant(s) Attorney

Special Instructions:

008 - We had a hearing and lost
part of the land. It was all cut up.
We have some left, Oct 10, 2008. **FILED**

2005-440-CD NOV 16 2010
9 01310/C
William A. Smith
Prothonotary/Clerk of Court

Land

80'

by 40'

Street

Was laid out as a street when airport started

Divided we have NO plant

house house house house house

Who has the plans for division?????

Charles Brown said we would get plans, where are they?

Dear Sir,

The unnamed street was
used by each property owner, still is!
Each property owner used what
was in back of them. The section
back of our house was used by us.

When Tom Meyers developed
a brain tumor he wanted the section
back of our house. He died since.

He got a lawyer Mr. Dubois and
a judge to agree with him. The
real judge, Charlie Brown, would not hear
our side and gave Tom Meyers
a large part of the property. We
had buildings on it and we had
to take them down, they had been
there for years! No one pays tax on these.

Richard
Bee A lawyer talked me into paying tax by adverse
possession! I no longer own the whole section.

Please take me off the tax!
Dorothy Buerdige Drury

Clearfield County Tax Claim Bureau

NOTICE OF RETURN AND CLAIM

Date: March 5, 2010



Claim # 2009-007512

Control # 124097159

Map# Q09-673-00026

Property Description

L (40' X 180')

Owner Or Reputed Owner
DRURY, DOROTHY BEVERIDGE ET AL
C/O 1535 OLD TURNPIKE ROAD
ALLPORT PA 16821

Charles Brown goes to 3
Delinquent 2009 Real Estate Tax

Address all communication in connection with claim and make all checks or money orders payable to:

Clearfield County Tax Claim Bureau
230 East Market Street, Suite 121
Clearfield PA 16830

RECEIVED AUG 13 2010

Business Hours: 8:30 AM to 4:00 PM Monday thru Friday Phone (814) 765-2641, Ext-5998

Notice is hereby given that the property above described has been returned to the Tax Claim Bureau of Clearfield County for non-payment of taxes and a claim has been entered under the provisions of Act No. 1947 P.L. 1368, as amended. If payment of these taxes is not made to the Tax Claim Bureau on or before **December 31, 2010** and no exception is filed the claim will become absolute.

On **July 1, 2010** a one (1) year period for discharge of tax claim shall commence or has commenced to run and if payment of taxes is not made during that period as provided by Act No. 1947, P.L. 1368, as amended, the property shall be advertised and exposed for sale under provisions of said act and there shall be no redemption after the actual sale.

Taxes Returned to Tax Claim Bureau	01/15/2010	County	\$12.70
		Municipal	\$0.00
		School	\$54.69
		Total	\$67.39

TOTAL DELINQUENCY IF PAID BY March 31, 2010

\$102.90

CALL FOR EXACT AMOUNT DUE.
APPROXIMATE INTEREST ADDED FIRST
DAY OF EACH MONTH = \$0.51

Cash is NOT accepted, please pay by Check or Money Order.

Any check returned unpaid by your bank will be subject to a twenty dollar (\$20.00) returned check fee.

PARTIAL PAYMENTS ARE ACCEPTED.

Eligible property owners may apply for an extension of time for payment of delinquent taxes by entering into an "AGREEMENT TO STAY SALE". Partial payment is required to begin. Inquire at Tax Claim Bureau for details.

WARNING

IF YOU FAIL TO PAY THIS TAX CLAIM OR FAIL TO TAKE LEGAL ACTION TO CHALLENGE THE TAX CLAIM, YOUR PROPERTY WILL BE SOLD WITHOUT YOUR CONSENT AS PAYMENT FOR THESE TAXES. YOUR PROPERTY MAY BE SOLD FOR A SMALL FRACTION OF IT'S FAIR MARKET VALUE. IF YOU PAY THIS TAX CLAIM BEFORE **December 31, 2010** YOUR PROPERTY WILL NOT BE SOLD. IF YOU PAY THIS CLAIM AFTER **July 1, 2011** BUT BEFORE THE ACTUAL SALE DATE YOUR PROPERTY WILL NOT BE SOLD BUT IT WILL BE LISTED ON ADVERTISEMENTS FOR SUCH SALE. IF YOU HAVE ANY QUESTIONS PLEASE CALL THE TAX CLAIM BUREAU AT (814)-765-2641, YOUR ATTORNEY OR THE COUNTY LAWYER REFERRAL SERVICE.

IF PROPERTY OWNER IS IN BANKRUPTCY OR IF PROPERTY IS UNMAPPED THIS NOTICE IS FOR INFORMATION ONLY.

*It was decided by Judge Brown
we never got the plans of how it
was decided. Judge Brown needs
to send them to us. This was in 2008.
I keep getting notices that I should pay
tax on all of the 40 X 180. What has he done.*

FILED

NOV 15 2011

William A. Shaw
Prothonotary/Clerk of Courts

FLUR PEN FJA

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

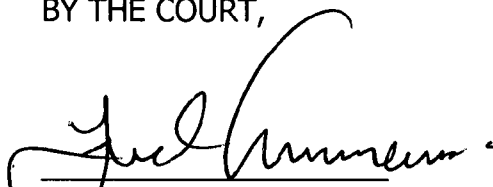
THOMAS A. MYERS and ANN M. MYERS,	*	NO. 05-440-CD
Plaintiffs	*	
vs.	*	
DOROTHY BEVERIDGE, ANTHONY T. BEVERIDGE and	*	
THERESA P. BEVERIDGE,	*	
Defendants	*	

ORDER

NOW, this 15th day of November , 2010, it is the ORDER of this Court that A Compliance hearing to determine if Plaintiffs' counsel has complied with paragraph number 2 of the Court's Order of October 10, 2008 be and is hereby scheduled for the 5th day of January, 2010 at 9:30a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830.

One-half hour has been reserved for this hearing.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 11/16/2010 1:48 PM
NOV 16 2010
William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty's:
Subois
Bell
66

FILED

NOV 16 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/16/10

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

CA

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

THOMAS A. MYERS and ANN M. MYERS

VS

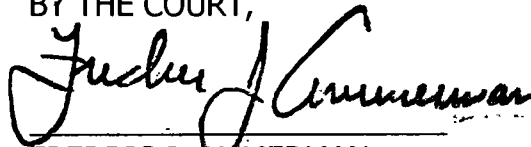
DOROTHY BEVERIDGE, ANTHONY T. BEVERIDGE
and THERESA P. BEVERIDGE

* NO. 05-440-CD
*
*
*
*

ORDER

NOW, this 4th day of January, 2011, upon being advised by Jeffrey S. DuBois, Esquire, counsel for the Plaintiffs, that in compliance with this Court's Order of October 10, 2008 a deed has been completed and is awaiting the signature of the parties; it is the ORDER of this Court that the hearing scheduled for the 5th day of January, 2011 at 9:30 .m. in be and is hereby continued until the 14th day of February, 2011 at 10:30 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

014:0060
JAN 05 2011

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty:
DuBois
R Bell

FILED

JAN 05 2011

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/5/11

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff X Plaintiff's Attorney ____ Other

