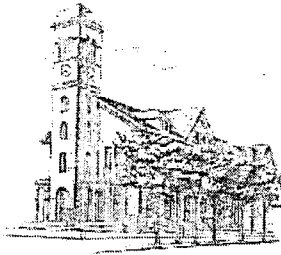


05-582-CD

Gary Berkley vs. Harry Shive et al

Gary Berkley v. Harry Shive et al.
2005-582-CD



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

March 9, 2010

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

RE: Gary L. Berkley

vs

Harry J. Shive and Dorothy L. Shive, Daniel A. Shive
and Colleen J. Shive, Patrick L. Shive and Jo Ellen Shive
No. 05-582-CD
Superior Court No. 160 WDA 2010

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed
to your office. Please also find enclosed two transcripts.

Sincerely,

William A. Shaw
Prothonotary

FILED
012:5460
MAR 09 2010

William A. Shaw
Prothonotary/Clerk of Courts

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

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

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

05-582-CD

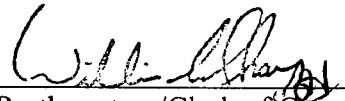
**Gary L. Berkley
VS.**

**Harry J. Shive and Dorothy L. Shive, Daniel A. Shive
and Colleen J. Shive, Patrick L. Shive and Jo Ellen Shive**

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

The documents comprising the record have been numbered from No. 1 to No. 40, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is March 9, 2010.


Prothonotary/Clerk of Courts

(seal)

Date: 3/9/2010

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:32 PM

ROA Report

Page 1 of 3

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

Civil Other

Date		Judge
4/22/2005	New Case Filed.	No Judge
	Filing: Quiet Title Action Paid by: Caldwell & Kearns Receipt number: 1899916 Dated: 04/22/2005 Amount: \$95.00 (Check) 3 Cert. to Atty.	No Judge
5/4/2005	Praecipe to Attach Exhibits "A", "B", "C" and "D" To Complaint. filed by s/ Brett M. Woodburn, Esquire. No CC	No Judge
5/16/2005	Preliminary Objections to Plaintiff's Complaint, filed by s/ F. Cortez Bell, III, Esquire. 5CC to Atty	No Judge
	Praecipe For Entry of Appearance, filed on behalf of Defendants Harry J. Shive and Dorothy L. Shive, by s/ F. Cortez Bell, III, Esquire. 1CC to Atty	No Judge
5/20/2005	Affidavit Pursuant To Pennsylvania Rule of Civil Rule Procedure 1066, filed by s/ Brett M. Woodburn, Esquire. 2CC atty Woodburn	No Judge
5/22/2005	Praecipe To Withdraw Affidavit, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty	Fredric Joseph Ammerman
	Order, this 21st day of June, 2005, it is ordered as follows: (see original). /s/ Fredric J. Ammerman, Pres. Judge. 2CC atty. Woodburn	Fredric Joseph Ammerman
7/14/2005	Order, filed. 2 cert. to Atty. Bell w/memo NOW, this 13th day of July, 2005. Re: Argument has been scheduled for the 12th day of August.	Fredric Joseph Ammerman
7/18/2005	Certificate of Service, July 18, 2005, Copy of Scheduling Order dated July 13, 2005 served upon Brett M. Woodburn, Esq. Filed By F. Cortez Bell, III, Esq. No CC.	Fredric Joseph Ammerman
7/28/2005	Amended Complaint Upon an Action To Quiet Title, Filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman
9/2/2005	Praecipe To Substitute Verification, filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman
10/10/2005	Acceptance of Service, filed. I, F. Cortez Bell III, Esquire, do hereby accept service of and acknowledge receipt of a filed copy of the Amended Complaint in the above captioned case on behalf of each of the Defendants set forth in the caption above, filed by s/ F. Cortez Bell III Esq. 3CC atty Bell	Fredric Joseph Ammerman
11/9/2005	Answer, New Matter and Counterclaim, filed by s/ F. Cortez Bell Esq. 2CC Atty Bell.	Fredric Joseph Ammerman
2/8/2006	Reply to New Matter and Counterclaim, filed by s/ Brett M. Woodburn Esq. No CC.	Fredric Joseph Ammerman
7/27/2006	Plaintiff's Motion to Compel Discovery, filed by s/ Brett M. Woodburn Esq. 2CC Atty.	Fredric Joseph Ammerman
7/31/2006	Order, NOW, this 28th day of July, 2006, upon consideration of Plaintiff's Motion to Compel Answers to Discovery, said Motion is Granted, Defs. are ordered to answer the Plaintiff's First Set of Interrogatories and First Request for Production of Documents in full, within 30 days of the date of this Order, or suffer sanctions. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Woodburn	Fredric Joseph Ammerman
10/27/2008	Plaintiff's Motion to Compel Discovery, filed by s/ Karen W. Miller, Esquire. 1CC Atty. Miller	Fredric Joseph Ammerman
10/29/2008	Order, this 28th day of Oct., 2008, plaintiff's Motion to Compel Answers to Discovery is GRANTED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty.	Fredric Joseph Ammerman

Date: 3/9/2010

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:32 PM

ROA Report

Page 2 of 3

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

Civil Other

Date		Judge
11/25/2008	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Request for Production of Documents upon Mr. Brett M. Woodburn Esq. by United States Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Interrogatories upon Mr. Brett M. Woodburn Esq by United State Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
3/20/2009	Certificate of Readiness for Non-Jury Trial, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
3/23/2009	Order, this 23rd day of March, 2009, a pre-trial conference shall be held April 24, 2009 at 1:30 p.m. in Judges Chambers. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. Cc to Attys: Woodburn & Bell w/form	Fredric Joseph Ammerman
4/16/2009	Motion For Continuance, filed by s/ Gary L. Berkley, Plaintiff. 2CC Atty.	Fredric Joseph Ammerman
4/17/2009	Order, this 16th day of April, 2009, upon consideration of the within Motion of Plaintiff, Gary L. Berkley, it is Ordered that the matter is continued until the 22nd day of July, 2009, at 1:30 p.m. in Judges Chambers. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Wood	Fredric Joseph Ammerman
4/20/2009	Motion For Continuance, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
4/21/2009	Order of Court, AND NOW, this 21st day of April 2009, upon consideration of the within Motion to Plaintiff, it is hereby Ordered that the above-referenced matter is continued until Wednesday the 22nd day of July 2009 at 1:30 pm in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty.	Fredric Joseph Ammerman
7/23/2009	Order, this 23rd day of July, 2009, a Civil Bench Trial is scheduled for the 29th day of Oct., 2009 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Woodburn, Bell	Fredric Joseph Ammerman
10/28/2009	Answer to New Matter to Counterclaim, filed by s/ F. Cortez Bell III Esq. 4CC Atty Bell.	Fredric Joseph Ammerman
11/2/2009	Order, AND NOW, this 29th day of October, 2009, following the completion of the taking of testimony in civil nonjury trial, Order that counsel have no more than 30 days from this date to submit appropriate brief to the Court. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Woodburn Five CC Attorney Bell	Fredric Joseph Ammerman
11/30/2009	Transcript of Proceedings, filed. Testimony of Gary L. Thorp, held Oct. 29, 2009 before Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman
12/21/2009	Opinion and Order, NOW, this 21st day of Dec., 2009, consistent with the Court's Opinion, it is Ordered: 1. The boundry line between the properties belonging to the parties is determined to be the boundary set by Gary L. Thorp, PLS, in his survey dated April 5, 2004 (revised July 30, 2004). 2. The Defendants' Counterclaim is DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Woodburn, Bell 1CC D. Mikesell; Law Library (without memo)	Fredric Joseph Ammerman
12/31/2009	Post-Trial Motion, RE: (Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman
	Post-Trial Motion, RE: Undisputed Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman

Date: 3/9/2010

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:32 PM

ROA Report

Page 3 of 3

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

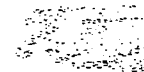
Civil Other

Date		Judge
1/5/2010	Order, this 4th day of Jan., 2010, the Plaintiff's Post-Trial Motion filed Dec. 31, 2009 and the Post-Trial Motion in the form of a Motion to Exclude or Strike Testimony, also filed Dec. 31, 2009 are hereby Dismissed. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Woodburn, Bell	Fredric Joseph Ammerman
1/20/2010	Filing: Appeal to High Court Paid by: Caldwell & Kearns Receipt number: 1933070 Dated: 1/21/2010 Amount: \$50.00 (Check) For: Berkley, Gary L. (plaintiff) Cert. to Superior Court with \$73.50 Check and cert. to Atty. Request for Transcript, filed by Atty. Woodburn 1 Cert. to Atty. Proof of Service of Notice of Appeal, filed by Atty. Woodburn 1 Cert. to Atty. Served copy of Notice of Appeal, Request for Transcript and Proof of Service upon Atty. Bell, Judge Ammerman, T. Snyder and District C/A/	Fredric Joseph Ammerman Fredric Joseph Ammerman Fredric Joseph Ammerman
1/21/2010	Order, this 21st day of Jan., 2010, the Court having been notified of Appeal to the Superior Court of PA, it is Ordered that Appellant file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 1CC Attys; Woodburn, F. Bell	Fredric Joseph Ammerman
2/1/2010	Appeal Docket Sheet from Superior Court, filed. Docket Number 160 WDA 2010	Fredric Joseph Ammerman
2/10/2010	Plaintiff Appellant's Concise Statement of Matters Complained of on Appeal, filed by s/ Brett M. Woodburn Esq. 2CC Atty Woodburn.	Fredric Joseph Ammerman
2/24/2010	Transcript of Proceedings, Civil Non-Jury Trial, held before Honorable President Judge Fredric J. Ammerman, October 29, 2009, filed.	Fredric Joseph Ammerman
3/9/2010	March 9, 2010, Mailed Appeal to Superior Court. March 9, 2010, Letters, Re: Notification of mailing appeal mailed to Brett M. Woodburn, Esq. and F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Fredric Joseph Ammerman

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

MAR 09 2010

Attest.



William E. Bell
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-582-CD

Gary L. Berkley

Vs.

Harry J. Shive and Dorothy L. Shive,

Daniel A. Shive and Colleen J. Shive,

Patrick L. Shive and Jo Ellen Shive

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	04/22/05	Quiet Title Complaint	08
02	05/04/05	Praecepte to Attach Exhibits, "A," "B," "C," and "D" to Complaint	14
03	06/16/05	Preliminary Objections to Plaintiff's Complaint	07
04	06/16/05	Praecepte for Entry of Appearance	03
05	06/20/05	Affidavit Pursuant to Pennsylvania Rule of Civil Procedure 1066	30
06	06/22/05	Praecepte to Withdraw Affidavit	03
07	06/22/05	Order, Re: filing of an answer	01
08	07/14/05	Order, Re: Argument scheduled	02
09	07/18/05	Certificate of Service	02
10	07/28/05	Amended Complaint upon an Action to Quiet Title	31
11	09/02/05	Praecepte to Substitute Verification	03
12	10/10/05	Acceptance of Service	03
13	11/09/05	Answer, New Matter, and Counterclaim	31
14	02/08/06	Reply to New Matter and Counterclaim	10
15	07/27/06	Plaintiff's Motion to Compel Discovery with Order filed July 31, 2006	04
16	10/27/08	Plaintiff's Motion to Compel Discovery	03
17	10/29/08	Order, Re: Plaintiff's Motion to Compel Answers to Discovery is Granted	02
18	11/25/08	Certificate of Service	02
19	11/25/08	Certificate of Service	02
20	03/20/09	Certificate of Readiness for Non-Jury Trial	07
21	03/23/09	Order, Re: Pre-trial conference scheduled	02
22	04/16/09	Motion for Continuance with Order filed April 17, 2009, continuing matter	05
23	04/20/09	Motion for Continuance	05
24	04/21/09	Order, Re: matter continued	01
25	07/23/09	Order, Re: Civil Bench Trial scheduled	01
26	10/28/09	Answer to New Matter to Counterclaim	07
27	11/02/09	Order, Re: briefs to be submitted	01
28	11/30/09	Transcript of Proceedings, Testimony of Gary L. Thorp, held October 29, 2009, before Honorable President Judge Fredric J. Ammerman	Separate Cover
29	12/21/09	Opinion and Order	15
30	12/31/09	Post-Trial Motion, Re: Facts	06
31	12/31/09	Post-Trial Motion, Re: Undisputed Facts	14
32	01/05/10	Order, Re: Post-Trial Motions Dismissed	01
33	01/20/10	Notice of Appeal to High Court	06
34	01/20/10	Request for Transcript	01
35	01/20/10	Proof of Service of Notice of Appeal	02
36	01/21/10	Order, Re: Concise statement to be filed	01
37	02/01/10	Appeal Docket Sheet, 160 WDA 2010	04
38	02/10/10	Plaintiff Appellant's Concise Statement of Matters Complained of on Appeal	04
39	02/24/10	Transcript of Proceedings, Civil Non-Jury Trial, held before Honorable President Judge Fredric J. Ammerman, October 29, 2009	Separate Cover

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-582-CD

Gary L. Berkley

Vs.

Harry J. Shive and Dorothy L. Shive,

Daniel A. Shive and Colleen J. Shive,

Patrick L. Shive and Jo Ellen Shive

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
40	03/09/10	Letters, Re: Notification of mailing appeal mailed to Brett M. Woodburn, Esq. and F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c)	05

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

Gary L. Berkley

Vs.

Case No. 2005-00582-CD

Harry J. Shive, Dorothy L. Shive,
Daniel A. Shive, Colleen J. Shive,
Patrick L. Shive, Jo Ellen Shive

CERTIFICATE OF CONTENTS

NOW, this 9th day of March, 2010, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

An additional copy of this Certificate is enclosed with the original hereof and the Clerk or Prothonotary of the Superior Court is hereby directed to acknowledge receipt of the Appeal Record by executing such copy at the place indicated by forthwith returning the same to this Court.

By: William A. Shaw
William A. Shaw, Prothonotary

Record, Etc. Received:

Date: 3/10/10
L. Watson
(Signature & Title)

FILED
MAR 12 2010
William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 160 WDA 2010

Page 1 of 4

January 28, 2010

Secure



CAPTION

Gary L. Berkley

Appellant

v.

Harry J. Shive and Dorothy L. Shive, husband and Wife, Daniel A. Shive and Colleen J. Shive, husband and Wife, Patrick L. Shive, and Jo Ellen Shive, husband and wife

CASE INFORMATION

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: January 27, 2010

Awaiting Original Record

Journal Number:

Case Category: Civil

Case Type(s): Quiet Title

FILED

FEB 01 2010

William A. Shaw
Prothonotary/Clerk of Courts

CONSOLIDATED CASES

RELATED CASES

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Type: Original Record Received

Next Event Due Date: February 11, 2010

Next Event Due Date: March 22, 2010

COUNSEL INFORMATION

Appellant Berkley, Gary L.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Woodburn, Brett M.

Bar No: 081786

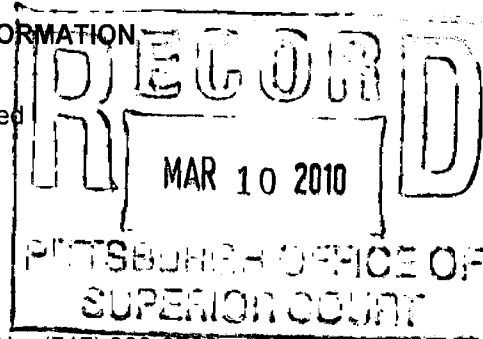
Law Firm: Caldwell & Kearns, P.C.

Address: 3631 N Front St
Harrisburg, PA 17110

Phone No: (717) 232-7661

Receive Mail: Yes

Receive EMail: No



Fax No: (717) 232-2766

Appellee Shive, Patrick L.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St
PO Box 1088
Clearfield, PA 16830

Phone No: (814) 765-5537

Receive Mail: No

Receive EMail: No

Fax No: (814) 765-9730

Record. 1 part
Trans. - 2
Exh. - 11 parts

37

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 160 WDA 2010**Page 2 of 4****January 28, 2010****Secure****COUNSEL INFORMATION****Appellee Shive, Jo Ellen**

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St
PO Box 1088
Clearfield, PA 16830

Phone No: (814) 765-5537

Fax No: (814) 765-9730

Receive Mail: No

Receive EMail: No

Appellee Shive, Harry J.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St
PO Box 1088
Clearfield, PA 16830

Phone No: (814) 765-5537

Fax No: (814) 765-9730

Receive Mail: No

Receive EMail: No

Appellee Shive, Dorthy L.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St
PO Box 1088
Clearfield, PA 16830

Phone No: (814) 765-5537

Fax No: (814) 765-9730

Receive Mail: Yes

Receive EMail: No

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 160 WDA 2010**Page 3 of 4****January 28, 2010****Secure****COUNSEL INFORMATION**

Appellee **Shive, Daniel A.**
Pro Se: No **Appoint Counsel Status:** Represented
IFP Status: No
Attorney: Bell, F. Cortez, III
Bar No: 030183
Law Firm: Clearfield County District Attorney's Office
Address: 318 E Locust St
 PO Box 1088
 Clearfield, PA 16830
Phone No: (814) 765-5537 **Fax No:** (814) 765-9730
Receive Mail: No
Receive EMail: No

Appellee **Shive, Colleen J.**
Pro Se: No **Appoint Counsel Status:** Represented
IFP Status: No
Attorney: Bell, F. Cortez, III
Bar No: 030183
Law Firm: Clearfield County District Attorney's Office
Address: 318 E Locust St
 PO Box 1088
 Clearfield, PA 16830
Phone No: (814) 765-5537 **Fax No:** (814) 765-9730
Receive Mail: No
Receive EMail: No

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
01/27/2010	Notice of Appeal	73.50	01/27/2010	2010-SPR-W-000129	73.50

AGENCY/TRIAL COURT INFORMATION

Court Below: Clearfield County Court of Common Pleas
County: Clearfield **Division:** Clearfield County Civil Division
Order Appealed From: December 21, 2009 **Judicial District:** 46
Documents Received: January 27, 2010 **Notice of Appeal Filed:** January 20, 2010
Order Type: Order
OTN(s):
Lower Ct Docket No(s): 2005-582-CD
Lower Ct Judge(s): Ammerman,
 Fredric J.
 President
 Judge

ORIGINAL RECORD CONTENT

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

Date of Remand of Record:**BRIEFING SCHEDULE**

9:50 A.M.

Appeal Docket Sheet

Docket Number: 160 WDA 2010

Page 4 of 4

January 28, 2010

Superior Court of Pennsylvania

Secure



None

None

DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
January 27, 2010	Notice of Appeal Docketed	Appellant	Berkley, Gary L.
January 28, 2010	Docketing Statement Exited (Civil)		Western District Filing Office

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

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

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

05-582-CD

Gary L. Berkley

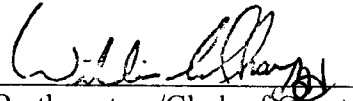
VS.

**Harry J. Shive and Dorothy L. Shive, Daniel A. Shive
and Colleen J. Shive, Patrick L. Shive and Jo Ellen Shive**

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

The documents comprising the record have been numbered from **No. 1 to No. 40**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is March 9, 2010.


Prothonotary/Clerk of Courts

(seal)

Date: 3/9/2010

Clerk of Court
Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:32 PM

ROA Report

Page 1 of 3

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

Civil Other

Date		Judge
4/22/2005	New Case Filed.	No Judge
	Filing: Quiet Title Action Paid by: Caldwell & Kearns Receipt number: 1899916 Dated: 04/22/2005 Amount: \$95.00 (Check) 3 Cert. to Atty.	No Judge
5/4/2005	Praeipce to Attach Exhibits "A", "B", "C" and "D" To Complaint. filed by s/ Brett M. Woodburn, Esquire. No CC	No Judge
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	Praeipce For Entry of Appearance, filed on behalf of Defendants Harry J. Shive and Dorothy L. Shive, by s/ F. Cortez Bell, III, Esquire. 1CC to Atty	No Judge
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6/22/2005	Praeipce To Withdraw Affidavit, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty	Fredric Joseph Ammerman
	Order, this 21st day of June, 2005, it is ordered as follows: (see original). /s/ Fredric J. Ammerman, Pres. Judge. 2CC atty. Woodburn	Fredric Joseph Ammerman
7/14/2005	Order, filed. 2 cert. to Atty. Bell w/memo NOW, this 13th day of July, 2005. Re: Argument has been scheduled for the 12th day of August.	Fredric Joseph Ammerman
7/18/2005	Certificate of Service, July 18, 2005, Copy of Scheduling Order dated July 13, 2005 served upon Brett M. Woodburn, Esq. Filed By F. Cortez Bell, III, Esq. No CC.	Fredric Joseph Ammerman
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9/2/2005	Praeipce To Substitute Verification, filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman
10/10/2005	Acceptance of Service, filed. I, F. Cortez Bell III, Esquire, do hereby accept service of and acknowledge receipt of a filed copy of the Amended Complaint in the above captioned case on behalf of each of the Defendants set forth in the caption above, filed by s/ F. Cortez Bell III Esq. 3CC atty Bell	Fredric Joseph Ammerman
11/9/2005	Answer, New Matter and Counterclaim, filed by s/ F. Cortez Bell Esq. 2CC Atty Bell.	Fredric Joseph Ammerman
2/8/2006	Reply to New Matter and Counterclaim, filed by s/ Brett M. Woodburn Esq. No CC.	Fredric Joseph Ammerman
7/27/2006	Plaintiff's Motion to Compel Discovery, filed by s/ Brett M. Woodburn Esq. 2CC Atty.	Fredric Joseph Ammerman
7/31/2006	Order, NOW, this 28th day of July, 2006, upon consideration of Plaintiff's Motion to Compel Answers to Discovery, said Motion is Granted, Defs. are ordered to answer the Plaintiff's First Set of Interrogatories and First Request for Production of Documents in full, within 30 days of the date of this Order, or suffer sanctions. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Woodburn	Fredric Joseph Ammerman
10/27/2008	Plaintiff's Motion to Compel Discovery, filed by s/ Karen W. Miller, Esquire. 1CC Atty. Miller	Fredric Joseph Ammerman
10/29/2008	Order, this 28th day of Oct., 2008, plaintiff's Motion to Compel Answers to Discovery is GRANTED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty.	Fredric Joseph Ammerman

Civil Other

Date		Judge
11/25/2008	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Request for Production of Documents upon Mr. Brett M. Woodburn Esq. by United States Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Interrogatories upon Mr. Brett M. Woodburn Esq by United State Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
3/20/2009	Certificate of Readiness for Non-Jury Trial, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
3/23/2009	Order, this 23rd day of March, 2009, a pre-trial conference shall be held April 24, 2009 at 1:30 p.m. in Judges Chambers. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. Cc to Attys: Woodburn & Bell w/form	Fredric Joseph Ammerman
4/16/2009	Motion For Continuance, filed by s/ Gary L. Berkley, Plaintiff. 2CC Atty.	Fredric Joseph Ammerman
4/17/2009	Order, this 16th day of April, 2009, upon consideration of the within Motion of Plaintiff, Gary L. Berkley, it is Ordered that the matter is continued until the 22nd day of July, 2009, at 1:30 p.m. in Judges Chambers. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Wood	Fredric Joseph Ammerman
4/20/2009	Motion For Continuance, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
4/21/2009	Order of Court, AND NOW, this 21st day of April 2009, upon consideration of the within Motion to Plaintiff, it is hereby Ordered that the above-referenced matter is continued until Wednesday the 22nd day of July 2009 at 1:30 pm in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty.	Fredric Joseph Ammerman
7/23/2009	Order, this 23rd day of July, 2009, a Civil Bench Trial is scheduled for the 29th day of Oct., 2009 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Woodburn, Bell	Fredric Joseph Ammerman
10/28/2009	Answer to New Matter to Counterclaim, filed by s/ F. Cortez Bell III Esq. 4CC Atty Bell.	Fredric Joseph Ammerman
11/2/2009	Order, AND NOW, this 29th day of October, 2009, following the completion of the taking of testimony in civil nonjury trial, Order that counsel have no more than 30 days from this date to submit appropriate brief to the Court. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Woodburn Five CC Attorney Bell	Fredric Joseph Ammerman
11/30/2009	Transcript of Proceedings, filed. Testimony of Gary L. Thorp, held Oct. 29, 2009 before Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman
12/21/2009	Opinion and Order, NOW, this 21st day of Dec., 2009, consistent with the Court's Opinion, it is Ordered: 1. The boundry line between the properties belonging to the parties is determined to be the boundary set by Gary L. Thorp, PLS, in his survey dated April 5, 2004 (revised July 30, 2004). 2. The Defendants' Counterclaim is DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Woodburn, Bell 1CC D. Mikesell; Law Library (without memo)	Fredric Joseph Ammerman
12/31/2009	Post-Trial Motion, RE: (Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman
	Post-Trial Motion, RE: Undisputed Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman

Date: 3/9/2010

Time: 02:32 PM

Page 3 of 3

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

Civil Other

Date		Judge
1/5/2010	Order, this 4th day of Jan., 2010, the Plaintiff's Post-Trial Motion filed Dec. 31, 2009 and the Post-Trial Motion in the form of a Motion to Exclude or Strike Testimony, also filed Dec. 31, 2009 are hereby Dismissed. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Woodburn, Bell	Fredric Joseph Ammerman
1/20/2010	Filing: Appeal to High Court Paid by: Caldwell & Kearns Receipt number: 1933070 Dated: 1/21/2010 Amount: \$50.00 (Check) For: Berkley, Gary L. (plaintiff) Cert. to Superior Court with \$73.50 Check and cert. to Atty. Request for Transcript, filed by Atty. Woodburn 1 Cert. to Atty.	Fredric Joseph Ammerman
	Proof of Service of Notice of Appeal, filed by Atty. Woodburn 1 Cert. to Atty.	Fredric Joseph Ammerman
	Served copy of Notice of Appeal, Request for Transcript and Proof of Service upon Atty. Bell, Judge Ammerman, T. Snyder and District C/A/	
1/21/2010	Order, this 21st day of Jan., 2010, the Court having been notified of Appeal to the Superior Court of PA, it is Ordered that Appellant file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 1CC Attys; Woodburn, F. Bell	Fredric Joseph Ammerman
2/1/2010	Appeal Docket Sheet from Superior Court, filed. Docket Number 160 WDA 2010	Fredric Joseph Ammerman
2/10/2010	Plaintiff Appellant's Concise Statement of Matters Complained of on Appeal, filed by s/ Brett M. Woodburn Esq. 2CC Atty Woodburn.	Fredric Joseph Ammerman
2/24/2010	Transcript of Proceedings, Civil Non-Jury Trial, held before Honorable President Judge Fredric J. Ammerman, October 29, 2009, filed.	Fredric Joseph Ammerman
3/9/2010	March 9, 2010, Mailed Appeal to Superior Court. March 9, 2010, Letters, Re: Notification of mailing appeal mailed to Brett M. Woodburn, Esq. and F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Fredric Joseph Ammerman

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

MAR 09 2010

Attest.



William L. Breen
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-582-CD

Gary L. Berkley

Vs.

Harry J. Shive and Dorothy L. Shive,

Daniel A. Shive and Colleen J. Shive,

Patrick L. Shive and Jo Ellen Shive

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	04/22/05	Quiet Title Complaint	08
02	05/04/05	Praecipe to Attach Exhibits, "A," "B," "C," and "D" to Complaint	14
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04	06/16/05	Praecipe for Entry of Appearance	03
05	06/20/05	Affidavit Pursuant to Pennsylvania Rule of Civil Procedure 1066	30
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07	06/22/05	Order, Re: filing of an answer	01
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12	10/10/05	Acceptance of Service	03
13	11/09/05	Answer, New Matter, and Counterclaim	31
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21	03/23/09	Order, Re: Pre-trial conference scheduled	02
22	04/16/09	Motion for Continuance with Order filed April 17, 2009, continuing matter	05
23	04/20/09	Motion for Continuance	05
24	04/21/09	Order, Re: matter continued	01
25	07/23/09	Order, Re: Civil Bench Trial scheduled	01
26	10/28/09	Answer to New Matter to Counterclaim	07
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28	11/30/09	Transcript of Proceedings, Testimony of Gary L. Thorp, held October 29, 2009, before Honorable President Judge Fredric J. Ammerman	Separate Cover
29	12/21/09	Opinion and Order	15
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31	12/31/09	Post-Trial Motion, Re: Undisputed Facts	14
32	01/05/10	Order, Re: Post-Trial Motions Dismissed	01
33	01/20/10	Notice of Appeal to High Court	06
34	01/20/10	Request for Transcript	01
35	01/20/10	Proof of Service of Notice of Appeal	02
36	01/21/10	Order, Re: Concise statement to be filed	01
37	02/01/10	Appeal Docket Sheet, 160 WDA 2010	04
38	02/10/10	Plaintiff Appellant's Concise Statement of Matters Complained of on Appeal	04
39	02/24/10	Transcript of Proceedings, Civil Non-Jury Trial, held before Honorable President Judge Fredric J. Ammerman, October 29, 2009	Separate Cover

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

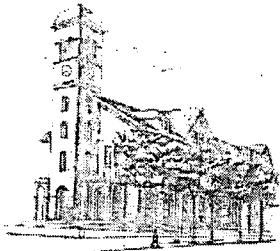
No. 05-582-CD

Gary L. Berkley

Vs.

**Harry J. Shive and Dorothy L. Shive,
Daniel A. Shive and Colleen J. Shive,
Patrick L. Shive and Jo Ellen Shive**

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
40	03/09/10	Letters, Re: Notification of mailing appeal mailed to Brett M. Woodburn, Esq. and F. Cortez Bell, III, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c)	05



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

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

Brett M. Woodburn, Esq.
3631 North Front Street
Harrisburg, PA 17110

F. Cortez Bell, III, Esq.
318 E. Locust Street
Clearfield, PA 16830

Gary L. Berkley
Vs.

Harry J. Shive, Dorothy L. Shive, Daniel A. Shive,
Colleen J. Shive, Patrick L. Shive, and Jo Ellen Shive

Court No. 2005-582-CD; Superior Court No. 160 WDA 2010

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on March 9, 2010.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

5
FILED
012:345
MAR 09 2010

William A. Shaw
Prothonotary/Clerk of Courts

#40

Civil Other

Date		Judge
1/22/2005	New Case Filed.	No Judge
	Filing: Quiet Title Action Paid by: Caldwell & Kearns Receipt number: 1899916 Dated: 04/22/2005 Amount: \$95.00 (Check) 3 Cert. to Atty.	No Judge
1/4/2005	Praeipce to Attach Exhibits "A", "B", "C" and "D" To Complaint. filed by s/ Brett M. Woodburn, Esquire. No CC	No Judge
1/16/2005	Preliminary Objections to Plaintiff's Complaint, filed by s/ F. Cortez Bell, III, Esquire. 5CC to Atty	No Judge
	Praeipce For Entry of Appearance, filed on behalf of Defendants Harry J. Shive and Dorothy L. Shive, by s/ F. Cortez Bell, III, Esquire. 1CC to Atty	No Judge
1/20/2005	Affidavit Pursuant To Pennsylvania Rule of Civil Rule Procedure 1066, filed by s/ Brett M. Woodburn, Esquire. 2CC atty Woodburn	No Judge
1/22/2005	Praeipce To Withdraw Affidavit, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty	Fredric Joseph Ammerman
	Order, this 21st day of June, 2005, it is ordered as follows: (see original). /s/ Fredric J. Ammerman, Pres. Judge. 2CC atty. Woodburn	Fredric Joseph Ammerman
7/14/2005	Order, filed. 2 cert. to Atty. Bell w/memo NOW, this 13th day of July, 2005. Re: Argument has been scheduled for the 12th day of August.	Fredric Joseph Ammerman
7/18/2005	Certificate of Service, July 18, 2005, Copy of Scheduling Order dated July 13, 2005 served upon Brett M. Woodburn, Esq. Filed By F. Cortez Bell, III, Esq. No CC.	Fredric Joseph Ammerman
7/28/2005	Amended Complaint Upon an Action To Quiet Title, Filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman
1/2/2005	Praeipce To Substitute Verification, filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman
0/10/2005	Acceptance of Service, filed. I, F. Cortez Bell III, Esquire, do hereby accept service of and acknowledge receipt of a filed copy of the Amended Complaint in the above captioned case on behalf of each of the Defendants set forth in the caption above, filed by s/ F. Cortez Bell III Esq. 3CC atty Bell	Fredric Joseph Ammerman
1/9/2005	Answer, New Matter and Counterclaim, filed by s/ F. Cortez Bell Esq. 2CC Atty Bell.	Fredric Joseph Ammerman
7/8/2006	Reply to New Matter and Counterclaim, filed by s/ Brett M. Woodburn Esq. No CC.	Fredric Joseph Ammerman
7/27/2006	Plaintiff's Motion to Compel Discovery, filed by s/ Brett M. Woodburn Esq. 2CC Atty.	Fredric Joseph Ammerman
7/31/2006	Order, NOW, this 28th day of July, 2006, upon consideration of Plaintiff's Motion to Compel Answers to Discovery, said Motion is Granted, Defs. are ordered to answer the Plaintiff's First Set of Interrogatories and First Request for Production of Documents in full, within 30 days of the date of this Order, or suffer sanctions. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Woodburn	Fredric Joseph Ammerman
0/27/2008	Plaintiff's Motion to Compel Discovery, filed by s/ Karen W. Miller, Esquire. 1CC Atty. Miller	Fredric Joseph Ammerman
0/29/2008	Order, this 28th day of Oct., 2008, plaintiff's Motion to Compel Answers to Discovery is GRANTED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty.	Fredric Joseph Ammerman

Civil Other

Date		Judge
1/25/2008	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Request for Production of Documents upon Mr. Brett M. Woodburn Esq. by United States Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Interrogatories upon Mr. Brett M. Woodburn Esq by United State Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
3/20/2009	Certificate of Readiness for Non-Jury Trial, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
3/23/2009	Order, this 23rd day of March, 2009, a pre-trial conference shall be held April 24, 2009 at 1:30 p.m. in Judges Chambers. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. Cc to Attys: Woodburn & Bell w/form	Fredric Joseph Ammerman
4/16/2009	Motion For Continuance, filed by s/ Gary L. Berkley, Plaintiff. 2CC Atty.	Fredric Joseph Ammerman
4/17/2009	Order, this 16th day of April, 2009, upon consideration of the within Motion of Plaintiff, Gary L. Berkley, it is Ordered that the matter is continued until the 22nd day of July, 2009, at 1:30 p.m. in Judges Chambers. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Wood	Fredric Joseph Ammerman
4/20/2009	Motion For Continuance, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
4/21/2009	Order of Court, AND NOW, this 21st day of April 2009, upon consideration of the within Motion to Plaintiff, it is hereby Ordered that the above-referenced matter is continued until Wednesday the 22nd day of July 2009 at 1:30 pm in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty.	Fredric Joseph Ammerman
7/23/2009	Order, this 23rd day of July, 2009, a Civil Bench Trial is scheduled for the 29th day of Oct., 2009 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Woodburn, Bell	Fredric Joseph Ammerman
10/28/2009	Answer to New Matter to Counterclaim, filed by s/ F. Cortez Bell III Esq. 4CC Atty Bell.	Fredric Joseph Ammerman
1/2/2009	Order, AND NOW, this 29th day of October, 2009, following the completion of the taking of testimony in civil nonjury trial, Order that counsel have no more than 30 days from this date to submit appropriate brief to the Court. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Woodburn Five CC Attorney Bell	Fredric Joseph Ammerman
1/30/2009	Transcript of Proceedings, filed. Testimony of Gary L. Thorp, held Oct. 29, 2009 before Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman
2/21/2009	Opinion and Order, NOW, this 21st day of Dec., 2009, consistent with the Court's Opinion, it is Ordered: 1. The boundry line between the properties belonging to the parties is determined to be the boundary set by Gary L. Thorp, PLS, in his survey dated April 5, 2004 (revised July 30, 2004). 2. The Defendants' Counterclaim is DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Woodburn, Bell 1CC D. Mikesell; Law Library (without memo)	Fredric Joseph Ammerman
2/31/2009	Post-Trial Motion, RE: (Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman
	Post-Trial Motion, RE: Undisputed Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman

Date: 3/9/2010

Time: 02:22 PM

Page 3 of 3

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

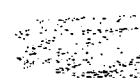
Civil Other

Date		Judge
1/5/2010	Order, this 4th day of Jan., 2010, the Plaintiff's Post-Trial Motion filed Dec. 31, 2009 and the Post-Trial Motion in the form of a Motion to Exclude or Strike Testimony, also filed Dec. 31, 2009 are hereby Dismissed. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Woodburn, Bell	Fredric Joseph Ammerman
1/20/2010	Filing: Appeal to High Court Paid by: Caldwell & Kearns Receipt number: 1933070 Dated: 1/21/2010 Amount: \$50.00 (Check) For: Berkley, Gary L. (plaintiff) Cert. to Superior Court with \$73.50 Check and cert. to Atty.	Fredric Joseph Ammerman
	Request for Transcript, filed by Atty. Woodburn 1 Cert. to Atty.	Fredric Joseph Ammerman
	Proof of Service of Notice of Appeal, filed by Atty. Woodburn 1 Cert. to Atty.	Fredric Joseph Ammerman
	Served copy of Notice of Appeal, Request for Transcript and Proof of Service upon Atty. Bell, Judge Ammerman, T. Snyder and District C/A/	
1/21/2010	Order, this 21st day of Jan., 2010, the Court having been notified of Appeal to the Superior Court of PA, it is Ordered that Appellant file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 1CC Attys; Woodburn, F. Bell	Fredric Joseph Ammerman
2/1/2010	Appeal Docket Sheet from Superior Court, filed.	Fredric Joseph Ammerman
	Docket Number 160 WDA 2010	
2/10/2010	Plaintiff Appellant's Concise Statement of Matters Complained of on Appeal, filed by s/ Brett M. Woodburn Esq. 2CC Atty Woodburn.	Fredric Joseph Ammerman
2/24/2010	Transcript of Proceedings, Civil Non-Jury Trial, held before Honorable President Judge Fredric J. Ammerman, October 29, 2009, filed.	Fredric Joseph Ammerman

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

MAR 09 2010

Attest.



William A. Shaw
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-582-CD

Gary L. Berkley

Vs.

**Harry J. Shive and Dorothy L. Shive,
Daniel A. Shive and Colleen J. Shive,
Patrick L. Shive and Jo Ellen Shive**

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31	12/31/09	Post-Trial Motion, Re: Undisputed Facts	14
32	01/05/10	Order, Re: Post-Trial Motions Dismissed	01
33	01/20/10	Notice of Appeal to High Court	06
34	01/20/10	Request for Transcript	01
35	01/20/10	Proof of Service of Notice of Appeal	02
36	01/21/10	Order, Re: Concise statement to be filed	01
37	02/01/10	Appeal Docket Sheet, 160 WDA 2010	04
38	02/10/10	Plaintiff Appellant's Concise Statement of Matters Complained of on Appeal	04
39	02/24/10	Transcript of Proceedings, Civil Non-Jury Trial, held before Honorable President Judge Fredric J. Ammerman, October 29, 2009	Separate Cover

Brett M. Woodburn, Esquire
Attorney I.D. No. 81786
Caldwell & Kearns, P.C.
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661
(717) 232-2766 (fax)
bwoodburn@caldwellkearns.com
Attorney for Plaintiff, Gary L. Berkley

FILED 2cc
m/11/2010
FEB 10 2010
William A. Shaw
Prothonotary/Clerk of Courts
Woodburn

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

GARY L. BERKLEY,	:	NO. 05-582-CD
Plaintiff.	:	
	:	
v.	:	
	:	
HARRY J. SHIVE and	:	
DOROTHY L. SHIVE, husband	:	
and wife, DANIEL A. SHIVE and	:	
COLLEEN J. SHIVE, husband and wife,	:	
PATRICK L. SHIVE and JO ELLEN	:	
SHIVE, husband and wife,	:	
Defendants	:	

**PLAINTIFF APPELLANT'S CONCISE STATEMENT OF
MATTERS COMPLAINED OF ON APPEAL**

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Concise Statement of Matters Complained of on Appeal, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b); and in support thereof, avers the following:

1. This Court's conclusion that the "real" issue of the case is the disposition of a "pie-shaped 74.06 area" between the Shive and Plaintiff Gary L. Berkley ("Plaintiff") properties is an error of law, an abuse of discretion and not supported by competent evidence.

#38

2. This Court's holding that a "gap" exists between the Shive property and the Berkley property, and applying the retracement principles for resolving "gaps" when no such testimony was presented at trial is an error of law, an abuse of discretion and not supported by competent evidence.
3. This Court's holding that that Plaintiff's expert Curtis McKnight ("McKnight") violated the standards of practice for surveyors pertaining to "gaps" in properties when no such testimony was given is an error of law and not supported by competent evidence.
4. This Court's decision to disregard or discount the survey results found and documented under seal by Nicholas Shirokey, P.L.S., was an error of law, abuse of discretion and not supported by competent evidence.
5. This Court's finding that Defendants' expert, Gary Thorp ("Thorp") was more credible than McKnight, when Thorp testified that his conclusions did not comport with the standards of practice for a professional licensed land surveyor was an abuse of discretion, and was not supported by competent evidence.
6. This Court's decision to apportion or prorate land between Defendants and Plaintiff was an error of law, an abuse of discretion and not supported by competent evidence.
7. This Court's conclusion that the doctrine of senior/junior rights is inapplicable was an error of law, an abuse of discretion and not supported by competent evidence.
8. This Court's finding that the deeds of conveyance from Reverend William Beates to Christian Hartle, Michael Miller and John Miller were not general in that they failed to use adjoining property owners to describe boundaries was an abuse of discretion, an error of law and not supported by competent evidence.

9. This Court's finding that McKnight had no basis by which to conclude that Reverend Beates intended to convey all of his land to Christian Hartle, Michael Miller and John Miller is an abuse of discretion and not supported by competent evidence.
10. This Court's conclusion that Reverend Beates intended to convey equal sized tracts of lands to Michael Miller and John Miller is not supported by competent evidence.
11. This Court's finding that McKnight failed to confirm the location of the Christian Hartle property with other points and monuments, was an abuse of discretion and not supported by competent evidence.
12. This Court's finding that Plaintiff "shifted" the Christian Hartle tract northward is an abuse of discretion and not supported by competent evidence.
13. This Court's conclusion that referencing an adjoining parcel of land from a separate chain of title was necessary to determine the location of the Christian Hartle tract was an abuse of discretion, an error of law and not supported by competent evidence.

Respectfully submitted,

CALDWELL & KEARNS

By 

Brett M. Woodburn, Esquire

Attorney I.D. No. 81786

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

(717) 232-2766 (fax)

bwoodburn@caldwellkearns.com

Attorney for Plaintiff, Gary L. Berkley

2/8/10

CERTIFICATE OF SERVICE

AND NOW, this 8th day of February, 2010, I hereby certify that I have served the foregoing document on the following by depositing a true and correct copy of same in the United States mail, postage prepaid, addressed to:

F. Cortez Bell, III, Esquire
P. O. Box 1088
Clearfield, PA 16830

The Honorable Fredric J. Ammerman, President Judge
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

CALDWELL & KEARNS

By:

Nancy Briski

04-668/159031

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 160 WDA 2010

Page 1 of 4

January 28, 2010

Secure



CAPTION

Gary L. Berkley

Appellant

v.

Harry J. Shive and Dorothy L. Shive, husband and Wife, Daniel A. Shive and Colleen J. Shive, husband and Wife, Patrick L. Shive, and Jo Ellen Shive, husband and wife

CASE INFORMATION

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: January 27, 2010

Awaiting Original Record

Journal Number:

Case Category: Civil

Case Type(s):

Quiet Title

FILED

FEB 01 2010

W/ 3:10 PM

William A. Shaw
Prothonotary/Clerk of Courts

CONSOLIDATED CASES

RELATED CASES

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: February 11, 2010

Next Event Type: Original Record Received

Next Event Due Date: March 22, 2010

COUNSEL INFORMATION

Appellant Berkley, Gary L.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Woodburn, Brett M.

Bar No: 081786

Law Firm: Caldwell & Kearns, P.C.

Address: 3631 N Front St
Harrisburg, PA 17110

Phone No: (717) 232-7661

Fax No: (717) 232-2766

Receive Mail: Yes

Receive EMail: No

Appellee Shive, Patrick L.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St
PO Box 1088
Clearfield, PA 16830

Phone No: (814) 765-5537

Fax No: (814) 765-9730

Receive Mail: No

Receive EMail: No

31

1 Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 160 WDA 2010

Page 2 of 4

January 28, 2010

Secure



COUNSEL INFORMATION

Appellee Shive, Jo Ellen

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St

PO Box 1088

Clearfield, PA 16830

Phone No: (814) 765-5537

Fax No: (814) 765-9730

Receive Mail: No

Receive EMail: No

Appellee Shive, Harry J.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St

PO Box 1088

Clearfield, PA 16830

Phone No: (814) 765-5537

Fax No: (814) 765-9730

Receive Mail: No

Receive EMail: No

Appellee Shive, Dorthy L.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St

PO Box 1088

Clearfield, PA 16830

Phone No: (814) 765-5537

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Receive Mail: Yes

Receive EMail: No

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 160 WDA 2010

Page 3 of 4

Secure

January 28, 2010

COUNSEL INFORMATION**Appellee Shive, Daniel A.**

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St

PO Box 1088

Clearfield, PA 16830

Phone No: (814) 765-5537

Fax No: (814) 765-9730

Receive Mail: No

Receive EMail: No

Appellee Shive, Colleen J.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Bell, F. Cortez, III

Bar No: 030183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St

PO Box 1088

Clearfield, PA 16830

Phone No: (814) 765-5537

Fax No: (814) 765-9730

Receive Mail: No

Receive EMail: No

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
01/27/2010	Notice of Appeal	73.50	01/27/2010	2010-SPR-W-000129	73.50

AGENCY/TRIAL COURT INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division:

Clearfield County Civil Division

Order Appealed From: December 21, 2009

Judicial District:

46

Documents Received: January 27, 2010

Notice of Appeal Filed:

January 20, 2010

Order Type: Order

OTN(s):

Lower Ct Docket No(s): 2005-582-CD

Lower Ct Judge(s): Ammerman,

Fredric J.

President

Judge

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
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Date of Remand of Record:**BRIEFING SCHEDULE**

9:50 A.M.

Appeal Docket Sheet

Docket Number: 160 WDA 2010

Page 4 of 4

January 28, 2010

Superior Court of Pennsylvania

Secure



None

None

DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
January 27, 2010	Notice of Appeal Docketed	Appellant	Berkley, Gary L.
January 28, 2010	Docketing Statement Exited (Civil)		Western District Filing Office

(9)

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

GARY L. BERKLEY,
Plaintiff

vs

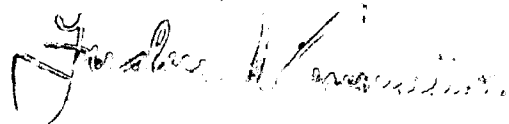
HARRY J. SHIVE and DOROTHY L. SHIVE,
husband and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN SHIVE,
husband and wife,
Defendants

* NO. 05-582-CD
*
*
*
*
*
*
*

ORDER

NOW, this 21st day of January, 2010, this Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter; it is the ORDER of this Court that, Appellant, file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED 10000000

01/21/2010

William A. Sharv
Prothonotary/Clerk of Courts

Woodburn
F. Bell

(610)

(34)

100-100000

JAN 21 2019

William A. Sha'y
Prothonotary/Clerk of Courts

Date 1/21/19

 Yes, I am 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:

Brett M. Woodburn, Esquire
Attorney I.D. No. 81786
Caldwell & Kearns, P.C.
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661
(717) 232-2766 (fax)
bwoodburn@caldwellkearns.com
Attorney for Plaintiff, Gary L. Berkley

FILED
JAN 20 2010
m/2.00/✓
William A. Shaw
Prothonotary/Clerk of Courts
1 copy to A+H

**COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY**

GARY L. BERKLEY,	:	NO. 2005-582-CD
Plaintiff.	:	
	:	
v.	:	
	:	
HARRY J. SHIVE and	:	
DOROTHY L. SHIVE, husband	:	
and wife, DANIEL A. SHIVE and	:	
COLLEEN J. SHIVE, husband and wife,	:	
PATRICK L. SHIVE and JO ELLEN	:	
SHIVE, husband and wife,	:	
Defendants	:	

PROOF OF SERVICE OF NOTICE OF APPEAL

I hereby certify I am this day serving copies of the foregoing Notice of appeal, docket entries, Request for Transcript and this Proof of Service on the following by depositing a true and correct copy of the same in the United States mail at Harrisburg, Pennsylvania, postage prepaid, addressed to:

F. Cortez Bell, III, Esquire
P. O. Box 1088
Clearfield, PA 16830

The Honorable Fredric J. Ammerman
Clearfield County Courthouse
P.O. Box 549
230 East Market Street
Clearfield, PA 16830

#35

Thomas Snyder, Court Reporter
Clearfield County Courthouse
P.O. Box 549
230 East Market Street
Clearfield, PA 16830

District Court Administrator
Clearfield County Courthouse
P.O. Box 549
230 East Market Street
Clearfield, PA 16830

157892

Brett M. Woodburn, Esquire
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3631 North Front Street
Harrisburg, PA 17110
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(717) 232-2766 (fax)
bwoodburn@caldwellkearns.com
Attorney for Plaintiff, Gary L. Berkley

FILED
JAN 20 2010
M/2:00/L
William A. Shaw
Prothonotary/Clerk of Courts
(PMA 70 HCL)

FILED
JAN 20 2010
William A. Shaw
Prothonotary/Clerk of Courts

**COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY**

GARY L. BERKLEY,
Plaintiff.

NO. 2005-582-CD

v.

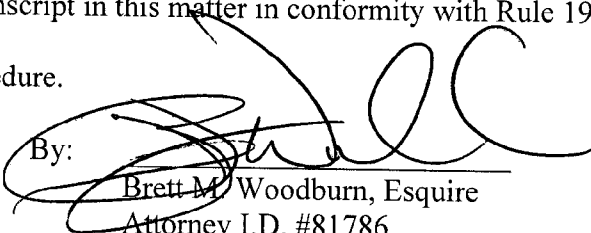
HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendants

REQUEST FOR TRANSCRIPT

A notice of appeal having been filed in this matter, the official court reporter is hereby ordered to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

Dated: 1/18/10

By:


Brett M. Woodburn, Esquire
Attorney I.D. #81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661
Attorney for Plaintiff

FILED

JAN 20 2010

William A. Shaw
Prothonotary/Clerk of Courts

UPPER TO PARTY

Sup. Court 4/73.50

Brett M. Woodburn, Esquire
Attorney I.D. No. 81786
Caldwell & Kearns, P.C.
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bwoodburn@caldwellkearns.com
Attorney for Plaintiff, Gary L. Berkley

**COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY**

GARY L. BERKLEY,	:	NO. 2005-582-CD
Plaintiff.	:	
	:	
v.	:	
	:	
HARRY J. SHIVE and	:	
DOROTHY L. SHIVE, husband	:	
and wife, DANIEL A. SHIVE and	:	
COLLEEN J. SHIVE, husband and wife,	:	
PATRICK L. SHIVE and JO ELLEN	:	
SHIVE, husband and wife,	:	
Defendants	:	

NOTICE OF APPEAL

Notice is hereby given that Gary L. Berkley, plaintiff above named, hereby appeals to the Superior Court of Pennsylvania from the order entered in this matter on the 21st day of December 2009. This order has been entered in the docket as evidenced by the attached certified copy of

33

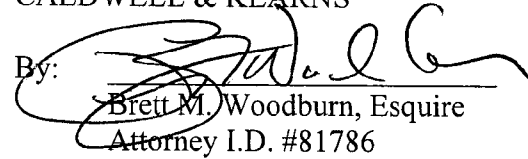
the docket entry.

Respectfully Submitted

CALDWELL & KEARNS

Dated: 1/18/10

By:

A handwritten signature in black ink, appearing to read "Brett M. Woodburn", is written over a horizontal line.

Brett M. Woodburn, Esquire

Attorney I.D. #81786

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Attorney for Plaintiff

Date: 1/15/2010

Time: 11:26 AM

Page 1 of 3

Clerkfield County Court of Common Pleas

ROA Report

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

User: GLKNISLEY

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

Gary L. Berkley vs. Harry J. Shive, et al

JAN 15 2010

Civil Other

Date		Judge	<i>William B. ...</i> Pro. Secy/ Clerk of Court
4/22/2005	New Case Filed.	No Judge	
	Filing: Quiet Title Action Paid by: Caldwell & Kearns Receipt number: 1899916 Dated: 04/22/2005 Amount: \$95.00 (Check) 3 Cert. to Atty.	No Judge	
5/4/2005	Praeipce to Attach Exhibits "A", "B", "C" and "D" To Complaint. filed by s/ Brett M. Woodburn, Esquire. No CC	No Judge	
6/16/2005	Preliminary Objections to Plaintiff's Complaint, filed by s/ F. Cortez Bell, III, Esquire. 5CC to Atty	No Judge	
	Praeipce For Entry of Appearance, filed on behalf of Defendants Harry J. Shive and Dorothy L. Shive, by s/ F. Cortez Bell, III, Esquire. 1CC to Atty	No Judge	
6/20/2005	Affidavit Pursuant To Pennsylvania Rule of Civil Rule Procedure 1066, filed by s/ Brett M. Woodburn, Esquire. 2CC atty Woodburn	No Judge	
6/22/2005	Praeipce To Withdraw Affidavit, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty	Fredric Joseph Ammerman	
	Order, this 21st day of June, 2005, it is ordered as follows: (see original). /s/ Fredric J. Ammerman, Pres. Judge. 2CC atty. Woodburn	Fredric Joseph Ammerman	
7/14/2005	Order, filed. 2 cert. to Atty. Bell w/memo NOW, this 13th day of July, 2005. Re: Argument has been scheduled for the 12th day of August.	Fredric Joseph Ammerman	
7/18/2005	Certificate of Service, July 18, 2005, Copy of Scheduling Order dated July 13, 2005 served upon Brett M. Woodburn, Esq. Filed By F. Cortez Bell, III, Esq. No CC.	Fredric Joseph Ammerman	
7/28/2005	Amended Complaint Upon an Action To Quiet Title, Filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman	
9/2/2005	Praeipce To Substitute Verification, filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman	
10/10/2005	Acceptance of Service, filed. I, F. Cortez Bell III, Esquire, do hereby accept service of and acknowledge receipt of a filed copy of the Amended Complaint in the above captioned case on behalf of each of the Defendants set forth in the caption above, filed by s/ F. Cortez Bell III Esq. 3CC atty Bell	Fredric Joseph Ammerman	
11/9/2005	Answer, New Matter and Counterclaim, filed by s/ F. Cortez Bell Esq. 2CC Atty Bell.	Fredric Joseph Ammerman	
2/8/2006	Reply to New matter and Counterclaim, filed by s/ Brett M. Woodburn Esq. No CC.	Fredric Joseph Ammerman	
7/27/2006	Plaintiff's Motion to Compel Discovery, filed by s/ Brett M. Woodburn Esq. 2CC Atty.	Fredric Joseph Ammerman	
7/31/2006	Order, NOW, this 28th day of July, 2006, upon consideration of Plaintiff's Motion to Compel Answers to Discovery, said Motion is Granted, Defs. are ordered to answer the Plaintiff's First Set of Interrogatories and First Request for Production of Documents in full, within 30 days of the date of this Order, or suffer sanctions. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Woodburn	Fredric Joseph Ammerman	
10/27/2008	Plaintiff's Motion to Compel Discovery, filed by s/ Karen W. Miller, Esquire. 1CC Atty. Miller	Fredric Joseph Ammerman	
10/29/2008	Order, this 28th day of Oct., 2008, plaintiff's Motion to Compel Answers to Discovery is GRANTED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty.	Fredric Joseph Ammerman	

Civil Other

Date		Judge
11/25/2008	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Request for Production of Documents upon Mr. Brett M. Woodburn Esq. by United States Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Interrogatories upon Mr. Brett M. Woodburn Esq by United State Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
3/20/2009	Certificate of Readiness for Non-Jury Trial, filed by s/ Brett M Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
3/23/2009	Order, this 23rd day of March, 2009, a pre-trial conference shall be held April 24, 2009 at 1:30 p.m. in Judges Chambers. By The Court, /s/ Fredric J. ammerman, Pres. Judge. Cc to Attys: Woodburn & Bell w/form	Fredric Joseph Ammerman
4/16/2009	Motion For Continuance, filed by s/ Gary L. Berkley, Plaintiff. 2CC Atty.	Fredric Joseph Ammerman
4/17/2009	Order, this 16th day of April, 2009, upon consideration of the within Motion of Plaintiff, Gary L. Berkley, it is Ordered that the matter is continued until the 22nd day of July, 2009, at 1:30 p.m. in Judges Chambers. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Wood	Fredric Joseph Ammerman
4/20/2009	Motion For Continuance, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
4/21/2009	Order of Court, AND NOW, this 21st day of April 2009, upon consideration of the within Motion to Plaintiff, it is hereby Ordered that the above-referenced matter is continued until Wednesday the 22nd day of July 2009 at 1:30 pm in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty.	Fredric Joseph Ammerman
7/23/2009	Order, this 23rd day of July, 2009, a Civil Bench Trial is scheduled for the 29th day of Oct., 2009 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Woodburn, Bell	Fredric Joseph Ammerman
10/28/2009	Answer to New Matter to Counterclaim, filed by s/ F. Cortez Bell III Esq. 4CC Atty Bell.	Fredric Joseph Ammerman
11/2/2009	Order, AND NOW, this 29th day of October, 2009, following the completion of the taking of testimony in civil nonjury trial, Order that counsel have no more than 30 days from this date to submit appropriate brief to the Court. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Woodburn Five CC Attorney Bell	Fredric Joseph Ammerman
11/30/2009	Transcript of Proceedings, filed. Testimony of Gary L. Thorp, held Oct. 29, 2009 before Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman
12/21/2009	Opinion and Order, NOW, this 21st day of Dec., 2009, consistent with the Court's Opinion, it is Ordered: 1. The boundry line between the properties belonging to the parties is determined to be the boundary set by Gary L. Thorp, PLS, in his survey dated April 5, 2004 (revised July 30, 2004). 2. The Defendants' Counterclaim is DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Woodburn, Bell 1CC D. Mikesell; Law Library (without memo)	Fredric Joseph Ammerman
12/31/2009	Post-Trial Motion, RE: (Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman
	Post-Trial Motion, RE: Undisputed Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman

Date: 1/15/2010

Time: 11:26 AM

Page 3 of 3

Clerk of Field County Court of Common Pleas

ROA Report

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

User: GLKNISLEY

Civil Other

Date		Judge
1/5/2010	Order, this 4th day of Jan., 2010, the Plaintiff's Post-Trial Motion filed Dec. 31, 2009 and the Post-Trial Motion in the form of a Motion to Exclude or Strike Testimony, also filed Dec. 31, 2009 are hereby Dismissed. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Woodburn, Bell	Fredric Joseph Ammerman

CERTIFICATE OF SERVICE

AND NOW, this 19th day of JAN 2010, I hereby certify that I have served a copy of the Notice of Appeal on the following by depositing a true and correct copy of the same in the United States mail at Harrisburg, Pennsylvania, postage prepaid, addressed to:

The Honorable Fredric J. Ammerman
Clearfield County Courthouse
P.O. Box 549
230 East Market Street
Clearfield, PA 16830

F. Cortez Bell, III, Esquire
P. O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By:

Dani Beaud

1A

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

GARY L. BERKLEY,

Plaintiff

vs.

No. 2005-582-CD

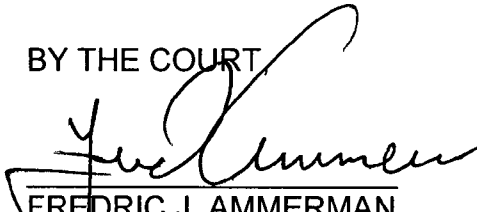
HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and
wife, PATRICK L. SHIVE and
JO ELLEN SHIVE, husband and
wife,

Defendants

ORDER

NOW, this 4th day of January, 2010, it is the ORDER of this Court that the Plaintiff's Post-Trial Motion filed December 31, 2009 and the Post-Trial Motion in the form of a Motion to Exclude or Strike Testimony, also filed December 31, 2009, be and are hereby DISMISSED.

BY THE COURT


FREDRIC J. AMMERMAN
President Judge

FILED

9/3/31/01 100
JAN 05 2010

William A. Shaw
Prothonotary/Clerk of Courts

Atty's:
Woodburn
Bell

60

33

FILED

JAN 05 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/5/10

--- 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 Interests:

Brett M. Woodburn, Esquire
Attorney I.D. No. 81786
Caldwell & Kearns, P.C.
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661
(717) 232-2766 (fax)
bwoodburn@caldwellkearns.com
Attorney for Plaintiff, Gary L. Berkley

FILED

DEC 31 2009

5 11/21/09 LC
William A. Shaw
Prothonotary/Clerk of Courts

2 CHAT TO ATT

GARY L. BERKLEY,	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	NO.: 2005-582-CD
	:	
	:	
HARRY J. SHIVE and	:	CIVIL ACTION - LAW
DOROTHY L. SHIVE, husband	:	
and wife, DANIEL A. SHIVE and	:	
COLLEEN J. SHIVE, husband and wife,	:	
PATRICK L. SHIVE and JO ELLEN	:	
SHIVE, husband and wife,	:	
Defendants	:	ACTION TO QUIET TITLE

POST-TRIAL MOTION

AND NOW COMES the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Post-Trial Motion; and support thereof avers the following:

UNDISPUTED FACTS

1. On or about April 22, 2005, Plaintiff Gary L. Berkley ("Plaintiff") filed an Action to Quiet Title to resolve a boundary dispute.
2. Defendants in this Action are Harry and Dorothy Shive, Daniel & Colleen Shive, and Patrick and Jo Ellen Shive ("Defendants").
3. Defendant Harry J. Shive purchased his tract of land from the Lundberg Estate on or about October 19, 1989 ("Shive Property").

31

4. On or about September 25, 1989, Defendant Harry J. Shive hired Nicholas Shirokey, a duly license surveyor, to conduct a survey of the property Defendant Harry J. Shive intended to purchase.

5. After completing the survey, Nicholas Shirokey provided a copy of the survey to Defendant Harry J. Shive, who then purchased the Shive Property.

6. On or about February 23, 2001, Defendant Harry J. Shive transferred ownership of the Shive Property from himself to all of the named Defendants.

7. On or about September 26, 2003, Plaintiff purchased three (3) parcels of land, identified as Tax Parcel Nos. 110-T6-7, 110-T6-7.1 and 110-T6-6, from Anna Mickney ("Berkley Property").

8. Plaintiff hired GeoTech Engineers, Inc., ("GeoTech") to survey all of the property that he owns.

9. As part of this process, GeoTech surveyed the Berkley Property and held the common boundary line between the Shive Property and Berkley Property, as determined by Shirokey.

10. After Plaintiff purchased the Berkley Property, Defendants hired Gary Thorp with Curry & Associates to ("Thorp") re-survey the Shive Property.

11. Thorp opined that the common boundary line was further south than either Shirokey or GeoTech determined it to be.

12. The effect of Thorp's survey was to determine that a dirt road was on the Shive Property instead of the Berkley Property.

13. Litigation commenced to determine the correct position of the boundary line.

14. The pleadings were closed and discovery was conducted, and a bench trial occurred on October 29, 2009.

15. Both the Shive Property and the Berkley Property were originally part of the larger parcel of land acquired by Reverend William Beates from Jacob Gratz on or about October 12, 1832 ("Beates Property").

16. The Beates Property came out of the William Moore Smith Warrant.

17. The northern-most property line of the Beates' Property is now the northern-most line of a smaller tract of land owned by Calvin Berkley and Albert Berkley.

18. All parties agree with the placement of this northern-most property line.

19. The northeastern corner of the Calvin/Albert Berkley property is identified as Corner 8 on Plaintiff's survey that was admitted as an exhibit at trial.

20. The northwestern corner of the Calvin/Albert Berkley property is identified as Corner 1 on Plaintiff's survey that was admitted as an exhibit at trial.

21. All parties agree with the placement of the southern-most property line of the Calvin/Albert Berkley property, which is also the northern-most property line for the Shive Property.

22. This common boundary line is further memorialized by a Property Line Agreement that was subsequently recorded.

23. The western-most corner of this common boundary line is identified as Corner 7 and the eastern-most corner of this common boundary line is identified as Corner 2 on Plaintiff's survey that was admitted as an exhibit at trial.

24. Reverend Beates made four (4) conveyances from the original grant that he received from Jacob Gratz.

25. One grant was to John Beates, and is currently Pennsylvania Game Commission property; this tract is not a part of this litigation.

26. The first grant from Reverend Beates' Property was to Christian Hartle on January 22, 1855.

27. Plaintiff currently owns this parcel, which is the southern-most portion of what was the Reverend Beates' Property.

28. The second conveyance from Reverend Beates' Property was to Michael Miller on January 21, 1856, and recorded at Deed Book "P" at Page 616.

29. This parcel was the northern-most portion of Reverence Beates' Property, and is comprised entirely of the Calvin/Albert Berkley property and the Shive Property.

30. The third conveyance from Reverend Beates' Property was to John Miller, also on January 21, 1856, but recorded after the deed to Michael Miller in Deed Book "P" at Page 616.

31. This parcel is now owned by Plaintiff, and the northern property line of John Miller's property (now Plaintiff) is the common line that forms the southern property line of the Michael Miller (now Shive) property.

32. It is the location of this common boundary line that is in dispute.

MATTERS IN DISPUTE

33. Thorp determined that a pie-shaped piece of property that had a maximum width of 74.06 feet remained un conveyed in the Reverend Beates' Property.

34. The Trial Court found Thorp's testimony was credible and more accurate than GeoTech's.

35. The Trial Court determined that the survey prepared by Nicholas Shirokey in 1989 was of little use.

36. The Trial Court accepted the Thorp's conclusion that the location of the Christian Hartle property is incorrect.

37. The Trial Court determined that GeoTech did little to establish the proper location of the Christian Hartle tract.

38. The Trial Court adopted Thorp's contention that it was necessary to reference a completely separate chain of title to determine the location of the southern boundary of Reverend Beates' property.

39. The Trial Court accepted Thorp's contention that it was necessary to use a parcel of land that Christian Hartle purchased from Edward and David Gratz, which was originally part of the Casper Haines Warrant, to determine the southern boundary of the Beates Property.

40. The Trial Court accepted Thorp's contention that there was a "gap" between the southern boundary of Reverend Beates' property and the northern boundary of property owned by Edward and David Gratz.

41. The Trial Court accepted Thorp's arbitrary decision to extend Reverend Beates' southern property line further south, creating an even greater excess amount of land for Reverend Beates.

42. The Trial Court accepted Thorp's arbitrary decision **not** to use the same principles to establish the true location of the Beates-Gratz common boundary as he used to establish the location of the Shive-Berkley common boundary.

43. The Trial Court accepted Thorp's arbitrary decision to prorate any "excess" land between the Michael Miller and John Miller tracts.

44. The Trial Court accepted Thorp's arbitrary decision **not** to prorate any "excess" land between the John Miller and Christian Hartle tracts.

45. If Thorp did not move the Reverend Beates' southern boundary line further south, then there would not have been enough "excess" land to allow Defendants to acquire the access road that is at the heart of this dispute.

46. The Trial Court concluded that there was no basis by which to conclude that Reverend Beates meant to convey all of the property contained in the warrant, when he made the conveyances to Michael Miller, John Miller and Christian Hartle.

47. The Trial Court concluded that the Doctrine of Senior Rights is inapplicable.

REQUESTS FOR RECONSIDERATION

Plaintiff Gary L. Berkley respectfully requests that this Honorable Court reconsider its conclusions based upon the following:

A. **The Shirokey Survey is a Substantial Factor in Determining the Shive-Berkley Boundary**

48. Nicholas Shirokey's survey was performed prior to Shive's acquisition of this parcel.

49. Shirokey's survey accurately reflects the legal description in the vesting deed held by Lundberg.

50. Shirokey's survey accurately reflects a legal description in the vesting deed into Harry Shive.

51. Defendant Harry Shive was present when Shirokey performed his survey.

52. Defendant Harry Shive was given a copy of the survey and was aware of where Shirokey had determined the boundary lines to be.

53. Shirokey's survey accurately reflects the legal description in the vesting deed into Defendants.

54. All Defendants had access to Shirokey's survey at or before the time they became record owners of the Shive Property.

55. There has been no documented evidence to suggest that Shirokey failed to accurately identify the southern boundary of the Shive property.

56. Nicholas Shirokey's survey in 1989 is a substantial factor in ascertaining the correct boundary lines for the Shive Property.

B. GeoTech Established that Corner 4 is the Northeast Corner of the Christian Hartle Property

57. The northeastern corner of the Christian Hartle tract is identified as Corner 4 on Plaintiff's survey that was admitted as an exhibit at trial.

58. The legal description for Christian Hartle's property begins with a call for an iron rail in a stone pile which, based upon the remainder of the calls, places this monument as the northeast corner of the Hartle property, as set forth in Deed Book "P" at Page 435.

59. An unrecorded deed from Christian Hartle to Lizzie Ollinger dated May 9, 1898 begins the legal description in the same location in calling for a stone corner as a monument.

60. In a deed from Lizzie Ollinger to Joseph Ollinger at Deed Book 207, Page 243 and dated December 24, 1912, the conveyance begins at a monument described as a stone corner.

61. In a deed from Ollinger to Mickney in Deed Book 314, Page 139 and dated February 2, 1937, the conveyance calls for a monument described as stones by pine.

62. In a deed from Mickney to Thompson in Deed Book 480 at Pages 126 and 127 and dated October 27, 1959, the conveyance calls for a monument described as stones by a pine.

63. This same corner is similarly described in Instrument No. 200212636 dated August 1, 2002, from Thompson back to Mickney.

64. This corner is similarly described by monument in the deed to Plaintiff dated September 16, 2003 and recorded at Instrument No. 200317439.

65. An out-sale of a parcel of land from what was originally the John Miller property immediately to the north of the Hartle property uses the same monument, stones by a pine, in a deed to Paul and Eula Gable found at Deed Book 720, Page 231 and dated May 1, 1962.

66. This conveyance to Gable further establishes with certainty the location of Corner 4 by tying this stone monument to witness trees as identified in the deed recorded at Deed Book 720, Page 231.

67. GeoTech located the witness trees and identified them on Plaintiff's survey that was admitted as an exhibit at trial.

68. Surveys of the State Game Lands 100 in Clearfield and Center Counties use this monument described as an iron rail in a stone pile.

69. GeoTech also located an iron rail, identified as Corner 2A in Plaintiff's survey, as a monument called for in the John Andrew's warrant shown in Deed Book 12 at Page 351, along with a recorded survey showing the same monument recorded at Survey Book "P" at Page 139.

70. The Pennsylvania Game Commission Survey filed in Map Rack 35 at Page 35 ties Corner 2A to the northeast corner of Christian Hartle's land at Corner 4.

71. The out-conveyance to Gable for the property that previously Christian Hartle provided access by way of a recorded easement.

72. The recorded easement was granted from lands owned by Hartle, through Ollinger and Mickney.

73. Moving the location of the Hartle property would add additional land to the approximate thirty acre parcel of land now owned by Defendants' counsel and his wife.

74. Moving the location of the Hartle property would materially affect the recorded easement.

75. There is substantial evidence, based upon monuments, adjacent boundaries, recorded surveys and other recorded documents to establish the location of the northeast corner of the Hartle property.

76. GeoTech accurately determined that Corner 4 is the northeastern corner of the tract conveyed to Christian Hartle.

C. The Adjacent Boundaries in the Conveyances from Reverend William Beates Make Clear His Intent to Convey All of His Property.

77. The conveyance from Reverend Beates to Christian Hartle identified John Miller as the adjacent boundary to Hartle's north, to wit:

Thence, also by lands of the said Rev. William Beates this day conveyed to John Miller South Eight Degrees East 150 perches to the place of the Beginning.

78. The conveyance from Reverend Beates to Michael Miller identified John Miller as the adjacent boundary to Michael Miller's south, to wit:

Thence, by other lands of said Reverend William Beates this day conveyed to John Miller North Eighty-Eight Degrees West 150 perches to a post.

79. The conveyance from Reverend Beates to John Miller identifies both Christian Hartle and Michael Miller as adjacent boundaries to the south and to the north, respectively.

80. According to the words and phrases of the recorded documents, Reverend Beates' intention to convey all of his property to Christian Hartle, Michael Miller and John Miller is clear.

D. The Seniority of Each Conveyance Can be Determined.

81. Christian Hartle was the first conveyance from the Beates Property.

82. Christian Hartle is the most senior conveyance.

83. Michael Miller was the second conveyance from the Beates Property.

84. John Miller was the third conveyance from the Beates Property.

85. The conveyance to Michael Miller was senior to the conveyance to John Miller.

E. Thorp Created a Needless Gap by Failing to Follow the Accepted Practices for Surveyors.

86. The Michael Miller deed describes the eastern boundary to be 100 perches, or 1,650 feet.

87. Measuring from Corner 1 to Corner 3, as identified on Plaintiff's survey, measures 1,649.89 feet.

88. Corner 3 was a corner set by Nicholas Shirokey in 1989 when he performed a retracement survey for Defendant Harry J. Shive.

89. Thorp testified he made the presumption that Michael Miller and John Miller were to receive equal conveyances because "the area was written similarly, they were dated the same date, and they were put on [record] back to back."

90. Thorp testified that Corner 3 is set at a place that matches the deed conveying title from Reverend Beates to Michael Miller.

91. Thorp testified that he ignored the leal descriptions in the conveyance from the Reverend William Beates to Michael Miller in order to reach his conclusions.

92. Thorp ignored the calls in the deeds and the monument set by Shirokey in order to reach his conclusions.

93. Thorp testified that Corner 4 was marked by a stone pile.

94. Thorp testified that a stone pile is considered a "monument".

95. Thorp testified that artificial monuments, such as stone piles, are second in hierarchy for surveying practices only to natural monuments.

96. Thorp testified that there is an iron pin denoted as Corner 5 on Plaintiff's survey.

97. Thorp testified that the recorded distance of the eastern boundary of Hartle's tract is 42.5 perches, or 701.25 feet.

98. Thorp testified that the measured distance from Corner 4 to Corner 5 is 706.51 feet.

99. Thorp testified that the variance between the recorded distance and the measured distance is accurate by the professional standards of duly licensed surveyors in Pennsylvania.

100. Thorp contends there is a “gap” between the southern Beates property line and the northern Gratz property line.

101. Thorp contends that instead of prorating the “gap” (as he suggests for the “gap” between Michael Miller and John Miller), all of the land should be given to Reverend Beates and the Hartle property should be moved, in its entirety, further south.

102. To the extent that there was “excess” land in the Beates Property after the conveyances to Hartle, Miller and Miller, following Thorp’s conclusions creates additional “excess” land.

103. Thorp’s decision to ignore monuments, calls and adjacent boundaries and to instead move to an adjoining parcel or land to justify moving the southern boundary of Reverend Beates’ property created a needless gap (or needlessly enlarged an existing gap), and disregarded the practices and procedures accepted by professional surveyors and as established by the laws of the Commonwealth of Pennsylvania.

PRAYER FOR RELIEF

Based upon the foregoing, Plaintiff Gary L. Berkley respectfully requests that this Honorable Court GRANT his Motion for Reconsideration and enter an Order containing the following:

1. Based upon the calls and legal descriptions set forth in all of the deeds in the Shive chain of title commencing with the initial conveyance from the Reverend William Beates to Michael Miller, and continuing through the current record owners, the survey performed by Nicholas Shirokey accurately and correctly sets forth the boundaries to the Shive property.

2. GeoTech established that Corner 4 is the northeast corner of the property initially conveyed from Reverend William Beates to Christian Hartle within a reasonable degree of professional certainty as required by the standards of practice and the laws of this Commonwealth, by references to monuments, adjacent boundaries, courses and distances and other recorded conveyances and surveys.

3. The legal description of the conveyance from the Reverend William Beates to Christian Hartle calls for John Miller as its northern adjacent boundary.

4. The legal description of the conveyance from the Reverend William Beates to Michael Miller calls for John Miller as its southern adjacent boundary.

5. The legal description of the conveyance from the Reverend William Beates to John Miller calls for Christian Hartle as the southern adjacent boundary and Michael Miller as the northern adjacent boundary.

6. A surveyor performing a retracement survey is limited to the words in deeds from the survey.

7. The law of Pennsylvania holds, “[W]here the calls for the location of boundaries to land are inconsistent, other things being equal, resort is to be had first to natural objects or landmarks, next to artificial monuments, then to adjacent boundaries (which are considered a sort of monument), and thereafter due courses and distances.” ***Baker V. Roslyn Swim Club, 206 Pa. Super. 192, 213 A.2d 145, 198 (1965).***

8. Surveyors are bound by the legal procedures and principles for locating boundaries and resolving title problems.

9. Plaintiff is entitled to any excess land because, in part, his deed “. . . described the Northern portion of [his] tract as bounded on the north by the Michael Miller” tract. ***Trial Ct Opinion, P.8.***

10. The deed conveying the tract from the Reverend William Beates to John Miller actually reads, in pertinent part, “Thence also by other lands of the said Rev. William Beates this day conveyed to Michael Miller. . .”

11. The language of the deed makes clear Reverend Beates’ intent to convey the entirety of his property to Christian Hartle, Michael Miller and John Miller.

12. Thorp deviated from the laws of Pennsylvania and accepted practice of duly licensed surveyors when he disregarded monuments in reaching his opinions and conclusions.

13. Thorp deviated from the laws for Pennsylvania and accepted practices of duly licensed surveyors when he disregarded adjacent boundaries in reaching his opinions and conclusions.

14. Thorp deviated from the laws of Pennsylvania and the accepted practice of duly licensed surveyors when he ignored the calls in the deed from the Reverend Beates to Michael Miller, in reaching his opinions and conclusions.

15. The boundary line between the properties belonging to the parties as hereby determined to be the boundaries set by GeoTech Engineering, Inc. in the survey dated April 15, 2008, said survey being admitted as Plaintiff's exhibit at the time of non-jury trial.