____ Defendant X Defendant's Attorney

____ Other Person(s)

CA

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

THOMAS A. MYERS and ANN M. MYERS

VS

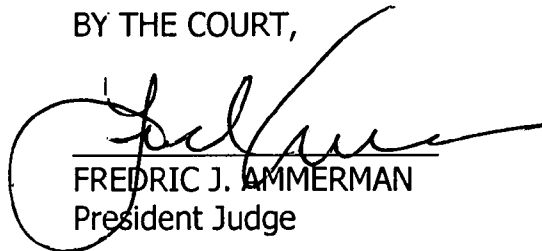
DOROTHY BEVERIDGE, ANTHONY T. BEVERIDGE
and THERESA P. BEVERIDGE

* NO. 05-440-CD
*
*
*
*
*

ORDER

AND NOW, this 26th day of January, 2011 the Court being advised by Richard Bell, Esquire, counsel for the Defendants, that he will be out of state on February 14, 2010, the date set for hearing in the above matter; it is the ORDER of this Court that the hearing scheduled for February 14, 2010 be and is hereby continued to March 3, 2011 at 1:30 p.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

01:31 PM
JAN 28 2011

William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys: Sue Bois
R. Bell

FILED

JAN 28 2011

**William A. Shaw
Prothonotary/Clerk of Courts**

DATE: 1/28/11

 You are responsible for serving all appropriate parties.

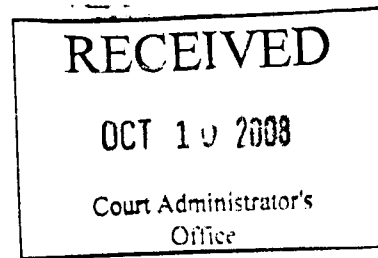
 X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

Bonne.
To Return
w/PO's Filed
downstairs
TR



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA L. WILLIAMS, an adult
individual,

Plaintiff,

vs.

PAMELA W. BRADLEY, an adult
individual, THOMAS J. BRADLEY, MD,
an adult individual, THOMAS J.
BRADLEY, MD, P.C., a Pennsylvania for
Profit Corporation, and DRMC, a
Pennsylvania Not for Profit Corporation,

Defendants.

CIVIL DIVISION

No. 08-1735-CD

Issue No.

**BRIEF IN SUPPORT OF PRELIMINARY
OBJECTIONS**

Filed on behalf of the defendant incorrectly
identified as "DRMC:"

Counsel of Record for This Party:

David R. Johnson, Esquire
PA I.D. #26409

Brad R. Korinski, Esquire
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

NOW COMES the defendant incorrectly identified as "DRMC," by and through its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following brief in support preliminary objections to the plaintiff's complaint, stating as follows.

I. FACTUAL BACKGROUND

In December of 2006, plaintiff Cynthia Williams, RN held employment with Thomas J. Bradley, M.D., P.C. as an office nurse. Concomitantly, Pamela W. Bradley, the wife of Thomas J. Bradley, M.D. worked in the same office. According to the complaint, Mrs. Bradley held the belief that plaintiff and Dr. Bradley were involved in a romantic affair of a sexual nature. Interestingly, the complaint does not deny the existence of the said affair. Not surprisingly given their close working proximity to one another, Mrs. Bradley is alleged to have confronted plaintiff about her dalliances. Also not surprisingly, this confrontation devolved into a physical altercation, with plaintiff alleging that Mrs. Bradley "attacked" her thereby causing plaintiff to sustain physical and mental injuries, including permanent incontinence.

Via counts I through III of the complaint, plaintiff brings claims against Mrs. Bradley stemming from the assault. Counts IV through VI of the complaint concern Dr. Bradley and his professional corporation, and the allegation that Dr. Bradley should have taken some action to have prevented the assault or to have defended plaintiff during the pendency of it. According to the complaint, Dr. Bradley "remained in his office in a cowed position" while Mrs. Bradley, his wife, "attacked" plaintiff.

As to the defendant incorrectly identified as "DRMC," plaintiff contends that "DRMC" at the time acted, variously, as Dr. Bradley's employer, landlord and/or as a hospital which

extended credentials/privileges to Dr. Bradley. Plaintiff does not aver in the complaint any specific knowledge or warning that "DRMC" had of the alleged assault committed by Mrs. Bradley. Moreover, plaintiff does not identify any acts engaged in by "DRMC" that led or contributed to the aforementioned assault or Dr. Bradley's alleged failure to protect or defend plaintiff. Plaintiff's complaint only pleads that DRMC should have more properly "supervised" Dr. Bradley in terms of unsubstantiated allegations that Dr. Bradley was at the time under the influence of narcotics. Through the use of spurious logic, had "DRMC" somehow prevented Dr. Bradley from using narcotics, plaintiff apparently asserts that Dr. Bradley would have acted to protect plaintiff from assault. The connection between the conduct alleged of "DRMC" and the injuries suffered by plaintiff are attenuated and remote, so much so that DRMC cannot, as a matter of law, serve as the proximate cause of any harm inflicted upon plaintiff. Indeed, plaintiff's complaint seems to disregard the "elephant in the room," that it was not Dr. Bradley's alleged drug use (to the extent that it occurred) that precipitated the altercation, but instead the purported romantic entanglement between and among Dr. Bradley and plaintiff - a relationship (real or imaginary) for which DRMC can bear no responsibility.

II. ARGUMENT

A. DEMURRER - "DRMC" IS NOT AN ENTITY CAPABLE OF BEING SUED

Plaintiff has incorrectly identified "DRMC" as a defendant. In the complaint, plaintiff alleges "DRMC" operates a general hospital and owns numerous physician practice groups; plaintiff also contends "DRMC" acted as the employer of Dr. Bradley. (*See* Complaint, ¶ 5, ¶ 77). The defendant referred to as "DRMC" does not exist. It is not a corporation, partnership, individual or entity. "DRMC" owns no property, possess no assets or employees. "DRMC"

cannot be a party to a lawsuit. In identifying "DRMC" as a defendant, it is believed plaintiff seeks to name DuBois Regional Medical Center. However, "DRMC" is merely a popularly utilized acronym and is not an official, actual or extant entity in its own right. An acronym is not an appropriate party to a lawsuit of this nature. Accordingly, plaintiff should be required to re-plead and re-file her complaint naming as a defendant an entity that is capable of being sued.

**B. DEMURRER - THE ALLEGATIONS OF THE COMPLAINT
DO NOT SET FORTH ANY ACT OR OMISSION BY "DRMC" WHICH
RESULTED IN HARM TO PLAINTIFF**

Plaintiff alleges throughout the complaint that prior to and during the alleged assault committed by Mrs. Bradley that Dr. Bradley was under the influence of narcotics. Plaintiff posits Dr. Bradley's narcotics usage as one of the reasons for Dr. Bradley's failure to come to the defense of plaintiff while she was being pummeled by Mrs. Bradley. Paragraphs 83(a), (b), (c), (d), (e) and (f) of Count VII of the complaint allege negligence on the part of "DRMC" in the following ways:

- ¶ 83(a): ["DRMC"] knew that Defendant Thomas J. Bradley, M.D. had a history of narcotic abuse.
- ¶ 83(b): ["DRMC"] failed to properly monitor Defendant Thomas J. Bradley, M.D. for substance abuse, especially in particular in light of knowing his history of previous substance abuse.
- ¶ 83(c) ["DRMC"] failed to detect that Defendant Thomas J. Bradley, M.D. was abusing narcotics.
- ¶ 83(d): ["DRMC"] failed to properly supervise Defendant Thomas J. Bradley, M.D. under the attenuate circumstances to such a degree that he was practicing and had been practicing medicine,

including the administration of his office, under the influence of narcotics.

¶ 83(e): ["DRMC"] failed to detect that Defendant Thomas J. Bradley, M.D., because of narcotic abuse, was not properly administering to Defendant Thomas J. Bradley, M.D., P.C.

¶ 83(f): ["DRMC"] by continuing to issue privileges, grant credentials and provide free office space to Defendant Thomas J. Bradley, M.D. and Defendant Thomas J. Bradley, M.D., P.C. thereby enabled him and it to engage in the aforementioned tortuous conduct.

Plaintiff's claims and injuries in this case stem from a purported assault committed by Dr. Bradley's wife in Dr. Bradley's office because of Mrs. Bradley's belief that plaintiff and Dr. Bradley were engaged in a relationship of a sexual/romantic nature. Plaintiff alleges that Dr. Bradley and/or his professional corporation should have afforded her some protection from this physical altercation. None of the above allegations against "DRMC" state, suggest or imply any act or omission which caused harm, nor do these allegations involve areas where defendant "DRMC" had a duty to act for the benefit of plaintiff.

Since the subject matter set forth in these paragraphs neither identifies a cause of harm nor breach of legal duty, there is no basis for plaintiff to claim that defendant "DRMC" may be liable to her as a result of the alleged conduct. Moreover, the above-referenced allegations relate to matters which are not factually related or connected to the alleged assault.

The only potential liability of "DRMC" in this case is as the alleged employer/supervisor of Dr. Bradley. The only issue that has been raised concerning "DRMC's" supervision of Dr.

Bradley is that "DRMC" should have taken measures to have ensured that Dr. Bradley did not become addicted to narcotics and/or that he did not use narcotics. This is not a valid predicate for a claim of liability because as a matter of law, no one associated with "DRMC" owed any duty to the plaintiff with regard to Dr. Bradley. "DRMC" was not the employer of Dr. Bradley nor did "DRMC" have any authority over how Dr. Bradley operated his private medical practice. Moreover, as events transpired, "DRMC" certainly had no ability to prevent a confrontation between plaintiff and Mrs. Bradley concerning plaintiff's alleged romantic affair with Dr. Bradley. Mrs. Bradley's alleged physical violence and Dr. Bradley's alleged narcotics use were events which "DRMC" had no control over and certainly involved matters in which "DRMC" owed no duty to the plaintiff.

“[T]o sustain a claim for negligence a plaintiff must establish that the defendant owed a duty of care to the plaintiff, the defendant breached that duty, the breach actually and proximately caused injury to the plaintiff, and the plaintiff suffered loss or damage as a result.” Holt v. Navarro, 932 A.2d 915 (Pa. Super. 2007). As a matter of law, "DRMC" breached no duty owed to the plaintiff, and for this reason "DRMC" should be dismissed as a defendant from this lawsuit, with prejudice.

C. DEMURRER - DRMC CANNOT BE VICARIOUSLY RESPONSIBLE FOR
THE INTENTIONAL TORTS OF WHICH PLAINTIFF COMPLAINS

There are no factual allegations set forth in the complaint establishing that the alleged assault and battery was committed by an employee of "DRMC." While plaintiff mistakenly alleges Dr. Bradley was an employee of "DRMC," Dr. Bradley was not the party who committed the assault. Moreover, given the nature of the alleged assault, even if the "attacker" were an

employee of DRMC, DRMC cannot be held vicariously responsible for it. See R.A. v. First Church of Christ, 748 A.2d 692, 699-700 (Pa. Super. 2000).

The Superior Court, in the case of R.A. v First Church of Christ was dealing with an issue of whether a church could be vicariously liable for alleged sexual abuse by a minister employed by the church. The court held that the church could not be vicariously liable for the minister's alleged conduct. In doing so, the court analyzed Pennsylvania law with respect to vicarious liability. The court stated as follows:

"Pennsylvania law concerning the extent to which an employer is vicariously liable for the actions of its employee is well-established and crystal clear: it is well settled that an employer is held vicariously liable for the negligent acts of his employee which cause injuries to a third party, provided that such acts were committed during the course of and within the scope of the employment. In certain circumstances, liability of the employer may also extend to intentional or criminal acts committed by the employee. The conduct of the employees considered "within the scope of the employment" for purposes of vicarious liability if: (1) it is of a kind and nature that the employee is employed to perform; (2) it occurs substantially within the authorized time and space limits; (3) it is actuated, at least in part, by a purpose to serve the employer; and (4) if force is intentionally used by the employee against another, the use of force is not unexpected by the employer. ... Where, however, the employee commits an act encompassing the use of force which is excess and so dangerous as to be totally without responsibility or reason, the employer is not responsible as a matter of law. Moreover, our courts have held that in an assault committed by an employee upon another for personal reasons or in an outrageous manner is not actuated by an intent to perform the business of the employer and, as such, is not within the scope of employment.

R.A. v. First Church of Christ, 748 A.2d at 699 - 700. (Citations and quotations omitted).

In this case, there are no facts alleged which identify an employee of "DRMC" as the person who allegedly assaulted the plaintiff. Nonetheless, assuming arguendo that plaintiff could prove that an employee of "DRMC" committed the assault, the nature of the intentional tort which is plead in the complaint precludes vicarious liability on the part of the "DRMC" because

the act could not have been performed within the course and scope of the person's agency. Accordingly, Count VII of plaintiff's complaint should be dismissed for the reason that DRMC cannot, as a matter of law, be responsible for the injuries inflicted upon plaintiff.

D. DEMURRER - IN VIEW OF THE FACTS OF THIS CASE, CAUSATION
CANNOT BE ESTABLISHED AS A MATTER OF LAW

The operative facts of this lawsuit are rudimentary. If one assumes all of the facts of the complaint as true, here is what occurred. On December 14, 2006, plaintiff, while working in Dr. Bradley's office, was physically assaulted by Mrs. Bradley because of Mrs. Bradley's belief that plaintiff and Dr. Bradley were involved in a romantic relationship of a sexual nature. Dr. Bradley knew of both his wife's propensity toward violence and of the actual assault while it occurred, but took no steps to protect plaintiff. At the time, Dr. Bradley suffered from an addiction to narcotics. "DRMC" because it either employed Dr. Bradley or issued him credentials/privileges to practice medicine at its hospital, had a duty to ensure that Dr. Bradley was not actively using narcotics.

Even if looked upon in the light most favorable to plaintiff, It is evident from the underlying facts that "DRMC" had no factual involvement or connection to the events of December 14, 2006. During this time, there is no allegation that "DRMC" knew of or permitted the alleged assault engaged in by Mrs. Bradley, or that "DRMC" was forewarned that such assault was about to occur. It is also clear no action or inaction of "DRMC" served as the precipitating cause of the assault. What occurred on December 14, 2006 involved matters over which the "DRMC" had absolutely no control, nor any ability to control. Moreover, the events occurring on December 14, 2006 were outside the orbit of any duty owed by "DRMC" to plaintiff.

The only thing "DRMC" is alleged to have done wrong is to have permitted Dr. Bradley to use narcotics. However, there are no facts plead in the complaint which establish even the most tenuous of connections between Dr. Bradley's use of narcotics and the assault.