16. The legal description of the Shive property being as follows:

"All that certain piece or parcel of land situated in the Township of Cooper, County of Clearfield, Commonwealth of Pennsylvania bounded and described as follows:

BEGINNING at an iron pin located in a stone pile on line of State Game Lands #100. Said point is also the Southeast corner of Calvin and Albert Berkley; thence along State Game Lands #100, South Zero degrees, Twenty-Two minutes, Ten seconds West (S 0° 22' 10" W) Eight Hundred Twenty-Five feet (825.0') to an iron pin; thence along the lands of Gary L. Berkley and F. Cortez Bell, III, North Eighty-Nine degrees, Six minutes, Thirty seconds West (N 89°, 06' 30" W) Two Thousand Six Hundred Sixty and Fourteen One-Hundredths feet (2660.14') to an axle in Township Road #728, and on a line of John Harvey. Said point is the Northwest corner of F. Cortez Bell, III; thence along the lands of John Harvey, North One degree, Zero minutes East (N 01°, 00' E) Eight Hundred Thirty-Three and Twenty-Five Hundredths feet (833.25') more or less, to an iron pin and also the Southwest corner of Calvin and Albert Berkley; thence along lands of Calvin and Albert Berkley, South Eighty-Eight degrees, Fifty-Five minutes, Forty-Five seconds East (S 88°, 55', 45" E) Two Thousand Six Hundred Fifty-One and Six Hundredths feet (2651.06') to an iron pin in a stone pile and the place of Beginning."

17. The boundary line at the southern most portion of the Christian Hartle property that was conveyed by Reverend William Bates is hereby determined to be the boundary set by GeoTech Engineering, Inc., in its survey dated April 15, 2008, said survey being admitted as Plaintiff's exhibit at the time of the non-jury trial. The legal description of that parcel is as follows:

"BEGINNING at a stone corner by a Pine, thence South 1 ½ degrees West, 42 ½ perches to a post; North 88 degrees West 150 perches to a post; thence North 01

degree East 42 ½ perches to a post; thence South 88 degrees East, 150 perches to the place of Beginning.”

Respectfully submitted,

CALDWELL & KEARNS

Date: 12/30/09

By:

A handwritten signature in black ink, appearing to read "Brett M. Woodburn", is written over a horizontal line.

Brett M. Woodburn, Esquire

I.D. No. 81786

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Attorney for Plaintiff, Gary L. Berkley

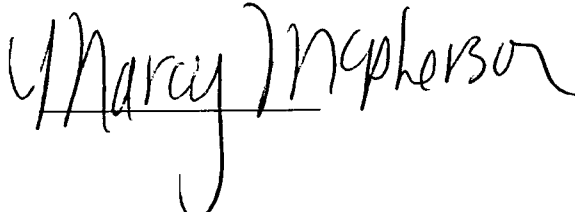
CERTIFICATE OF SERVICE

AND NOW, this 30th day of December 2009, I hereby certify that I have served the foregoing Post-Trial Motion to the following by depositing a true and correct copy of same in the United States mail, postage prepaid, addressed to:

F. Cortez Bell, III, Esquire
P. O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By:

A handwritten signature in cursive script, reading "Mary McPherson". The signature is written over a horizontal line.

04-668/157550

Brett M. Woodburn, Esquire
Attorney I.D. No. 81786
Caldwell & Kearns, P.C.
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661
(717) 232-2766 (fax)
bwoodburn@caldwellkearns.com
Attorney for Plaintiff, Gary L. Berkley

FILED

DEC 31 2009

William A. Shaw
Prothonotary/Clerk of Courts

2 L Ent to ATT

GARY L. BERKLEY,	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	NO.: 2005-582-CD
	:	
	:	
HARRY J. SHIVE and	:	CIVIL ACTION - LAW
DOROTHY L. SHIVE, husband	:	
and wife, DANIEL A. SHIVE and	:	
COLLEEN J. SHIVE, husband and wife,	:	
PATRICK L. SHIVE and JO ELLEN	:	
SHIVE, husband and wife,	:	
Defendants	:	ACTION TO QUIET TITLE

POST-TRIAL MOTION

AND NOW COMES the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Post-Trial Motion; and support thereof avers the following:

FACTS

1. On or about April 22, 2005, Plaintiff Gary L. Berkley ("Plaintiff") filed an Action to Quiet Title to resolve a boundary dispute.
2. Defendants in this Action are Harry and Dorothy Shive, Daniel & Colleen Shive, and Patrick and Jo Ellen Shive ("Defendants").
3. Defendant Harry J. Shive purchased his tract of land from the Lundberg Estate on or about October 19, 1989 ("Shive Property").

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4. On or about September 25, 1989, Defendant Harry J. Shive hired Nicholas Shirokey, a duly license surveyor, to conduct a survey of the property Defendant Harry J. Shive intended to purchase.

5. After completing the survey, Nicholas Shirokey provided a copy of the survey to Defendant Harry J. Shive, who then purchased the Shive Property.

6. On or about February 23, 2001, Defendant Harry J. Shive transferred ownership of the Shive Property from himself to all of the named Defendants.

7. On or about September 26, 2003, Plaintiff purchased three (3) parcels of land, identified as Tax Parcel Nos. 110-T6-7, 110-T6-7.1 and 110-T6-6, from Anna Mickney ("Berkley Property").

8. Plaintiff hired GeoTech Engineers, Inc., ("GeoTech") to survey all of the property that he owns.

9. As part of this process, GeoTech surveyed the Berkley Property and held the common boundary line between the Shive Property and Berkley Property, as determined by Shirokey.

10. After Plaintiff purchased the Berkley Property, Defendants hired Gary Thorp with Curry & Associates to ("Thorp") re-survey the Shive Property.

11. Thorp opined that the common boundary line was further south than either Shirokey or GeoTech determined it to be.

12. The effect of Thorp's survey was to determine that a dirt road was on the Shive Property instead of the Berkley Property.

13. Litigation commenced to determine the correct position of the boundary line.

14. The pleadings were closed and discovery was conducted, and a bench trial occurred on October 29, 2009.

MOTION TO EXCLUDE OR STRIKE TESTIMONY

15. The law of Pennsylvania holds, "[W]here the calls for the location of boundaries to land are inconsistent, other things being equal, resort is to be had first to natural objects or landmarks, next to artificial monuments, then to adjacent boundaries (which are considered a sort of monument), and thereafter due courses and distances." **Baker V. Roslyn Swim Club, 206 Pa. Super. 192, 213 A.2d 145,**

198 (1965).

16. In retracing a boundary, surveyors should not second-guess the intent of the grantor.

Boundary Retracement Principles and Procedures for Pennsylvania, HERMANSEN, KNUD EVERETT, 3rd Ed. (1995).

17. A surveyor conducting a retracement survey is limited to the words and phrases in the records. Id.

18. A surveyor conducting a retracement survey should not let any “gaps” influence the course of the survey. Id.

19. A surveyor should not create needless gaps. Id.

20. Thorp testified that Corner 4 was marked by a stone pile.

21. Thorp testified that a stone pile is considered a “monument”.

22. Thorp testified that artificial monuments, such as stone piles, are second in hierarchy for surveying practices only to natural monuments.

23. Thorp testified that there is an iron pin denoted as Corner 5 on Plaintiff’s survey.

24. Thorp testified that the recorded distance of the eastern boundary of Hartle’s tract is 42.5 perches, or 701.25 feet.

25. Thorp testified that the measured distance from Corner 4 to Corner 5 is 706.51 feet.

26. Thorp testified that the variance between the recorded distance and the measured distance is accurate by the professional standards of duly licensed surveyors in Pennsylvania.

27. Thorp refused to accept Corner 4 as the northeast corner of the Hartle property based upon his contention that there is a “gap” between the southern boundary of the Beates Property and the northern boundary of the Gratz property such that the entire Hartle property had to be shifted south.

28. Thorp provides no other basis upon which to discount this monument as the corner of the Hartle property.

29. Thorp’s refusal to accept the monument is contrary to the laws of the Commonwealth of Pennsylvania.

30. Thorp's refusal to accept the monument is contrary to the standards of practice for licensed surveyors.

31. The Michael Miller deed describes the eastern boundary to be 100 perches, or 1,650 feet.

32. Measuring from Corner 1 to Corner 3, as identified on Plaintiff's survey, measures 1,649.89 feet.

33. Corner 3 was a corner set by Nicholas Shirokey in 1989 when he performed a retracement survey for Defendant Harry J. Shive.

34. The Shirokey survey matches the legal description in the chain of title preceding Defendants' ownership of the Shive Property.

35. Thorp testified that Corner 1 is an accurate monument establishing the northeast corner of the Beates Property.

36. Thorp testified that Corner 2 is an accurate monument establishing the eastern point on the Albert/Calvin Berkley-Shive common boundary.

37. Thorp testified that Corner 3 is set at a place that matches the legal description in the original deed conveying title from Reverend Beates to Michael Miller.

38. Thorp testified that he ignored the legal descriptions in the conveyance from the Reverend William Beates to Michael Miller in order to reach his conclusions.

39. Thorp ignored the calls in the deeds and the monument set by Shirokey in order to reach his conclusions.

40. Christian Hartle and Michael Miller are adjacent boundaries to John Miller.

41. The conveyance from Reverend Beates to Christian Hartle identified John Miller as the adjacent boundary to Hartle's north.

42. The conveyance from Reverend Beates to Michael Miller identified John Miller as the adjacent boundary to Michael Miller's south.

43. The conveyance from Reverend Beates to John Miller identifies both Christian Hartle and Michael Miller as adjacent boundaries to the south and to the north, respectively.

44. According to the words and phrases of the recorded documents, Reverend Beates' intention to convey all of his property to Christian Hartle, Michael Miller and John Miller is clear.

45. Thorp's decision to ignore monuments, calls and adjacent boundaries is contrary to the laws of the Commonwealth of Pennsylvania.

46. Thorp's decision to ignore monuments, calls and adjacent boundaries is contrary to the standards of practice for licensed surveyors.

47. Thorp did not use an accepted methodology to reach his conclusions.

48. Thorp's testimony as an expert fails to meet the standards for admissibility as established by the laws of Pennsylvania.

49. Thorp's testimony should be excluded or stricken.

WHEREFORE, Plaintiff Gary L. Berkley respectfully requests that this Honorable Court GRANT his motion to exclude and/or strike the testimony offered by Gary Thorp because it fails to meet the standards established by Pennsylvania law.

Respectfully submitted,

CALDWELL & KEARNS

Date: 12/30/09

By: 

Brett M. Woodburn, Esquire

I.D. No. 81786

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Attorney for Plaintiff, Gary L. Berkley


CERTIFICATE OF SERVICE

AND NOW, this 30th day of December 2009, I hereby certify that I have served the foregoing Post-Trial Motion to the following by depositing a true and correct copy of same in the United States mail, postage prepaid, addressed to:

F. Cortez Bell, III, Esquire
P. O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By:

A handwritten signature in cursive script, appearing to read "Mary McPherson", written over a horizontal line.

04-668/157568

(4)

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

GARY L. BERKLEY,

Plaintiff

vs.

No. 2005-582-CD

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and
wife, PATRICK L. SHIVE and
JO ELLEN SHIVE, husband and
wife,

Defendants

OPINION AND ORDER

The instant matter concerns a boundary line dispute between the Plaintiff Gary L. Berkley and the Defendants Harry J. Shive, Daniel A. Shive, Patrick L. Shive and each of their wives.

The dispute centers around certain property of Plaintiff Berkley and Defendants Shive located in Cooper Township, Clearfield County. At dispute is a pie shaped piece of ground with a maximum width of 74.06 feet which extends from the common line between the parties property at about the centerline of the Shive property and extends Eastward to the point where the properties meet and adjoin the State Game Lands. The balance of the property line, from the center of the Shive property forward (Westward) to the intersection with German Road is no longer in dispute as a result of the purchase of the former Mountain View Center property by F. Cortez Bell, III and his wife, Sandra.

Harry J. Shive and his wife Dorothy moved to the Cooper Township area of Clearfield County in the late 1950's and commenced farming various properties which they both owned and leased. During that time period, some of the property which was farmed was that property

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William A. Shaw
Prothonotary/Clerk of Courts

1cc (610) Atty: Woodburn Bell
1cc D. Mikesell (without memo)
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currently owned by Gary L. Berkley, the Plaintiff herein. At that time the property was owned by the Mikni (Mickney) family and was subsequently conveyed to Leroy and Isabelle Thompson who later sold the property to Anna Mickney, Plaintiff Berkley's predecessor in title. Harry J. Shive, Daniel A. Shive and Patrick L. Shive each testified at trial as to their use of the private road across the then Zizony and later Lundberg property, Defendants Shive predecessor in title, as their access to the area currently owned by the State Game Lands as well as to provide access to the farm fields located on various portions of the Mickney (Thompson) tract. They additionally testified as to the use of the roadway by members of the Zizony and Lundberg families as well as by members of the general public as a dumpsite existed at the rear of the property.

Harry J. Shive eventually purchased the property from the Lundberg estate by deed dated October 19, 1989 and he and his family continued to use the roadway on the property from that time until the present date, subject only to an obstruction which was placed across the roadway by Plaintiff Berkley in 2004. The property was subsequently conveyed by Harry J. Shive to himself and his sons, Daniel A. Shive and Patrick L. Shive by deed dated February 23, 2001. Gary L. Berkley purchased the Mikni / Mickney (Thompson) property by deed dated September 16, 2003. It was during the course of that purchase or immediately thereafter that Plaintiff Berkley had the property surveyed and asserted his purported ownership of the portion of ground which is currently in dispute.

As part of that assertion of ownership, Plaintiff Berkley placed a large Jersey barrier across the roadway in a position that the road could not be used except by driving across a portion of the fields being actively farmed. In June 2004, Plaintiff Berkley filed a complaint with the Pennsylvania State Police which led to a Non Traffic Citation being issued to Harry J. Shive

on June 21, 2004 for Defiant Trespass when he drove around the barrier and continued to drive on the roadway in order to access his picnic ground and camp located on the property that he owned. That citation proceeded to hearing on August 20, 2004 with a finding of not guilty because of the ongoing civil property line dispute. The Defendants Shive, from the time the barrier was placed across the roadway, always had the equipment and ability to move the same but they continued to leave it in place out of consideration for Plaintiff Berkley. They even moved it on one occasion to bring some equipment onto the property and then replaced it in its original position. Finally by letter dated February 11, 2005, the Shives through counsel provided a notification that the barrier needed to be removed within a certain time period otherwise Shive's would remove it. A copy of that letter was introduced as an exhibit at time of trial. The barrier was removed by the Shives in the spring of 2005 consistent with the contents of the letter..

The Plaintiff Berkley commenced this Quiet Title action on April 22, 2005. Following the filing of appropriate responsive and other pleadings by the parties and the completion of discovery the matter was scheduled for Non Jury trial before the Court. Non-Jury trial was held on Thursday, October 29, 2009 at which time testimony was taken.

From the testimony introduced at the time of non-jury trial as well as upon review of the pleadings filed in the matter, it is clear that a valid boundary line dispute exists between the Plaintiff and the Defendants. It is equally clear that the boundary line between the Berkley property and the Shive property was never formally marked, or those markings have long since been lost. The Plaintiff presented as a witness and provided testimony by way of deposition of Nicholas Shirokey. (Plaintiff's Exhibit A) Mr. Shirokey is a registered surveyor who was originally retained by Harry J. Shive in 1989 at the time that he originally purchased what is now

referred to as the Shive tract. During the course of that deposition, Mr. Shirokey was asked by Plaintiff's counsel to mark upon his survey map the location of the pins or existing markers that he found during the course of his work on the matter. He did so by placing small circles around the objects that he found to be already existing. (Shirokey Deposition, p 15) In doing so, Mr. Shirokey stated that he was not sure about the axle which forms the corner of the Mountain View Center property and the Southwestern corner of the Shive tract. He indicated that he may have set that point. (Shirokey Deposition, pp. 15-16, 42-43) The testimony of Harry J. Shive at the time of trial indicates that he provided the axle and that Mr. Shirokey actually set that point. Mr. Shirokey further admitted that he set the iron pin which marks the Southeastern point of the boundary line between Berkley and Shive (Shirokey Deposition, pp. 18, 42). The line established between the two points noted above is the boundary line between the Berkley and Shive tracts, which is the subject of the instant dispute. It is thus agreed by all the parties to the matter that the line was not marked prior to Mr. Shirokey performing his services. The matter for the Court's determination is thus the location of said boundary line between the property of the Plaintiff Berkley and the Defendants Shive.

In making that determination, the Court finds from the testimony presented at trial and the pleadings that certain matters are not in dispute between the parties. The parties are in agreement as to the placement of the Northern boundary line between the Commonwealth of Pennsylvania Game Commission and that premises currently owned by Calvin Berkley and Albert Berkley located to the North of the disputed boundary line area. (Trial Transcript, Testimony of Gary L. Thorp, p. 17, 34) The parties are also in agreement as to the placement of the Southern boundary line between the property owned by Plaintiff Berkley and various other adjoining landowners located to the South of the disputed boundary line area. The individual adjoining

property owners are listed along the bottom line of the survey map presented as an exhibit by Plaintiff Berkley and is also the Southern most line shown on the survey map presented as an exhibit by Defendants Shive. (Trial Transcript, Testimony of Gary L. Thorp, pp. 16-17).

Furthermore there is no dispute as to the Western and Eastern boundary lines of any of the properties involved. The only line in contention is the Northern line of the Berkley tract and the Southern line of the Shive tract.

There is one other point upon which all parties agree, as evidenced from their testimony at the time of trial, and it is that point which has led to the current boundary line dispute. When looking at the William Moore Smith warrant and the conveyances out of said warrant, of which the properties of the Plaintiff and the Defendants are derived, there is simply too much ground contained in the warrant. After all the conveyances are taken out, there is still excess property remaining in the warrant. The entire warrant was ultimately conveyed following the death of William Moore Smith by his executors to Jacob Grantz and Jacob Grantz conveyed the full warrant to Reverend William Beates as recorded in Deed Book D at Page 590 by deed dated October 12, 1832. Reverend Beates then eventually sold out of the warrant four conveyances which account for all of the properties conveyed out of the warrant. The four conveyances out of the warrant were as follows:

1. Reverend William Beates to Christian Hartle as recorded in Deed Book P at Page 435 by deed dated January 22, 1855. This tract is located within the Southern most portion of the warrant and is currently owned as a portion of the property of the Plaintiff Berkley.
2. Reverend William Beates to Michael Miller as recorded in Deed Book P at Page 616 by deed dated January 21, 1856. This tract currently makes up the property of

Calvin Berkley and Albert Berkley and the property of the Defendants Shive which is part of the current dispute.

3. Reverend William Beates to John Miller as recorded in Deed Book P at Page 616 by deed dated January 21, 1856. This tract currently makes up the property of F. Cortez and Sandra Bell (formerly Mountain View Center), the property of Paul and Edna Gable and a portion of the property of the Plaintiff Berkley, including that portion of the Berkley property which is part of the current dispute.
4. Reverend William Beates to John Beates as recorded in Deed Book 12 at Page 351 by deed dated October 28, 1876. This tract currently makes up a portion of the Pennsylvania Game Commission property which borders the properties set forth in 2 and 3 above on the North and the East. Said area is not in dispute.

After allowing for all of the above conveyances, there is still excess property remaining in the warrant with said excess property providing the basis for the current property line dispute. Mr. Thorp testified as to his calculation of the excess and the means by which the same was established and determined that the excess that exists is a pie shaped piece or gap with a maximum width of 74.06 feet. (Trial Transcript, Testimony of Gary L. Thorp, pp. 22-24, 30)

At this point, the disposition as to the disputed 74.06 feet and hence the boundary line between the two properties must be resolved by the Court making a determination as to which of the two surveyor's (Mr. Curtis McKnight for Plaintiff Berkley and Mr. Thorp for Defendants Shive) findings and conclusions are supported by the individual surveys which were completed and the law. In general, the Court found the testimony of Gary Thorpe to be credible and more accurate than that of Mr. McKnight. As such, more weight was assigned to Mr. Thorpe's testimony. Brief mention must be made as to the survey prepared by Nicholas Shirokey as Mr.

McKnight, the surveyor for Berkley, made reference to that survey extensively in his testimony and portions of his opinion appear to be based thereon. It is interesting to note that at the time of the deposition, as counsel for the Defendants Shive was inquiring as to the basis for his opinions and his survey, Mr. Shirokey was discovered during the course of his testimony to be testifying from a document prepared by Mr. McKnight and/or his Engineering firm. (Shirokey Deposition, pp. 33-35) A copy of said documents was made by counsel for the Shives and is attached to the deposition exhibit. After that documents was discovered, his testimony then shifts to making reference to what he probably did, that he did not do certain things and/or I would imagine that I did. (Shirokey Deposition, pp. 36, 37, 38) Upon complete review the Court finds the survey of Mr. Shirokey is of very little use to the Court in resolving the dispute except for the fact that it does establish that any markings as to the disputed area were placed there by Mr. Shirokey and were not found by him during the course of the survey as pre-existing.

The burden in this case is upon the Plaintiff Berkley as the moving party. It is incumbent upon the Plaintiff to establish the correct boundary line and the reasons why the line should be placed in that position. A review of the pleadings in the case and the testimony at trial clearly provides that the basis for the claim of the Plaintiff is the doctrine of senior / junior rights. Such a doctrine provides a certain pecking order in regard to conveyances from the same grantor and that pecking order provides and determines that one title, deed or description is superior to that resulting from a subsequent conveyance. In other words, you must take conveyances of property from a single grantor in order and the first in time must be given full weight before determining what the second conveyance actually transferred. Thompson v. Kauffelt, 110 Pa. 209, 1 A. 267, 268 (Pa. Supreme, 1885); Collins v. Clough, 222 Pa. 472, 71 A. 1077, 1078 (Pa. Supreme, 1909); Wysinski v. Mazzotta, 325 Pa. Super. 128, 472 A. 2d 680, 683 (Pa. Superior, 1984);

Murrer v. American Oil Company, 241 Pa. Super. 120, 359 A.2d 817, 819 (Pa. Superior, 1976); Will v. Piper, 184 Pa. Super. 313, 134 A.2d 41, 44 (Pa. Superior, 1957); Merlino v. Eannotti, 177 Pa. Super. 307, 110 A.2d 783, 787 (Pa. Superior, 1955). In this instance, Plaintiff Berkley is claiming that the Michael Miller deed (Shive tract) was the first recorded and thus that deed is superior to the subsequent recorded deed of the John Miller (Berkley tract). Both deeds are dated the same date and thus Plaintiff Berkley takes the position that the first recorded deed is the superior deed. According to the theory of Plaintiff Berkley, the Michael Miller deed (Shive tract) is plotted on the land first and the provisions and descriptions of that deed are given first priority over any other subsequent conveyance or description contained in any other subsequent deed.. (John Miller deed / Berkley tract) The Plaintiff Berkley interpretation of the doctrine is that the John Miller deed, hence Plaintiff Berkley, takes any remainder left after the plotting of the Michael Miller deed (Shive tract) whether that be a lesser amount of land as is contained in their deed or a greater amount of land. as is contained in their deed.

Such an interpretation is only partially correct and hence the fallacy in Plaintiff Berkley's argument. It is true that Plaintiff Berkley would be left under the doctrine with any remainder after the plotting of the Michael Miller (Shive tract) deed so long as that remainder is the same as or less than the land conveyed and described in their deed. Plaintiff Berkley is not entitled under the doctrine to any excess. The only means by which Plaintiff Berkley could acquire the excess under such a circumstance would be if their deed description were generally in nature and described the Northern portion of their tract generally as "bounded on the north by the Michael Miller" (Shive tract). The Michael Miller deed (Shive tract) is limited by the description in the deed and the John Miller deed (Berkley tract) is also equally limited. John Miller (Berkley tract) is conveyed what was conveyed but cannot expand upon Plaintiff Berkley's deed description to

take in any excess property which was not described in their deed. The doctrine of senior / junior rights is based upon the principle that if a grantor has already conveyed a tract of land, the grantor cannot in a subsequent conveyance convey the same area. Title to a property goes to the first to receive the same within a deed. Hence, there is no problem when the subsequent conveyance conveys exactly the remaining tract of land or any lesser tract of land. That doctrine does not stand for the principle that if there is excess property that said excess belongs to the junior deed holder, as the excess is not included within the description of the junior deed holders property.

Counsel for Plaintiff Berkley took some time cross examining Mr. Thorp as to, and reading portions, of a treatise entitled "Boundary Retracement Principles and Procedures for Pennsylvania" by Knud Everett Hermansen. Mr. Thorp admitted that said treatise is an authoritative treatise in his profession and that he makes use of it from time to time in helping him to identify or reach opinions and conclusions of establishing boundaries. (Trial Transcript, Testimony of Gary L. Thorp, p. 33) That same treatise sets forth the following in regard to senior rights:

"When one or more parcels are conveyed from the same tract by the same grantor (there is always some point in the history of the parcel where this is true) and there is not enough land to accommodate all, the first conveyance has first consideration. What this means is that the title of the later (junior) cannot encompass the title of the earlier (senior) conveyance. From a different perspective, the boundary of the junior transfer must conform to that of the senior transfer in areas where the title is in conflict (overlap). This principle is known as "senior rights" at Page 4-57 Hermansen, Knud Everett. Boundary Retracement Principles and Procedures for Pennsylvania Third Edition. Published by The Pennsylvania Society of Land Surveyors, 1995

As stated, it is important to note that the doctrine of senior / junior title is limited to overlap situations and not to situations in which there is an excess of property. The argument of the Plaintiff Berkley is misplaced. Mr. Thorp attempted to make that known during the course of

his testimony. (Trial Transcript, Testimony of Gary L. Thorp, p. 56) It is interesting to note that the prime thrust and weight of the Plaintiff Berkley's argument and testimony is focused on the placement of the Michael Miller property (Shive tract) as the senior tract while very little of their testimony was placed upon the proper placement of the Christian Hartle tract. (See Reverend Beates conveyance number 1 above, which represent the Northern portion of the Hartle tract) That tract is senior in time and conveyance to both the Michael Miller (Shive tract) and the John Miller (Berkley tract) and therefore its proper placement should take precedence to all subsequent conveyances. If the doctrine of senior / junior title is to be followed it should be followed as to all conveyance out of the William Moore Smith warrant.

Mr. McKnight does place the tract and does so by making reference to a point along what would be the Eastern border of the State Game Commission Lands. Yet in doing so, he does little to confirm that placement with other points which may be relevant to a consideration as to the proper location of the Hartle tract. Mr. Thorp, on the other hand, confirmed the placement of the Hartle tract by obtaining and plotting the other half (Southern portion) of the Hartle tract which was conveyed by a separate deed. That deed is found in Clearfield County Deed Book P at Page 436 which would have been the very next deed after the Reverend Beates to Hartle conveyance. The South line of that deed (Deed Book P at Page 436) sits directly upon that line which both surveyors agree to as being the Southern most line of each survey. There is complete agreement as to the placement of that line by both surveyors. (Trial Transcript, Testimony of Gary L. Thorp, pp. 16-17) Mr. McKnight did not mention nor did he testify as to the placement of that deed. Mr. Thorp noted that the placement of that Southern Hartle deed is consistent and matches up with the properties of the adjoining landowners to the South. Mr. Thorp indicated that very often when an area is in dispute it is best to move outside of the

disputed area and match up adjoining properties to establish known and accepted line or boundaries and then work your way back into the disputed area. (Trial Transcript, Testimony of Gary L. Thorp, p. 29) Once that Southern deed of Hartle is in place then Mr. Thorpe placed the northern tract of Hartle. Placement of that Northern tract of Hartle puts the Northern Hartle line to the South of what was referred to at trial as the access road to Gables camp. That placement matches the two separate hashed marked trees located along that line which were pictured within the photographs introduced by the Defendants Shive as well as the tree line with barbed wire. (Trial Transcript, Testimony of Gary L. Thorp, pp. 21-22) Such facts further confirm the correct placement of that line. Mr. Thorp then continues to proceed in a northward direction to place the John Miller deed (Berkley tract which is in dispute). In a similar fashion, Mr. Thorp found a line on the Northern side of the disputed area upon which both surveyors could agree. That being the line of the State Game Commission and Calvin and Albert Berkley. (Trial Transcript, Testimony of Gary L. Thorp, p. 17, 34) he then plotted in the Michael Miller deed from that line (Shive tract). When plotted in that fashion as has been set forth above, plotting from the South from an agreed to accurate line and from the North from an agreed to accurate line, each of which is consistent with the bounding properties to those lines, a pie shaped gap with a maximum width of 74.06 feet is found to exist between the Michael Miller deed (Shive tract) and the John Miller deed (Berkley tract). (Trial Transcript, Testimony of Gary L. Thorp, pp. 23-24, 30)

Plaintiff Berkley does not acknowledge that the gap exists as he has accounted for the gap by shifting the Christian Hartle tract northward, thus allowing him to move all of his properties northward and hence into Shive by the distance of the excess. If that position is not successful, the argument is then made on behalf of Plaintiff Berkley that due to the doctrine of senior / junior title he should be able to claim the excess.

The real issue before the Court is the disposition of the pie shaped 74.06 foot area between the two properties with that disposition controlling the determination of the disputed property line. What the Court is faced with is what is commonly referred to in boundary retracement language as a "gap." Turning once again to the treatise, Boundary Retracement Principles and Procedures for Pennsylvania, it acknowledges the existence of gaps and notes the following:

"A gap is usually a small, narrow parcel of land, estate, or property which no one actively claims.....A gap is normally the result of inaccuracies in previous descriptions or surveys. The title to the area within the gap normally resides with the owner or heirs for whom the last survey was performed, whether they realize it or not. The law does not arbitrarily remove someone's title because they forgot about it or fail to acknowledge it. Naturally, in performing retracement surveys, minor gaps (and for that matter, overlaps) are frequently found. In some cases, large gaps are encountered. Regardless of the size, the following are three general rules that apply to gaps.

First, the surveyor, in the course of retracing a boundary, should not second guess the intent of the original grantor or surveyor. It may be true that the original grantor had every intention of transferring all of his or her title or that the original surveyor intended to describe all of the grantor's title, yet the surveyor performing the retracement is limited to the words and phrases in the records. Omissions or apparent errors in the descriptions, provided there is no conflict, do not allow a deviation from the established rules of retracing a boundary.....

Second, the surveyor should not let the gap influence the course of the survey. While it is true that title to the gap will enhance the client's property and no one will question the client's claim, the surveyor, and for that matter the client, are bound by the legal procedures and principles for locating boundaries and resolving title problems. A gap involves a question of title which is not within the surveyor's authority to decide.....

Finally, the surveyor must not, from neglect or incompetence, create needless gaps when performing a retracement survey....." at Pages 10-68 - 10-69
Hermansen, Knud Everett. Boundary Retracement Principles and Procedures for Pennsylvania Third Edition. Published by The Pennsylvania Society of Land Surveyors, 1995

Based upon the above there is apparently an acknowledgment within the area of survey procedure and boundary retracement that there are areas of property that can exist between two property lines. Such is the situation with which the Court is faced in this instance. This Court notes that counsel for the Defendants Shive made a significant point with Mr. McKnight as to

how he made the assumption that Reverend Beates meant to convey all of his property at the time of the conveyances to Michael Miller and John Miller. Mr. McKnight got to the point where he indicated in essence in every deed, the grantor who is retaining a portion of his ground and not convey the same should place a reservation of the remainder within the deed. Mr. McKnight needs to make the assumption that all property was conveyed in order to uphold the conclusions of his survey and the position of Plaintiff Berkley. In making the assumption that Reverend Beates conveyed all of his property, Mr. McKnight in essence is violating general rules number 1 and 2 in regard to gaps as has been set forth above. He is assuming that all property was conveyed in the deeds to Michael Miller and John Miller by Reverend Beates and he has no basis to make that assumption other than the fact that the deeds were made on the same date to brothers and contained generally similar acreage.

In essence, the Court has two choices. The Court may quite properly hold that the area of the gap was never conveyed and that legally the pie shaped piece remains the property of the heirs of Reverend Beates. That holding certainly can be supported by the facts of the case and the acknowledgment of both surveyors that an excess of property exists. Such a holding would however create a landlocked no mans land which could not be claimed by either party to the land dispute, and given the location and small size of the piece seems to be an unworkable solution. The other option available to the Court is that described by Mr. Thorp in setting forth the position of the Defendants Shive. Mr. Thorp clearly admits that he divided the pie shaped excess 74.06 feet of ground by providing one half to Defendants Shive and one half to Plaintiff Berkley. (Trial Transcript, Testimony of Gary L. Thorp, pp. 52, 55, 56) The division option provides for continued use of the excess ground in question and acknowledges the assumption made by Mr. McKnight and also desired to be made by Mr. Thorp that the conveyances to Michael Miller

(Shive tract) and to John Miller (Berkley tract) were meant to be equal conveyances and were meant to dispose of all available property in the area belonging to Reverend Beates. Such a holding provides one half of the disputed ground to each of the parties to the proceeding and would appear to be a fair, equitable and workable resolution of the property line dispute.

The standards of practice in Pennsylvania limit prorating or apportioning land to only those circumstances in which, “(1) there are no valid monuments originally set between existing monuments or block corners, (2) there are no senior rights to be considered, and (3) there is excess or deficiency in the boundary distance between the monuments.” RETRACEMENT PRINCIPLES, § 10.3.3.1. Here, the doctrine of senior rights within this subdivision is inapplicable. Therefore, the prorating or apportioning of the pie shaped gap is appropriate in this case.

ORDER

NOW, this 21st day of December, 2009, consistent with the Court’s Opinion; it is the ORDER of this Court as follows:

1. The boundary line between the properties belonging to the parties is hereby determined to be the boundary set by Gary L. Thorp, PLS, in his survey dated April 5, 2004 (revised July 30, 2004), said survey being admitted as Defendants Exhibit 3 at time of non-jury trial. The legal description of the boundary line being as follows:

All that certain piece or parcel or land situated in the Township of Cooper, County of Clearfield, Commonwealth of Pennsylvania bounded and described as follows:

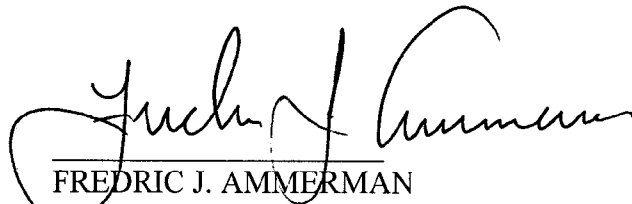
Beginning at a ¾” rebar (set) on the Western line of the Commonwealth of Pennsylvania State Game Lands as described in Deed Book 591 page, 38, said rebar being South 00 Degrees 22 Minutes 13 Seconds West a distance of 825.42 feet thence South 00 Degrees 25 Minutes 30 Seconds West a distance of 861.62 feet from the Northeast corner of Calvin and Albert Berkley as recorded in Deed Book 525 page 699, the said Northeast

corner being the common corner with the Commonwealth of Pennsylvania State Game Lands, said ¾" rebar and place of beginning of the boundary line being the Southeast corner of the Harry J. Shive, Daniel A. Shive and Patrick L. Shive parcel and running:

Thence from said ¾" rebar establishing the boundary line between Harry J. Shive, Daniel A. Shive and Patrick L. Shive and the lands of Gary L. Berkley the line runs North 88 degrees 28 Minutes 08 Seconds West a distance of 1685.05 feet to a ¾" rebar (set) and the end of the property line between the two parties.

2. The Defendants' Counterclaim is hereby DISMISSED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

DEC 21 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/21/09

 You are responsible for serving all appropriate parties.

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

 Plaintiffs X Plaintiff(s) Audrey Obit

 Defendants X Defendant(s) Audrey

 Special Instructions:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GARY L. BERKLEY

-VS-

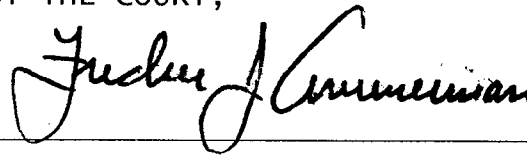
No. 05-582-CD

HARRY J. SHIVE and DOROTHY
L. SHIVE, husband and wife,
DANIEL A. SHIVE and COLLEEN
J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN:
SHIVE, husband and wife

O R D E R

AND NOW, this 29th day of October, 2009, following the completion of the taking of testimony in civil nonjury trial, it is the ORDER of this Court that counsel for both parties have no more than thirty (30) days from this date in which to submit appropriate brief to the Court.

BY THE COURT,



President Judge

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FILED 2cc
012:40301 Atty Woodburn
NOV 02 2009 5cc
William A. Shaw
Prothonotary/Clerk of Courts Atty Bell

FILED

NOV 02 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/2/09

 You are responsible for serving all appropriate parties.
 V 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:

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

GARY L. BERKLEY, :
Plaintiff :
 :
vs. : No. 2005-582-CD
 :
HARRY J. SHIVE and : Type of Case: Civil
DOROTHY L. SHIVE, husband :
and wife, DANIEL A. SHIVE and : Type of Pleading:
COLLEEN J. SHIVE, husband and : Answer to New Matter to
wife, PATRICK L. SHIVE and : Counterclaim
JO ELLEN SHIVE, husband and :
wife, : Filed on Behalf of:
Defendants: Defendants Shive
 :
 : Counsel of Record for This
 : Party:
 : F. Cortez Bell, III, Esq.
 : I.D. #30183
 :
 : 318 East Locust Street
 : P. O. Box 1088
 : Clearfield, PA 16830
 : Telephone: (814) 765-5537
 :
 :
 :

FILED 4cc RAY
0/2.30am Bell
OCT 28 2009

William A. Shaw
Prothonotary/Clerk of Courts

#26

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

GARY L. BERKLEY, :
Plaintiff :
 :
vs. : No. 2005-582-CD
 :
HARRY J. SHIVE and :
DOROTHY L. SHIVE, husband :
and wife, DANIEL A. SHIVE and :
COLLEEN J. SHIVE, husband and :
wife, PATRICK L. SHIVE and :
JO ELLEN SHIVE, husband and :
wife, :
Defendants:

ANSWER TO NEW MATTER TO COUNTERCLAIM

NOW comes the Defendants, Harry J. Shive and Dorothy L. Shive, his wife, Daniel A. Shive and Colleen J. Shive, his wife and Patrick L. Shive and Jo Ellen Shive, his wife, by and through their attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth the Defendant's Answer to New Matter to Counterclaim as follows:

38. Paragraph Thirty Eight of the New Matter to Counterclaim would be denied. The Defendants would specifically aver that they can show that they or their predecessors in title have used the roadway in question in an open manner for a period of at least 21 years. Strict proof of the denied averment set forth in the New Matter would be demanded at time of trial or hearing in this

matter.

39. Paragraph Thirty Nine of the New Matter to Counterclaim would be denied. The Defendants would specifically aver that they can show that they or their predecessors in title have used the roadway in question in a manner which would be adverse to any other owner or purported owner thereof for a period of at least 21 years. Strict proof of the denied averment set forth in the New Matter would be demanded at time of trial or hearing in this matter.

40. Paragraph Forty of the New Matter to Counterclaim would be denied. The Defendants would specifically aver that they can show that they or their predecessors in title have used the roadway in question continuously for a period of at least 21 years. Strict proof of the denied averment set forth in the New Matter would be demanded at time of trial or hearing in this matter.

41. Paragraph Forty One of the New Matter to Counterclaim would be denied. The Defendants would specifically aver that they can show that they or their predecessors in title have used the roadway in question in an notorious and uninterrupted manner for a

period of at least 21 years. Strict proof of the denied averment set forth in the New Matter would be demanded at time of trial or hearing in this matter.

42. Paragraph Forty Two of the New Matter to Counterclaim would be denied. The Defendants would specifically aver that they can tack their claimed use of the roadway in question to their predecessors in interest. Strict proof of the denied averment set forth in the New Matter would be demanded at time of trial or hearing in this matter.