Given these circumstances, a jury, as a matter of law, would be unable to conclude that anything "DRMC" did or did not do served as a substantial factor in causing plaintiff's injuries at the hands of Mrs. Bradley. Given the myriad of intervening circumstances, any issue with regard to "DRMC's" purported duty to ensure Dr. Bradley was not addicted to narcotics is too remote to be a substantial factor in causing his death.

In order to establish a cause of action for negligence, the plaintiff must prove that there was: (1) a duty or obligation recognized by law; (2) breach of that duty by the defendant; (3) a causal connection between the defendant's breach of that duty and the resulting injury; and (4) actual loss or damage suffered by the plaintiff. Herczeg v. Hampton Tp. Mun. Authority, 766 A.2d 866, 871 (Pa. Super. 2001). It is well settled that "the mere existence of negligence and the occurrence of injury are insufficient to impose liability upon anyone as there remains to be proved the link of causation." Lux v. Gerald E. Ort Trucking, Inc., 887 A.2d 1281, 1286 (Pa. Super. 2005). Even if it is established that defendant breached a duty of care owed to the plaintiff, the plaintiff still has to establish "a causal connection between defendant's conduct, and it must be shown to have been the proximate cause of plaintiff's injury." Id. (quoting Taylor v. Jackson, 643 A.2d 771, 775 (Pa. Cmwlth. 1994)).

Proximate cause is found where the alleged wrongful act was a "substantial factor" in bringing about the plaintiff's harm. Amarhanov v. Fassel, 658 A.2d 808, 810 (Pa. Super. 1995). "Proximate cause does not exist where the causal chain of events resulting in plaintiff's injury is so remote as to appear highly extraordinary that the conduct could have brought about the harm."

Dudley v. USX Corp., 606 A.2d 916, 923 (Pa. Super. 1992). Proximate cause is a question of law to be determined by the court before the issue of actual cause is put to the jury. Lux, 887 A.2d at 1287. Courts of this Commonwealth rely on the following considerations to determine whether a defendant's conduct was the proximate cause of the plaintiff's injury:

- (a) the number of other factors which contribute in producing the harm and the extent of the [a]ffect which they have in producing it;
- (b) whether the actor's conduct created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; and
- (c) lapse of time.

Holt v. Navarro, 932 A.2d 915, 921 (Pa. Super. 2007).

There are several appellate court cases that are instructive in regard to whether the alleged negligent acts of "DRMC" were the proximate cause of plaintiffs' injuries. In Collins v. Hand, the plaintiff was being treated at a hospital due to depression. Her treating psychiatrist transferred her to another medical facility in order for her to receive electroshock treatments for her condition. 246 A.2d 398 (Pa. 1968). During her electroshock treatment, the plaintiff suffered a hip fracture. Her treating psychiatrist was not present during this treatment. The plaintiff brought a claim against her psychiatrist on the theory that he was negligent in failing to take X-rays prior to her transfer which would have disclosed her osteoporosis.

In its decision, our Supreme Court initially held that the psychiatrist was negligent in failing to properly evaluate the plaintiff's physical condition prior to treatment. Id. at 401. However, the Court concluded that despite the doctor's negligence, the plaintiff could not recover because she failed to establish that the failure to order X-rays "caused" her injuries. Id. at 402. The Court stated that in negligence cases, "the principle is established beyond question that the alleged negligence must have caused the injuries complained of before the recovery may

be had.” Id. at 401. In Collins, the apparent cause of the fractures was the application of too much restraints on plaintiff’s legs during the electroshock therapy and not the failure to take X-rays. See Id. at 403. Similarly, in the case at bar, the actual cause of the injuries was Mrs. Bradley’s physical assault of plaintiff, not the purported narcotics use of Dr. Bradley.

In Amarhanov v. Fassel, a pedestrian brought suit against a homeowner to recover for injuries sustained when he was hit by a speeding vehicle while rummaging through a dumpster placed along the street by the homeowner. 658 A.2d 808 (Pa. Super. 1995). In its decision granting homeowner’s motion for summary judgment, the Court held that the pedestrian failed to establish that the homeowner’s conduct was the proximate cause of his injuries. Id. at 810. The Court reasoned that his injuries were caused by the negligence of defendant driver and was not a “natural and probable consequence” of defendant homeowner’s conduct in placing the dumpster along the street. Id.

Similarly, in Matos v. Rivera, the passenger in a stolen pizza delivery car was injured when the vehicle crashed into a utility pole. 648 A.2d 337 (Pa. Super. 1994). The plaintiff and two other men stole the car when the driver left the engine running while making a delivery. The plaintiff filed suit against the pizza delivery driver and his employer alleging that they were negligent in failing to ensure that the car would not be stolen while making a delivery. The Court held that plaintiff failed to establish that the defendant’s negligence was the proximate cause of his injuries. Id. at 340. The thief’s negligent operation of the vehicle was a superseding cause of the plaintiff’s injuries and therefore defendants could not be liable as a matter of law. Holt v. Navarro, 932 A.2d 915, 922 (Pa. Super. 2007).

Recently, in Holt v. Navarro, the Superior Court held that an ambulance service that was transferring a psychiatric patient was not liable to the patient for negligently allowing him to

escape. 932 A.2d 915 (Pa. Super. 2007). After escaping from the ambulance, the patient assaulted an off-duty police officer. In his complaint, the patient alleged that as a result of the criminal convictions stemming from the assault, he suffered a reduced earning potential. The Court held that even if the ambulance service breached its duty of care owed to the patient, the patient's loss of income due to his criminal behavior following the escape was not a "natural and probable" outcome of the ambulance service's breach. Id. at 923-24. Thus, the ambulance service's acts or omission were "too remote or attenuated" to be significant as compared to the "aggregate of the other factors" which contributed to the circumstances of the patient's criminal activity. Id. at 924.

Instantly, plaintiff alleges that "DRMC" was negligent in allowing Dr. Bradley to use or become addicted to narcotics. Even if, in some manner, DRMC could be determined to have been negligent in regards to Dr. Bradley, it could not be the proximate cause of Mrs. Bradley assault of plaintiff. "When the harm which ultimately results appears to the court to be a remote and highly extraordinary consequence of the defendant's conduct, legal causation will not be found and liability will not attach." Amarhanov, 658 A.2d at 810.

As a matter of law, any act or omission by "DRMC" in supervising Dr. Bradley could not be found to be a substantial factor in causing plaintiff to be assaulted by Mrs. Bradley or in Dr. Bradley's failure to come to the aid of plaintiff or to prevent Mrs. Bradley's actions in the first instance.

Significantly, proximate cause is a legal question; it involves a determination of whether the alleged negligence was so remote that as a matter of law, the defendant cannot be held legally responsible for the subsequent harm. Therefore, the court must determine whether the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of. The court must evaluate the alleged facts and refuse to find an actor's conduct was the legal cause of harm when

it appears to the court highly extraordinary that the actor's conduct should have brought about the harm. Thus, proximate cause must be established before the question of actual cause may be put to the jury.

Holt, 932 A.2d at 921 (citations and quotation marks omitted).

The facts of this case, as a matter of law, would preclude the jury from finding that any act or omission by "DRMC" caused any injury to plaintiff. Accordingly, the demurrer filed by "DRMC" to Count VII of the complaint should be granted and "DRMC" should be dismissed, with prejudice," as a defendant from this lawsuit.

E. ALL ALLEGATIONS CONCERNING NARCOTICS/DRUG USE
BY DR. BRADLEY SHOULD BE STRICKEN FROM THE COMPLAINT
AS SCANDALOUS AND IMPERTINENT MATTER PURSUANT
TO PA. R.C.P. 1028(a)(2)

Pa. R.C.P. 1028(a)(2) provides that preliminary objections may be filed for failure to a pleading to conform to law or rule of court for "for inclusion of scandalous and impertinent matter." To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action. Department of Environmental Resources v. Peggs Run Coal Co., 423 A.2d 765 (Pa. Cmwlth. 1980).

The purported drug use of Dr. Bradley (which is substantiated by no facts in the complaint) bears no relevance to any element of plaintiff's liability claims. The only ostensible purpose of including such averments in the complaint is to tend to blacken and impugn the reputation of Dr. Bradley in the community, as well as "DRMC" where Dr. Bradley practices medicine as a physician.

Accordingly, "DRMC" respectfully urges this Honorable Court to strike any mention of any drug/narcotic use by Dr. Bradley from the complaint.

F. THERE IS NO FACTUAL BASIS TO IMPOSE PUNITIVE DAMAGES
AGAINST THIS DEFENDANT

The allegations plead in the complaint concerning the conduct of "DRMC" do not assert facts sufficient to entitle plaintiff to recover punitive damages. Such damages are recoverable only in cases of outrageous behavior, where the defendants' egregious conduct shows either an evil motive or reckless indifference to the rights of others. Martin v. Johns-Manville Corp., 508 Pa. 154, 494 A.2d 1088 (1984); Danner v. Miller, 701 A.2d 232 (Pa. Super. 1997). Neither ordinary negligence nor even gross negligence reflects sufficient culpability to justify an award of punitive damages.

Castetter v. Mr. B's Storage, 669 A.2d 1268 (Pa. Super. 1997). Section 500 of the Restatement of Torts (Second) defines the term "reckless disregard" as follows.

The actor's conduct is in reckless disregard of the safety of another if he does na act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.

In order to be recklessly indifferent, the actor must not only know or have reason to know of facts which create a high degree of risk of physical harm to another; he or she must also "deliberately proceed to act or fail to act in conscious disregard of, or indifference to, that risk." SVH Coal, Inc. v. Continental Grain Co., 526 Pa. 489, 494, 587 A.2d 702, 704 (1991).

Here, plaintiff has alleged no facts to possibly support a finding of outrageous conduct on the part of "DRMC." The complaint does not contain any factual averments that "DRMC" acted in an intentional, willful, wanton or reckless manner toward plaintiff. Indeed, as concerns "DRMC," the allegations of the complaint are not that "DRMC" failed to protect plaintiff but

only that "DRMC" failed to supervise Dr. Bradley, who, in turn, failed to protect plaintiff. Given the attenuated factual circumstances in this lawsuit, it is wholly inappropriate for the specter of punitive damages to be visited against "DRMC."

Therefore, this Honorable Court should strike from the complaint all claims of punitive damages against "DRMC."

III. CONCLUSION

For all of the reasons stated above, this Honorable Court should grant and sustain the preliminary objections filed on behalf of "DRMC." Even assuming all of the facts in the light most favorable to the plaintiff, the complaint fails to set forth any cognizable cause of action plead against "DRMC" or DuBois Regional Medical Center.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire

Brad R. Korinski, Esquire

Attorneys for the defendant incorrectly identified as
"DRMC."

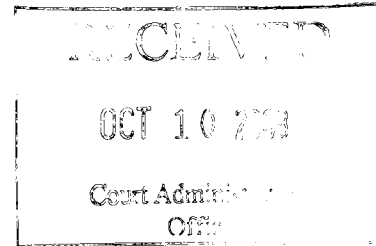
CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 8th day of Oct, 2008:

Theron G. Noble, Esquire
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301 East Pine Street
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David R. Johnson
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Attorneys for the defendant incorrectly identified as
"DRMC."



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CYNTHIA L. WILLIAMS, an adult
individual,

Plaintiff,

vs.

PAMELA W. BRADLEY, an adult
individual, THOMAS J. BRADLEY, MD,
an adult individual, THOMAS J.
BRADLEY, MD, P.C., a Pennsylvania for
Profit Corporation, and DRMC, a
Pennsylvania Not for Profit Corporation,

Defendants.

CIVIL DIVISION

No. 08-1735-CD

Issue No.

**BRIEF IN SUPPORT OF PRELIMINARY
OBJECTIONS**

Filed on behalf of the defendant incorrectly
identified as "DRMC:"

Counsel of Record for This Party:

David R. Johnson, Esquire
PA I.D. #26409

Brad R. Korinski, Esquire
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.
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1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

NOW COMES the defendant incorrectly identified as "DRMC," by and through its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following brief in support preliminary objections to the plaintiff's complaint, stating as follows.

I. FACTUAL BACKGROUND

In December of 2006, plaintiff Cynthia Williams, RN held employment with Thomas J. Bradley, M.D., P.C. as an office nurse. Concomitantly, Pamela W. Bradley, the wife of Thomas J. Bradley, M.D. worked in the same office. According to the complaint, Mrs. Bradley held the belief that plaintiff and Dr. Bradley were involved in a romantic affair of a sexual nature. Interestingly, the complaint does not deny the existence of the said affair. Not surprisingly given their close working proximity to one another, Mrs. Bradley is alleged to have confronted plaintiff about her dalliances. Also not surprisingly, this confrontation devolved into a physical altercation, with plaintiff alleging that Mrs. Bradley "attacked" her thereby causing plaintiff to sustain physical and mental injuries, including permanent incontinence.

Via counts I through III of the complaint, plaintiff brings claims against Mrs. Bradley stemming from the assault. Counts IV through VI of the complaint concern Dr. Bradley and his professional corporation, and the allegation that Dr. Bradley should have taken some action to have prevented the assault or to have defended plaintiff during the pendency of it. According to the complaint, Dr. Bradley "remained in his office in a cowed position" while Mrs. Bradley, his wife, "attacked" plaintiff.

As to the defendant incorrectly identified as "DRMC," plaintiff contends that "DRMC" at the time acted, variously, as Dr. Bradley's employer, landlord and/or as a hospital which

extended credentials/privileges to Dr. Bradley. Plaintiff does not aver in the complaint any specific knowledge or warning that "DRMC" had of the alleged assault committed by Mrs. Bradley. Moreover, plaintiff does not identify any acts engaged in by "DRMC" that led or contributed to the aforementioned assault or Dr. Bradley's alleged failure to protect or defend plaintiff. Plaintiff's complaint only pleads that DRMC should have more properly "supervised" Dr. Bradley in terms of unsubstantiated allegations that Dr. Bradley was at the time under the influence of narcotics. Through the use of spurious logic, had "DRMC" somehow prevented Dr. Bradley from using narcotics, plaintiff apparently asserts that Dr. Bradley would have acted to protect plaintiff from assault. The connection between the conduct alleged of "DRMC" and the injuries suffered by plaintiff are attenuated and remote, so much so that DRMC cannot, as a matter of law, serve as the proximate cause of any harm inflicted upon plaintiff. Indeed, plaintiff's complaint seems to disregard the "elephant in the room," that it was not Dr. Bradley's alleged drug use (to the extent that it occurred) that precipitated the altercation, but instead the purported romantic entanglement between and among Dr. Bradley and plaintiff - a relationship (real or imaginary) for which DRMC can bear no responsibility.