43. Paragraph Forty Three of the New Matter to Counterclaim would be denied. The Defendants would specifically aver that they can and do state or establish a claim for prescriptive easement. Strict proof of the denied averment set forth in the New Matter would be demanded at time of trial or hearing in this matter.

WHEREFORE the Defendants Harry J. Shive and Dorothy L. Shive, his wife, Daniel A. Shive and Colleen J. Shive, his wife and Patrick L. Shive and Jo Ellen Shive, his wife, respectfully request that your Honorable Court find that the Defendants have an easement

over the property in question as a result of a prescriptive
easement.

Respectfully submitted,

By,

F. Cortez Bell, III

F. Cortez Bell, III, Esquire
Attorney for Defendants Shive

VERIFICATION

I F. Cortez Bell, III, Esquire, Counsel for the Defendants Shive do hereby verify that the averments set forth in the foregoing Answer to New Matter to Counterclaim are true and correct to the best of my information, knowledge and belief based upon knowledge and information related to me from my clients the Defendants in the instant matter. The instant verification is being supplied for the purpose so as to allow the filing of the within document and Counsel for the Defendants shall obtain the verification of each of the individual Defendants in the matter with the same being filed with the Court.

FC Bell III
F. Cortez Bell, III

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

GARY L. BERKLEY, :
Plaintiff :
 :
vs. : No. 2005-582-CD
 :
HARRY J. SHIVE and :
DOROTHY L. SHIVE, husband :
and wife, DANIEL A. SHIVE and :
COLLEEN J. SHIVE, husband and :
wife, PATRICK L. SHIVE and :
JO ELLEN SHIVE, husband and :
wife, :
Defendants:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the
foregoing Answer to New Matter to Counterclaim upon the following
person addressed as follows by the following means of service :

By FAX to (717)232-2766 to

Brett M. Woodburn, Esquire
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA 17110-1533

By personal service on October 29, 2009

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants

Date: October 28, 2009

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

GARY L. BERKLEY

vs.

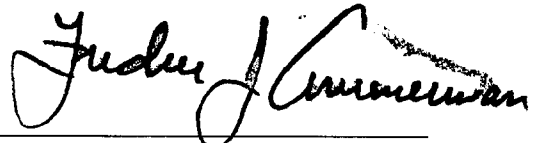
NO. 2005-582-CD

HARRY J. SHIVE and DOROTHY L.
SHIVE, husband and wife,
DANIEL A. SHIVE and COLLEEN J.
SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife

SCHEDULING ORDER

AND NOW, this 23rd day of July 2009, following pre-trial conference, it is
the ORDER of the Court that a Civil Bench Trial shall be and is hereby scheduled in
the above captioned case for the 29th day of October, 2009 at 9:00 o'clock A.M. in
Courtroom #1 of the Court of Common Pleas of Clearfield County, Pennsylvania.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

JUL 23 2009

William A. Shaw
Prothonotary/Clerk of Courts

all Attys:
Woodburn
Bell

(64)

(22)

FILED

JUL 23 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/23/09

___ 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:

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendants

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

:
: NO.: 2005-582-CD

:
: CIVIL ACTION - LAW

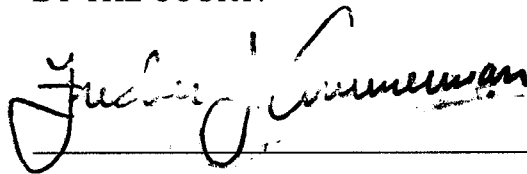
:
: ACTION TO QUIET TITLE

5
FILED
APR 21 2009
0/11:40
William A. Shaw
Prothonotary/Clerk of Courts
2 CEN TO ATT

ORDER OF COURT

AND NOW, this 21st day of April, 2009, upon consideration of the within Motion of Plaintiff, Gary L. Berkley, it is hereby Ordered that the above-referenced matter is continued until wednesday the 22nd day of July, 2009, at 1:30 P.m. in Courtroom # 1 of the Clearfield County Courthouse.

BY THE COURT:



J.

FILED

APR 21 2009

William A. Shaw
Prothonotary/Clerk of Courts

4-11-09
You are responsible for serving all appropriate parties.
X The Prothonotary's office has provided service to the following parties:
Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other _____
Defendant(s) _____ Defendant(s) Attorney _____
Special Instructions: _____

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendants

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

:
:
: NO.: 2005-582-CD
:
:

: CIVIL ACTION - LAW
:
:

: ACTION TO QUIET TITLE

MOTION FOR CONTINUANCE Filed on
Behalf of Gary L. Berkley, Plaintiff

Counsel of Record for this Party:

Brett M. Woodburn, Esquire
Attorney I.D. # 81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Opposing Counsel:

F. Cortez Bell, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

FILED

APR 20 2009

William A. Shaw
Prothonotary/Clerk of Courts

2cc
Bry Woodburn

(60)

23

Brett M. Woodburn, Esquire
Attorney I.D. # 81786
Caldwell & Kearns, P.C.
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661
(717) 232-2766 (fax)
Attorney for Plaintiff, Gary L. Berkley

GARY L. BERKLEY,	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	NO.: 2005-582-CD
	:	
HARRY J. SHIVE and	:	CIVIL ACTION - LAW
DOROTHY L. SHIVE, husband	:	
and wife, DANIEL A. SHIVE and	:	
COLLEEN J. SHIVE, husband and wife,	:	
PATRICK L. SHIVE and JO ELLEN	:	
SHIVE, husband and wife,	:	
Defendants	:	ACTION TO QUIET TITLE

MOTION FOR CONTINUANCE

AND NOW, comes the Plaintiff, Gary L. Berkley, by and through his attorney, Brett M. Woodburn, Esquire, and files this Motion for Continuance and in support thereof, avers as follows:

1. On April 22, 2005, Plaintiff filed a Complaint for Action to Quiet Title, instituting the above-referenced action.
2. On March 23, 2009, the Honorable Fredric J. Ammerman, entered an Order, scheduling a Pre-Trial Conference for Friday, April 24, 2009, at 1:30 p.m., in Judges Chambers of the Clearfield County Courthouse. A true and correct copy is attached hereto as Exhibit "A".

3. Brett M. Woodburn, Esquire, counsel for Gary L. Berkley, will be out of state on the date scheduled for such Pre-Trial Conference, April 24, 2009, and is currently scheduled to return to Pennsylvania on Thursday, May 7, 2009.

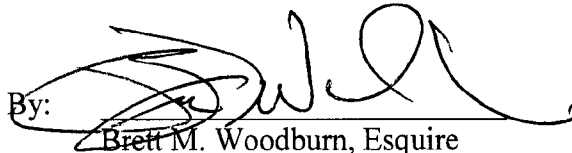
4. Counsel for Plaintiff Gary L. Berkley, respectfully requests a continuance.

5. Counsel for Defendants concurs with the within Motion.

WHEREFORE, it is respectfully requested that this matter be continued to permit counsel for Plaintiff to be present for the Pre-Trial Conference.

Respectfully submitted,

Date: 4/1/09

By: 

Brett M. Woodburn, Esquire
Attorney I.D. # 81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661
Attorney for the Plaintiff

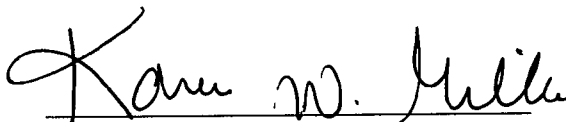
04668-146884

VERIFICATION

I, Karen W. Miller, Esquire, attorney for Plaintiff, hereby verify that the matters contained herein constitute conclusions of law, facts of record and matters exclusively within the knowledge of counsel and is true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. 4904, relating to unsworn falsification to authorities.

Dated: _____

4/8/2009


Karen W. Miller, Esquire

CERTIFICATE OF SERVICE

AND NOW, this 8th day of April 2009, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S.

Mail at Harrisburg, Pennsylvania, postage prepaid, addressed to:

F. Cortez Bell, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By: Nancy Breski

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendants

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

: NO.: 2005-582-CD
:
:
:

: CIVIL ACTION - LAW
:
:
:

: ACTION TO QUIET TITLE

MOTION FOR CONTINUANCE Filed on
Behalf of Gary L. Berkley, Plaintiff

Counsel of Record for this Party:

Brett M. Woodburn, Esquire
Attorney I.D. # 81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Opposing Counsel:

F. Cortez Bell, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

FILED

m 1:30 p.m. GK

APR 16 2009

2CC Atty

5 William A. Shaw
Prothonotary/Clerk of Courts

(GK)

(22)

Brett M. Woodburn, Esquire
Attorney I.D. # 81786
Caldwell & Kearns, P.C.
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661
(717) 232-2766 (fax)
Attorney for Plaintiff, Gary L. Berkley

GARY L. BERKLEY,	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	NO.: 2005-582-CD
	:	
	:	
HARRY J. SHIVE and	:	CIVIL ACTION - LAW
DOROTHY L. SHIVE, husband	:	
and wife, DANIEL A. SHIVE and	:	
COLLEEN J. SHIVE, husband and wife,	:	
PATRICK L. SHIVE and JO ELLEN	:	
SHIVE, husband and wife,	:	
Defendants	:	ACTION TO QUIET TITLE

MOTION FOR CONTINUANCE

AND NOW, comes the Plaintiff, Gary L. Berkley, by and through his attorney, Brett M. Woodburn, Esquire, and files this Motion for Continuance and in support thereof, avers as follows:

1. On April 22, 2005, Plaintiff filed a Complaint for Action to Quiet Title, instituting the above-referenced action.
2. On March 23, 2009, the Honorable Fredric J. Ammerman, entered an Order, scheduling a Pre-Trial Conference for Friday, April 24, 2009, at 1:30 p.m., in Judges Chambers of the Clearfield County Courthouse. A true and correct copy is attached hereto as Exhibit "A".

3. Brett M. Woodburn, Esquire, counsel for Gary L. Berkley, will be out of state on the date scheduled for such Pre-Trial Conference, April 24, 2009, and is currently scheduled to return to Pennsylvania on Thursday, May 7, 2009.

4. Counsel for Plaintiff Gary L. Berkley, respectfully requests a continuance.

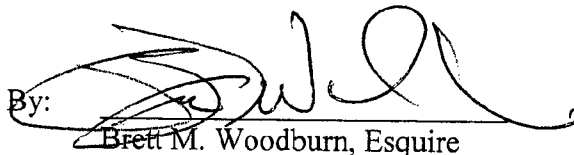
5. Counsel for Defendants concurs with the within Motion.

WHEREFORE, it is respectfully requested that this matter be continued to permit counsel for Plaintiff to be present for the Pre-Trial Conference.

Respectfully submitted,

Date: 4/1/09

By:



Brett M. Woodburn, Esquire

Attorney I.D. # 81786

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Attorney for the Plaintiff

CERTIFICATE OF SERVICE

AND NOW, this 8th day of April 2009, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S.

Mail at Harrisburg, Pennsylvania, postage prepaid, addressed to:

F. Cortez Bell, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By: Nancy Breski

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendants

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

: NO.: 2005-582-CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

ORDER OF COURT

AND NOW, this 16th day of April, 2009, upon consideration of the within Motion of Plaintiff, Gary L. Berkley, it is hereby Ordered that the above-referenced matter is continued until Wednesday the 22nd day of July, 2009, at 1:30 P.m. in ~~Courtroom #~~ of the Clearfield County Courthouse.
Judges Chambers

BY THE COURT:

John J. Zimmerman
J.

FILED

0/2:37:30
APR 17 2009

William A. Shaw
Prothonotary/Clerk of Courts

2cc
Amy Woodburn

(610)

(22)

FILED

APR 17 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/17/09

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:

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

GARY L. BERKLEY

vs.

No. 05-582-CD

HARRY J. SHIVE and DOROTHY L.
SHIVE, husband/wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband/wife, PATRICK L.
SHIVE and JO ELLEN SHIVE, husband/wife

FILED

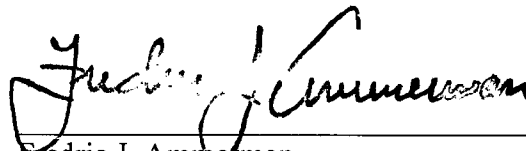
MAR 23 2009
0/3:30/c (610)
William A. Shaw
Prothonotary/Clerk of Courts
CENT TO ATTYS

ORDER

AND NOW, this 23rd day of March, 2009, it is the Order of the
Court that a pre-trial conference in the above-captioned matter shall be and is
hereby scheduled for Friday, April 24, 2009 at 1:30 P.M. in Judges Chambers,
Clearfield County Courthouse, Clearfield, PA.

Woodburn
↓
Brill
w/form

BY THE COURT:



Fredric J. Ammerman
President Judge

DATE: 3-23-09

☒ You are responsible for serving all appropriate parties.

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

☒ Plaintiff(s)

☒ Defendant(s) Attorney

☒ Defendant(s) Attorney

☐ Other

Special Instructions:

FILED

MAR 23 2009

William A. Shaw
 Probationary/Clerk of Courts

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

:
:
: NO.: 2005-582-CD

:
:
: CIVIL ACTION - LAW

:
:
: ACTION TO QUIET TITLE

ORDER

AND NOW, this _____ day of _____, 2009, it is hereby
ordered that, the above-referenced action shall be listed for trial.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

GARY L. BERKLEY

(Plaintiff)

c/o Brett M. Woodburn, Esquire
Caldwell & Kearns

(Street Address)

3631 North Front Street
Harrisburg, PA 17110

(City, State ZIP)

CIVIL ACTION - LAW

No. 2005-582-CD

Type of Case: Action to Quiet Title

Type of Pleading: Certificate of Readiness

VS. HARRY J. SHIVE and DOROTHY L. Filed on Behalf of:

SHIVE, husband/wife, DANIEL A.

SHIVE and COLLEEN J. SHIVE, husband Gary L. Berkley, Plaintiff

/wife, PATRICK L. SHIVE and JO (Plaintiff/Defendant)

(Defendant) ELLEN SHIVE, husband/wife

c/o F. Cortez Bell, III, Esquire

(Street Address)

318 Locust Street, P.O. Box 1088
Clearfield, PA 16830

(City, State ZIP)

FILED

MAR 11 3 30 PM '09
MAR 20 2009

S William A. Shaw (610)
Prothonotary/Clerk of Courts

2CC Atty Woodburn

Brett M. Woodburn, Esquire

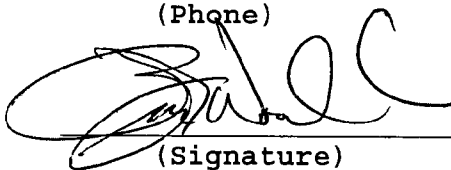
(Filed by)

Caldwell & Kearns
3631 North Front Street
Harrisburg, PA 17110

(Address)

(717) 232-7661

(Phone)



(Signature)

20

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

Civil Trial Listing/Certificate of Readiness

Plaintiff(s): GARY L. BERKLEY

Case Number: 2005-582-CD

Defendant(s): HARRY J. SHIVE and DOROTHY L. SHIVE, husband and wife
DANIEL A. SHIVE and COLLEEN J. SHIVE, husband and wife
PATRICK L. SHIVE and JO ELLEN SHIVE, husband and wife

To the Prothonotary:

Arbitration Limit: _____

Type Trial Requested: _____ Jury

X Non-Jury

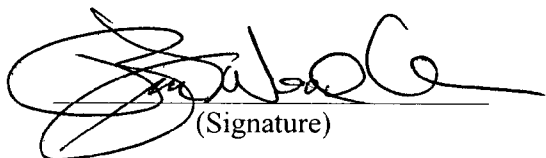
_____ Arbitration

Estimated Trial Time: 1 DAY

Jury Demand Filed By: _____

Date Jury Demand Filed: _____

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 respects 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)

March 18, 2009
(Date)

For the Plaintiff: Brett M. Woodburn, Esquire (717) 232-7661 Telephone Number

For the Defendant: F. Cortez Bell, III, Esquire (814) 765-5537 Telephone Number

For Additional Defendant: _____ Telephone Number

Certification of Current Address for all parties or counsel of record:

Name: <u>Brett M. Woodburn</u>	Address: <u>3631 N. Front St.</u>	City/State/Zip: <u>Harrisburg, PA 17110</u>
Name: <u>F. Cortez Bell, III</u>	Address: <u>318 Locust Street</u>	City/State/Zip: <u>Clearfield, PA 16830</u>
Name: _____	Address: <u>P.O. Box 1088</u>	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

: NO.: 2005-582-CD
:
:
:

: CIVIL ACTION - LAW
:
:
:

: ACTION TO QUIET TITLE

PRAECIPE TO LIST CASE FOR TRIAL

TO THE HONORABLE COURT:

GARY L. BERKLEY, Plaintiff, in the above captioned matter, by and through his counsel, Brett M. Woodburn, Esquire, having properly served his Notice of Praecipe to List Case for Trial upon Defendants on March 5, 2009, and having filed the appropriate Certification attached hereto as Exhibit "A", does praecipe this Court to list the above-action for trial.

Respectfully submitted,

By: 

Brett M. Woodburn, Esquire
Sup. Ct. I.D. No. 81789
3631 North Front Street
Harrisburg, PA 17110-1533
(717) 232-7661 - Phone
(717) 232 - 2766 - Fax
Attorneys for Plaintiff

Date: 3/18/09

CERTIFICATE OF SERVICE

AND NOW, this 15th day of March, 2009, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

F. Cortez Bell, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By Nancy Bruski

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

:
: NO.: 2005-582-CD

:
: CIVIL ACTION - LAW

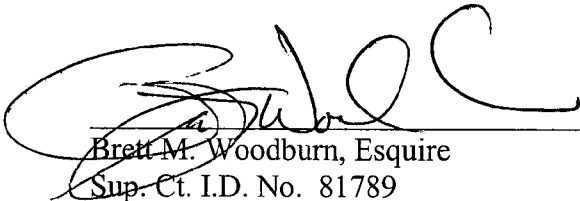
:
: ACTION TO QUIET TITLE

CERTIFICATION TO FILE PRAECIPE FOR TRIAL

I, BRETT M. WOODBURN, ESQUIRE, of Caldwell & Kearns, attorneys for Gary L.

Berkley, hereby certify this 18th day of MARCH, 2009, that:

- (1) No motions in the above-referenced action are outstanding;
- (2) Discovery in the above-referenced action is complete;
- (3) The case is ready for trial;
- (4) This is a non-jury action;
- (5) Notice of the Praecipe for Trial was mailed by first-class mail, postage prepaid, to the counsel for Defendants, F. Cortez Bell, Esq., 318 East Locust Street, P.O. Box 1088, Clearfield, PA 16830, as evidenced by the copy of the letter dated March 5, 2009, attached hereto.



Brett M. Woodburn, Esquire
Sup. Ct. I.D. No. 81789

3631 North Front Street
Harrisburg, PA 17110-1533
(717) 232-7661 - Phone
(717) 232 - 2766 - Fax
Attorneys for Plaintiff

JAMES R. CLIPPINGER
CHARLES J. DEHART, III
JAMES L. GOLDSMITH
P. DANIEL ALTLAND
JEFFREY T. MCGUIRE*
STANLEY J. A. LASKOWSKI
DOUGLAS K. MARSICO
BRETT M. WOODBURN
MICHAEL D. REED
PAULA J. LEICHT
ELIZABETH H. FEATHER
KAREN W. MILLER
DOUGLAS M. OBERHOLSER
*BOARD CERTIFIED CIVIL TRIAL ADVOCATE

CALDWELL & KEARNS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
3631 NORTH FRONT STREET
HARRISBURG, PENNSYLVANIA 17110-1533

OF COUNSEL
CARL G. WASS
JAMES D. CAMPBELL, JR.
THOMAS D. CALDWELL, JR.
(1928-2001)

RICHARD L. KEARNS
RETIRED

717-232-7661
FAX: 717-232-2766
thefirm@caldwellkearns.com

March 5, 2009

F. Cortez Bell, III, Esquire
318 Locust Street
P.O. Box 1088
Clearfield, PA 16830

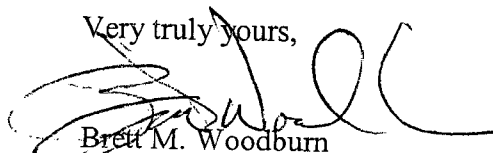
RE: Gary L. Berkley v. Harry J. Shive et al.
Docket No. 2005-582-CD

Dear Attorney Bell:

Enclosed please find a Praecept for Trial and accompanying Certification which we intend to file with the Prothonotary of Clearfield County. Pursuant to Local Rule 212.2, we are providing you with Notice of the proposed documents.

Should you have any questions or concerns, please do not hesitate to contact me. I can be reached by telephone or through e-mail at bwoodburn@caldwellkearns.com.

Very truly yours,


Brett M. Woodburn
CALDWELL & KEARNS

BMW:nb
/Enclosures
cc: Gary L. Berkley
04-688/145702

CERTIFICATE OF SERVICE

AND NOW, this 18th day of March, 2009, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

F. Cortez Bell, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By Nancy Breski

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

GARY L. BERKLEY,
Plaintiff

vs.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and
wife, PATRICK L. SHIVE and
JO ELLEN SHIVE, husband and wife,
Defendants

NO. 05-582-CD

Type of Case: Civil

Type of Pleading:
Certificate of Service
Answer to Interrogatories

Filed on Behalf of:

Harry J. Shive
Dorothy L. Shive
Daniel A. Shive
Colleen J. Shive
Patrick L. Shive
Jo Ellen Shive
Defendants

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

F. CORTEZ BELL, III, ESQUIRE
318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
Telephone: 814-765-5537

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FILED ^{2cc}
08:32 PM
NOV 25 2008
LM
William A. Shaw
Prothonotary/Clerk of Courts

19

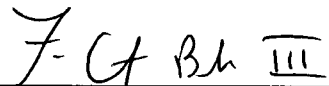
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GARY L. BERKLEY,	:	
Plaintiff	:	
	:	
vs.	:	No. 05-582-CD
	:	
HARRY J. SHIVE and	:	
DOROTHY L. SHIVE, husband	:	
and wife, DANIEL A. SHIVE and	:	
COLLEEN J. SHIVE, husband and	:	
wife, PATRICK L. SHIVE and	:	
JO ELLEN SHIVE, husband and wife,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer to Interrogatories upon the person set forth below by mailing a copy thereof by United States Postal Service Express Mail, postage prepaid, addressed as follows:

Mr. Brett M. Woodburn, Esquire
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA. 17110


F. Cortez Bell, III, Esquire
Attorney for Defendants Shvie

Dated: November 25, 2008

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

GARY L. BERKLEY,
Plaintiff

vs.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and
wife, PATRICK L. SHIVE and
JO ELLEN SHIVE, husband and wife,
Defendants

NO. 05-582-CD

Type of Case: Civil

Type of Pleading:
Certificate of Service
Answer to Request for
Production of Documents

Filed on Behalf of:
Harry J. Shive
Dorothy L. Shive
Daniel A. Shive
Colleen J. Shive
Patrick L. Shive
Jo Ellen Shive
Defendants

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

F. CORTEZ BELL, III, ESQUIRE
318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
Telephone: 814-765-5537

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FILED ^{acc}
018:32/521 Atty Bell
NOV 25 2008
William A. Shaw
Prothonotary/Clerk of Courts

#15

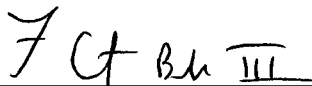
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GARY L. BERKLEY,	:	
Plaintiff	:	
	:	
vs.	:	No. 05-582-CD
	:	
HARRY J. SHIVE and	:	
DOROTHY L. SHIVE, husband	:	
and wife, DANIEL A. SHIVE and	:	
COLLEEN J. SHIVE, husband and	:	
wife, PATRICK L. SHIVE and	:	
JO ELLEN SHIVE, husband and wife,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer to Request for Production of Documents upon the person set forth below by mailing a copy thereof by United States Postal Service Express Mail, postage prepaid, addressed as follows:

Mr. Brett M. Woodburn, Esquire
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA. 17110


F. Cortez Bell, III, Esquire
Attorney for Defendants Shvie

Dated: November 25, 2008

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

:
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: NO.: 2005-582-CD

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: CIVIL ACTION - LAW

:
:
: ACTION TO QUIET TITLE

FILED

OCT 29 2008

0/8:30/11
William A. Shaw
Prothonotary/Clerk of Courts

1 CENT TO ATTY

ORDER

AND NOW, this 28th day of October, 2008, upon consideration of Plaintiff's Motion to Compel Answers to Discovery, said Motion is hereby GRANTED and the Defendants, Harry J. Shive, Dorothy L. Shive, Daniel A. Shive, Coleen J. Shive, Patrick L. Shive, and Jo Ellen Shive are ORDERED to answer the Plaintiff's Interrogatories and Request for Production of Documents in full, within thirty (30) days of the date of this Order, or suffer sanctions.

BY THE COURT:

Justice J. Cunningham
J.

17

I hereto certify that the foregoing and all contents of the original statement used in this case.

OCT 29 2008

Attest.

William A. Shaw
Prothonotary
Clerk of Courts

FILED
OCT 29 2008
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10-29-08

☒ 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:

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

:
:
: NO.: 2005-582-CD

:
:
: CIVIL ACTION - LAW

:
:
: ACTION TO QUIET TITLE

ORDER

AND NOW, this _____ day of _____, 2008, upon consideration of the foregoing motion, it is hereby ordered that:

1. A rule is issued upon the respondents to show cause why Plaintiff, Gary L. Berkley, is not entitled to the relief requested;
2. The respondents shall file an answer to the petition within ____ days of this date;
3. The petition shall be decided under Pa. R.C.P. 206.7;
4. Depositions and all other discovery shall be completed within ____ day of this date;
5. An evidentiary hearing on disputed issues of material fact shall be held on _____, in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____;
6. Argument shall be held on _____, in courtroom No. ____ of the Clearfield County Courthouse; and
7. Notice of the entry of this order shall be provided to all parties by the moving party.

By the Court:

J.

Distribution:

Brett M. Woodburn, Esquire, 3631 North Front Street, Harrisburg, PA 17110
F. Cortez Bell, Esquire, 318 East Locust Street, P.O. Box 1088, Clearfield, PA 16830

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

: NO.: 2005-582-CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

FILED ^{icc}
m 11/24/08/ Amy
OCT 27 2008 Miller
§ William A. Shaw
Prothonotary/Clerk of Courts (6/12)

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the instant Motion to Compel Discovery pursuant to Pa. R.C.P. 4006(a) and 4009.12. In support of this motion Plaintiff avers as follows:

1. On or about April 18, 2005, Gary L. Berkley ("Plaintiff") filed a Complaint against Defendants Harry J. Shive, Dorothy L. Shive, Daniel A. Shive, Coleen J. Shive, Patrick L. Shive, and Jo Ellen Shive (Defendants) in an action to quiet title.

2. On or about September 5, 2008, Plaintiff served Interrogatories on Defendants' counsel.

3. On or about September 5, 2008, Plaintiff served Plaintiff's Request for Production of Documents on Defendants' counsel.

4. On or about October 7, 2008, Plaintiff sent a letter to Defendant's counsel requesting a response to Plaintiff's Interrogatories and Request for the Production of Documents and noted that a failure to respond would result in Plaintiff's filing of a Motion to Compel Discovery.

#110

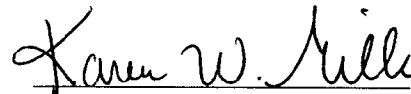
5. To date, Plaintiff has not received a response to Plaintiff's Interrogatories or his Request for the Production of Documents.

WHEREFORE, Plaintiff Gary L. Berkley respectfully requests that this Honorable Court GRANT this Motion to Compel and ORDER Defendants, Harry J. Shive, Dorothy L. Shive, Daniel A. Shive, Coleen J. Shive, Patrick L. Shive, and Jo Ellen Shive, to answer the Plaintiff's Interrogatories and Request for Production of Documents of September 5, 2008, within ten (10) days of the date of this Court's Order.

Respectfully Submitted

CALDWELL & KEARNS

By:



Brett M. Woodburn, Esquire

Attorney I.D. # 81789

Karen W. Miller, Esquire

Attorney I.D. # 200037

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Attorney for the Plaintiff

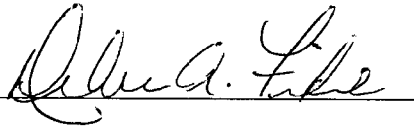
Date: October 23, 2008

CERTIFICATE OF SERVICE

AND NOW, this 23rd day of October, 2008, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

F. Cortez Bell, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By 

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

:
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: NO.: 2005-582-CD
:
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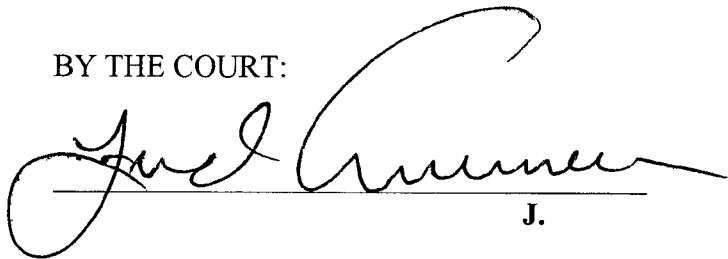
: CIVIL ACTION - LAW
:
:

: ACTION TO QUIET TITLE

ORDER

AND NOW, this 28 day of July, 2006, upon consideration of Plaintiff's Motion to Compel Answers to Discovery, said Motion is hereby GRANTED and the Defendants, Harry J. Shive, Dorothy L. Shive, Daniel A. Shive, Coleen J. Shive, Patrick L. Shive, and Jo Ellen Shive are ORDERED to answer the Plaintiff's First Set of Interrogatories and First Request for Production of Documents in full, within thirty (30) days of the date of this Order, or suffer sanctions.

BY THE COURT:


J.

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FILED 2cc
2005-582-CD
JUL 31 2006
Amy Woodburn
ER

William A. Shaw
Prothonotary/Clerk of Courts

15

William A. Shaw
Prothonotary/Clerk of Courts

FILED
JUL 31 2006

DATE: 7/31/06

☒ 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:

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

: NO.: 2005-582-CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

FILED

JUL 27 2006
m/11:40
William A. Shaw
Prothonotary/Clerk of Courts
2 cfm. to Atty

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the instant Motion to Compel Discovery pursuant to Pa. R.C.P. 4006(a) and 4009.12. In support of this motion Plaintiff avers as follows:

1. On or about April 18, 2005, Gary L. Berkley ("Plaintiff") filed a Complaint against Defendants Harry J. Shive, Dorothy L. Shive, Daniel A. Shive, Coleen J. Shive, Patrick L. Shive, and Jo Ellen Shive (Defendants) in an action to quiet title.

2. On or about June 1, 2006, Plaintiff served his First Set of Interrogatories on Defendants' counsel.

3. On or about June 14, 2006, Plaintiff served Plaintiff's First Request for Production of Documents on Defendants' counsel.

4. On or about July 17, 2006, Plaintiff sent a letter to Defendant's counsel requesting a response to Plaintiff's Interrogatories and Request for the Production of Documents and noted that a failure to respond would result in Plaintiff's filing of a Motion to Compel Discovery.

5. On July 22, 2006, Plaintiff's counsel e-mailed Defendants' counsel at Chip@clearnet.net about the outstanding Discovery Responses.

6. To date, Plaintiff has not received a response to Plaintiff's Interrogatories or his Request for the Production of Documents.

WHEREFORE, Plaintiff Gary L. Berkley respectfully requests that this Honorable Court GRANT this Motion to Compel and ORDER Defendants, Harry J. Shive, Dorothy L. Shive, Daniel A. Shive, Coleen J. Shive, Patrick L. Shive, and Jo Ellen Shive , to answer the Plaintiff's First Set of Interrogatories and First Request for Production of Documents within ten (10) days of the date of this Court's Order.

Respectfully Submitted

CALDWELL & KEARNS

By:


Brett M. Woodburn, Esquire

Attorney I.D. # 81789

Douglas L. Cassel, Esquire

Attorney I.D. # 92895

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Attorney for the Plaintiff

Date:

7/25/06

CERTIFICATE OF SERVICE

AND NOW, this 25th day of July, 2006, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

F. Cortez Bell, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By Nancy Breski

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendants

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

:
:
: NO.: 2005-582-CD

:
: CIVIL ACTION - LAW

:
: Type of Pleading:
: Reply to New Matter and
: Counterclaim

:
: Filed on Behalf of:
: Gary L. Berkley, Plaintiff

:
: Counsel of Record for this Party:

:
: Brett M. Woodburn, Esquire
: Attorney I.D. #81786
: Caldwell & Kearns
: 3631 North Front Street
: Harrisburg, PA 17110
: Telephone: (717) 232-7661

04-668/97992

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FEB 08 2006

William A. Shaw
Prothonotary/Clerk of Courts

#14

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendants

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

: NO.: 2005-582-CD
:

: CIVIL ACTION - LAW
:

: ACTION TO QUIET TITLE

NOTICE TO PLEAD

To: Harry J. and Dorothy L. Shive
Daniel A. Shive and Colleen J. Shive
Patrick L. Shive and Jo Ellen Shive

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Reply to New Matter and Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire

Attorney I.D. #81786

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Dated: 2/3/06

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

: NO.: 2005-582-CD
:

: CIVIL ACTION - LAW
:

: ACTION TO QUIET TITLE

REPLY TO NEW MATTER AND COUNTERCLAIM

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Reply to New Matter and Counterclaim; and in support thereof avers as follows:

Plaintiff hereby incorporates, by reference, as if set forth in full, the allegations set forth in Paragraphs 1 through 17 Plaintiff's Amended Complaint.

18. Paragraph 18 does not contain factual averments; therefore, no response is required.

19. Denied. After reasonable investigation, Plaintiff is without sufficient information to determine the truth or accuracy of the averments of this paragraph, and strict proof thereof is demanded at time of trial.

20. Denied. After reasonable investigation, Plaintiff is without sufficient information to determine the truth or accuracy of the averments of this paragraph, and the same are hereby denied with strict proof thereof demanded at time of trial.

21. Admitted in part, denied in part. It is admitted that there is a quit claim deed from Calvin E. Berkley, Margaret M. Berkley, Albert V. Berkley and Shirley A. Berkley, as grantors, to Harry and Dorothy Shive, Daniel and Colleen Shive and Patrick and Jo Ellen Shive, with Instrument No. 200501732. The remaining averments of this paragraph are denied. The deed is a document that speaks for itself, and any attempts by Defendants to characterize or interpret the same are specifically denied, with strict proof thereof demanded at time of trial.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an Order forever barring the Defendants Harry J. Shive and Dorothy L. Shive, husband and wife, Daniel A. Shive and Colleen J. Shive, husband and wife, and Patrick L. Shive and Jo Ellen Shive, husband and wife, from asserting any right, title or interest in and to the subject property inconsistent with the interest or claim of ownership of the subject property by the Plaintiff herein, and further enjoining the Defendants from denying, impeaching or in any other way attacking Plaintiff's unencumbered ownership interest in the subject property.

REPLY TO COUNTERCLAIM

Plaintiff hereby incorporates by reference, as if set forth in full, Paragraphs 1 through 17 of his Amended Complaint, and Paragraphs 18 through 21 of his Reply to New Matter.

22. This paragraph does not contain any factual averments; therefore, no response is required.

23. Denied. Exhibit A is a document that speaks for itself, and any attempts by Defendants to characterize or interpret the same are specifically denied, with strict proof thereof demanded at time of trial.

24. Admitted in part, denied in part. It is admitted that there is a quit claim deed from Calvin E. Berkley, Margaret M. Berkley, Albert V. Berkley and Shirley A. Berkley, as grantors,

to Harry and Dorothy Shive, Daniel and Colleen Shive and Patrick and Jo Ellen Shive, with Instrument No. 200501732. The remaining averments of this paragraph are denied. The deed is a document that speaks for itself, and any attempts by Defendants to characterize or interpret the same are specifically denied, with strict proof thereof demanded at time of trial.

25. Admitted in part, denied in part. It is admitted that Plaintiff acquired land as identified by a deed recorded at Instrument No. 200317439. The remaining averments of this paragraph are denied. The deed is a document that speaks for itself, and any attempts by Defendants to characterize or interpret the same are specifically denied, with strict proof thereof demanded at time of trial.

26. Admitted in part, denied in part. It is admitted that Plaintiff blocked access to the roadway which, by survey, is believed and, therefore, averred to be entirely on Plaintiff's property. It is specifically denied that Plaintiff blocked Defendants' access to their property, and strict proof thereof is demanded at time of trial.

27. Denied. Plaintiff seeks to have Defendants ejected from property owned by him.

28. Denied. After reasonable investigation, Plaintiff is without sufficient information to determine the truth or accuracy of the averments of Paragraph 28, and the same are hereby denied, with strict proof thereof demanded at time of trial.

29. Denied. The survey is a document that speaks for itself, and any attempts by Defendants to characterize or interpret the same are specifically denied, with strict proof thereof demanded at time of trial. By way of further answer, it is believed, and therefore averred, that the survey commissioned by Defendants does not accurately or correctly reflect the common boundary line between Plaintiff and Defendants.

30. Denied. The averments of this paragraph are specifically denied, with strict proof thereof demanded at time of trial. By way of further answer, Plaintiff is seeking to eject Defendants from property owned by Plaintiff.

31. Denied. The averments of this paragraph are specifically denied, with strict proof thereof demanded at time of trial.

32. Admitted.

33. Paragraph 33 does not contain any factual averments; therefore, no response is deemed necessary.

34. Denied. The averments of this paragraph are comprised of conclusions of law to which no response is deemed necessary, and strict proof thereof is demanded at time of trial. By way of further answer, Plaintiff is without sufficient information to determine the truth or accuracy of the averments of this paragraph, and the same are hereby denied, with strict proof thereof demanded at time of trial.

35. Denied. Plaintiff is without sufficient information to determine the truth or accuracy of the averments of this paragraph, and the same are hereby denied, with strict proof thereof demanded at time of trial. By way of further answer, the averments of this paragraph are comprised of conclusions of law to which no response is deemed necessary, and the same are hereby denied, with strict proof thereof demanded at time of trial.

36. Admitted in part, denied in part. Plaintiff admits that he knew Defendants were using the roadway. The remaining averments of this paragraph are specifically denied, with strict proof thereof demanded at time of trial.

37. Denied. The averments of this paragraph are comprised of conclusions of law to which no response is deemed necessary, and strict proof thereof is demanded at time of trial.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an Order forever barring the Defendants Harry J. Shive and Dorothy L. Shive, husband and wife, Daniel A. Shive and Colleen J. Shive, husband and wife, and Patrick L. Shive and Jo Ellen Shive, husband and wife, from asserting any right, title or interest in and to the subject property inconsistent with the interest or claim of ownership of the subject property by the Plaintiff herein, and further enjoining the Defendants from denying, impeaching or in any other way attacking Plaintiff's unencumbered ownership interest in the subject property.

NEW MATTER TO COUNTERCLAIM

Plaintiff hereby incorporates by reference, as if set forth in full, Paragraphs 1 through 17 of his Amended Complaint, Paragraphs 18 through 21 of his Reply to New Matter, and Paragraphs 22 through 37 of his Reply to Counterclaim.

38. It is believed, and therefore averred, that Defendants have not used the roadway in question in an open manner for a period of 21 years.

39. It is believed, and therefore averred, that Defendants have not used the roadway in question adversely for a period of 21 years.

40. It is believed, and therefore averred, that Defendants have not used the roadway in question continuously for a period of 21 years.

41. It is believed, and therefore averred, that Defendants have not used the roadway in question notoriously and uninterruptedly for a period of 21 years.