II. ARGUMENT

A. DEMURRER - "DRMC" IS NOT AN ENTITY CAPABLE OF BEING SUED

Plaintiff has incorrectly identified "DRMC" as a defendant. In the complaint, plaintiff alleges "DRMC" operates a general hospital and owns numerous physician practice groups; plaintiff also contends "DRMC" acted as the employer of Dr. Bradley. (*See* Complaint, ¶ 5, ¶ 77). The defendant referred to as "DRMC" does not exist. It is not a corporation, partnership, individual or entity. "DRMC" owns no property, possess no assets or employees. "DRMC"

cannot be a party to a lawsuit. In identifying "DRMC" as a defendant, it is believed plaintiff seeks to name DuBois Regional Medical Center. However, "DRMC" is merely a popularly utilized acronym and is not an official, actual or extant entity in its own right. An acronym is not an appropriate party to a lawsuit of this nature. Accordingly, plaintiff should be required to re-plead and re-file her complaint naming as a defendant an entity that is capable of being sued.

B. DEMURRER - THE ALLEGATIONS OF THE COMPLAINT
DO NOT SET FORTH ANY ACT OR OMISSION BY "DRMC" WHICH
RESULTED IN HARM TO PLAINTIFF

Plaintiff alleges throughout the complaint that prior to and during the alleged assault committed by Mrs. Bradley that Dr. Bradley was under the influence of narcotics. Plaintiff posits Dr. Bradley's narcotics usage as one of the reasons for Dr. Bradley's failure to come to the defense of plaintiff while she was being pummeled by Mrs. Bradley. Paragraphs 83(a), (b), (c), (d), (e) and (f) of Count VII of the complaint allege negligence on the part of "DRMC" in the following ways:

- ¶ 83(a): ["DRMC"] knew that Defendant Thomas J. Bradley, M.D. had a history of narcotic abuse.
- ¶ 83(b): ["DRMC"] failed to properly monitor Defendant Thomas J. Bradley, M.D. for substance abuse, especially in particular in light of knowing his history of previous substance abuse.
- ¶ 83(c) ["DRMC"] failed to detect that Defendant Thomas J. Bradley, M.D. was abusing narcotics.
- ¶ 83(d): ["DRMC"] failed to properly supervise Defendant Thomas J. Bradley, M.D. under the attenuate circumstances to such a degree that he was practicing and had been practicing medicine,

including the administration of his office, under the influence of narcotics.

- ¶ 83(e): ["DRMC"] failed to detect that Defendant Thomas J. Bradley, M.D., because of narcotic abuse, was not properly administering to Defendant Thomas J. Bradley, M.D., P.C.
- ¶ 83(f): ["DRMC"] by continuing to issue privileges, grant credentials and provide free office space to Defendant Thomas J. Bradley, M.D. and Defendant Thomas J. Bradley, M.D., P.C. thereby enabled him and it to engage in the aforementioned tortuous conduct.

Plaintiff's claims and injuries in this case stem from a purported assault committed by Dr. Bradley's wife in Dr. Bradley's office because of Mrs. Bradley's belief that plaintiff and Dr. Bradley were engaged in a relationship of a sexual/romantic nature. Plaintiff alleges that Dr. Bradley and/or his professional corporation should have afforded her some protection from this physical altercation. None of the above allegations against "DRMC" state, suggest or imply any act or omission which caused harm, nor do these allegations involve areas where defendant "DRMC" had a duty to act for the benefit of plaintiff.

Since the subject matter set forth in these paragraphs neither identifies a cause of harm nor breach of legal duty, there is no basis for plaintiff to claim that defendant "DRMC" may be liable to her as a result of the alleged conduct. Moreover, the above-referenced allegations relate to matters which are not factually related or connected to the alleged assault.

The only potential liability of "DRMC" in this case is as the alleged employer/supervisor of Dr. Bradley. The only issue that has been raised concerning "DRMC's" supervision of Dr.

Bradley is that "DRMC" should have taken measures to have ensured that Dr. Bradley did not become addicted to narcotics and/or that he did not use narcotics. This is not a valid predicate for a claim of liability because as a matter of law, no one associated with "DRMC" owed any duty to the plaintiff with regard to Dr. Bradley. "DRMC" was not the employer of Dr. Bradley nor did "DRMC" have any authority over how Dr. Bradley operated his private medical practice. Moreover, as events transpired, "DRMC" certainly had no ability to prevent a confrontation between plaintiff and Mrs. Bradley concerning plaintiff's alleged romantic affair with Dr. Bradley. Mrs. Bradley's alleged physical violence and Dr. Bradley's alleged narcotics use were events which "DRMC" had no control over and certainly involved matters in which "DRMC" owed no duty to the plaintiff.

“[T]o sustain a claim for negligence a plaintiff must establish that the defendant owed a duty of care to the plaintiff, the defendant breached that duty, the breach actually and proximately caused injury to the plaintiff, and the plaintiff suffered loss or damage as a result.” Holt v. Navarro, 932 A.2d 915 (Pa. Super. 2007). As a matter of law, "DRMC" breached no duty owed to the plaintiff, and for this reason "DRMC" should be dismissed as a defendant from this lawsuit, with prejudice.

**C. DEMURRER - DRMC CANNOT BE VICARIOUSLY RESPONSIBLE FOR
THE INTENTIONAL TORTS OF WHICH PLAINTIFF COMPLAINS**

There are no factual allegations set forth in the complaint establishing that the alleged assault and battery was committed by an employee of "DRMC." While plaintiff mistakenly alleges Dr. Bradley was an employee of "DRMC," Dr. Bradley was not the party who committed the assault. Moreover, given the nature of the alleged assault, even if the "attacker" were an

employee of DRMC, DRMC cannot be held vicariously responsible for it. See R.A. v. First Church of Christ, 748 A.2d 692, 699-700 (Pa. Super. 2000).

The Superior Court, in the case of R.A. v First Church of Christ was dealing with an issue of whether a church could be vicariously liable for alleged sexual abuse by a minister employed by the church. The court held that the church could not be vicariously liable for the minister's alleged conduct. In doing so, the court analyzed Pennsylvania law with respect to vicarious liability. The court stated as follows:

"Pennsylvania law concerning the extent to which an employer is vicariously liable for the actions of its employee is well-established and crystal clear: it is well settled that an employer is held vicariously liable for the negligent acts of his employee which cause injuries to a third party, provided that such acts were committed during the course of and within the scope of the employment. In certain circumstances, liability of the employer may also extend to intentional or criminal acts committed by the employee. The conduct of the employees considered "within the scope of the employment" for purposes of vicarious liability if: (1) it is of a kind and nature that the employee is employed to perform; (2) it occurs substantially within the authorized time and space limits; (3) it is actuated, at least in part, by a purpose to serve the employer; and (4) if force is intentionally used by the employee against another, the use of force is not unexpected by the employer. ... Where, however, the employee commits an act encompassing the use of force which is excess and so dangerous as to be totally without responsibility or reason, the employer is not responsible as a matter of law. Moreover, our courts have held that in an assault committed by an employee upon another for personal reasons or in an outrageous manner is not actuated by an intent to perform the business of the employer and, as such, is not within the scope of employment.

R.A. v. First Church of Christ, 748 A.2d at 699 - 700. (Citations and quotations omitted).

In this case, there are no facts alleged which identify an employee of "DRMC" as the person who allegedly assaulted the plaintiff. Nonetheless, assuming arguendo that plaintiff could prove that an employee of "DRMC" committed the assault, the nature of the intentional tort which is plead in the complaint precludes vicarious liability on the part of the "DRMC" because

the act could not have been performed within the course and scope of the person's agency. Accordingly, Count VII of plaintiff's complaint should be dismissed for the reason that DRMC cannot, as a matter of law, be responsible for the injuries inflicted upon plaintiff.

D. DEMURRER - IN VIEW OF THE FACTS OF THIS CASE, CAUSATION
CANNOT BE ESTABLISHED AS A MATTER OF LAW

The operative facts of this lawsuit are rudimentary. If one assumes all of the facts of the complaint as true, here is what occurred. On December 14, 2006, plaintiff, while working in Dr. Bradley's office, was physically assaulted by Mrs. Bradley because of Mrs. Bradley's belief that plaintiff and Dr. Bradley were involved in a romantic relationship of a sexual nature. Dr. Bradley knew of both his wife's propensity toward violence and of the actual assault while it occurred, but took no steps to protect plaintiff. At the time, Dr. Bradley suffered from an addiction to narcotics. "DRMC" because it either employed Dr. Bradley or issued him credentials/privileges to practice medicine at its hospital, had a duty to ensure that Dr. Bradley was not actively using narcotics.

Even if looked upon in the light most favorable to plaintiff, It is evident from the underlying facts that "DRMC" had no factual involvement or connection to the events of December 14, 2006. During this time, there is no allegation that "DRMC" knew of or permitted the alleged assault engaged in by Mrs. Bradley, or that "DRMC" was forewarned that such assault was about to occur. It is also clear no action or inaction of "DRMC" served as the precipitating cause of the assault. What occurred on December 14, 2006 involved matters over which the "DRMC" had absolutely no control, nor any ability to control. Moreover, the events occurring on December 14, 2006 were outside the orbit of any duty owed by "DRMC" to plaintiff.

The only thing "DRMC" is alleged to have done wrong is to have permitted Dr. Bradley to use narcotics. However, there are no facts plead in the complaint which establish even the most tenuous of connections between Dr. Bradley's use of narcotics and the assault.

Given these circumstances, a jury, as a matter of law, would be unable to conclude that anything "DRMC" did or did not do served as a substantial factor in causing plaintiff's injuries at the hands of Mrs. Bradley. Given the myriad of intervening circumstances, any issue with regard to "DRMC's" purported duty to ensure Dr. Bradley was not addicted to narcotics is too remote to be a substantial factor in causing his death.

In order to establish a cause of action for negligence, the plaintiff must prove that there was: (1) a duty or obligation recognized by law; (2) breach of that duty by the defendant; (3) a causal connection between the defendant's breach of that duty and the resulting injury; and (4) actual loss or damage suffered by the plaintiff. Herczeg v. Hampton Tp. Mun. Authority, 766 A.2d 866, 871 (Pa. Super. 2001). It is well settled that "the mere existence of negligence and the occurrence of injury are insufficient to impose liability upon anyone as there remains to be proved the link of causation." Lux v. Gerald E. Ort Trucking, Inc., 887 A.2d 1281, 1286 (Pa. Super. 2005). Even if it is established that defendant breached a duty of care owed to the plaintiff, the plaintiff still has to establish "a causal connection between defendant's conduct, and it must be shown to have been the proximate cause of plaintiff's injury." Id. (quoting Taylor v. Jackson, 643 A.2d 771, 775 (Pa. Cmwlth. 1994)).

Proximate cause is found where the alleged wrongful act was a "substantial factor" in bringing about the plaintiff's harm. Amarhanov v. Fassel, 658 A.2d 808, 810 (Pa. Super. 1995). "Proximate cause does not exist where the causal chain of events resulting in plaintiff's injury is so remote as to appear highly extraordinary that the conduct could have brought about the harm."

Dudley v. USX Corp., 606 A.2d 916, 923 (Pa. Super. 1992). Proximate cause is a question of law to be determined by the court before the issue of actual cause is put to the jury. Lux, 887 A.2d at 1287. Courts of this Commonwealth rely on the following considerations to determine whether a defendant's conduct was the proximate cause of the plaintiff's injury:

- (a) the number of other factors which contribute in producing the harm and the extent of the [a]ffect which they have in producing it;
- (b) whether the actor's conduct created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; and
- (c) lapse of time.

Holt v. Navarro, 932 A.2d 915, 921 (Pa. Super. 2007).

There are several appellate court cases that are instructive in regard to whether the alleged negligent acts of "DRMC" were the proximate cause of plaintiffs' injuries. In Collins v. Hand, the plaintiff was being treated at a hospital due to depression. Her treating psychiatrist transferred her to another medical facility in order for her to receive electroshock treatments for her condition. 246 A.2d 398 (Pa. 1968). During her electroshock treatment, the plaintiff suffered a hip fracture. Her treating psychiatrist was not present during this treatment. The plaintiff brought a claim against her psychiatrist on the theory that he was negligent in failing to take X-rays prior to her transfer which would have disclosed her osteoporosis.

In its decision, our Supreme Court initially held that the psychiatrist was negligent in failing to properly evaluate the plaintiff's physical condition prior to treatment. Id. at 401. However, the Court concluded that despite the doctor's negligence, the plaintiff could not recover because she failed to establish that the failure to order X-rays "caused" her injuries. Id. at 402. The Court stated that in negligence cases, "the principle is established beyond question that the alleged negligence must have caused the injuries complained of before the recovery may

be had.” Id. at 401. In Collins, the apparent cause of the fractures was the application of too much restraints on plaintiff’s legs during the electroshock therapy and not the failure to take X-rays. See Id. at 403. Similarly, in the case at bar, the actual cause of the injuries was Mrs. Bradley’s physical assault of plaintiff, not the purported narcotics use of Dr. Bradley.

In Amarhanov v. Fassel, a pedestrian brought suit against a homeowner to recover for injuries sustained when he was hit by a speeding vehicle while rummaging through a dumpster placed along the street by the homeowner. 658 A.2d 808 (Pa. Super. 1995). In its decision granting homeowner’s motion for summary judgment, the Court held that the pedestrian failed to establish that the homeowner’s conduct was the proximate cause of his injuries. Id. at 810. The Court reasoned that his injuries were caused by the negligence of defendant driver and was not a “natural and probable consequence” of defendant homeowner’s conduct in placing the dumpster along the street. Id.

Similarly, in Matos v. Rivera, the passenger in a stolen pizza delivery car was injured when the vehicle crashed into a utility pole. 648 A.2d 337 (Pa. Super. 1994). The plaintiff and two other men stole the car when the driver left the engine running while making a delivery. The plaintiff filed suit against the pizza delivery driver and his employer alleging that they were negligent in failing to ensure that the car would not be stolen while making a delivery. The Court held that plaintiff failed to establish that the defendant’s negligence was the proximate cause of his injuries. Id. at 340. The thief’s negligent operation of the vehicle was a superseding cause of the plaintiff’s injuries and therefore defendants could not be liable as a matter of law. Holt v. Navarro, 932 A.2d 915, 922 (Pa. Super. 2007).