42. It is believed, and therefore averred, that Defendants cannot tack their claimed use of the roadway in question to their predecessors in interest.

43. Defendants fail to state a claim for prescriptive easement.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an Order forever barring the Defendants Harry J. Shive and Dorothy L. Shive, husband and wife, Daniel A. Shive and Colleen J. Shive, husband and wife, and Patrick L. Shive and Jo Ellen Shive, husband and wife, from asserting any right, title or interest in and to the subject property inconsistent with the interest or claim of ownership of the subject property by the Plaintiff herein, and further enjoining the Defendants from denying, impeaching or in any other way attacking Plaintiff's unencumbered ownership interest in the subject property.

Respectfully submitted,

CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire

Attorney I.D. #81789

Douglas L. Cassel, Esquire

Attorney I.D. #92895

3631 North Front Street

Harrisburg, PA 17110

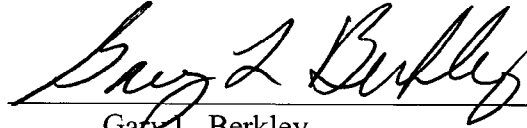
(717) 232-7661

Attorney for Plaintiff

Dated: 2/3/06

VERIFICATION

I, Gary L. Berkley, verify that the averments in this document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. 4904, relating to unsworn falsification to authorities.



Gary L. Berkley

04-668/96442

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the within document this 3rd day of February, 2006, on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

F. Cortez Bell, III, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

CALDWELL & KEARNS

By: _____

Nancy L. Breski

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

GARY L. BERKLEY,
Plaintiffs

vs.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and
wife, PATRICK L. SHIVE and
JO ELLEN SHIVE, husband and wife,
Defendants

: No. 05-582-CD
:
: Type of Case: Civil
:
: Type of Pleading:
: Answer, New Matter and
: Counterclaim
:
: Filed on Behalf of:
: Harry J. Shive
: Dorothy L. Shive
: Daniel A. Shive
: Colleen J. Shive
: Patrick L. Shive
: Jo Ellen Shive
: Defendants
:
: Counsel of Record for this
: Party
:
: F. Cortez Bell, III, Esquire
: I.D. #30183
:
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814)765-5537
:

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NOV 09 2005
F. Cortez Bell
William A. Shaw
Prothonotary, Clerk of Courts

(13)

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

GARY L. BERKLEY,	:
Plaintiff	:
	:
v.	: NO. 05-582-CD
	:
HARRY J. SHIVE and	:
DOROTHY L. SHIVE, husband	:
and wife, DANIEL A. SHIVE and	:
COLLEEN J. SHIVE, husband and	:
wife, PATRICK L. SHIVE and	:
JO ELLEN SHIVE, husband and wife:	:
Defendants	:

NOTICE TO PLEAD

To: Gary L. Berkley, Plaintiff

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

FC Bell III
F. Cortez Bell, III, Esquire
Attorney for Defendants
Harry J. Shive and Dorothy L.
Shive; Daniel A. Shive and
Colleen J. Shive; Patrick L.
Shive and Jo Ellen Shive

DATED: November 9, 2005

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

GARY L. BERKLEY,	:
Plaintiff	:
	:
v.	: NO. 05-582-CD
	:
HARRY J. SHIVE and	:
DOROTHY L. SHIVE, husband	:
and wife, DANIEL A. SHIVE and	:
COLLEEN J. SHIVE, husband and	:
wife, PATRICK L. SHIVE and	:
JO ELLEN SHIVE, husband and wife:	:
Defendants	:

ANSWER, NEW MATTER AND COUNTERCLAIM TO
PLAINTIFF'S AMENDED COMPLAINT

NOW comes the Defendants, Harry J. Shive and Dorothy L. Shive, Daniel A. Shive and Colleen J. Shive, Patrick L. Shive and Jo Ellen Shive, by and through their attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth their Answer, New Matter and Counterclaim to Plaintiff's Amended Complaint and avers as follows:

ANSWER

1. Paragraph One of the Amended Complaint is admitted.
2. Paragraph Two of the Amended Complaint is admitted.
3. Paragraph Three of the Amended Complaint is admitted.
4. Paragraph Four of the Amended Complaint is admitted.

5. Paragraph Five of the Amended Complaint is admitted to the extent stated. It would be further averred that said deed is recorded to Instrument Number 200317439.

6. Paragraph Six of the Amended Complaint is admitted in part and denied in part. It is admitted that said Harry J. Shive acquired title to that parcel of land located in Cooper Township and found at Tax Map # 110-T06-004 by deed dated October 19, 1989 as was recorded on October 19, 1989. It would be denied that said deed is recorded to Deed and Record Volume 1309 at Page 202. It would be averred that said deed is recorded to Deed and Record Volume 1309 at Page 199. It would be further denied that at any point in time said Harry J. Shive conveyed an unrecorded interest to his spouse, Dorothy L. Shive. Said Dorothy L. Shive merely joined in any subsequent conveyance as the current spouse of said Harry J. Shive to assure that complete title was conveyed. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

7. Paragraph Seven of the Amended Complaint is admitted to the extent stated. It would be further averred that said deed is recorded to Instrument Number 200102650.

8. Paragraph Eight of the Amended Complaint is admitted to the extent stated. It would be further averred that said deed is recorded to Instrument Number 200501734.

9. Paragraph Nine of the Amended Complaint is admitted.

10. Paragraph Ten of the Amended Complaint is denied as stated. It would be further averred that the Plaintiff has attempted to claim property owned by the Defendants. Strict proof thereof of the denied averment would be demanded at time of trial or hearing in this matter.

11. Paragraph Eleven of the Amended Complaint is denied as being not relevant to the instant proceeding. It would be averred that while property owned by Mountain View Center, Inc. is adjacent to properties owned by the Plaintiff and the Defendants, said adjoining areas in regard to the properties are not in dispute. Additionally, the adjoining portion of the Plaintiff's property and that of Mountain View have no relation whatsoever to the area of the Defendant's property which the Plaintiff is claiming. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

12. Paragraph Twelve of the Amended Complaint can be neither admitted nor denied as the same is wholly within the knowledge of the Plaintiff. The Defendants, following investigation, are without sufficient knowledge, information or belief such that an admission or denial can be made. To the extent that a response is required, the Defendants would deny the averments of Paragraph Twelve of the Amended Complaint and would demand strict proof

thereof at the time of trial or hearing in this matter.

13. Paragraph Thirteen of the Amended Complaint is specifically denied. It is specifically denied that the Plaintiff is the owner of the area where the private road is located as well as that the Plaintiff owns other portions of the Defendants' tract of land. Strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

14. Paragraph Fourteen of the Amended Complaint is specifically denied as stated. The Plaintiff is asserting a claim adverse to the property owned by the Defendants as well as to the private road which is located on the Defendants' property. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

15. Paragraph Fifteen of the Amended Complaint is denied. It is specifically denied that the Defendants are not the owners of the property in question. The Defendants are the full owners of the tract of land in question and strict proof of the denied averment of the Amended Complaint would be demanded at time of trial or hearing in this matter.

16. Paragraph Sixteen of the Amended Complaint is denied as stated. Any dispute as to the tract of land and the ownership thereof arises as a result of the Plaintiff's assertion of ownership of property owned by the Defendants. It is

specifically denied that the Plaintiff is the owner of any portion of the tract of land purported to be in question. Strict proof of the denied averment of the Amended Complaint would be demanded at time of trial or hearing in this matter.

17. Paragraph Seventeen of the Amended Complaint is admitted.

WHEREFORE the Defendants respectfully request that your Honorable Court enter an Order dismissing the Amended Complaint filed by the Plaintiff, affirming the ownership of the tract of land in question by the Defendants and awarding the Defendants counsel fees, costs and expenses associated with regard to the defense of the instant matter.

NEW MATTER

NOW comes the Defendants, Harry J. Shive and Dorothy L. Shive, Daniel A. Shive and Colleen J. Shive, Patrick L. Shive and Jo Ellen Shive, by and through their attorney, F. Cortez Bell, III, Esquire who respectfully set forth their New Matter to the Plaintiff's Amended Complaint and aver as follows:

18. Paragraphs 1 through 17 of the Answer to Plaintiff's Amended Complaint set forth above would be incorporated herein by reference as if the same were set forth in full at length.

19. That within the Defendants' chain of title and the

predecessors in interest within the Defendant's chain there was a premises which was located upon the property of the Defendants for which the roadway asserted by the Plaintiffs Amended Complaint within Paragraphs Thirteen and Fourteen was the sole source of access to said premises.

20. That said roadway has been in continuous use by the Defendants or their predecessors in title for a period in excess of twenty-one years.

21. That an additional deed within the Defendants' chain of title is that quitclaim deed from Calvin E. Berkley and Margaret M. Berkley, his wife and Albert V. Berkley and Shirley A. Berkley, his wife as Grantors to Harry J. Shive and Dorothy L. Shive, his wife, Daniel A. Shive and Colleen J. Shive, his wife, and Patrick L. Shive and Jo Ellen Shive, his wife as Grantees dated December 17, 2004 as was recorded in the Office of the Recorder of Deeds of Clearfield County on February 7, 2005 at Instrument Number 200501732.

WHEREFORE the Defendants respectfully request that your Honorable Court enter an Order dismissing the Amended Complaint filed by the Plaintiff, affirming the ownership of the tract of land in question by the Defendants and awarding the Defendants counsel fees, costs and expenses associated with regard to the defense of the instant matter.

COUNTERCLAIM

NOW comes the Defendants, Harry J. Shive and Dorothy L. Shive, Daniel A. Shive and Colleen J. Shive, Patrick L. Shive and Jo Ellen Shive, by and through their attorney, F. Cortez Bell, III, Esquire who respectfully set forth their Counterclaim to the Plaintiff's Amended Complaint and aver as follows:

22. Paragraphs 1 through 21 of the Answer and New Matter to Plaintiff's Amended Complaint set forth above would be incorporated herein by reference as if the same were set forth in full at length.

23. That the Defendants, Harry J. Shive and Dorothy L. Shive, Daniel A. Shive and Colleen J. Shive, Patrick L. Shive and Jo Ellen Shive acquired title to a parcel of land located in Cooper Township, Clearfield County, Pennsylvania bearing Tax Map Number 110-T06-004 be deed dated October 19, 1989 as was recorded in the Office of the Recorder of Deeds of Clearfield County on October 19, 1989 at Deed and Record Volume 1309 at Page 199. Attached hereto and incorporated herein by reference as Exhibit A is a complete copy of said deed.

24. That an additional deed within the Defendants' chain of title is that quitclaim deed from Calvin E. Berkley and Margaret M. Berkley, his wife and Albert V. Berkley and Shirley A. Berkley, his wife as Grantors to Harry J. Shive and Dorothy L.

Shive, his wife, Daniel A. Shive and Colleen J. Shive, his wife, and Patrick L. Shive and Jo Ellen Shive, his wife as Grantees dated December 17, 2004 as was recorded in the Office of the Recorder of Deeds of Clearfield County on February 7, 2005 at Instrument Number 200501732. Attached hereto and incorporated herein by reference as Exhibit B is a complete copy of said deed.

25. That the Plaintiff, Gary L. Berkley acquired title to a parcel of land located in Cooper Township, Clearfield County, Pennsylvania bearing Tax Map Number 110-T06-006 by deed dated September 16, 2003 as was recorded in the Office of the Recorder of Deeds of Clearfield County on September 26, 2003 at Instrument Number 200317439. Attached hereto and incorporated herein by reference as Exhibit C is a complete copy of said deed.

26. That the Plaintiff, Gary L. Berkley as a result of his claimed ownership set forth in Paragraph 25 above, blocked the Defendants access to their property along the private road referred to in Paragraphs 19 and 20 of the New Matter by barricade.

27. That the Plaintiff, Gary L. Berkley claims ownership of a portion of the Defendants property.

28. That the Defendants in preparation for the Subdivision of their property retained the services of Curry & Associates, Registered Surveyors, who prepared a survey of the Defendants

complete property and prepared a Map thereof dated April 5, 2004 which has been filed of record within the Office of the Recorder of Deeds of Clearfield County at Instrument Number 200500062 on January 3, 2005.

29. As a result of the survey, it was determined that the private roadway and the property asserted to be owned by the Plaintiff, Gary L. Berkley, fell within that area of property owned by the Defendants.

30. Plaintiffs claim of an interest and/or stake in said property as set forth within the Paragraphs above and within the Plaintiff's Complaint is adverse to the ownership of the Defendants as said claimed property is wholly or partially within the property of the Defendants.

31. Plaintiff's claim is without any right whatsoever, and Plaintiff has no right, estate, title, lien or interest in or to the property or any part thereof.

32. As a result of the above, there is an apparent dispute as to the ownership of a certain tract of land in the area of the borderline between the property of the Plaintiff and the Defendants.

33. Defendants respectfully request that your Honorable Court forever determine all rights, liens, title or interest in the land and determine the validity or discharge of all

documents, obligations, or deeds affecting any right, lien, title interest in said land.

34. That the use of the private roadway and area in question by the Defendants and their predecessors has been hostile, open, notorious and continuous as to the Plaintiff's property throughout the ownership of the Defendants and their predecessors in title.

35. That said private roadway and area in question has been in existence and use by the Defendants and their predecessors in title for a period in excess of twenty-one (21) years.

36. That the Plaintiff, Gary L. Berkley, has been aware of the existence and use of the roadway and area in question by the Defendants and their predecessors in title.

37. That the Defendants would aver that in light of the previous existence and use of the roadway and area in question by themselves and their predecessors in title and that the same has been open, notorious, hostile and continuous for a period in excess of twenty-one (21) years that the Defendants can not now be precluded from the use and enjoyment of said roadway and area as the Defendants have acquired a Prescriptive Easement over the same.

WHEREFORE the Defendants respectfully request that your Honorable Court enter an Order forever barring the Plaintiff,

Gary L. Berkley, from asserting any right, title, or interest in and to the subject property inconsistent with the interest or claim of ownership of the subject property by the Defendants herein and further enjoining the Plaintiff from denying, impeaching or in any other way attacking Defendants' unencumbered ownership interest in the subject property. In the alternative, the Defendants would respectfully request that your Honorable Court enter a declaratory judgment finding that the Defendants have an easement over the property of the Plaintiff as a result of an prescriptive easement.

Respectfully submitted,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants

Vol 1309-199

BOOK-Condition-Township-County-1989

Vol 1309-199

Book by The Philadelphia Co. Philadelphia Pa. 17701

This Indenture,

MADE the 19th day of October
eighty-nine (1989).

in the year of our Lord, nineteen hundred and

BETWEEN ESTATE OF L. RUDOLPH LUNDBERG a/k/a RUDOLPH LUNDBERG, by
COUNTY NATIONAL BANK, Executor, GRANTOR and Party of the First Part,

AND

HARRY J. SHIVE, an individual, of P. O. Box 64, Drifting, Clearfield
County, Pennsylvania 16834, GRANTEE and Party of the Second Part.

WHEREAS, the said L. Rudolph Lundberg became in his lifetime
lawfully seized in the hereinafter described real estate; and being
thereof so seized made his Last Will and Testament, in writing dated
March 23, 1988, wherein he appointed the County National Bank as
Executor; and

WHEREAS, the said L. Rudolph Lundberg died the 11th day of January,
1989, and the said Last Will and Testament was duly probated on the
20th day of January, 1989, and is now of record in the Office of the
Register of Wills, in and for Clearfield County, filed to No.

NOW THIS INDENTURE WITNESSETH; That the said GRANTOR

for and in consideration of the sum of

Fifty Thousand One Hundred Twenty One (\$50,121.00)-----Dollars

lawful money of the United States, to it well and truly paid by the said Grantee

at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, by virtue of the
power granted by law, has granted, bargained, sold, aliened, released and confirmed, and by these presents
does grant, bargain, sell, alien, release and confirm unto the said Harry J. Shive, his
heirs

and assigns,

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

EXHIBIT

A

VOL 1309 PAGE 260

BEGINNING at an iron pin located in a stone pile on line of State Game Lands #100. Said point is also the Southeast corner of Calvin and Albert Berkley; thence along State Game Lands #100, South no degrees, twenty-two minutes, ten seconds West (S 0° 22' 10" W) eight hundred twenty five feet (825.0') to an iron pin; thence along lands of Leroy Thompson and Mountain View Center, Inc. North eighty-nine degrees, six minutes, thirty seconds West (N 89° 06' 30" W) two thousand six hundred and sixty and fourteen hundredths feet (2660.14') to an axle in Township Road #728 and on line of John Harvey. Said point is the Northwest corner of Mountain View Center, Inc.; thence along lands of John Harvey, North one degree no minutes East (N 1° 00' E) eight hundred thirty three and twenty five hundredths feet (833.25') more or less, to an iron pin and also the Southwest corner of Calvin and Albert Berkley; thence along lands of Calvin and Albert Berkley, South eighty-eight degrees, fifty-five minutes, forty-five seconds East (S 88° 55' 45" E) two thousand six hundred fifty-one and six hundredths feet (2651.06') to an iron pin in Stone pile and place of beginning.

BEING the same premises as vested in L. Rudolph Lundberg and Kathleen S. Lundberg, his wife, by Deed dated December 13, 1982, and recorded in Clearfield County in Deed Book Volume 866, at Page 01, thereafter the said Kathleen S. Lundberg died January 30, 1988, thus vesting complete title to the within described premises in L. Rudolph Lundberg.

WEST BRANCH SCHOOL DISTRICT

1% REALTY TRANSFER TAX

AMOUNT \$ 501.21

PAID 10-19-89 MICHAEL R. LYTLE

Date

Agent

VOL 1300-201

TOGETHER with all and singular
ways, ways, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever therein
belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and
also all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever of
L. Rudolph Lundberg a/k/a Rudolph Lundberg
in law, equity, or otherwise, howsoever, of, in, to, or out of the same.

TO HAVE AND TO HOLD the said described parcel

hereditaments and premises hereby granted and released, or mentioned and intended so to be, with the appur-
tenances unto the said Harry J. Shive,
his heirs and assigns, to and for the only proper use and behoof of the said
Harry J. Shive, his heirs and assigns, forever.

AND the said Harry J. Shive

for him, and his heirs, executors and administrators,
do covenant, promise and agree, to and with the said Harry J. Shive

his heirs and assigns, by these presents, that they the said
Executors have not done, committed, or knowingly, or willingly suffered to be done or committed, any act, matter
or thing whatsoever whereby the premises hereby granted, or any part thereof, is, are, shall or may be impeached,
charged or incumbered, in title, charge, estate or otherwise howsoever.

IN WITNESS WHEREOF, The said Grantor

hereunto set its hand and seal the day and

year first above written.

IN THE PRESENCE OF:

ESTATE OF L. RUDOLPH LUNDBERG
a/k/a RUDOLPH LUNDBERG
COUNTY NATIONAL BANK, EXECUTOR
(SEAL)

Nancy J. Fisk
Audrey C. Fisk

By: *Paul E. Lundberg* (SEAL)

(SEAL)

(SEAL)

I hereby certify that the precise address of the grantee

herein is:

- P. O. Box 64 -
- Drifting, PA 16834 -

Betty L. Shive

(Attest for)

Vol 1309-202

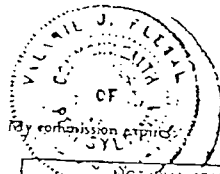
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

On this the 19th day of October, A.D. 1989,
before me Valarie J. Flegal
the undersigned officer, personally appeared

Donald Edwin Shawley, Trust Officer for County National Bank, Execu- known to me
tor for the Estate of L. R. Lundberg
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument

and acknowledged that he executed the same for the purposes therein contained.

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



Valarie J. Flegal

NOTARY SEAL
VALARIE J. FLEGAL, Notary Public
Clearfield County, Clearfield County, Pa.
My Commission Expires Dec. 31, 1992

GUARDIAN, TRUSTEE or EXECUTOR
ESTATE OF L. RUDOLPH
LUNDBERG a/k/a RUDOLPH
LUNDBERG

TO

HARRY J. SHIVE

1989

Dated

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 11:40 A.M. 10-19-89
BY HARRY J. SHIVE
FEES 13.50
Michael R. Lytle, Recorder

MILLER & MASON
ATTORNEYS AT LAW
P.O. BOX 78
PHILIPSBURG, PA 16864

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

RECORDED on this 19th day of OCT.

A.D. 1989, in the Recorder's Office of the said County, in Deed Book No.
1307 page 177

Given under my hand and the seal of the said office, the day and year above said.

Michael R. Lytle

My Commission Expires
First Monday in January, 1992

Entered of Record OCT. 19, 1989 11:40 A.M. Michael R. Lytle, Recorder

State Tax 50.21
Wish-Burner 50.250.61
County Tax 250.60

CLEARFIELD COUNTY RECORDER OF DEEDS

Karen L. Starck, Recorder
Maurene Inlow - Chief Deputy
P.O. Box 361
1 North Second Street, Suite 103
Clearfield, Pennsylvania 16830

***RETURN DOCUMENT TO:**

BELL, SILBERBLATT & WOOD
P.O. BOX 670
CLEARFIELD, PA 16830

Instrument Number - 200501732
Recorded On 2/7/2005 At 2:47:39 PM

* Instrument Type - DEED

* Total Pages - 6

Invoice Number - 124544

* Grantor - BERKLEY, CALVIN E

* Grantee - SHIVE, HARRY J

* Customer - BELL, SILBERBLATT & WOOD

Affidavit No. 38103

*** FEES**

STATE WRIT TAX	\$0.50
JCS/ACCESS TO JUSTICE	\$10.00
RECORDING FEES -	\$18.00
RECORDER	
RECORDER IMPROVEMENT	\$3.00
FUND	
COUNTY IMPROVEMENT FUND	\$2.00
TOTAL	\$33.50

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



Karen L. Starck
Karen L. Starck
Recorder of Deeds

THIS IS A CERTIFICATION PAGE

Do Not Detach

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

* - Information denoted by an asterisk may change during the verification process and may not be reflected on this page.

EXHIBIT

B

THIS INDENTURE

MADE the 17th day of December, 2004, between Calvin E. Berkley and Margaret M. Berkley, his wife, of R.D. #2, Box 54, Morrisdale, Clearfield County, Pennsylvania 16858 and Albert V. Berkley and Shirley A. Berkley, 1030 Edwards Drive, Delaware County, Pennsylvania 19064 (hereinafter called Grantors),

AND

Harry J. Shive and Dorothy L. Shive, his wife, of 321 Summit Road, Drifting, Clearfield County, Pennsylvania 16834; Patrick L. Shive and Jo Ellen Shive, his wife, of 402 Firehouse Road, Drifting, Clearfield County, Pennsylvania 16834 and Daniel A. Shive and Colleen J. Shive, his wife, of 428 Firehouse Road, Drifting, Clearfield County, Pennsylvania 16834, (hereinafter called Grantees).

WITNESSETH, That the said Grantors in consideration of One (\$1.00) Dollar, paid to the Grantors by the Grantees, the receipt of which is hereby acknowledged does remise, release, and quit-claim unto the said Grantees, and to their heirs, successors and assigns, forever,

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

BEGINNING at a point, said point being within the rights of way of Township Road T-728, also known as German Road, said point being South 00 degrees 29 minutes 51 seconds West a distance 842.36 feet from a 3/4" iron stake (found), said iron stake being on the Southern line of lands of the Pennsylvania State Game

Lands Number 100 as described in Deed Book 591 page 38, said place of beginning being the Northwest corner of the lands now being assessed to Harry J. Shive, Patrick Shive and Daniel Shive and being identified according to the Clearfield County Tax Assessment Office as Parcel Number 110-T06 -00004 and running: thence along the agreed to line between the Grantors and Grantees herein South 88 degrees 53 minutes 10 seconds East passing through a 3/4" rebars (set) at distances of 287.77 feet and 304.61 feet and passing through a 1" pipe (found) at a distance of 2643.28 feet and continuing on for a total distance of 2643.66 feet to a point and end of said agreed boundary line between the Grantors and Grantees herein, said point being on the Western line of lands of the Pennsylvania State Game Lands Number 100.

Said line as set forth and described above being the Northern line of lands of the Grantees now being assessed to Harry J. Shive, Patrick L. Shive and Daniel A. Shive and being identified according to the Clearfield County Tax Assessment Office as Parcel Number 110-T06-00004 and being located between the properties of the Grantees and the Grantors and the said Grantors specifically remise, release, deed and quitclaim unto the Grantees, their heirs, successors and assigns all property located South of said line and to specifically include all property as is currently assessed in the names of the Grantees as is mapped and assessed at Clearfield County Tax Assessment Office Parcel Number 110-T06-00004.

To have and to hold all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantors to and for the use of the said Grantees, their heirs, successors and assigns forever.

NOTICE-THIS DOCUMENT MAY NOT (DOES NOT) SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE (HAVE) THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY 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 OR RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED,

EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P. L. 984, as amended].

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: _____

This _____ day of _____

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

Calvin E. Berkley
Calvin E. Berkley

Margaret M. Berkley
Margaret M. Berkley

Albert V. Berkley
Albert V. Berkley

Shirley A. Berkley
Shirley A. Berkley

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

On this 13th day of ~~December~~ ^{JANUARY}, 2005, before me, the undersigned officer, personally appeared Calvin E. Berkley and Margaret M. Berkley, 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 purposes therein contained.

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


Title of Officer


COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF ~~CLEARFIELD~~
~~DELAWARE~~ :

MICHAEL A. RUDELLA
District Justice, State of Pennsylvania
No. 46-3-03, Clearfield County
Term Expires Jan. 3, 2006

On this 17th day of December, 2004, before me, the undersigned officer, personally appeared Albert V. Berkley and Shirley A. Berkley, 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 purposes therein contained.

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

Notarial Seal
Lawrence Pellegrino, Notary Public
Ridley Twp., Delaware County
My Commission Expires Mar. 28, 2005
Member, Pennsylvania Association of Notaries


Title of Officer

(Notary)
12-17-04

CERTIFICATE OF RESIDENCE

I do hereby certify that the precise residence of
Grantees is 402 Firehouse Road, Drifting, Pennsylvania 16834.

F. C. B. III
Attorney for Grantees

County Parcel No.: 110-T6-7
110-T6-7.1
110-T6-6

RECORDED
2003/03/11 11:44 AM
GARY L. BERKLEY
CLERK OF THE COUNTY
CLEARFIELD COUNTY
CLEARFIELD, PA
Not Notary

This Deed

MADE the _____ day of _____ in the year Two Thousand and three (2003).

BETWEEN ANNA MICKNEY, a widow, of 5427 Baptist Road, Pittsburgh, Pennsylvania, 15236, hereinafter referred to as the "GRANTOR";

-And-

GARY L. BERKLEY, of 147 Loop Road, West Decatur, Pennsylvania, 16878, hereinafter referred to as the "GRANTEE".

WITNESSETH, that in consideration of the sum of Two Hundred Fifty-eight Thousand (\$258,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey unto the Grantee, his successors and assigns forever,

ALL those certain tracts or parcels of ground situate in Cooper Township, Clearfield County, Pennsylvania, bounded and described as follows:

The First Thereof:

BEGINNING at a stone corner, thence by land surveyed to John Andrews, North one degree East seventy three and one half perches to a post by a Pine; thence North eighty eight degrees West, seven perches to a post by a White Oak; thence by lands now or formerly of Brown and Bassert, South, two degrees West, one hundred and sixteen perches to a stone heap; thence by land now or formerly of John Pemp, South eighty eight degrees East, one hundred and fifty nine perches to the place of beginning. CONTAINING seventy acres and seventy one perches, and allowances. Being part of a larger tract of land surveyed on a warrant granted to Casper Haines.

The Second Thereof:

BEGINNING at a stone corner by a Pine, thence South one and one half degrees West, forty two and one half perches to a post; thence North eighty eight degrees West, one hundred and fifty perches to a post; thence North one degree East, forty two and one half perches to a post; thence South eighty eight degrees East, one hundred and fifty perches to the place of beginning. CONTAINING thirty seven acres and one hundred perches and allowances.

EXHIBIT

C

The Third Thereof:

BEGINNING at a post on line of lands of Joseph Olinger; thence by said lands North, eighty-four degrees West, seven hundred thirty-eight (738) feet of a post; thence by private road, North, eleven and one half degrees East, thirteen hundred and seventy-four (1374) feet more or less to a post; thence by same North, seventy degrees East, forty-five (45) feet to a post; thence by same, North, fourteen degrees East, Two Hundred and Eighty-nine (289) feet to a post; thence by lands of John Zezony, South, eighty-four degrees East, nine hundred and sixty-six (966) feet more or less to a post; thence South, nineteen and one-half degrees West, Seventeen Hundred and Sixteen (1716) feet more or less to a post; and place of beginning. CONTAINING thirty-four (34) acres and ninety (90) perches, more or less.

The Fourth Thereof:

BEGINNING at a post on the line of lands of John Zezony; thence by same, South 84 degrees, East, six hundred and ninety-three (693) feet, more or less to a post; thence by lands of the Herman Beates Estate, North 5 degrees West, nine hundred and nine (909) feet more or less to a post; thence North 84 degrees West, nine hundred and one (901) feet more or less to a post; thence North, 19 ½ degrees East, nine hundred and thirty-five (935) feet more or less to a post and place of beginning. CONTAINING 16 acres and 100 perches more or less.

UNDER AND SUBJECT TO all exceptions and reservations contained in prior deeds of record in the chain of title.

ALSO UNDER AND SUBJECT TO a previous conveyance to Paul R. Gable, et al. of a parcel described in that Deed of Paul R. Gable and Eula M. Gable dated August 24, 1992 and recorded in Clearfield County Deeds and Records Book Volume 1481 at page 110.

BEING the same premises conveyed to Anna Mickney, the grantor herein by Deed of Isabel Thompson, a/k/a Isabelle Thompson dated August 1, 2002 and recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument Number 200212636.

TOGETHER with all and singular, the improvements, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of the said parties of the first part in law, equity, or otherwise, howsoever, of, in, and to the same and every part thereof.

TO HAVE AND HOLD the said hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances unto the said party of the second part, their heirs, executors, administrators, and assigns, to and for the only proper use and behoof of the said party of the second part, their heirs, executors, administrators, and assigns, FOREVER.

NOTICE

in accordance with the provisions of "The Bituminous Coal Act of 1935" and the Conservation Act of 1965" We, the undersigned, grant and warrant that we know and understand that we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the subsidence of the land may be protected from damage due to mine subsidence by a private contract which is in the interest of the economic interest in the coal. We further certify that this certification is not in contravention with that in the deed proper and is printed in large and bold type and in the word "notice" printed in twenty-four point type.

Witness:

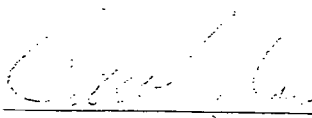
This _____ day of _____

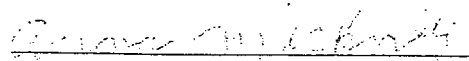
THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE, OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY 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 Grantor will SPECIALLY warrant and forever defend the property hereby conveyed.

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

Sealed and delivered
in the presence of:

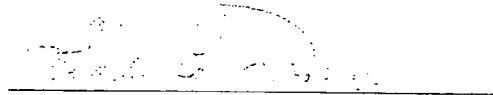


 {SEAL}
Anna Mickney

Commonwealth Of Pennsylvania :
: SS.
County Of Clearfield :

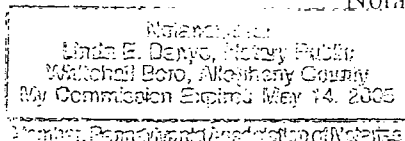
On this, the ____ day of _____, 2003, before me, the undersigned authority, personally appeared ANNA MICKNEY, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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



Notary Public

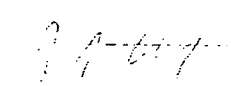
My Commission Expires:



Certificate of Residence

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

Gary L. Berkley
147 Loop Road
West Decatur, PA 16878




Agent or Attorney for Grantees

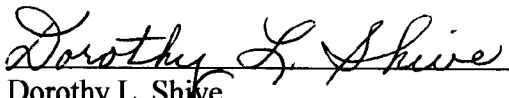
VERIFICATION

We, Harry J. Shive and Dorothy L. Shive verify that the statements made within the foregoing 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., Section 4904, relating to unsworn falsifications to authorities.

Date: 11-6-2005



Harry J. Shive

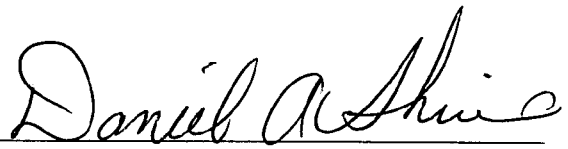


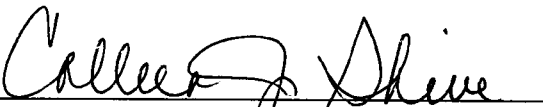
Dorothy L. Shive

VERIFICATION

We, Daniel A. Shive and Colleen J. Shive verify that the statements made within the foregoing 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., Section 4904, relating to unsworn falsifications to authorities.

Date: 11-6-2005

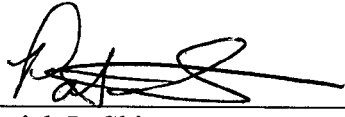

Daniel A. Shive


Colleen J. Shive

VERIFICATION

We, Patrick L. Shive and Jo Ellen Shive verify that the statements made within the foregoing 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., Section 4904, relating to unsworn falsifications to authorities.

Date: 11-6-2005



Patrick L. Shive



Jo Ellen Shive

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

GARY L. BERKLEY, :
Plaintiff :
 :
v. : NO. 05-582-CD
 :
HARRY J. SHIVE and :
DOROTHY L. SHIVE, husband :
and wife, DANIEL A. SHIVE and :
COLLEEN J. SHIVE, husband and :
wife, PATRICK L. SHIVE and :
JO ELLEN SHIVE, husband and wife: :
Defendants :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of
the Answer, New Matter and Counterclaim to Plaintiff's Amended
Complaint upon the following person by mailing such copy first
class mail, postage prepaid, addressed as follows:

Mr. Brett M. Woodburn, Esquire
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA 17110

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants
Harry J. Shive and Dorothy L.
Shive; Daniel A. Shive and
Colleen J. Shive; Patrick L.
Shive and Jo Ellen Shive

DATED: November 9, 2005

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

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife; DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband
and wife; PATRICK L. SHIVE
and JO ELLEN SHIVE, husband
and wife,
Defendants

:
:
:
: NO. 05-582-CD
:
: Type of Case: Civil
:
: Type of Pleading: Acceptance
: of Service
:
: Filed on Behalf of:
: Defendants
:
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
:
: F. Cortez Bell, III, Esquire
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814)765-5537
:
:

⁴FILED 3cc
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OCT 10 2005
William A. Shaw
Prothonotary/Clerk of Courts
Amy Bell

812

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

GARY L. BERKLEY,	:
Plaintiff	:
	:
v.	: NO. 05-582-CD
	:
HARRY J. SHIVE and	:
DOROTHY L. SHIVE, husband	:
and wife; DANIEL A. SHIVE and	:
COLLEEN J. SHIVE, husband	:
and wife; PATRICK L. SHIVE	:
and JO ELLEN SHIVE, husband	:
and wife,	:
Defendants	:

ACCEPTANCE OF SERVICE

I, F. Cortez Bell, III, Esquire, do hereby accept service of and acknowledge receipt of a filed copy of the Amended Complaint in the above captioned case on behalf of each of the Defendants set forth in the caption above.

Date: October 10, 2005

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Counsel for Defendants

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

GARY L. BERKLEY,	:
Plaintiff	:
	:
v.	: NO. 05-582-CD
	:
HARRY J. SHIVE and	:
DOROTHY L. SHIVE, husband	:
and wife; DANIEL A. SHIVE and	:
COLLEEN J. SHIVE, husband	:
and wife; PATRICK L. SHIVE	:
and JO ELLEN SHIVE, husband	:
and wife,	:
Defendants	:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the Acceptance of Service upon the following person by mailing such copy first class mail, postage prepaid, and by FAX addressed as follows:

Mr. Brett M. Woodburn, Esquire
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA 17110

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants

DATED: October 10, 2005

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

:

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: NO.: 2005-582-CD

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: CIVIL ACTION - LAW

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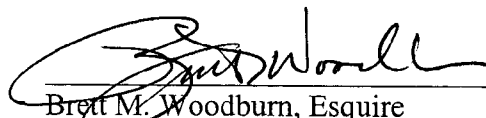
: ACTION TO QUIET TITLE

PRAECIPE TO SUBSTITUTE VERIFICATION

TO THE PROTHONOTARY:

Kindly substitute the attached Verification for the Attorney Verification filed with
Plaintiff's Amended Complaint Upon an Action to Quiet Title.

CALDWELL & KEARNS



Brett M. Woodburn, Esquire
Attorney I.D. No. 81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Date

8/30/05

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SEP 02 2005

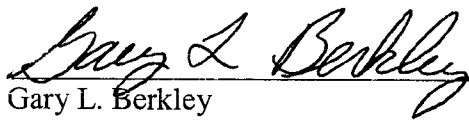
William A. Shaw
Prothonotary/Clerk of Courts

211

VERIFICATION

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

By:


Gary L. Berkley

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the within document this 31 day of August, 2005, on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Chip Bell, Esquire
318 Locust Street
P.O. Box 670
Clearfield, PA 16830

CALDWELL & KEARNS

By: 

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

:
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: NO.: 2005-582-CD

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: CIVIL ACTION - LAW

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:
: ACTION TO QUIET TITLE

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

David S. Meholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

FILED^{CP} NOCC
m11:03BN
JUL 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

#10

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

: NO.: 2005-582-CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

A V I S O

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

David S. Meholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife, DANIEL A. SHIVE and
COLLEEN J. SHIVE, husband and wife,
PATRICK L. SHIVE and JO ELLEN
SHIVE, husband and wife,
Defendant

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

:
:
: NO.: 2005-582-CD
:
:

: CIVIL ACTION - LAW
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: ACTION TO QUIET TITLE

AMENDED COMPLAINT UPON AN ACTION TO QUIET TITLE

AND NOW, comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Complaint Upon an Action to Quiet Title; and in support thereof, avers as follows:

1. The Plaintiff, Gary L. Berkley, ("Plaintiff"), is an adult individual currently residing at 147 Loop Road, West Decatur, Clearfield County, Pennsylvania, 16878.
2. The Defendants, Harry J. Shive and Dorothy L. Shive, husband and wife, ("Defendants Harry and Dorothy Shive") are adult individuals currently residing at 321 Summit Road, Drifting, Clearfield County, Pennsylvania 16834.
3. The Defendants, Daniel A. Shive and Colleen J. Shive, husband and wife, ("Defendants Daniel and Colleen Shive"), are adult individuals currently residing at 428 Firehouse Road, Drifting, Clearfield County, Pennsylvania 16834.
4. The Defendants, Patrick L. Shive and Jo Ellen Shive, husband and wife, ("Defendants Patrick and Jo Ellen Shive"), are adult individuals currently residing at 402 Firehouse Road, Drifting, Clearfield County, Pennsylvania 16834.