Recently, in Holt v. Navarro, the Superior Court held that an ambulance service that was transferring a psychiatric patient was not liable to the patient for negligently allowing him to

escape. 932 A.2d 915 (Pa. Super. 2007). After escaping from the ambulance, the patient assaulted an off-duty police officer. In his complaint, the patient alleged that as a result of the criminal convictions stemming from the assault, he suffered a reduced earning potential. The Court held that even if the ambulance service breached its duty of care owed to the patient, the patient's loss of income due to his criminal behavior following the escape was not a "natural and probable" outcome of the ambulance service's breach. Id. at 923-24. Thus, the ambulance service's acts or omission were "too remote or attenuated" to be significant as compared to the "aggregate of the other factors" which contributed to the circumstances of the patient's criminal activity. Id. at 924.

Instantly, plaintiff alleges that "DRMC" was negligent in allowing Dr. Bradley to use or become addicted to narcotics. Even if, in some manner, DRMC could be determined to have been negligent in regards to Dr. Bradley, it could not be the proximate cause of Mrs. Bradley assault of plaintiff. "When the harm which ultimately results appears to the court to be a remote and highly extraordinary consequence of the defendant's conduct, legal causation will not be found and liability will not attach." Amarhanov, 658 A.2d at 810.

As a matter of law, any act or omission by "DRMC" in supervising Dr. Bradley could not be found to be a substantial factor in causing plaintiff to be assaulted by Mrs. Bradley or in Dr. Bradley's failure to come to the aid of plaintiff or to prevent Mrs. Bradley's actions in the first instance.

Significantly, proximate cause is a legal question; it involves a determination of whether the alleged negligence was so remote that as a matter of law, the defendant cannot be held legally responsible for the subsequent harm. Therefore, the court must determine whether the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of. The court must evaluate the alleged facts and refuse to find an actor's conduct was the legal cause of harm when

it appears to the court highly extraordinary that the actor's conduct should have brought about the harm. Thus, proximate cause must be established before the question of actual cause may be put to the jury.

Holt, 932 A.2d at 921 (citations and quotation marks omitted).

The facts of this case, as a matter of law, would preclude the jury from finding that any act or omission by "DRMC" caused any injury to plaintiff. Accordingly, the demurrer filed by "DRMC" to Count VII of the complaint should be granted and "DRMC" should be dismissed, with prejudice," as a defendant from this lawsuit.

E. ALL ALLEGATIONS CONCERNING NARCOTICS/DRUG USE
BY DR. BRADLEY SHOULD BE STRICKEN FROM THE COMPLAINT
AS SCANDALOUS AND IMPERTINENT MATTER PURSUANT
TO PA. R.C.P. 1028(a)(2)

Pa. R.C.P. 1028(a)(2) provides that preliminary objections may be filed for failure to a pleading to conform to law or rule of court for "for inclusion of scandalous and impertinent matter." To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action. Department of Environmental Resources v. Peggs Run Coal Co., 423 A.2d 765 (Pa. Cmwlth. 1980).

The purported drug use of Dr. Bradley (which is substantiated by no facts in the complaint) bears no relevance to any element of plaintiff's liability claims. The only ostensible purpose of including such averments in the complaint is to tend to blacken and impugn the reputation of Dr. Bradley in the community, as well as "DRMC" where Dr. Bradley practices medicine as a physician.

Accordingly, "DRMC" respectfully urges this Honorable Court to strike any mention of any drug/narcotic use by Dr. Bradley from the complaint.

F. THERE IS NO FACTUAL BASIS TO IMPOSE PUNITIVE DAMAGES
AGAINST THIS DEFENDANT

The allegations plead in the complaint concerning the conduct of "DRMC" do not assert facts sufficient to entitle plaintiff to recover punitive damages. Such damages are recoverable only in cases of outrageous behavior, where the defendants' egregious conduct shows either an evil motive or reckless indifference to the rights of others. Martin v. Johns-Manville Corp., 508 Pa. 154, 494 A.2d 1088 (1984); Danner v. Miller, 701 A.2d 232 (Pa. Super. 1997). Neither ordinary negligence nor even gross negligence reflects sufficient culpability to justify an award of punitive damages.

Castetter v. Mr. B's Storage, 669 A.2d 1268 (Pa. Super. 1997). Section 500 of the Restatement of Torts (Second) defines the term "reckless disregard" as follows.

The actor's conduct is in reckless disregard of the safety of another if he does not act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.

In order to be recklessly indifferent, the actor must not only know or have reason to know of facts which create a high degree of risk of physical harm to another; he or she must also "deliberately proceed to act or fail to act in conscious disregard of, or indifference to, that risk." SVH Coal, Inc. v. Continental Grain Co., 526 Pa. 489, 494, 587 A.2d 702, 704 (1991).

Here, plaintiff has alleged no facts to possibly support a finding of outrageous conduct on the part of "DRMC." The complaint does not contain any factual averments that "DRMC" acted in an intentional, willful, wanton or reckless manner toward plaintiff. Indeed, as concerns "DRMC," the allegations of the complaint are not that "DRMC" failed to protect plaintiff but

only that "DRMC" failed to supervise Dr. Bradley, who, in turn, failed to protect plaintiff. Given the attenuated factual circumstances in this lawsuit, it is wholly inappropriate for the specter of punitive damages to be visited against "DRMC."

Therefore, this Honorable Court should strike from the complaint all claims of punitive damages against "DRMC."

III. CONCLUSION

For all of the reasons stated above, this Honorable Court should grant and sustain the preliminary objections filed on behalf of "DRMC." Even assuming all of the facts in the light most favorable to the plaintiff, the complaint fails to set forth any cognizable cause of action plead against "DRMC" or DuBois Regional Medical Center.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



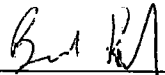
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for the defendant incorrectly identified as
"DRMC."

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 8th day of Oct, 2008:

Theron G. Noble, Esquire
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THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for the defendant incorrectly identified as
"DRMC."

FILED 2cc
MAR 04 2011
Atty's: DuBois
Bell
William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS A. MYERS and
ANN M. MYERS

VS.

NC. 2005-440-CD

DOROTHY BEVERIDGE,
ANTHONY T. BEVERIDGE and
THERESA P. BEVERIDGE

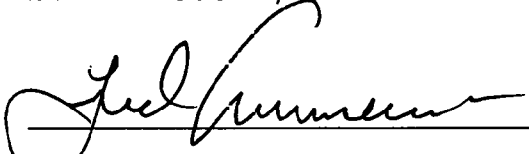
ORDER

NOW this 3rd day of March, 2011, this being the date set for Compliance Hearing, with Jeffrey S. DuBois, Esquire, attorney for the Plaintiffs, having prepared the deed that is necessary in order to finalize the matter; the deed having been supplied to Richard A. Bell, Esquire, attorney for the Defendants, and Attorney Bell having approved the same; however, Attorney Bell has not heard from his clients as to their opinion on the deed's propriety.

Therefore, it is the ORDER of this Court that, unless written objections to the deed are filed with the record by the Defendants within ten (10) days of this date, Plaintiffs shall consider that the form of the deed is

approved. The Plaintiffs may then cause the deed to be filed with the Office of the Register and Recorder of Clearfield County. The Court notes the filing of the deed will conclude this matter.

BY THE COURT,



President Judge