5. The Plaintiff acquired title to a parcel of land, Parcel No. 110-T6-6, by deed located in Cooper Township, Clearfield County, Pennsylvania, such Deed being dated September 16, 2003, and recorded in the Recorder of Deeds office of Clearfield County on September 26, 2003. Said parcel is contained in said Deed as being "The Third Thereof" and "The Fourth Thereof" and is described as follows:

The Third Thereof:

BEGINNING at a post on line of lands of Joseph Olinger; thence by said lands North, eighty-four degrees West, seven hundred thirty-eight (738) feet of a post; thence by private road, North, eleven and one half degrees East, thirteen hundred and seventy-four (1374) feet more or less to a post; thence by same North, seventy degrees East, forty-five (45) feet to a post; thence by same, North, fourteen degrees East, Two Hundred and Eighty-nine (289) feet to a post; thence by lands of John Zezony, South, eighty-four degrees East, nine hundred and sixty-six (966) feet more or less to a post; thence South, nineteen and one-half degrees West, Seventeen Hundred and Sixteen (1716) feet more or less to a post; and place of beginning. CONTAINING thirty-four (34) acres and ninety (90) perches, more or less

The Fourth Thereof:

BEGINNING at a post on the line of lands of John Zezony; thence by same, South 84 degrees, East, six hundred and ninety-three (693) feet, more or less to a post; thence by lands of the Herman Beates Estate, North 5 degrees West, nine hundred and nine (909) feet more or less to a post; thence North 84 degrees West, nine hundred and one (901) feet more or less to a post; thence North, 19 ½ degrees East, nine hundred and thirty-five (935) feet more or less to a post and place of beginning. CONTAINING 16 acres and 100 perches more or less.

A true and correct copy of the Deed is attached hereto as Exhibit "A" and incorporated herein by reference.

6. Defendant Harry Shive, who purportedly later conveyed an unrecorded interest to his wife, Defendant Dorothy Shive, acquired title to a parcel of land, Parcel No. 110-T6-004, by deed located in Cooper Township, Clearfield County, Pennsylvania, such Deed being dated October 19, 1989, and recorded in the Recorder of Deeds office of Clearfield County on October

19, 1989, in Record Book 1309, Page 202. *A true and correct copy of the Deed is attached hereto as Exhibit "B" and incorporated herein by reference.*

7. Defendants Harry and Dorothy Shive later conveyed the property referenced in the preceding paragraph, Parcel No. 110-T6-004, by deed located in Cooper Township, Clearfield County, Pennsylvania, to Defendant Daniel Shive in a 5% undivided interest, Defendant Patrick Shive in a 48% undivided interest, and Defendant Harry Shive in a 47% undivided interest, with such Deed being dated February 23, 2001, and recorded in the Recorder of Deeds Office of Clearfield County on February 23, 2001. *A true and correct copy of the Deed is attached hereto as Exhibit "C" and incorporated herein by reference.*

8. Defendants Harry and Dorothy Shive, Daniel and Colleen Shive, and Patrick and Jo Ellen Shive, subsequently conveyed a portion of that property referenced in the two preceding paragraphs, Parcel No. 110-T6-004, by deed located in Cooper Township, Clearfield County, Pennsylvania, to Todd A. Shive and Nicole L. Shive, husband and wife, pursuant to the Shive Subdivision dated April 5, 2004, and shown on subdivision map prepared by Curry & Associates as was recorded in the Office of the Register and Recorder of Deeds of Clearfield County on January 3, 2005 at Instrument Number 200500062, with such Deed being dated February 1, 2005, and recorded in the Recorder of Deeds Office of Clearfield County on February 7, 2005. *A true and correct copy of the Deed is attached hereto as Exhibit "D" and incorporated herein by reference.*

9. The aforementioned Deed to Todd A. Shive and Nicole L. Shive, husband and wife, conveyed property known as Parcel 1 of the Shive Subdivision dated April 5, 2004, which is not in dispute, and therefore Todd A. Shive and Nicole L. Shive are not parties to this litigation.

10. A dispute exists between Plaintiff and Defendants regarding the boundary line between the parties property.

11. Both parties also border property owned by Mountain View Center, Inc., known as Parcel No. 110-T6-005, which was acquired by deed dated October 27, 1975, said deed being recorded in the Clearfield County Recorder of Deeds Office on October 28, 1975, in Record Book 709, Page 162. *A true and correct copy of Mountain View Center, Inc.'s, Deed is attached hereto as Exhibit "E" and incorporated herein by reference.*

12. On or about December 17, 2003, Plaintiff ordered a survey to be conducted of the subject properties in order to determine the actual boundary lines between the parties property. *A true and correct copy of said survey is attached hereto as Exhibit "F" and incorporated herein by reference.*

13. As a result of said survey, it was determined that the private road, which purportedly represented the boundary line between the properties, was wholly within the property owned by Plaintiff.

14. Defendants claim an interest and a stake in said property adverse to Plaintiff, with regard to the private road, which Defendants purport is contained wholly or partially within their property.

15. Defendants' claim is without any right whatsoever, and Defendants have no right, estate, title, lien or interest in or to the property, or any part thereof.

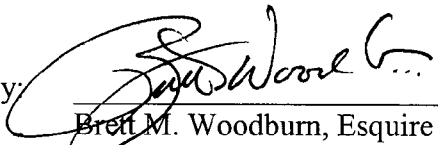
16. As a result of the above, a dispute exists as to the boundary lines between the parties' properties.

17. Plaintiff respectfully requests that this Court forever determine all rights, liens, title, or interest in the land and determine the validity or discharge of all documents, obligations or deeds affecting any right, lien, title or interest in said land.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an Order forever barring the Defendants Harry J. Shive and Dorothy L. Shive, husband and wife, Daniel A. Shive and Colleen J. Shive, husband and wife, and Patrick L. Shive and Jo Ellen Shive, husband and wife, from asserting any right, title, or interest in and to the subject property inconsistent with the interest or claim of ownership of the subject property by the Plaintiff herein, and further enjoining the Defendants from denying, impeaching or in any other way attacking Plaintiff's unencumbered ownership interest in the subject property.

Respectfully submitted,

CALDWELL & KEARNS

By: 
Brett M. Woodburn, Esquire
Attorney I.D. # 81789
Douglas L. Cassel, Esquire
Attorney I.D. # 92895
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661
Attorney for the Plaintiff

Date: 7/22/05

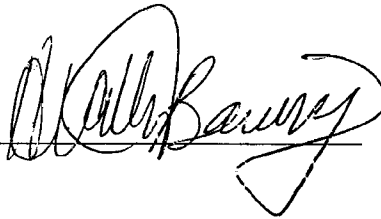
04-668/90633

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the within document this 25 day of July, 2005, on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Chip Bell, Esquire
313 Locust Street
P.O. Box 670
Clearfield, PA 16830

CALDWELL & KEARNS

By: 

County Parcel No.: 110-T6-7
110-T6-7.1
110-T6-6

RECORDED
09/26/2003 11:11:44
KAREN L. STARK
REGISTER AND RECORDER
CLEARFIELD COUNTY
PENNSYLVANIA
Cert. Num: 200317030

This Deed

MADE the _____ day of _____ in the year Two Thousand and three (2003).

BETWEEN ANNA MICKNEY, a widow, of 5427 Baptist Road, Pittsburgh, Pennsylvania, 15236, hereinafter referred to as the "GRANTOR";

-And-

GARY L. BERKLEY, of 147 Loop Road, West Decatur, Pennsylvania, 16878, hereinafter referred to as the "GRANTEE".

WITNESSETH, that in consideration of the sum of Two Hundred Fifty-eight Thousand (\$258,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey unto the Grantee, his successors and assigns forever,

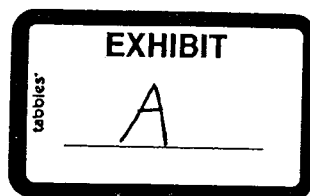
ALL those certain tracts or parcels of ground situate in Cooper Township, Clearfield County, Pennsylvania, bounded and described as follows:

The First Thereof:

BEGINNING at a stone corner, thence by land surveyed to John Andrews, North one degree East seventy three and one half perches to a post by a Pine; thence North eighty eight degrees West, seven perches to a post by a White Oak; thence by lands now or formerly of Brown and Bassert, South, two degrees West, one hundred and sixteen perches to a stone heap; thence by land now or formerly of John Pemp, South eighty eight degrees East, one hundred and fifty nine perches to the place of beginning. CONTAINING seventy acres and seventy one perches, and allowances. Being part of a larger tract of land surveyed on a warrant granted to Casper Haines.

The Second Thereof:

BEGINNING at a stone corner by a Pine, thence South one and one half degrees West, forty two and one half perches to a post; thence North eighty eight degrees West, one hundred and fifty perches to a post; thence North one degree East, forty two and one half perches to a post; thence South eighty eight degrees East, one hundred and fifty perches to the place of beginning. CONTAINING thirty seven acres and one hundred perches and allowances.



The Third Thereof:

BEGINNING at a post on line of lands of Joseph Olinger; thence by said lands North, eighty-four degrees West, seven hundred thirty-eight (738) feet of a post; thence by private road, North, eleven and one half degrees East, thirteen hundred and seventy-four (1374) feet more or less to a post; thence by same North, seventy degrees East, forty-five (45) feet to a post; thence by same, North, fourteen degrees East, Two Hundred and Eighty-nine (289) feet to a post; thence by lands of John Zezony, South, eighty-four degrees East, nine hundred and sixty-six (966) feet more or less to a post; thence South, nineteen and one-half degrees West, Seventeen Hundred and Sixteen (1716) feet more or less to a post; and place of beginning. CONTAINING thirty-four (34) acres and ninety (90) perches, more or less.

The Fourth Thereof:

BEGINNING at a post on the line of lands of John Zezony; thence by same, South 84 degrees, East, six hundred and ninety-three (693) feet, more or less to a post; thence by lands of the Herman Beates Estate, North 5 degrees West, nine hundred and nine (909) feet more or less to a post; thence North 84 degrees West, nine hundred and one (901) feet more or less to a post; thence North, 19 ½ degrees East, nine hundred and thirty-five (935) feet more or less to a post and place of beginning. CONTAINING 16 acres and 100 perches more or less.

UNDER AND SUBJECT TO all exceptions and reservations contained in prior deeds of record in the chain of title.

ALSO UNDER AND SUBJECT TO a previous conveyance to Paul R. Gable, et al. of a parcel described in that Deed of Paul R. Gable and Eula M. Gable dated August 24, 1992 and recorded in Clearfield County Deeds and Records Book Volume 1481 at page 110.

BEING the same premises conveyed to Anna Mickney, the grantor herein by Deed of Isabel Thompson, a/k/a Isabelle Thompson dated August 1, 2002 and recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument Number 200212636.

TOGETHER with all and singular, the improvements, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of the said parties of the first part in law, equity, or otherwise, howsoever, of, in, and to the same and every part thereof.

TO HAVE AND HOLD the said hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances unto the said party of the second part, their heirs, executors, administrators, and assigns, to and for the only proper use and behoof of the said party of the second part, their heirs, executors, administrators, and assigns, FOREVER.

NOTICE

in accordance with the provisions of "The Bituminous Coal Conservation Act of 1935" (We, the undersigned grantee-grantees, hereby certify that we know and understand that 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. We further certify that this certification is in a form contrasting with that in the deed proper and is printed in heavy bold type preceded by the word "notice" printed in twenty-four point type.

Witness: _____

This _____ day of _____

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 Grantor will SPECIALLY warrant and forever defend the property hereby conveyed.

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

Sealed and delivered
in the presence of:

Anna Mickney {SEAL}
Anna Mickney

Commonwealth Of Pennsylvania

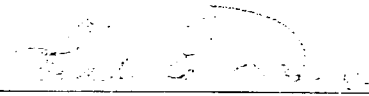
:
: SS.

County Of Clearfield

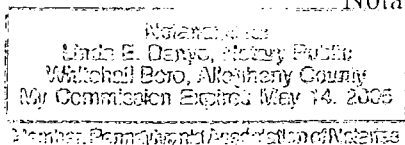
:

On this, the 12 day of December, 2003, before me, the undersigned authority, personally appeared ANNA MICKNEY, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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


Notary Public

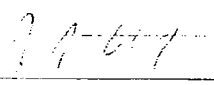
My Commission Expires:



Certificate of Residence

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

Gary L. Berkley
147 Loop Road
West Decatur, PA 16878


Agent or Attorney for Grantees

VOL 1309-199

EXCEEDS Conditions, Terms or Endorsement 1949

VOL 1309-199

Sold by The Philadelphia Co. Wilmington, Pa. 17701

This Indenture,

MADE the 19th day of October in the year of our Lord, nineteen hundred and eighty-nine (1989).

BETWEEN ESTATE OF L. RUDOLPH LUNDBERG a/k/a RUDOLPH LUNDBERG, by COUNTY NATIONAL BANK, Executor, GRANTOR and Party of the First Part,

AND

HARRY J. SHIVE, an individual, of P. O. Box 64, Drifting, Clearfield County, Pennsylvania 16834, GRANTEE and Party of the Second Part.

WHEREAS, the said L. Rudolph Lundberg became in his lifetime lawfully seized in the hereinafter described real estate; and being thereof so seized made his Last Will and Testament, in writing dated March 23, 1988, wherein he appointed the County National Bank as Executor; and

WHEREAS, the said L. Rudolph Lundberg died the 11th day of January, 1989, and the said Last Will and Testament was duly probated on the 20th day of January, 1989, and is now of record in the Office of the Register of Wills, in and for Clearfield County, filed to No.

NOW THIS INDENTURE WITNESSETH: That the said GRANTOR

for and in consideration of the sum of

Fifty Thousand One Hundred Twenty One (\$50,121.00)-----Dollar,

lawful money of the United States, to it well and truly paid by the said Grantee at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, by virtue of the power granted by law, has granted, bargained, sold, aliened, released and confirmed, and by these presents does grant, bargain, sell, alien, release and confirm unto the said Harry J. Shive, his heirs

and assigns,

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

EXHIBIT

tabbies

B

VOL 1309 PAGE 200

BEGINNING at an iron pin located in a stone pile on line of State Game Lands #100. Said point is also the Southeast corner of Calvin and Albert Berkley; thence along State Game Lands #100, South no degrees, twenty-two minutes, ten seconds West (S 0° 22' 10" W) eight hundred twenty five feet (825.0') to an iron pin; thence along lands of Leroy Thompson and Mountain View Center, Inc. North eighty-nine degrees, six minutes, thirty seconds West (N 89° 06' 30" W) two thousand six hundred and sixty and fourteen hundredths feet (2660.14') to an axle in Township Road #728 and on line of John Harvey. Said point is the Northwest corner of Mountain View Center, Inc.; thence along lands of John Harvey, North one degree no minutes East (N 1° 00' E) eight hundred thirty three and twenty five hundredths feet (833.25') more or less, to an iron pin and also the Southwest corner of Calvin and Albert Berkley; thence along lands of Calvin and Albert Berkley, South eighty-eight degrees, fifty-five minutes, forty-five seconds East (S 88° 55' 45" E) two thousand six hundred fifty-one and six hundredths feet (2651.06') to an iron pin in Stone pile and place of beginning.

BEING the same premises as vested in L. Rudolph Lundberg and Kathleen S. Lundberg, his wife, by Deed dated December 13, 1982, and recorded in Clearfield County in Deed Book Volume 866, at Page 01, thereafter the said Kathleen S. Lundberg died January 30, 1988, thus vesting complete title to the within described premises in L. Rudolph Lundberg.

WEST BRANCH SCHOOL DISTRICT
1% REALTY TRANSFER TAX

AMOUNT \$ 501.21

PAID 10-19-89 MICHAEL R. LYLE
Date Agent

VOL 1300 PAGE 201

TOGETHER with all and singular ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever of L. Rudolph Lundberg a/k/a Rudolph Lundberg in law, equity, or otherwise, howsoever, of, in, to, or out of the same.

TO HAVE AND TO HOLD the said described parcel

hereditaments and premises hereby granted and released, or mentioned and intended so to be, with the appurtenances unto the said Harry J. Shive, his heirs and assigns, to and for the only proper use and behoof of the said Harry J. Shive, his heirs and assigns, forever.

AND the said Harry J. Shive

for him, and his heirs, executors and administrators, do covenant, promise and agree, to and with the said Harry J. Shive

his heirs and assigns, by these presents, that they the said Executors have not done, committed, or knowingly, or willingly suffered to be done or committed, any act, matter or thing whatsoever whereby the premises hereby granted, or any part thereof, its, act, shall or may be impeached, charged or incumbered, in title, charge, estate or otherwise howsoever.

IN WITNESS WHEREOF, The said Grantor

herunto set its hand and seal the day and

year first above written.

IN THE PRESENCE OF:

ESTATE OF L. RUDOLPH LUNDBERG
a/k/a RUDOLPH LUNDBERG
COUNTY NATIONAL BANK, EXECUTOR
(SEAL)

Nancy Fisk
Assistant Clerk

By *Malcolm Lundberg* (SEAL)

(SEAL)

(SEAL)

I hereby certify that the precise address of the grantee

herein is:

- P. O. Box 64 -
- Drifting, PA 16834 -

Dorothy L. Shive

(Attest for)

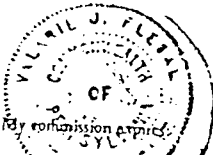
Vol 1309-202

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

On this the 19th day of October, A.D. 1989,
before me Valarie J. Flegal
the undersigned officer, personally appeared

Donald Edwin Shawley, Trust Officer for County National Bank, Execu- known to me
tor for the Estate of L. R. Lundberg
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument
and acknowledged that he executed the same for the purposes therein contained.

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



Valarie J. Flegal

NOTARY SEAL
VALARIE J. FLEGAL, Notary Public
Clearfield Dist., Clearfield County, Pa.
My Commission Expires Dec. 31, 1992

RECORDED
GUARANTY TRUST OF ESTATES
L-10-89

ESTATE OF L. RUDOLPH
LUNDBERG a/k/a RUDOLPH
LUNDBERG

TO
HARRY J. SHIVE

1989

Dated

MILLER & MASON
ATTORNEYS AT LAW
P.O. BOX 12
PHILIPSBURG, PA 16866

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 11:40 A.M. 10-19-89
BY HARRY J. SHIVE
FEES \$13.00
Michael R. Lytle, Recorder

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

RECORDED on this 19th day of OCT.

A.D. 1989, In the Recorder's Office of the said County, In Deed Book No.
1309 page 199

Given under my hand and the seal of the said office, the day and year aforesaid.

Michael R. Lytle
My Commission Expires
First Monday in January, 1992

Entered of Record OCT. 19, 1989 11:40 A.M. Michael R. Lytle, Recorder

State Tax \$51.21
Dist. Broker's \$250.61
County Tax \$250.60

THIS DEED Made the 23 day of February, Two Thousand (2000).

BETWEEN HARRY J. SHIVE and DOROTHY L. SHIVE, husband and wife, of
Clearfield County, Pennsylvania,

GRANTORS

A
N
D

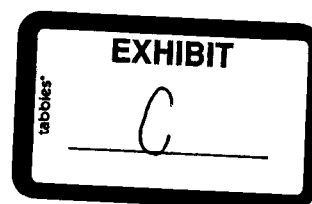
DANIEL SHIVE of Clearfield County, Pennsylvania, a 5% undivided interest,
PATRICK SHIVE of Clearfield County, Pennsylvania, a 48% undivided interest, and
HARRY J. SHIVE of Clearfield County, Pennsylvania, a 47% undivided interest, said
undivided interests to be held as tenants in common,

GRANTEES

WITNESSETH, That in consideration of One (\$1.00) Dollar, in hand paid, the
receipt whereof is hereby acknowledged, the said grantors do hereby grant and convey to
the said grantees, their heirs and assigns,

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

BEGINNING at an iron pin located in a stone pile on line of State
Game Lands #100. Said point is also the Southeast corner of Calvin and
Albert Berkley; thence along State Game Lands #100, South 00 degrees 22
minutes, 10 seconds West eight hundred twenty-five (825) feet to an iron
pin; thence along lands of Leroy Thompson and Mountain View Center,
Inc., North 89 degrees 6 minutes 30 seconds West two thousand six
hundred sixty and fourteen hundredths (2660.14) feet to an axle in
Township Road #728 and on line of John Harvey. Said point is the
Northwest corner of Mountain View Center, Inc.; thence along lands of
John Harvey, North 1 degree 00 minutes East eight hundred thirty three and
twenty-five hundredths (833.25) feet, more or less, to an iron pin and also
the Southwest corner of Calvin and Albert Berkley; thence along lands of



Calvin and Albert Berkley, South 88 degrees 55 minutes 45 seconds East two thousand six hundred fifty-one and six hundredths (2651.06) feet to an iron pin in Stone pile and place of beginning.

BEING the same premises granted and conveyed to Harry J. Shive by Deed of Estate of L. Rudolph Lundberg a/k/a Rudolph Lundberg, by County National Bank, Executor, dated and recorded October 19, 1989, in Clearfield County Record Book 1309, Page 199.

THIS IS A NON-TAXABLE CONVEYANCE BETWEEN PARENT AND CHILDREN

AND the said grantors, do hereby WARRANT SPECIALLY the property hereby conveyed,

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Judith A. Hockenbury
Judith A. Hockenbury

Harry J. Shive (SEAL)
Harry J. Shive

Dorothy L. Shive (SEAL)
Dorothy L. Shive

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER

2001022650

RECORDED ON

Feb 23, 2001
10:54:52 AM

RECORDING FEES - \$13.50

RECORDER

COUNTY IMPROVEMENT \$1.00

FUND

RECORDER IMPROVEMENT FUND \$1.00

STATE WRIT TAX \$0.50

TOTAL \$16.00

CUSTOMER

SHIVE, HARRY J

**CLEARFIELD COUNTY
RECORDER OF DEEDS****Karen L. Starck, Recorder****Maurene Inlow - Chief Deputy**

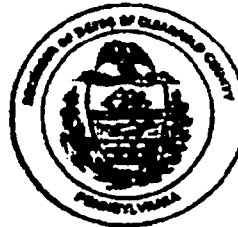
P.O. Box 361

1 North Second Street, Suite 103

Clearfield, Pennsylvania 16830

RETURN DOCUMENT TO:*F. CORTEZ BELL III****P O BOX 1088****CLEARFIELD, PA 16830****Instrument Number - 200500062****Recorded On 1/3/2005 At 12:55:54 PM***** Instrument Type - MAP - SUBDIVISION***** Total Pages - 2****Invoice Number - 122885***** Grantor - PLAN OF***** Grantee - SHIVE, DANIEL***** Customer - BELL III, F. CORTEZ***** FEES****RECORDING FEES - \$20.00****RECORDER****RECORDER IMPROVEMENT \$3.00****FUND****COUNTY IMPROVEMENT FUND \$2.00****TOTAL \$25.00**

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



**Karen L. Starck
Recorder of Deeds**

THIS IS A CERTIFICATION PAGE**Do Not Detach****THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT**

*** - Information denoted by an asterisk may change during the verification process and may not be reflected on this page.**

THIS INDENTURE

MADE this 1st day of ~~January~~^{February}, 2005, between Harry J. Shive and Dorothy L. Shive, his wife, of 321 Summit Road, Drifting, Clearfield County, Pennsylvania 16834; Patrick L. Shive and Jo Ellen Shive, his wife, of 402 Firehouse Road, Drifting, Clearfield County, Pennsylvania 16834 and Daniel A. Shive and Colleen J. Shive, his wife, of 428 Firehouse Road, Drifting, Clearfield County, Pennsylvania 16834, (hereinafter called "Grantors")

AND

Todd A. Shive and Nicole L. Shive, his wife, of 712 Martin Street, Clearfield, Clearfield County, Pennsylvania, 16830, as tenants by the entireties (hereinafter called "Grantees")

WITNESSETH, that in consideration of the sum of Five Thousand (\$5000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, Grantors do hereby grant, bargain, sell, alien and convey to Grantees:

THIS IS A CONVEYANCE FROM PARENTS AND GRANDPARENTS TO SON AND/OR GRANDSON AND HIS WIFE AND IS THEREFORE TRANSFER TAX EXEMPT

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

BEGINNING at a 3/4" rebar (set0 at the Southwest corner of lands of Calvin and Albert Berkley as identified as Tax Parcel Number 110-T06-00003, said rebar being South 01 degrees 00 minutes 00seconds West a distance

EXHIBIT

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842.31 feet from a 3/4" iron stake (found) on the Southern line of lands of the Commonwealth of Pennsylvania Game Commission as described in Deed Book 591 page 38, and being the Northeast corner of Calvin and Albert Berkley, said place of beginning being on the Eastern side of an abandoned Township Road T-728, said point of beginning being the Northeast corner of the parcel herein conveyed and running; thence along the Southern line of lands of Calvin and Albert Berkley as identified as Tax Parcel Number 110-T06-00003 South 88 degrees 53 minutes 10 seconds East a distance of 287.77 feet to a 3/4" rebar (set); thence through lands of the Grantors for a new subdivision line South 01 degrees 00 minutes 00 seconds West a distance of 295.16 feet to a 3/4" rebar (set); thence still through lands of the Grantors for a new subdivision line North 88 degrees 53 minutes 10 seconds West a distance of said 285.18 feet to a 3/4" rebar (set), said rebar being on the Eastern line of lands of John J. Harvey as described in Deed Book 1157 page 245, said rebar also being on the Eastern side of an abandoned Township Road T-728; thence along the Eastern side of the abandoned Township Road T-728 North 00 degrees 29 minutes 51 seconds East a distance of 295.16 feet to a 3/4" rebar (set) and place of beginning.

CONTAINING 87,119.36 sq. ft. or 2 Acres more or less and known as Parcel 1 of the Shive Subdivision dated April 5, 2004 and shown on subdivision map prepared by Curry & Associates as was recorded in the Office of the Register and Recorder of Deeds of Clearfield County on January 3, 2005 at Instrument Number 200500062. Bearings above are based on the Eastern line of lands of the Grantors herein as described in Instrument Number 200102650. Being a part of the lands conveyed to the unto the Grantors by Instrument Number 200102650.

FURTHER GRANTING AND CONVEYING to the Grantees herein, the right of egress, ingress and regress over through and upon a right of way for construction, placement and maintenance of a water line from the existing Spring House on residue lands of the Grantors to the property here above described. Said water line running

generally in a Northern direction from the Spring House approximately 305 feet more or less and then in a generally westerly direction 950 feet more or less to the property of the Grantees. Said right of way will be 10 foot on both sides of the water line location as determined by the Grantors and the Grantees consistent with the above.

FURTHER GRANTING AND CONVEYING to the Grantees the right of egress, ingress and regress over through and upon a right of way for the construction, placement and maintenance of electric and telephone lines from the existing electric line that is located on the residue lands of the Grantors running to Parcel 1 of the Shive subdivision. Said right of way to run generally in a Northwest direction from the existing electric line a distance of 324 feet more or less to a pole to be installed and then running in a generally Northern direction a distance of 85 feet more or less to the property of the Grantees.

AND, the said Grantors, do hereby covenant and agree to and with the said grantees, that the Grantors, their heirs, executor and administrators, shall and will SPECIALLY warrant and forever defend the herein above described premises, with the hereditaments and appurtenances, unto the said Grantees, their heirs and assigns, against the said Grantors and against every other person lawfully claiming or who shall hereafter claim the said or any part thereof.

NOTICE-THIS DOCUMENT MAY NOT (DOES NOT) SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE (HAVE) THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY 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 OR RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P. L. 984, as amended].

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.

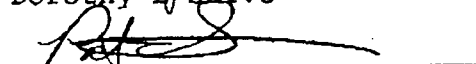
Witness: _____

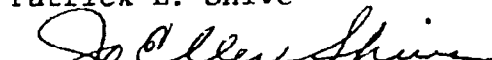
This _____ day of _____

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



Harry J. Shive


Dorothy L. Shive


Patrick L. Shive


Jo Ellen Shive


Daniel A. Shive


Colleen J. Shive

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

On this 01st day of February, 2005, before me, the undersigned officer, personally appeared Harry J Shive and Dorothy L. Shive, 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 purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official

seal.



Title of Officer


MICHAEL A. RUDELLA
District Justice, State of Pennsylvania
No. 46-3-03, Clearfield County
Term Expires Jan. 3, 2006

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

On this 01st day of February, 2005, before me, the undersigned officer, personally appeared Patrick L. Shive and Jo Ellen Shive, 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 purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official

seal.



Title of Officer

MICHAEL A. RUDELLA
District Justice, State of Pennsylvania
No. 46-3-03, Clearfield County
Term Expires Jan. 3, 2006

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

On this 01st day of ~~January~~ February, 2005, before me, the undersigned officer, personally appeared Daniel A. Shive and Colleen J. Shive, 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 purposes therein contained.

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

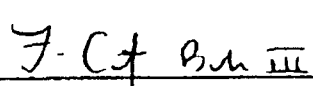



Title of Officer

MICHAEL A. RUDELLA
District Justice, State of Pennsylvania
No. 48-3-03, Clearfield County
Term Expires Jan. 3, 2006

CERTIFICATE OF RESIDENCE

I do hereby certify that the precise residence of Grantees is 712 Martin Street, Clearfield, Pennsylvania 16830.



Attorney for Grantees

CLEARFIELD COUNTY RECORDER OF DEEDS

Karen L. Starck, Recorder
Maurene Inlow - Chief Deputy

P.O. Box 361

1 North Second Street, Suite 103
Clearfield, Pennsylvania 16830

***RETURN DOCUMENT TO:**

BELL, SILBERBLATT & WOOD
P.O. BOX 670
CLEARFIELD, PA 16830

Instrument Number - 200501734

Recorded On 2/7/2005 At 2:49:37 PM

* Instrument Type - DEED

* Total Pages - 7

Invoice Number - 124544

* Grantor - SHIVE, HARRY J

* Grantee - SHIVE, TODD A

* Customer - BELL, SILBERBLATT & WOOD

*** FEES**

STATE WRIT TAX	\$0.50
JCS/ACCESS TO JUSTICE	\$10.00
RECORDING FEES -	\$19.00
RECORDER	
RECORDER IMPROVEMENT	\$3.00
FUND	
COUNTY IMPROVEMENT FUND	\$2.00
TOTAL	\$34.50

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



Karen L. Starck

Karen L. Starck
Recorder of Deeds

THIS IS A CERTIFICATION PAGE

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THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

* - Information denoted by an asterisk may change during the verification process and may not be reflected on this page.

106-CORPORATION DEED—Develop the Printer, Inc., Box 1233, Erie, Pa.
VOL 709 PAGE 162

Clearfield Recorder Made the

27th day of October In the year of our Lord one thousand nine hundred and Seventy-Five
Between RIVER HILL COAL COMPANY, INC., of Kylertown, Clearfield County, Pennsylvania,
party of the first part, hereinafter referred to as GRANTOR,

A
N
D

MOUNTAIN VIEW CENTER, INC., of Kylertown, Clearfield County, Pennsylvania, party of the
second part, hereinafter referred to as GRANTEE.

Witnesseth, That the said party of the first part, for and in consideration of the sum of Fourteen
Thousand Two Hundred Fifty and no/100 (\$14,250.00) Dollars

lawful money of the United States of America, unto the party of the first part, well and truly paid by the said
party of the second part, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged,
has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and
confirm unto the said party of the second part, its, his, her or their heirs, executors, administrators, successors and
assigns, all that certain piece or parcel of land, the following certain pieces or parcels of land situate in
Cooper Township, Clearfield County, Pennsylvania, more particularly bounded and described as
follows:

THE FIRST THEREOF: BEGINNING at an iron pin corner on line of Kylertown
Presbyterian Church and now or formerly Chester A. Beam; thence along line of
now or formerly Chester A. Beam South seventy seven degrees no minutes East
(S 77° 00' E) a distance of sixty six and no hundredths (66.00') feet to a corner on
the northern right of way line of State Highway Route Number 53 leading from
Kylertown to Drifting; thence along the northern right of way line of State
Highway Route Number 53 by curve to the left having a radius of two thousand
three hundred thirty two and one hundredths (2332.01') feet a distance of one
hundred fifty eight and sixty hundredths (158.60') feet to a corner on line of other
lands of River Hill Coal Company; thence along line of other lands of River Hill
Coal Company North seven degrees fifteen minutes East (N 7° 15' E) a distance of
eighty seven and fifty hundredths (87.50') feet to a corner on line of Kylertown
Presbyterian Church; thence along line of Kylertown Presbyterian Church South
seventy seven degrees no minutes East (S 77° 00' E) a distance of seventy two
and no hundredths (72.00') feet to an iron pin corner the place of beginning. Con-
taining 0.14 Acres.

BEING the same premises as were conveyed to the within Grantor by deed of
Kenneth L. Womer Et Ux dated the 8th day of November, 1974 and recorded in
Clearfield County Deed Book 695, page 309.

THE SECOND THEREOF: BEGINNING at a post corner; thence by residue
of the Walter Stewart survey North sixty seven and one half (67 1/2°) degrees East
one hundred and eighty (180) perches to a post corner; thence by land of Joseph
Eisenhower North four and one half (4 1/2°) degrees East seventy five (75) perches
to a post corner; thence by land of George D. Hess, and John Hoover, North
eighty six (86°) degrees West one hundred and sixty (160) perches to a Maple
corner, being the Northwest corner of the Walter Stewart survey; thence by
land of S. Hoover and Joseph Potter, South Four and one half (4 1/2°) degrees
West one hundred and fifty four and one half (154 1/2) perches to a post corner
and place of beginning. Containing one hundred and eight (108) acres and
forty three (43) perches with allowance.

EXCEPTING AND RESERVING from and out of the described premises all minerals
and mining rights reserved and excepted in Deed by Curtin M. Graham and Susan,
his wife, and Sarah Wright to A.R. Wright dated May 24, 1866.

EXHIBIT

E

tabbies

VOL 709 PAGE 163

THE THIRD THEREOF: BEGINNING at a post, thence North four (4°) degrees, East thirty-six and three fourth (36 3/4) perches to a post; thence by land of John Hoover, North sixty-seven and one half (67 1/2°) degrees East one hundred seventy-nine and seven tenths (179.7) perches to a post; thence by lands of Jos Eisenhower and Mrs. John Irwin South four (4°) degrees West seventy-seven and two tenths (77.2) perches to a post; thence by lands of Anderson Lutz, South eighty (80°) degrees West, one hundred and sixty-six (166) perches to a post and place of beginning. Containing fifty-four (54) acres and twenty-four and one half (24 1/2) perches of land.

EXCEPTING AND RESERVING the minerals and mining rights as contained in the prior chain of title.

THE FOURTH THEREOF: BEGINNING at a dead pine, said pine being a corner of land of Joseph Potter Estate and Samuel Hoover; thence by line between said Joseph Potter and Samuel Hoover Estate sixty-two (62) perches, more or less, to public road, which is to be considered the West line; thence in a Southerly direction along said road twenty-two (22) perches, more or less, to a stone corner; thence in an Easterly direction along said road fifty-one (51) perches to line of James Hoover Estate; thence by lands of James Hoover Estate (now owned by Ira S. Hoover) twenty-eight (28) perches to place of beginning. Containing nine (9) acres, more or less.

THE FIFTH THEREOF: ALL the coal remaining in the "B", or "Lower Kittanning", coal seam (being the same seam mined by the Clearfield Bituminous Coal Corporation in this and adjoining property) in and underlying all that certain piece or parcel of land bounded and described as follows:

BEGINNING at a point in the Graham and Wright Tract, the surface of which is now owned by Ira S. Hoover (said point is located by beginning at the post at the Northeast corner of the said Graham and Wright Tract, a corner common with the George Hess, Susan Beam and Joseph Eisenhower Tracts, and running thence South one and one half (1 1/2°) degrees West one hundred twenty-three (123) feet to a point on the line adjoining the Joseph Eisenhower Tract, and thence through the Graham and Wright Tract, of which this is a part, South Seventy-eight (78°) degrees West one thousand sixty (1,060) feet to the point of beginning of the tract being described); thence by a line through the said Graham and Wright Tract the following four courses and distances, viz., - South twelve (12°) degrees East five hundred (500) feet, South seventy-eight (78°) degrees West three hundred (300) feet, North twelve (12°) degrees West five hundred (500) feet, and North seventy-eight (78°) degrees East three hundred (300) feet to the place of beginning. Containing three and forty-four hundredths (3.44) acres, more or less.

TOGETHER with the right to enter, mine and take away all of the coal and other minerals, and to make such openings, shafts, chutes, dumps, improvements, roads and railroads, on the land as in the judgment of the Grantee, its successors and assigns, may be necessary to conveniently mine the same and transport such coal and other freight through and over said lands. Subject, however, to the rights of A.K. Wright as contained in the prior chain of title.

BEING the same four (4) parcels of land as were conveyed to the Grantor herein by deed of Helen E. Blackburn, Et Al dated the 12th day of May, 1967 and recorded in Clearfield County Deed Book 530, at page 451.

THE SIXTH THEREOF: BEGINNING at a point on the township road; thence along land of Gus Johnson North Four (4) degrees thirty (30) minutes East seven hundred and twenty-six (726) feet to a point; thence along land of John Young South Eighty-five (85) degrees thirty (30) minutes East One Hundred and Fifty (150) feet; thence along land of Charles S. Johnson South Four (4) degrees thirty (30) minutes West Seven Hundred and twenty-six (726) feet to a point on Township road; thence along said thirty foot township road North Eighty-five (85) degrees Thirty (30) minutes West, one Hundred and Fifty (150) feet to a point the place of beginning, containing two (2) acres and Eighty (80) perches, being part of a larger tract of land in the warrantee name of David Beverage. Being all the surface of this certain lot of ground.

BEING the same premises as were conveyed to the Grantor herein by deed of Axel Netterblade Et Ux dated the 31st day of March, 1965 and recorded in Clearfield County Deed Book 514, page 409.

VOL 709 PAGE 164

THE SEVENTH THEREOF: BEGINNING at a point on a thirty-foot township road; thence along land of Gus Johnson north 4 degrees 30 minutes east 726 feet to a point; thence along land of John Young south 85 degrees 30 minutes east 150 feet; thence along land of Alfred Anderson South 4 degrees 30 minutes west 726 feet to a point on said township road; thence along said township road north 85 degrees 30 minutes west 150 feet to a point, the place of beginning. Containing 2 acres and 80 perches. Being all the surface of all this certain lot of ground.

RESERVATION the same as in Deed of Oscar A. Johnson and wife to John Sandstrom, Jr. and wife, recorded in Clearfield, October 4, 1917 in Deed Book No. 223, page 132.

BEING the same premises as were conveyed to the Grantor herein by deed of Helen Brolin, Widow, dated the 31st day of March, 1965 and recorded in Clearfield County Deed Book 514, page 406.

PLEASE SEE ATTACHED SHEET

THE EIGHTH THEREOF: BEGINNING at a post on line of lands of Joseph Ollinger, thence by said lands North eighty-four degrees (84) West seven hundred thirty-eight (738) feet to a post by a public road, thence by said road North five (5) degrees East sixteen hundred and seventy (1670) feet more or less to a post corner of lands of John Zizone, thence by said lands South eighty-four (84) degrees East nine hundred and sixty (960) feet to a post, thence by a private road South fourteen (14) degrees West two hundred eighty nine (289) feet to a post, thence by same South seventy (70) degrees West forty-five (45) feet to a post, thence by same South eleven and one-half (11 1/2) degrees West thirteen hundred and seventy-four (1374) feet more or less to post and place of beginning. Containing thirty-two (32) acres more or less.

THE NINTH THEREOF: BEGINNING at a post on line of lands of Herman Beals Estate, thence by same South five (5) degrees West seven hundred and sixty-one (761) feet more or less to corner of lands of Joseph Ollinger, thence by said lands North eighty-four (84) degrees West ten hundred eighty two (1082) feet more or less to a post, thence North nineteen and one half (19 1/2) degrees East seven hundred eighty-one (781) feet more or less to a post, thence south eighty-four degrees East nine hundred and one (901) feet more or less to post and point of beginning. Containing (17) acres and fifty (50) perches more or less.

EXCEPTING AND RESERVING from above recited tract all of the oil and gas that is or may be underlying the same with the right to enter at any time and remove the same and the right of way into the said tracts for the purpose of removing same without liability to the surface owners.

BEING the same two (2) parcels of land as were conveyed to the Grantor herein by deed of Martin M. Gavlock Et Al dated the 27th day of July, 1963 and recorded in Clearfield County Deed Book 503, page 384.

For the purpose of complying with the Act No. 431 approved July 17, 1957, the following clause is included:

"THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE 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."

VOL 709 PAGE 165

Together with all and singular the improvements, ways, streets, alleys, passages, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of the party of the first part, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof,

To Have and to Hold the said lot or piece of ground above described with the messuage or tenement thereon erected unto the said party of the second part, his, his, her or their heirs, executors, administrators, successors and assigns forever.

AND the said party of the first part hereby does and will warrant SPECIALLY the property hereby conveyed.

In Witness Whereof, the said party of the first part has hereunto caused its corporate seal to be affixed, and attested this 27th day of October A.D. one thousand nine hundred and Seventy-Five.

RIVER HILL COAL COMPANY, INC.

By [Signature] V. President.

Attest: [Signature] Secretary.

(Corporate Seal)

COMMONWEALTH OF PENNSYLVANIA.

COUNTY OF CLEARFIELD

SS.

On this, the 27th day of October, 1975,

before me Dorothy H. Hile, the undersigned officer, personally appeared

V. Hoover Rydberg, who acknowledged himself to be the

Vice President of RIVER HILL COAL COMPANY, INC., a corporation,

and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

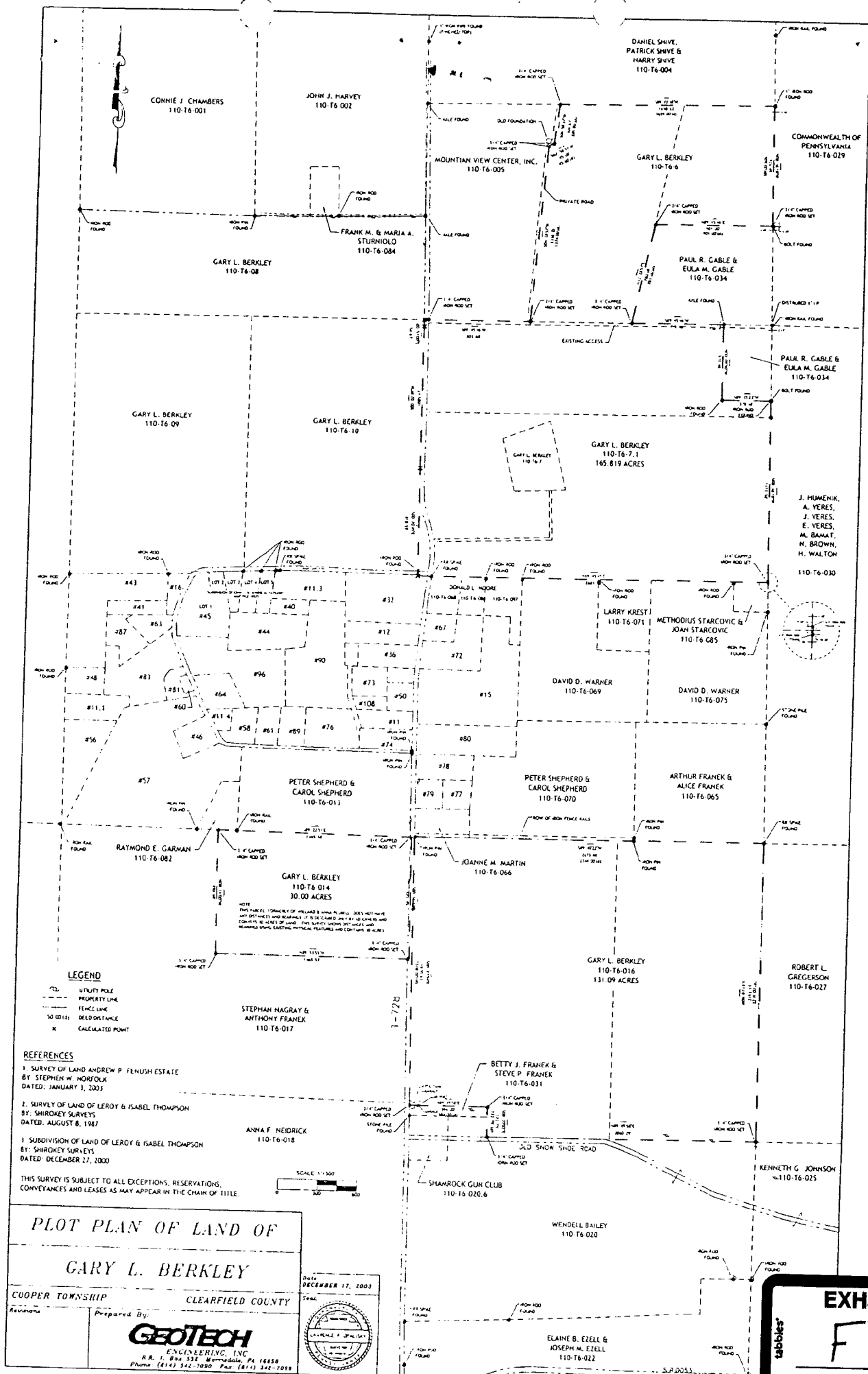
In witness whereof, I hereunto set my hand and official seal.

[Signature]
MRS. DOROTHY A. HILE, Notary Public
Clearfield, Clearfield Co., Pa.
My Commission Expires Dec. 3, 1978

I [Signature] hereby certify that the residence of the within named Grantee

is: Kylertown, Pennsylvania

Entered of Record Oct 28 1975, 3:48 [Signature] Recorder



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

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendants

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:
:
:
:
:
:

NO. 05-582-CD

FILED *NO CC*
0/8 350/
JUL 18 2005

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the
attached Scheduling Order dated July 13, 2005 upon the following
person by mailing such copy first class mail, postage prepaid,
addressed as follows:

Mr. Brett M. Woodburn, Esquire
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA 17110

F. Cortez Bell III
F. Cortez Bell, III, Esquire
Attorney for Defendants
Harry J. Shive and Dorothy L.
Shive

DATED: July 18, 2005

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

GARY L. BERKLEY

vs.

HARRY J. SHIVE and DOROTHY
L. SHIVE, husband and wife

:
:
: No. 05-582-CD
:
:

ORDER

AND NOW, this 13 day of July, 2005, upon consideration of Defendants' Preliminary Objections to Plaintiff's Complaint filed in the above matter, it is the Order of the Court that argument has been scheduled for the 12th day of August, 2005, at 1:30 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

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

JUL 14 2005

Attest.

William B. Shaw
Prothonotary/
Clerk of Courts

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

GARY L. BERKLEY

vs.

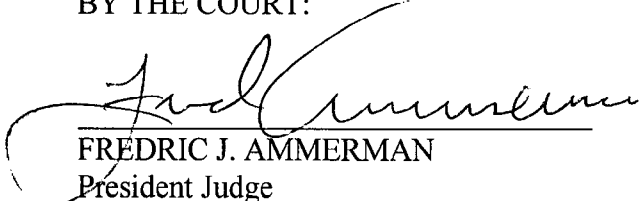
HARRY J. SHIVE and DOROTHY
L. SHIVE, husband and wife

:
:
: No. 05-582-CD
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ORDER

AND NOW, this 13 day of July, 2005, upon consideration of Defendants' Preliminary Objections to Plaintiff's Complaint filed in the above matter, it is the Order of the Court that argument has been scheduled for the 12th day of August, 2005, at 1:30 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

4 FILED 2cc Amy Bell
01111060 w/ service memo
JUL 14 2005

#8



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.: 2005-582-CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

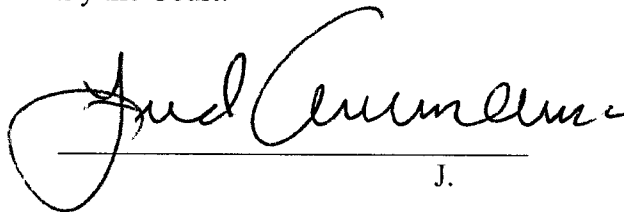
ORDER

AND NOW this 21 day of June, 2005, upon filing of a Affidavit by Plaintiff in accordance with Pennsylvania Rule of Civil Procedure 1066 stating that a Action to Quiet Title containing a Notice to Defend was served, and that Defendants have not filed an Answer as required by the Pennsylvania Rules of Civil Procedure, it is hereby ordered as follows: 1. 1.

1. Defendants Harry J. Shive and Dorothy L. Shive shall be forever barred from asserting any right, lien, title or interest in the land inconsistent with the interest or claim of the Plaintiff, Gary L. Berkley, set forth in the Complaint, unless the Defendants file an Answer to the Action to Quiet Title within thirty (30) days of the date of this Order.

2. If such Answer is not filed with the 30-day period, the Prothonotary, on Praecipe of the Plaintiff, shall enter final judgment.

By the Court:


J.

GARY L. BERKLEY,
Plaintiff

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband and wife,
Defendants

: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL DIVISION

:
: NO. 05-582-CD

:
: Praecipe to Withdraw Affidavit

:
: Caldwell & Kearns
: Brett M. Woodburn, Esquire
: Attorney ID# 81786
: 3631 North Front Street
: Harrisburg, PA 17110
: (717) 232-7661
: bwoodburn@caldwellkearns.com

:
: Attorney for Plaintiff Gary L. Berkley

FILED

JUN 22 2005
0/10:15/um @
William A. Shaw
Prothonotary/Clerk of Courts
2 CENT. ATT.

ALG

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

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband and wife,
Defendants

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: NO. 05-582-CD
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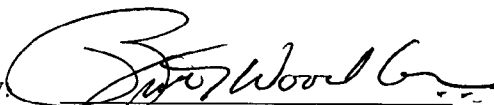
PRAECIPE TO WITHDRAW AFFIDAVIT

TO THE PROTHONOTARY:

Kindly withdraw the Affidavit filed by Plaintiff pursuant to Pennsylvania Rule of Civil Procedure 1066.

Respectfully submitted,

CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire
Attorney I.D. No. 81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Dated: 6/20/05

04-668/89286

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the within document this 21 day of June, 2005, on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Chip Bell, Esquire
318 Locust Street
P.O. Box 670
Clearfield, PA 16830

CALDWELL & KEARNS

By:  

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

:
:
: NO.: 2005-582-CD

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: CIVIL ACTION - LAW

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: ACTION TO QUIET TITLE

**AFFIDAVIT PURSUANT TO PENNSYLVANIA
RULE OF CIVIL RULE PROCEDURE 1066**

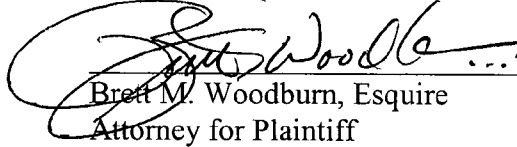
AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Affidavit in accordance with Pennsylvania Rule of Civil Procedure 1066; and in support thereof, states the following:

1. On April 22, 2005 an Action to Quiet Title was filed in the Court of Common Pleas of Clearfield County.
2. The aforementioned Action to Quiet Title contained a Notice to Defend pursuant to Pennsylvania Rule of Civil Procedure 1018.1. A true and correct copy of the Action to Quiet Title with Notice to Defend is attached hereto as Exhibit "A".
3. The Action to Quiet Title was served on Defendants, Harry and Dorothy Shive by R. Stuart Auber, a Constable for the County of Clearfield. True and correct copies of the Affidavits of Service on Defendants are attached hereto as Exhibit "B" and Exhibit "C".
4. Defendants have not filed an Answer to the Action to Quiet Title.

5 FILED 200
m/12:53 PM
JUN 20 2005 Woodburn
William A. Shaw
Prothonotary/Clerk of Courts

#5

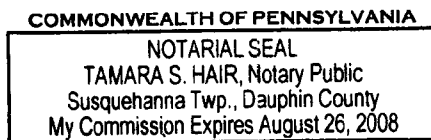
5. Plaintiff is entitled to an Order of court establishing the actual boundary line between Plaintiff and Defendants to be that which is set forth on the survey conducted on December 17, 2003 and attached as Exhibit "D" to Plaintiffs' Action to Quiet Title.


Brett M. Woodburn, Esquire
Attorney for Plaintiff

Sworn to and subscribed this
Day of June, 2005


Notary Public
My Commission Expires:

04-668/89118



GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.: 2005-582-CO
:

: CIVIL ACTION - LAW
:

: ACTION TO QUIET TITLE

NOTICE TO PLEAD

To: Harry and Dorothy Shive
321 Summit Road
Drifting, PA 16834

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Complaint
within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

CALDWELL & KEARNS

By: 

Brett M. Woodburn
Attorney I.D. #81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

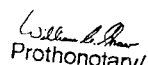
Dated: 4/18/2005

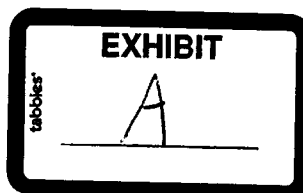
04-668/86893

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

APR 22 2005

Attest.


Prothonotary/
Clerk of Courts



GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
:
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: NO.:

: CIVIL ACTION - LAW
:
:

: ACTION TO QUIET TITLE

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

David S. Mcholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.:
:

: CIVIL ACTION - LAW
:

: ACTION TO QUIET TITLE

AVISO

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

David S. Meholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.:

: CIVIL ACTION - LAW
:

: ACTION TO QUIET TITLE

COMPLAINT UPON AN ACTION TO QUIET TITLE

AND NOW, comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Complaint Upon an Action to Quiet Title; and in support thereof, avers as follows:

1. The Plaintiff, Gary L. Berkley, ("Plaintiff"), is an adult individual currently residing at 147 Loop Road, West Decatur, Clearfield County, Pennsylvania, 16878.
2. The Defendants, Harry J. Shive and Dorothy L. Shive, husband and wife, ("Defendants") are adult individuals currently residing at 321 Summit Road, Drifting, Clearfield County, Pennsylvania 16834.
3. The Plaintiff acquired title to a parcel of land, Parcel No. 110-T6-6, by deed located in Cooper Township, Clearfield County, Pennsylvania, such Deed being dated September 16, 2003, and recorded in the Recorder of Deeds office of Clearfield County on September 26, 2003. Said parcel is contained in said Deed as being "The Third Thereof" and "The Fourth Thereof" and is described as follows:

The Third Thereof:

BEGINNING at a post on line of lands of Joseph Olinger; thence by said lands North, eighty-four degrees West, seven hundred thirty-eight (738) feet of a post; thence by private road, North, eleven and one half degrees East, thirteen hundred and seventy-four (1374) feet more or less to a post; thence by same North, seventy degrees East, forty-five (45) feet to a post; thence by same, North, fourteen degrees East, Two Hundred and Eighty-nine (289) feet to a post; thence by lands of John Zezony, South, eighty-four degrees East, nine hundred and sixty-six (966) feet more or less to a post; thence South, nineteen and one-half degrees West, Seventeen Hundred and Sixteen (1716) feet more or less to a post; and place of beginning. CONTAINING thirty-four (34) acres and ninety (90) perches, more or less

The Fourth Thereof:

BEGINNING at a post on the line of lands of John Zezony; thence by same, South 84 degrees, East, six hundred and ninety-three (693) feet, more or less to a post; thence by lands of the Herman Beates Estate, North 5 degrees West, nine hundred and nine (909) feet more or less to a post; thence North 84 degrees West, nine hundred and one (901) feet more or less to a post; thence North, 19 ½ degrees East, nine hundred and thirty-five (935) feet more or less to a post and place of beginning. CONTAINING 16 acres and 100 perches more or less.

A true and correct copy of the Deed is attached hereto as Exhibit "A" and incorporated herein by reference.

4. The Defendant, Harry J. Shive, who purportedly later conveyed an unrecorded interest to his wife, Defendant Dorothy L. Shive, acquired title to a parcel of land, Parcel No. 110-T6-004, by deed located in Cooper Township, Clearfield County, Pennsylvania, such Deed being dated October 19, 1989, and recorded in the Recorder of Deeds office of Clearfield County on October 19, 1989, in Record Book 1309, Page 202. *A true and correct copy of Defendants' Deed is attached hereto as Exhibit "B" and incorporated herein by reference.*

5. A dispute exists between Plaintiff and Defendants regarding the boundary line between the parties property.

6. Both parties also border property owned by Mountain View Center, Inc., known as Parcel No. 110-T6-005, which was acquired by deed dated October 27, 1975, said deed being recorded in the Clearfield County Recorder of Deeds Office on October 28, 1975, in Record Book 709, Page 162. *A true and correct copy of Mountain View Center, Inc. 's, Deed is attached hereto as Exhibit "C" and incorporated herein by reference.*

6. On or about December 17, 2003, Plaintiff ordered a survey to be conducted of the subject properties in order to determine the actual boundary lines between the parties property. *A true and correct copy of said survey is attached hereto as Exhibit "D" and incorporated herein by reference.*

7. As a result of said survey, it was determined that the private road, which purportedly represented the boundary line between the properties, was wholly within the property owned by Plaintiff.

8. Defendants claim an interest and a stake in said property adverse to Plaintiff, with regard to the private road, which Defendants purport is contained wholly or partially within their property.

9. Defendants' claim is without any right whatsoever, and Defendants have no right, estate, title, lien or interest in or to the property, or any part thereof.

10. As a result of the above, a dispute exists as to the boundary lines between the parties' properties.

11. Plaintiff respectfully requests that this Court forever determine all rights, liens, title, or interest in the land and determine the validity or discharge of all documents, obligations or deeds affecting any right, lien, title or interest in said land.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an Order forever barring the Defendants from asserting any right, title, or interest in and to the subject property inconsistent with the interest or claim of ownership of the subject property by the Plaintiff herein, and further enjoining the Defendants from denying, impeaching or in any other way attacking Plaintiff's unencumbered ownership interest in the subject property.

Respectfully submitted,

CALDWELL & KEARNS

By:



Brett M. Woodburn, Esquire

Attorney I.D. # 81789

Douglas L. Cassel, Esquire

Attorney I.D. # 92895

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

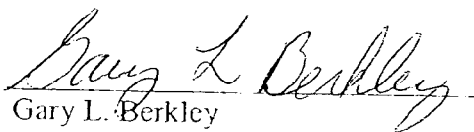
Attorney for the Plaintiff

Date: 04/18/2005

VERIFICATION

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

By:


Gary L. Berkley

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.: 2005-582-CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

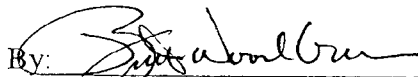
PRAECIPE TO ATTACH EXHIBITS "A", "B", "C" AND "D" TO COMPLAINT

TO THE PROTHONOTARY OF SAID COURT:

Please attach the following exhibits to the Complaint marked Exhibits "A", "B", "C"
and "D".

Respectfully submitted,

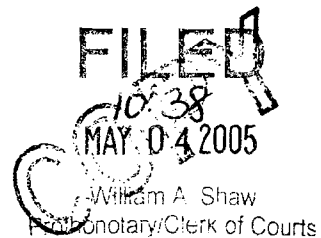
CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire
Attorney I.D. #81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Dated: 4/29/05

04-668/87316



County Parcel No.: 110-T6-7
110-T6-7.1
110-T6-6

RECORDED
07/26/2003 11:14:44 A
KAREN L. STARK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pittsburgh, PA 15201
Eod Num: 200307230

This Deed

MADE the _____ day of _____ in the year Two Thousand and three (2003).

BETWEEN ANNA MICKNEY, a widow, of 5427 Baptist Road, Pittsburgh, Pennsylvania, 15236, hereinafter referred to as the "GRANTOR";

-And-

GARY L. BERKLEY, of 147 Loop Road, West Decatur, Pennsylvania, 16878, hereinafter referred to as the "GRANTEE".

WITNESSETH, that in consideration of the sum of Two Hundred Fifty-eight Thousand (\$258,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey unto the Grantee, his successors and assigns forever,

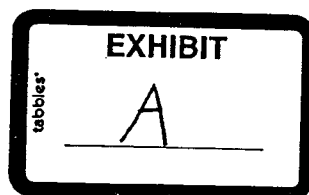
ALL those certain tracts or parcels of ground situate in Cooper Township, Clearfield County, Pennsylvania, bounded and described as follows:

The First Thereof:

BEGINNING at a stone corner, thence by land surveyed to John Andrews, North one degree East seventy three and one half perches to a post by a Pine; thence North eighty eight degrees West, seven perches to a post by a White Oak; thence by lands now or formerly of Brown and Bassert, South, two degrees West, one hundred and sixteen perches to a stone heap; thence by land now or formerly of John Pemp, South eighty eight degrees East, one hundred and fifty nine perches to the place of beginning. CONTAINING seventy acres and seventy one perches, and allowances. Being part of a larger tract of land surveyed on a warrant granted to Casper Haines.

The Second Thereof:

BEGINNING at a stone corner by a Pine, thence South one and one half degrees West, forty two and one half perches to a post; thence North eighty eight degrees West, one hundred and fifty perches to a post; thence North one degree East, forty two and one half perches to a post; thence South eighty eight degrees East, one hundred and fifty perches to the place of beginning. CONTAINING thirty seven acres and one hundred perches and allowances.



The Third Thereof:

BEGINNING at a post on line of lands of Joseph Olinger; thence by said lands North, eighty-four degrees West, seven hundred thirty-eight (738) feet of a post; thence by private road, North, eleven and one half degrees East, thirteen hundred and seventy-four (1374) feet more or less to a post; thence by same North, seventy degrees East, forty-five (45) feet to a post; thence by same, North, fourteen degrees East, Two Hundred and Eighty-nine (289) feet to a post; thence by lands of John Zezony, South, eighty-four degrees East, nine hundred and sixty-six (966) feet more or less to a post; thence South, nineteen and one-half degrees West, Seventeen Hundred and Sixteen (1716) feet more or less to a post; and place of beginning. CONTAINING thirty-four (34) acres and ninety (90) perches, more or less.

The Fourth Thereof:

BEGINNING at a post on the line of lands of John Zezony; thence by same, South 84 degrees, East, six hundred and ninety-three (693) feet, more or less to a post; thence by lands of the Herman Beates Estate, North 5 degrees West, nine hundred and nine (909) feet more or less to a post; thence North 84 degrees West, nine hundred and one (901) feet more or less to a post; thence North, 19 ½ degrees East, nine hundred and thirty-five (935) feet more or less to a post and place of beginning. CONTAINING 16 acres and 100 perches more or less.

UNDER AND SUBJECT TO all exceptions and reservations contained in prior deeds of record in the chain of title.

ALSO UNDER AND SUBJECT TO a previous conveyance to Paul R. Gable, et al. of a parcel described in that Deed of Paul R. Gable and Eula M. Gable dated August 24, 1992 and recorded in Clearfield County Deeds and Records Book Volume 1481 at page 110.

BEING the same premises conveyed to Anna Mickney, the grantor herein by Deed of Isabel Thompson, a/k/a Isabelle Thompson dated August 1, 2002 and recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument Number 200212636.

TOGETHER with all and singular, the improvements, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of the said parties of the first part in law, equity, or otherwise, howsoever, of, in, and to the same and every part thereof.

TO HAVE AND HOLD the said hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances unto the said party of the second part, their heirs, executors, administrators, and assigns, to and for the only proper use and behoof of the said party of the second part, their heirs, executors, administrators, and assigns, **FOREVER**.

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 estate 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:

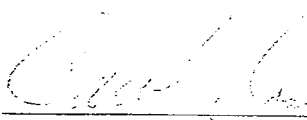
This _____ day of _____

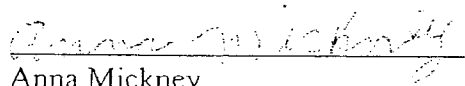
THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE, OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY 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 Grantor will SPECIALLY warrant and forever defend the property hereby conveyed.

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

Scaled and delivered
in the presence of:



 {SEAL}
Anna Mickney

Commonwealth Of Pennsylvania

:


: SS.

County Of Clearfield

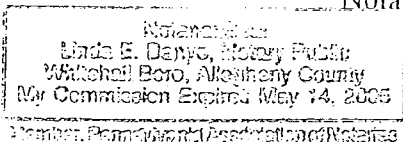
:

On this, the 12 day of February, 2003, before me, the undersigned authority, personally appeared ANNA MICKNEY, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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


Notary Public

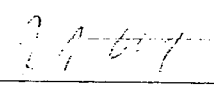
My Commission Expires:



Certificate of Residence

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

Gary L. Berkley
147 Loop Road
West Decatur, PA 16878


Agent or Attorney for Grantees

VOL 1369-199

DEED: Conveyance, Transfer of Estate 1989

VOL 1369-199

Sold by The Plunkett Co., Williamsport, Pa. 17701

This Indenture,

MADE the 19th day of October in the year of our Lord, nineteen hundred and eighty-nine (1989).

BETWEEN ESTATE OF L. RUDOLPH LUNDBERG a/k/a RUDOLPH LUNDBERG, by COUNTY NATIONAL BANK, Executor, GRANTOR and Party of the First Part,

AND

HARRY J. SHIVE, an individual, of P. O. Box 64, Drifting, Clearfield County, Pennsylvania 16834, GRANTEE and Party of the Second Part.

WHEREAS, the said L. Rudolph Lundberg became in his lifetime lawfully seized in the hereinafter described real estate; and being thereof so seized made his Last Will and Testament, in writing dated March 23, 1988, wherein he appointed the County National Bank as Executor; and

WHEREAS, the said L. Rudolph Lundberg died the 11th day of January, 1989, and the said Last Will and Testament was duly probated on the 20th day of January, 1989, and is now of record in the Office of the Register of Wills, in and for Clearfield County, filed to No.

NOW THIS INDENTURE WITNESSETH: That the said GRANTOR

for and in consideration of the sum of

Fifty Thousand One Hundred Twenty One (\$50,121.00)-----Dollars,

lawful money of the United States, to it well and truly paid by the said Grantee at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, by virtue of the power granted by law, has granted, bargained, sold, aliened, released and confirmed, and by these presents does grant, bargain, sell, alien, release and confirm unto the said Harry J. Shive, his heirs and assigns,

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

EXHIBIT

tabbles

B

VOL 1309 PAGE 260

BEGINNING at an iron pin located in a stone pile on line of State Game Lands #100. Said point is also the Southeast corner of Calvin and Albert Berkley; thence along State Game Lands #100, South no degrees, twenty-two minutes, ten seconds West (S 0° 22' 10" W) eight hundred twenty five feet (825.0') to an iron pin; thence along lands of Leroy Thompson and Mountain View Center, Inc. North eighty-nine degrees, six minutes, thirty seconds West (N 89° 06' 30" W) two thousand six hundred and sixty and fourteen hundredths feet (2660.14') to an axle in Township Road #728 and on line of John Harvey. Said point is the Northwest corner of Mountain View Center, Inc.; thence along lands of John Harvey, North one degree no minutes East (N 1° 00' E) eight hundred thirty three and twenty five hundredths feet (833.25') more or less, to an iron pin and also the Southwest corner of Calvin and Albert Berkley; thence along lands of Calvin and Albert Berkley, South eighty-eight degrees, fifty-five minutes, forty-five seconds East (S 88° 55' 45" E) two thousand six hundred fifty-one and six hundredths feet (2651.06') to an iron pin in Stone pile and place of beginning. . .

BEING the same premises as vested in L. Rudolph Lundberg and Kathleen S. Lundberg, his wife, by Deed dated December 13, 1982, and recorded in Clearfield County in Deed Book Volume 866, at Page 01, thereafter the said Kathleen S. Lundberg died January 30, 1988, thus vesting complete title to the within described premises in L. Rudolph Lundberg.

WEST BRANCH SCHOOL DISTRICT

1% REALTY TRANSFER TAX

AMOUNT \$ 501.21

PAID 10-19-89 MICHAEL R. LYLE

Date

Agent

Vol 1300 Page 201

TOGETHER with all and singular
ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto
belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and
also all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever of
L. Rudolph Lundberg a/k/a Rudolph Lundberg
in law, equity, or otherwise, howsoever, of, in, to, or out of the same.

TO HAVE AND TO HOLD the said described parcel

hereditaments and premises hereby granted and released, or mentioned and intended so to be, with the appur-
tenances, unto the said Harry J. Shive,
his heirs and assigns, to and for the only proper use and behoof of the said
Harry J. Shive, his heirs and assigns, forever.

AND the said Harry J. Shive

for him, and his heirs, executors and administrators,
do covenant, promise and agree, to and with the said Harry J. Shive

his heirs and assigns, by these presents, that they the said
Executors have not done, committed, or knowingly, or willingly suffered to be done or committed, any act, matter
or thing whatsoever whereby the premises hereby granted, or any part thereof, its, act, shall or may be impeached,
charged or incumbered, in title, charge, estate or otherwise howsoever.

IN WITNESS WHEREOF, The said Grantor

hereunto set its hand and seal the day and

year first above written.

IN THE PRESENCE OF:

ESTATE OF L. RUDOLPH LUNDBERG
a/k/a RUDOLPH LUNDBERG
COUNTY NATIONAL BANK, EXECUTOR
(REAL)

Nancy J. Link
Assistant Clerk

By: *Donald E. Lundberg*
(REAL)

(REAL)

(REAL)

I hereby certify that the precise address of the grantee

herein is:

- P. O. Box 64 -
- Drifting, PA 16834 -

Dorothy L. Shive

(Attorney for)

VOL 1309 PAGE 202

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

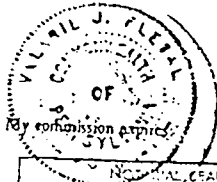
SS:

On this the 19th day of October, A.D. 1989,
before me Valarie J. Flegal the undersigned officer, personally appeared

Donald Edwin Shawley, Trust Officer for County National Bank, Execu- known to me
tor for the Estate of L. R. Lundberg
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument

and acknowledged that he executed the same for the purposes therein contained.

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



Valarie J. Flegal

NOTARY SEAL
VALARIE J. FLEGAL, Notary Public
Clearfield County, Pa.
My Commission Expires Dec. 31, 1992

GUARDIAN, TRUSTEE or EXECUTOR
1-10-89

ESTATE OF L. RUDOLPH
LUNDBERG a/k/a RUDOLPH
LUNDBERG

TO

HARRY J. SHIVE

1989

Dated

MILLER & MASON
ATTORNEYS AT LAW
P.O. BOX 28
PHILIPSBURG, PA 16864

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 11:40 A.M. 10-19-89
BY HARRY J. SHIVE
FEES 13.50
Michael R. Lytle, Recorder

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

SS:

RECORDED on this 19TH day of OCT.

A.D. 1989, in the Recorder's Office of the said County, in Deed Book No.

1307 page 199

Given under my hand and the seal of the said office, the day and year first above said.

Michael R. Lytle

My Commission Expires
First Monday in January, 1992

Entered of Record OCT. 19, 1989, 11:40 A.M. Michael R. Lytle, Recorder

STATUTORY FEE \$1.21
WITNESS FEE \$50.61
COURT FEE \$50.60

VOL 709 PAGE 162

306-CORPORATION DEED—Develop the Prieter, Inc., Box 1233, Erie, Pa.

Clearfield Deed

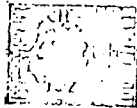
27th day of October in the year of our Lord one thousand nine hundred and Seventy-Five
Between RIVER HILL COAL COMPANY, INC., of Kylertown, Clearfield County, Pennsylvania,
 party of the first part, hereinafter referred to as GRANTOR,

A
 N
 D

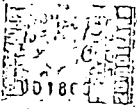
MOUNTAIN VIEW CENTER, INC., of Kylertown, Clearfield County, Pennsylvania, party of the
 second part, hereinafter referred to as GRANTEE.

Witnesseth, That the said party of the first part, for and in consideration of the sum of Fourteen
 Thousand Two Hundred Fifty and no/100 (\$14,250.00) Dollars

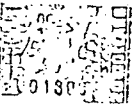
lawful money of the United States of America, unto the party of the first part, well and truly paid by the said
 party of the second part, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged,
 has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and
 confirm unto the said party of the second part, its, his, her or their heirs, executors, administrators, successors and
 assigns, all that certain piece or parcel of land the following certain pieces or parcels of land situate in
 Cooper Township, Clearfield County, Pennsylvania, more particularly bounded and described as
 follows:



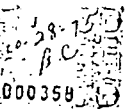
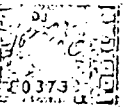
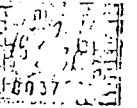
THE FIRST THEREOF: BEGINNING at an iron pin corner on line of Kylertown
 Presbyterian Church and now or formerly Chester A. Beam; thence along line of
 now or formerly Chester A. Beam South seventy seven degrees no minutes East
 (S 77° 00' E) a distance of sixty six and no hundredths (66.00') feet to a corner on
 the northern right of way line of State Highway Route Number 53 leading from
 Kylertown to Drifting; thence along the northern right of way line of State
 Highway Route Number 53 by curve to the left having a radius of two thousand
 three hundred thirty two and one hundredths (2332.01') feet a distance of one
 hundred fifty eight and sixty hundredths (158.60') feet to a corner on line of other
 lands of River Hill Coal Company; thence along line of other lands of River Hill
 Coal Company North seven degrees fifteen minutes East (N 7° 15' E) a distance of
 eighty seven and fifty hundredths (87.50') feet to a corner on line of Kylertown
 Presbyterian Church; thence along line of Kylertown Presbyterian Church South
 seventy seven degrees no minutes East (S 77° 00' E) a distance of seventy two and
 no hundredths (72.00') feet to an iron pin corner the place of beginning. Con-
 taining 0.14 Acres.



BEING the same premises as were conveyed to the within Grantor by deed of
 Kenneth L. Womer Et Ux dated the 8th day of November, 1974 and recorded in
 Clearfield County Deed Book 695, page 309.



THE SECOND THEREOF: BEGINNING at a post corner; thence by residue
 of the Walter Stewart survey North sixty seven and one half (67 1/2°) degrees East
 one hundred and eighty (180) perches to a post corner; thence by land of Joseph
 Eisenhower North four and one half (4 1/2°) degrees East seventy five (75) perches
 to a post corner; thence by land of George D. Hess, and John Hoover, North
 eighty six (86°) degrees West one hundred and sixty (160) perches to a Maple
 corner, being the Northwest corner of the Walter Stewart survey; thence by
 land of S. Hoover and Joseph Potter, South Four and one half (4 1/2°) degrees
 West one hundred and fifty four and one half (154 1/2) perches to a post corner
 and place of beginning. Containing one hundred and eight (108) acres and
 forty three (43) perches with allowance.



EXCEPTING AND RESERVING from and out of the described premises all minerals
 and mining rights reserved and excepted in Deed by Curtin M. Graham and Susan,
 his wife, and Sarah Wright to A.R. Wright dated May 24, 1866.

EXHIBIT

tabbles

C

VOL 709 PAGE 163

THE THIRD THEREOF: BEGINNING at a post, thence North four (4°) degrees, East thirty-six and three fourth (36 3/4) perches to a post; thence by land of John Hoover, North sixty-seven and one half (67 1/2°) degrees East one hundred seventy-nine and seven tenths (179.7) perches to a post; thence by lands of Jos Eisenhower and Mrs. John Irwin South four (4°) degrees West seventy-seven and two tenths (77.2) perches to a post; thence by lands of Anderson Lutz, South eighty (80°) degrees West, one hundred and sixty-six (166) perches to a post and place of beginning. Containing fifty-four (54) acres and twenty-four and one half (24 1/2) perches of land.

EXCEPTING AND RESERVING the minerals and mining rights as contained in the prior chain of title.

THE FOURTH THEREOF: BEGINNING at a dead pine, said pine being a corner of land of Joseph Potter Estate and Samuel Hoover; thence by line between said Joseph Potter and Samuel Hoover Estate sixty-two (62) perches, more or less, to public road, which is to be considered the West line; thence in a Southerly direction along said road twenty-two (22) perches, more or less, to a stone corner; thence in an Easterly direction along said road fifty-one (51) perches to line of James Hoover Estate; thence by lands of James Hoover Estate (now owned by Ira S. Hoover) twenty-eight (28) perches to place of beginning. Containing nine (9) acres, more or less.

THE FIFTH THEREOF: ALL the coal remaining in the "B", or "Lower Kittanning", coal seam (being the same seam mined by the Clearfield Bituminous Coal Corporation in this and adjoining property) in and underlying all that contain piece or parcel of land bounded and described as follows:

BEGINNING at a point in the Graham and Wright Tract, the surface of which is now owned by Ira S. Hoover (said point is located by beginning at the post at the Northeast corner of the said Graham and Wright Tract, a corner common with the George Hess, Susan Beam and Joseph Eisenhower Tracts, and running thence South one and one half (1 1/2°) degrees West one hundred twenty-three (123) feet to a point on the line adjoining the Joseph Eisenhower Tract, and thence through the Graham and Wright Tract, of which this is a part, South Seventy-eight (78°) degrees West one thousand sixty (1,060) feet to the point of beginning of the tract being described; thence by a line through the said Graham and Wright Tract the following four courses and distances, viz., - South twelve (12°) degrees East five hundred (500) feet, South seventy-eight (78°) degrees West three hundred (300) feet, North twelve (12°) degrees West five hundred (500) feet, and North seventy-eight (78°) degrees East three hundred (300) feet to the place of beginning. Containing three and forty-four hundredths (3.44) acres, more or less.

TOGETHER with the right to enter, mine and take away all of the coal and other minerals, and to make such openings, shafts, chutes, dumps, improvements, roads and railroads, on the land as in the judgment of the Grantee, its successors and assigns, may be necessary to conveniently mine the same and transport such coal and other freight through and over said lands. Subject, however, to the rights of A.K. Wright as contained in the prior chain of title.

BEING the same four (4) parcels of land as were conveyed to the Grantor herein by deed of Helen E. Blackburn, Et Al dated the 12th day of May, 1967 and recorded in Clearfield County Deed Book 530, at page 451.

THE SIXTH THEREOF: BEGINNING at a point on the township road; thence along land of Gus Johnson North Four (4) degrees thirty (30) minutes East seven hundred and twenty-six (726) feet to a point; thence along land of John Young South Eighty-five (85) degrees thirty (30) minutes East One Hundred and fifty (150) feet; thence along land of Charles S. Johnson South Four (4) degrees thirty (30) minutes West Seven Hundred and twenty-six (726) feet to a point on Township road; thence along said thirty foot township road North Eighty-five (85) degrees Thirty (30) minutes West, one Hundred and Fifty (150) feet to a point the place of beginning, containing two (2) acres and Eighty (80) perches, being part of a larger tract of land in the warrantee name of David Beverage. Being all the surface of this certain lot of ground.

BEING the same premises as were conveyed to the Grantor herein by deed of Axel Netterblade Et Ux dated the 31st day of March, 1965 and recorded in Clearfield County Deed Book 514, page 409.

VOL 709 PAGE 164

THE SEVENTH THEREOF: BEGINNING at a point on a thirty-foot township road; thence along land of Gus Johnson north 4 degrees 30 minutes east 726 feet to a point; thence along land of John Young south 85 degrees 30 minutes east 150 feet; thence along land of Alfred Anderson South 4 degrees 30 minutes west 726 feet to a point on said township road; thence along said township road north 85 degrees 30 minutes west 150 feet to a point, the place of beginning. Containing 2 acres and 80 perches. Being all the surface of all this certain lot of ground.

RESERVATION the same as in Deed of Oscar A. Johnson and wife to John Sandstrom, Jr. and wife, recorded in Clearfield, October 4, 1917 in Deed Book No. 223, page 132.

BEING the same premises as were conveyed to the Grantor herein by deed of Helen Brolin, Widow, dated the 31st day of March, 1965 and recorded in Clearfield County Deed Book 514, page 406.

PLEASE SEE ATTACHED SHEET

THE EIGHTH THEREOF: BEGINNING at a post on line of lands of Joseph Ollinger, thence by said lands North eighty-four degrees (84) West seven hundred thirty-eight (738) feet to a post by a public road, thence by said road North five (5) degrees East sixteen hundred and seventy (1670) feet more or less to a post corner of lands of John Zizone, thence by said lands South eighty-four (84) degrees East nine hundred and sixty (960) feet to a post, thence by a private road South fourteen (14) degrees West two hundred eighty nine (289) feet to a post, thence by same South seventy (70) degrees West forty-five (45) feet to a post, thence by same South eleven and one-half (11 1/2) degrees West thirteen hundred and seventy-four (1374) feet more or less to post and place of beginning. Containing thirty-two (32) acres more or less.

THE NINTH THEREOF: BEGINNING at a post on line of lands of Herman Beais Estate, thence by same South five (5) degrees West seven hundred and sixty-one (761) feet more or less to corner of lands of Joseph Ollinger, thence by said lands North eighty-four (84) degrees West ten hundred eighty two (1082) feet more or less to a post, thence North nineteen and one half (19 1/2) degrees East seven hundred eighty-one (781) feet more or less to a post, thence south eighty-four degrees East nine hundred and one (901) feet more or less to post and point of beginning. Containing (17) acres and fifty (50) perches more or less.

EXCEPTING AND RESERVING from above recited tract all of the oil and gas that is or may be underlying the same with the right to enter at any time and remove the same and the right of way into the said tracts for the purpose of removing same without liability to the surface owners.

BEING the same two (2) parcels of land as were conveyed to the Grantor herein by deed of Martin M. Gavlock Et Al dated the 27th day of July, 1963 and recorded in Clearfield County Deed Book 503, page 384.

For the purpose of complying with the Act No. 431 approved July 17, 1957, the following clause is included:

"THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE 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."

VOL 709 PAGE 165

Together with all and singular the improvements, ways, streets, alleys, passages, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of the party of the first part, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof,

To Have and to Hold the said lot or piece of ground above described, with the messuage or tenement thereon erected unto the said party of the second part, its, his, her or their heirs, executors, administrators, successors and assigns forever.

AND the said party of the first part hereby does and will warrant SPECIALLY the property hereby conveyed.

In Witness Whereof, the said party of the first part has hereto caused its corporate seal to be affixed, and attested this 27th day of October A.D. one thousand nine hundred and Seventy-Five.

RIVER HILL COAL COMPANY, INC.

By V. Hoover Rydberg V. President.

Attest: M. W. G. G. G. G. Secretary.

(Corporate Seal)

COMMONWEALTH OF PENNSYLVANIA.

COUNTY OF CLEARFIELD

SS.

On this, the 27th day of October, 1975,

before me Dorothy H. Hile, the undersigned officer, personally appeared

V. Hoover Rydberg, who acknowledged himself to be the

Vice President of RIVER HILL COAL COMPANY, INC., a corporation,

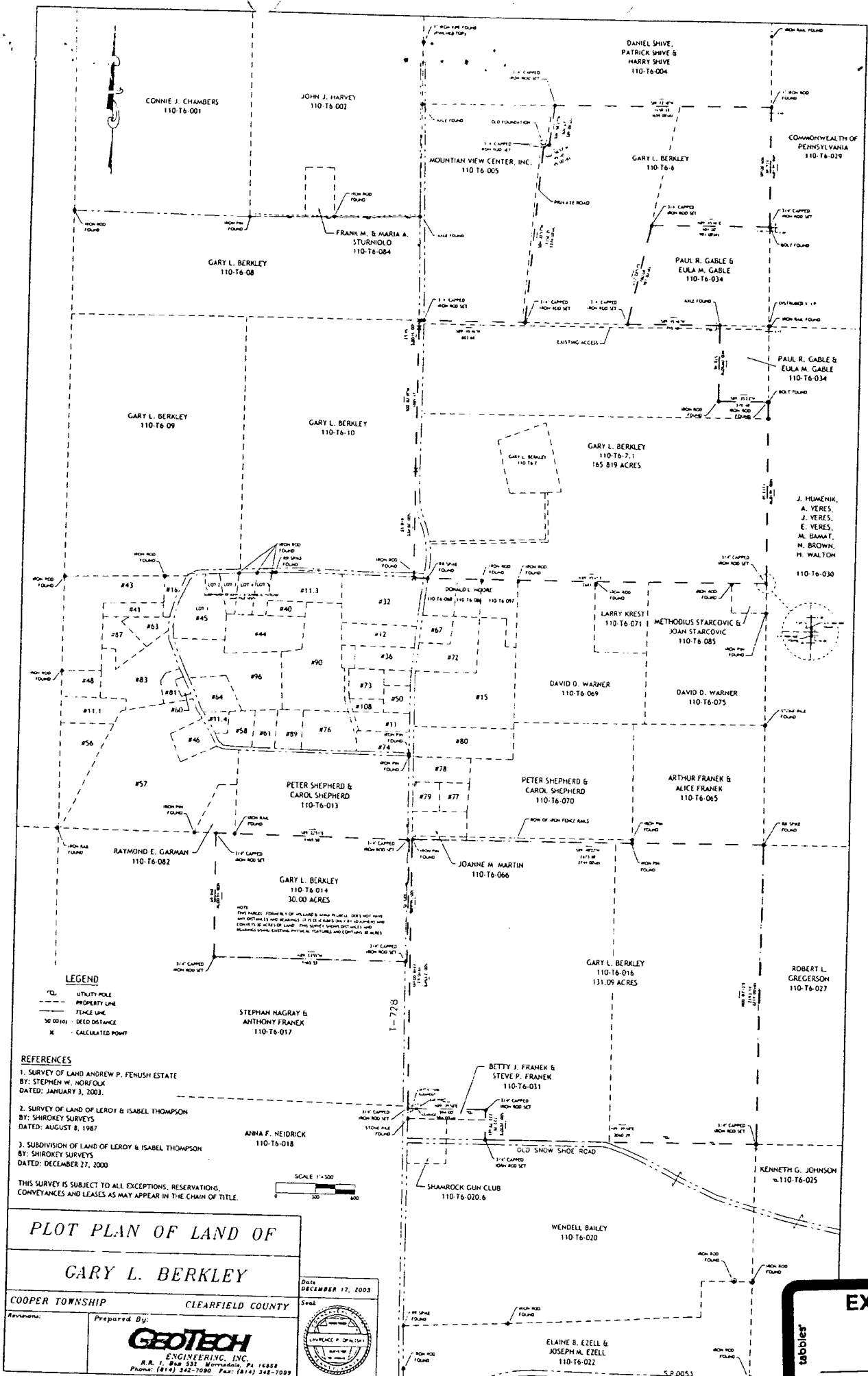
and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

MRS. DOROTHY H. HILE, Notary Public
Clearfield, Clearfield Co., Pa.
My Commission Expires Dec. 3, 1978

I W U Hile hereby certify that the residence of the within named Grantee is: Kylertown, Pennsylvania

Entered of Record Oct 28 1975 3:48 C. L. G. G. G. Recorder



EXHIBIT

D

tabbles

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GARY L. BERKLEY

PLAINTIFF

VS

DEFENDANT

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife

NO. 2005-582-CD

AFFADAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA:

SS:

COUNTY OF CLEARFIELD

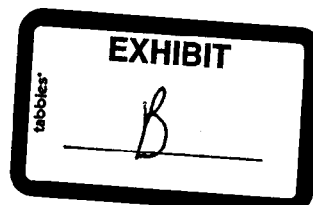
I, R. STUART AUBER, BEING FIRST DULY SWORN AND
ACCORDING TO LAW, DEPOSES AND SAYS:

1. THAT HE IS A CONSTABLE FOR THE COUNTY OF
CLEARFIELD

AND THE STATE OF PENNSYLVANIA, AND NOT A PARTY TO
THE WITHIN ACTION.

2. THAT ON THE 9 DAY OF MAY, 2005, HE
SERVED A TRUE AND CORRECT COPY OF A ACTION TO QUIET TITLE
UPON HARRY J, SHIVE, AT DURA KAN CO. IN
THE CITY, BORO, VILLAGE OF GRASSFLAY, TOWNSHIP
OF COOPER, COUNTY OF CLEARFIELD
PENNSYLVANIA, THE DEFENDANT NAMED IN SAID
DOCUMENT, BY THEN AND THERE AT THE PLACE AND ON THE
DATE NOTED ABOVE, DELIVERED TO PAT SHIVE(SON)
A TRUE AND CORRECT COPY OF THE SAID STATED
DOCUMENTS. TIME OF THIS SERVICE WAS AT 1155 HOURS.

R. Stuart Auber
R. STUART AUBER, CONSTABLE
CERTIFICATION B000802



GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.: 2005 - 582 - CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

NOTICE TO PLEAD

To: Harry and Dorothy Shive
321 Summit Road
Drifting, PA 16834

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Complaint
within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

CALDWELL & KEARNS

By: 

Brett M. Woodburn
Attorney I.D. #81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

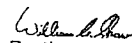
Dated: 4/18/2005

04-668/86893

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

APR 22 2005

Attest.


Prothonotary/
Clerk of Courts

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.: 2005-582-CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

PRAECIPE TO ATTACH EXHIBITS "A", "B", "C" AND "D" TO COMPLAINT

TO THE PROTHONOTARY OF SAID COURT:

Please attach the following exhibits to the Complaint marked Exhibits "A", "B", "C"
and "D".

Respectfully submitted.

CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire
Attorney I.D. #81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Dated: 4/29/05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GARY L. BERKLEY

PLAINTIFF
VS
DEFENDANT

NO. 2005-582-CD

HARRY J. SHIVE and
DOROTHY L. SHIVE husband
and wife

AFFADAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA:

SS:

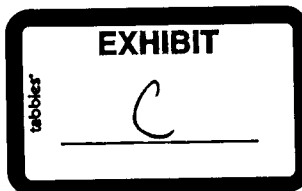
COUNTY OF CLEARFIELD

I, R. STUART AUBER, BEING FIRST DULY SWORN AND
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1. THAT HE IS A CONSTABLE FOR THE COUNTY OF
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THE CITY, BORO, VILLAGE OF GRASSFLAT, TOWNSHIP
OF COOPER, COUNTY OF CLEARFIELD
PENNSYLVANIA, THE DEFENDANT NAMED IN SAID
DOCUMENT, BY THEN AND THERE AT THE PLACE AND ON THE
DATE NOTED ABOVE, DELIVERED TO PAT SHIVE (SON)
A TRUE AND CORRECT COPY OF THE SAID STATED
DOCUMENTS. TIME OF THIS SERVICE WAS AT 1155 HOURS.

R. Stuart Auber
R. STUART AUBER, CONSTABLE
CERTIFICATION B000802



3631 NORTH FRONT STREET
HARRISBURG, PENNSYLVANIA 17110

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

NO.: 2005-582-CD

CIVIL ACTION - LAW

ACTION TO QUIET TITLE

NOTICE TO PLEAD

To: Harry and Dorothy Shive
321 Summit Road
Drifling, PA 16834

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Respectfully submitted,

CALDWELL & KEARNS

By: 

Brett M. Woodburn
Attorney I.D. #81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

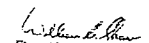
Dated: 4/18/2005

04-668/86893

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

APR 22 2005

Attest.


Prothonotary/
Clerk of Courts

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.: 2005-582-CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

PRAECIPE TO ATTACH EXHIBITS "A", "B", "C" AND "D" TO COMPLAINT

TO THE PROTHONOTARY OF SAID COURT:

Please attach the following exhibits to the Complaint marked Exhibits "A", "B", "C"
and "D".

Respectfully submitted.

CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire
Attorney I.D. #81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Dated:

4/29/05

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

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendants

: NO. 05-582-CD
:
: Type of Case: Civil
:
: Type of Pleading:
: Praecipe for Entry of
: Appearance
:
: Filed on Behalf of:
: Harry J. Shive and
: Dorothy L. Shive,
: Defendants
:
:
: Counsel of Record for This
: Party:
: F. Cortez Bell, III, Esq.
: I.D. #30183
:
: 318 East Locust Street
: P. O. Box 1088
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:
:

FILED

JUN 16 2005
8/11:40
William A. Shaw
Prothonotary/Clerk of Courts
1 Cent TO ATT

(6)

#4

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

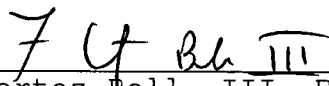
GARY L. BERKLEY,	:	
Plaintiff	:	
	:	
v.	:	NO. 05-582-CD
	:	
HARRY J. SHIVE and	:	
DOROTHY L. SHIVE, husband	:	
and wife,	:	
Defendants	:	

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance in the above-captioned matter
on behalf of the Defendants, Harry J. Shive and Dorothy L. Shive.

Respectfully submitted,
By,



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

Dated: June 16, 2005

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

GARY L. BERKLEY,	:	
Plaintiff	:	
	:	
v.	:	NO. 05-582-CD
	:	
HARRY J. SHIVE and	:	
DOROTHY L. SHIVE, husband	:	
and wife,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the
Praecipe for Entry of Appearance upon the following person by
mailing such copy first class mail, postage prepaid, addressed as
follows:

Mr. Brett M. Woodburn, Esquire
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA 17110

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants
Harry J. Shive and Dorothy
L. Shive

DATED: June 16, 2005

CA

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

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendants

: NO. 05-582-CD
:
: Type of Case: Civil
:
: Type of Pleading:
: Preliminary Objections to
: Plaintiff's Complaint
:
: Filed on Behalf of:
: Harry J. Shive and
: Dorothy L. Shive,
: Defendants
:
:
: Counsel of Record for This
: Party:
: F. Cortez Bell, III, Esq.
: I.D. #30183
:
: 318 East Locust Street
: P. O. Box 1088
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:
:

64 FILED

JUN 16 2005

0/11:30h

William A. Shaw

Prothonotary/Clerk of Courts

5 CENTS TO ATT

#3

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

GARY L. BERKLEY,	:	
Plaintiff	:	
	:	
v.	:	NO. 05-582-CD
	:	
HARRY J. SHIVE and	:	
DOROTHY L. SHIVE, husband	:	
and wife,	:	
Defendants	:	

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

NOW comes the Defendants, Harry J. Shive and Dorothy L. Shive, by and through their attorney, F. Cortez Bell, III, Esquire, who, pursuant to the Pennsylvania Rules of Civil Procedure, Rule 1028, set forth the Defendants' Preliminary Objections to the Plaintiff's Complaint and aver as follows:

1. That a Complaint in an Action to Quiet Title was filed to the above captioned term and number by the Plaintiff on or about April 22, 2005.

2. That said Complaint was served upon the Defendants, Harry J. Shive and Dorothy L. Shive, by a Pennsylvania State Constable.

3. That the Defendants pursuant to the Pennsylvania Rules of Civil Procedure, Rule 1028 respectfully set forth the following Preliminary Objections:

MOTION FOR MORE SPECIFIC PLEADING

4. The averments of Paragraphs 1 through 3 set forth within this Preliminary Objection to Plaintiff's Complaint would be incorporated herein by reference as if the same were set forth in full at length.

5. That Paragraph 3 of the Plaintiff's Complaint specifically indicates that the Plaintiff acquired title to the premises in question by Deed dated September 16, 2003, with a copy of said Deed having been attached to the Complaint as Plaintiff's Exhibit "A".

6. That the Plaintiff's Complaint does not set forth, therein, the chain of title under which the Plaintiff asserts ownership of the alleged property or portion of property which is in dispute.

7. That without a complete recitation of the chain of title upon which the Plaintiff's action is based, the Defendants are not in a position to fully and completely respond to the Complaint which has been filed.

8. That the Defendants would respectfully that the Plaintiff either file an Amended Complaint within twenty (20) days from the service of a copy of these Preliminary Objections containing the full and complete chain of title of the Plaintiff as to the property or portion of property in dispute and/or that the Court issue an Order directing that an Amended Complaint be filed

containing such information.

NON JOINDER OF A NECESSARY PARTY

9. Paragraphs 1 through 8 of the Preliminary Objections to Plaintiff's Complaint set forth above would be incorporated herein by reference as if the same were set forth in full at length.

10. That the Plaintiff's Complaint is filed against the Defendants Harry J. Shive and Dorothy L. Shive and appears to be based upon that deed to Harry J. Shive dated October 19, 1989 as is recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 1309 at Page 199.

11. That said deed as recited in the Plaintiff's Complaint is not the final or last deed in the chain of title of the Defendant's tract as there have been further conveyances by said Harry J. Shive of the property or parcel in question to other individuals.

12. That the Defendants would respectfully request that your Honorable Court direct that the Plaintiff's amend their original Complaint to include any other current owners of the tract in question as Defendants such that any and all parties associated with regard to this matter have an opportunity to present their positions to your Honorable Court as well as such that at the time the Court issues any Orders in this matter that all the necessary

parties have had the opportunity of notice and a right to be heard thereon.

WHEREFORE, it is respectfully requested that your Honorable Court grant the Preliminary Objections of the Defendants, Harry J. Shive and Dorothy L. Shive, and that the Plaintiff be directed to file an Amended Complaint within twenty (20) days from the date of the Court Order.

IMPROPER SERVICE OF PLAINTIFF'S COMPLAINT

13. Paragraphs 1 through 12 of the Preliminary Objections to Plaintiff's Complaint set forth above would be incorporated herein by reference as if the same were set forth in full at length.

14. That service of the Plaintiff's Complaint was made upon the Defendants by a Pennsylvania State Constable.

15. That the former Pennsylvania Rules of Civil Procedure, Rule 1064 dealt with the service of original process in Actions to Quiet Title and now refers the service procedure to Rule 410 governing service in actions involving real property.

16. That the Pennsylvania Rules of Civil Procedure, Rule 410 provides that service is to made in accord with the provisions of the Pennsylvania Rules of Civil Procedure, Rule 400.

17. That the provisions of the Pennsylvania Rules of

Civil Procedure, Rule 400 provides that original process shall be served within the Commonwealth only by the Sheriff.

18. That the Defendants would assert that the Plaintiff's Complaint has been improperly served upon them.

WHEREFORE, it is respectfully requested that your Honorable Court grant the Preliminary Objections of the Defendants, Harry J. Shive and Dorothy L. Shive, and that the Plaintiff be directed to file an Amended Complaint and properly serve the same within twenty (20) days from the date of the Court Order.

Respectfully submitted,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants Harry
J. Shive and Dorothy L. Shive

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

GARY L. BERKLEY,	:	
Plaintiff	:	
	:	
v.	:	NO. 05-582-CD
	:	
HARRY J. SHIVE and	:	
DOROTHY L. SHIVE, husband	:	
and wife,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the Preliminary Objections to Plaintiff's Complaint upon the following person by mailing such copy first class mail, postage prepaid, addressed as follows:

Mr. Brett M. Woodburn, Esquire
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA 17110

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants
Harry J. Shive and Dorothy L.
Shive

DATED: June 16, 2005

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.: 2005-582-CD

: CIVIL ACTION - LAW

: ACTION TO QUIET TITLE

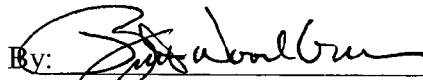
PRAECIPE TO ATTACH EXHIBITS "A", "B", "C" AND "D" TO COMPLAINT

TO THE PROTHONOTARY OF SAID COURT:

Please attach the following exhibits to the Complaint marked Exhibits "A", "B", "C"
and "D".

Respectfully submitted,

CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire
Attorney I.D. #81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Dated:

4/29/05

04-668/87316

7 FILED 10 CC
m/10:38/04
MAY 04 2005

William A. Shaw
Prothonotary/Clerk of Courts

2

County Parcel No.: 110-T6-7
110-T6-7.1
110-T6-6

RECORDED
09/26/2003 11:15:44 AM
KAREN L. STARK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania
Inst Num: 200317439

This Deed

MADE the 17 day of September in the year Two Thousand and three (2003).

BETWEEN ANNA MICKNEY, a widow, of 5427 Baptist Road, Pittsburgh, Pennsylvania, 15236, hereinafter referred to as the "GRANTOR";

-And-

GARY L. BERKLEY, of 147 Loop Road, West Decatur, Pennsylvania, 16878, hereinafter referred to as the "GRANTEE".

WITNESSETH, that in consideration of the sum of Two Hundred Fifty-eight Thousand (\$258,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey unto the Grantee, his successors and assigns forever,

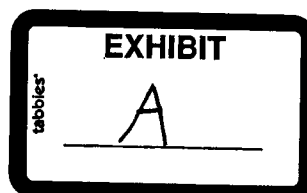
ALL those certain tracts or parcels of ground situate in Cooper Township, Clearfield County, Pennsylvania, bounded and described as follows:

The First Thereof:

BEGINNING at a stone corner, thence by land surveyed to John Andrews, North one degree East seventy three and one half perches to a post by a Pine; thence North eighty eight degrees West, seven perches to a post by a White Oak; thence by lands now or formerly of Brown and Bassert, South, two degrees West, one hundred and sixteen perches to a stone heap; thence by land now or formerly of John Pemp, South eighty eight degrees East, one hundred and fifty nine perches to the place of beginning. CONTAINING seventy acres and seventy one perches, and allowances. Being part of a larger tract of land surveyed on a warrant granted to Casper Haines.

The Second Thereof:

BEGINNING at a stone corner by a Pine, thence South one and one half degrees West, forty two and one half perches to a post; thence North eighty eight degrees West, one hundred and fifty perches to a post; thence North one degree East, forty two and one half perches to a post; thence South eighty eight degrees East, one hundred and fifty perches to the place of beginning. CONTAINING thirty seven acres and one hundred perches and allowances.



The Third Thereof:

BEGINNING at a post on line of lands of Joseph Olinger; thence by said lands North, eighty-four degrees West, seven hundred thirty-eight (738) feet of a post; thence by private road, North, eleven and one half degrees East, thirteen hundred and seventy-four (1374) feet more or less to a post; thence by same North, seventy degrees East, forty-five (45) feet to a post; thence by same, North, fourteen degrees East, Two Hundred and Eighty-nine (289) feet to a post; thence by lands of John Zezony, South, eighty-four degrees East, nine hundred and sixty-six (966) feet more or less to a post; thence South, nineteen and one-half degrees West, Seventeen Hundred and Sixteen (1716) feet more or less to a post; and place of beginning. CONTAINING thirty-four (34) acres and ninety (90) perches, more or less.

The Fourth Thereof:

BEGINNING at a post on the line of lands of John Zezony; thence by same, South 84 degrees, East, six hundred and ninety-three (693) feet, more or less to a post; thence by lands of the Herman Beates Estate, North 5 degrees West, nine hundred and nine (909) feet more or less to a post; thence North 84 degrees West, nine hundred and one (901) feet more or less to a post; thence North, 19 ½ degrees East, nine hundred and thirty-five (935) feet more or less to a post and place of beginning. CONTAINING 16 acres and 100 perches more or less.

UNDER AND SUBJECT TO all exceptions and reservations contained in prior deeds of record in the chain of title.

ALSO UNDER AND SUBJECT TO a previous conveyance to Paul R. Gable, et al. of a parcel described in that Deed of Paul R. Gable and Eula M. Gable dated August 24, 1992 and recorded in Clearfield County Deeds and Records Book Volume 1481 at page 110.

BEING the same premises conveyed to Anna Mickney, the grantor herein by Deed of Isabel Thompson, a/k/a Isabelle Thompson dated August 1, 2002 and recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument Number 200212636.

TOGETHER with all and singular, the improvements, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of the said parties of the first part in law, equity, or otherwise, howsoever, of, in, and to the same and every part thereof.

TO HAVE AND HOLD the said hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances unto the said party of the second part, their heirs, executors, administrators, and assigns, to and for the only proper use and behoof of the said party of the second part, their heirs, executors, administrators, and assigns, FOREVER.

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: _____

This _____ day of _____

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 Grantor will SPECIALLY warrant and forever defend the property hereby conveyed.

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

Sealed and delivered
in the presence of:

Anna Mickney {SEAL}
Anna Mickney

Commonwealth Of Pennsylvania

:

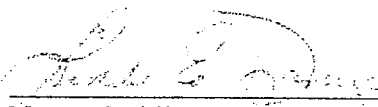
: SS.

County Of Clearfield

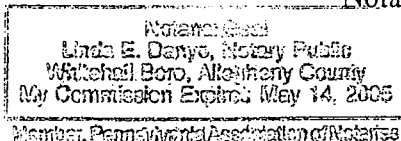
:

On this, the 14th day of September, 2003, before me, the undersigned authority, personally appeared ANNA MICKNEY, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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


Notary Public

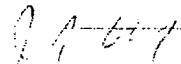
My Commission Expires:



Certificate of Residence

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

Gary L. Berkley
147 Loop Road
West Decatur, PA 16878


Agent or Attorney for Grantees

VOL 1309-199

DEED: Conveyance, Transfer or Encumbrance 1989

VOL 1309-199

Sold by The Plunkett Co., Williamsport, Pa. 17701

This Indenture,

MADE the 19th day of October
eighty-nine (1989).

in the year of our Lord, nineteen hundred and

BETWEEN ESTATE OF L. RUDOLPH LUNDBERG a/k/a RUDOLPH LUNDBERG, by
COUNTY NATIONAL BANK, Executor, GRANTOR and Party of the First Part,

AND

HARRY J. SHIVE, an individual, of P. O. Box 64, Drifting, Clearfield
County, Pennsylvania 16834, GRANTEE and Party of the Second Part.WHEREAS, the said L. Rudolph Lundberg became in his lifetime
lawfully seized in the hereinafter described real estate; and being
thereof so seized made his Last Will and Testament, in writing dated
March 23, 1988, wherein he appointed the County National Bank as
Executor; andWHEREAS, the said L. Rudolph Lundberg died the 11th day of January,
1989, and the said Last Will and Testament was duly probated on the
20th day of January, 1989, and is now of record in the Office of the
Register of Wills, in and for Clearfield County, filed to No.

NOW THIS INDENTURE WITNESSETH; That the said GRANTOR

for and in consideration of the sum of

Fifty Thousand One Hundred Twenty One (\$50,121.00)-----Dollars,

lawful money of the United States, to it well and truly paid by the said Grantee
at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, by virtue of the
power granted by law, has granted, bargained, sold, aliened, released and confirmed, and by these presents
does grant, bargain, sell, alien, release and confirm unto the said Harry J. Shive, his
heirs

and assigns,

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

EXHIBIT

tabbies

B

VOL 1309 PAGE 200

BEGINNING at an iron pin located in a stone pile on line of State Game Lands #100. Said point is also the Southeast corner of Calvin and Albert Berkley; thence along State Game Lands #100, South no degrees, twenty-two minutes, ten seconds West (S 0° 22' 10" W) eight hundred twenty five feet (825.0') to an iron pin; thence along lands of Leroy Thompson and Mountain View Center, Inc. North eighty-nine degrees, six minutes, thirty seconds West (N 89° 06' 30" W) two thousand six hundred and sixty and fourteen hundredths feet (2660.14') to an axle in Township Road #728 and on line of John Harvey. Said point is the Northwest corner of Mountain View Center, Inc.; thence along lands of John Harvey, North one degree no minutes East (N 1° 00' E) eight hundred thirty three and twenty five hundredths feet (833.25') more or less, to an iron pin and also the Southwest corner of Calvin and Albert Berkley; thence along lands of Calvin and Albert Berkley, South eighty-eight degrees, fifty-five minutes, forty-five seconds East (S 88° 55' 45" E) two thousand six hundred fifty-one and six hundredths feet (2651.06') to an iron pin in Stone pile and place of beginning.

BEING the same premises as vested in L. Rudolph Lundberg and Kathleen S. Lundberg, his wife, by Deed dated December 13, 1982, and recorded in Clearfield County in Deed Book Volume 866, at Page 01, thereafter the said Kathleen S. Lundberg died January 30, 1988, thus vesting complete title to the within described premises in L. Rudolph Lundberg.

WEST BRANCH SCHOOL DISTRICT
1% REALTY TRANSFER TAX

AMOUNT \$ 201.21

PAID 10-19-89 MICHAEL R. LYTLE
Date Agent

VOL 1300 PAGE 201

TOGETHER with all and singular
ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto
belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and
also all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever of
L. Rudolph Lundberg a/k/a Rudolph Lundberg
in law, equity, or otherwise, howsoever, of, in, to, or out of the same.

TO HAVE AND TO HOLD the said described parcel

hereditaments and premises hereby granted and released, or mentioned and intended so to be, with the appur-
tenances, unto the said Harry J. Shive,
his heirs and assigns, to and for the only proper use and behoof of the said
Harry J. Shive, his heirs and assigns, forever.

AND the said Harry J. Shive

for him, and his heirs, executors and administrators,
do covenant, promise and agree, to and with the said Harry J. Shive

his heirs and assigns, by these presents, that they the said
Executors have not done, committed, or knowingly, or willingly suffered to be done or committed, any act, matter
or thing whatsoever whereby the premises hereby granted, or any part thereof, is, are, shall or may be impeached,
charged or incumbered, in title, charge, estate or otherwise howsoever.

IN WITNESS WHEREOF, The said Grantor

hereunto set its hand and seal the day and

year first above written.

IN THE PRESENCE OF:

Nancy J. Lusk
Assistant Clerk

ESTATE OF L. RUDOLPH LUNDBERG
a/k/a RUDOLPH LUNDBERG
COUNTY NATIONAL BANK, EXECUTOR
(SEAL)

By: *Donald E. Lundberg*
(SEAL)

(SEAL)

(SEAL)

I hereby certify that the precise address of the grantee

herein is:

- P. O. BOX 64 -
- Drifting, PA 16834 -

Dorothy L. Shive

(Attorney for)

VOL 1309 PAGE 202

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELDOn this the 19th day of October, A.D. 1989,
before me Valarie J. Flegal
the undersigned officer, personally appearedDonald Edwin Shawley, Trust Officer for County National Bank, Execu- known to me
tor for the Estate of L. R. Lundberg
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument
and acknowledged that he executed the same for the purposes therein contained.

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

VALARIE J. FLEGAL, Notary Public
Clearfield County, Pa.
My Commission Expires Dec. 31, 1992*Valarie J. Flegal*Estate of
Guardian, Trustee or ExecutorESTATE OF L. RUDOLPH
LUNDBERG a/k/a RUDOLPH
LUNDBERG

TO

HARRY J. SHIVE

1989

Dated

MILLER & MASON
ATTORNEYS AT LAW
P.O. BOX 28
PHILIPSBURG, PA 16866CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 11:40 A.M. 10-19-89
BY HARRY J. SHIVE
FEES 13.50
Michael R. Lytle, RecorderCOMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

RECORDED on this 19th day of OCT.

A.D. 1989, in the Recorder's Office of the said County, in Deed Book, No.

1309 page 199

Given under my hand and the seal of the said office, the day and year aforesaid.

*Michael R. Lytle*My Commission Expires
First Monday in January, 1992

Entered of Record OCT. 19, 1989, 11:40 A.M. Michael R. Lytle, Recorder

STING Tied 500.21
Wish Binder 250.61
Courier Tel. 250.60

306-CORPORATION DEED—Develop the Printer, Inc., Box 1235, Erie, Pa.
VOL 709 PAGE 162

Clearfield County, Pa. Made the

27th day of October In the year of our Lord one thousand nine hundred and Seventy-Five
Between RIVER HILL COAL COMPANY, INC., of Kylertown, Clearfield County, Pennsylvania,
party of the first part, hereinafter referred to as GRANTOR,

A
N
D

MOUNTAIN VIEW CENTER, INC., of Kylertown, Clearfield County, Pennsylvania, party of the
second part, hereinafter referred to as GRANTEE.

Witnesseth, That the said party of the first part, for and in consideration of the sum of Fourteen
Thousand Two Hundred Fifty and no/100 (\$14,250.00) Dollars

lawful money of the United States of America, unto the party of the first part, well and truly paid by the said
party of the second part, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged,
has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and
confirm unto the said party of the second part, its, his, her or their heirs, executors, administrators, successors and
assigns, all that certain piece or parcel of land the following certain pieces or parcels of land situate in
Cooper Township, Clearfield County, Pennsylvania, more particularly bounded and described as
follows:

THE FIRST THEREOF: BEGINNING at an iron pin corner on line of Kylertown
Presbyterian Church and now or formerly Chester A. Beam; thence along line of
now or formerly Chester A. Beam South seventy seven degrees no minutes East
(S 77° 00' E) a distance of sixty six and no hundredths (66.00') feet to a corner on
the northern right of way line of State Highway Route Number 53 leading from
Kylertown to Drifting; thence along the northern right of way line of State
Highway Route Number 53 by curve to the left having a radius of two thousand
three hundred thirty two and one hundredths (2332.01') feet a distance of one
hundred fifty eight and sixty hundredths (158.60') feet to a corner on line of other
lands of River Hill Coal Company; thence along line of other lands of River Hill
Coal Company North seven degrees fifteen minutes East (N 7° 15' E) a distance of
eighty seven and fifty hundredths (87.50') feet to a corner on line of Kylertown
Presbyterian Church; thence along line of Kylertown Presbyterian Church South
seventy seven degrees no minutes East (S 77° 00' E) a distance of seventy two and
no hundredths (72.00') feet to an iron pin corner the place of beginning. Con-
taining 0.14 Acres.

BEING the same premises as were conveyed to the within Grantor by deed of
Kenneth L. Womer Et Ux dated the 8th day of November, 1974 and recorded in
Clearfield County Deed Book 695, page 309.

THE SECOND THEREOF: BEGINNING at a post corner; thence by residue
of the Walter Stewart survey North sixty seven and one half (67 1/2°) degrees East
one hundred and eighty (180) perches to a post corner; thence by land of Joseph
Eisenhower North four and one half (4 1/2°) degrees East seventy five (75) perches
to a post corner; thence by land of George D. Hess, and John Hoover, North
eighty six (86°) degrees West one hundred and sixty (160) perches to a Maple
corner, being the Northwest corner of the Walter Stewart survey; thence by
land of S. Hoover and Joseph Potter, South Four and one half (4 1/2°) degrees
West one hundred and fifty four and one half (154 1/2) perches to a post corner
and place of beginning. Containing one hundred and eight (108) acres and
forty three (43) perches with allowance.

EXCEPTING AND RESERVING from and out of the described premises all minerals
and mining rights reserved and excepted in Deed by Curtin M. Graham and Susan,
his wife, and Sarah Wright to A.R. Wright dated May 24, 1866.

EXHIBIT

tabbles

C

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THE THIRD THEREOF: BEGINNING at a post, thence North four (4°) degrees, East thirty-six and three fourth (36 3/4) perches to a post; thence by land of John Hoover, North sixty-seven and one half (67 1/2°) degrees East one hundred seventy-nine and seven tenths (179.7) perches to a post; thence by lands of Jos Eisenhower and Mrs. John Irwin South four (4°) degrees West seventy-seven and two tenths (77.2) perches to a post; thence by lands of Anderson Lutz, South eighty (80°) degrees West, one hundred and sixty-six (166) perches to a post and place of beginning. Containing fifty-four (54) acres and twenty-four and one half (24 1/2) perches of land.

EXCEPTING AND RESERVING the minerals and mining rights as contained in the prior chain of title.

THE FOURTH THEREOF: BEGINNING at a dead pine, said pine being a corner of land of Joseph Potter Estate and Samuel Hoover; thence by line between said Joseph Potter and Samuel Hoover Estate sixty-two (62) perches, more or less, to public road, which is to be considered the West line; thence in a Southerly direction along said road twenty-two (22) perches, more or less, to a stone corner; thence in an Easterly direction along said road fifty-one (51) perches to line of James Hoover Estate; thence by lands of James Hoover Estate (now owned by Ira S. Hoover) twenty-eight (28) perches to place of beginning. Containing nine (9) acres, more or less.

THE FIFTH THEREOF: ALL the coal remaining in the "B", or "Lower Kittanning", coal seam (being the same seam mined by the Clearfield Bituminous Coal Corporation in this and adjoining property) in and underlying all that certain piece or parcel of land bounded and described as follows:

BEGINNING at a point in the Graham and Wright Tract, the surface of which is now owned by Ira S. Hoover (said point is located by beginning at the post at the Northeast corner of the said Graham and Wright Tract, a corner common with the George Hess, Susan Beam and Joseph Eisenhower Tracts, and running thence South one and one half (1 1/2°) degrees West one hundred twenty-three (123) feet to a point on the line adjoining the Joseph Eisenhower Tract, and thence through the Graham and Wright Tract, of which this is a part, South Seventy-eight (78°) degrees West one thousand sixty (1,060) feet to the point of beginning of the tract being described; thence by a line through the said Graham and Wright Tract the following four courses and distances, viz, - South twelve (12°) degrees East five hundred (500) feet, South seventy-eight (78°) degrees West three hundred (300) feet, North twelve (12°) degrees West five hundred (500) feet, and North seventy-eight (78°) degrees East three hundred (300) feet to the place of beginning. Containing three and forty-four hundredths (3.44) acres, more or less.

TOGETHER with the right to enter, mine and take away all of the coal and other minerals, and to make such openings, shafts, chutes, dumps, improvements, roads and railroads, on the land as in the judgment of the Grantee, its successors and assigns, may be necessary to conveniently mine the same and transport such coal and other freight through and over said lands. Subject, however, to the rights of A.K. Wright as contained in the prior chain of title.

BEING the same four (4) parcels of land as were conveyed to the Grantor herein by deed of Helen E. Blackburn, Et Al dated the 12th day of May, 1967 and recorded in Clearfield County Deed Book 530, at page 451.

THE SIXTH THEREOF: BEGINNING at a point on the township road; thence along land of Gus Johnson North Four (4) degrees thirty (30) minutes East seven hundred and twenty-six (726) feet to a point; thence along land of John Young South Eighty-five (85) degrees thirty (30) minutes East One Hundred and fifty (150) feet; thence along land of Charles S. Johnson South Four (4) degrees thirty (30) minutes West Seven Hundred and twenty-six (726) feet to a point on Township road; thence along said thirty foot township road North Eighty-five (85) degrees Thirty (30) minutes West, one Hundred and Fifty (150) feet to a point the place of beginning, containing two (2) acres and Eighty (80) perches, being part of a larger tract of land in the warrantee name of David Beverage. Being all the surface of this certain lot of ground.

BEING the same premises as were conveyed to the Grantor herein by deed of Axel Netterblade Et Ux dated the 31st day of March, 1965 and recorded in Clearfield County Deed Book 514, page 409.

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THE SEVENTH THEREOF: BEGINNING at a point on a thirty-foot township road; thence along land of Gus Johnson north 4 degrees 30 minutes east 726 feet to a point; thence along land of John Young south 85 degrees 30 minutes east 150 feet; thence along land of Alfred Anderson South 4 degrees 30 minutes west 726 feet to a point on said township road; thence along said township road north 85 degrees 30 minutes west 150 feet to a point, the place of beginning. Containing 2 acres and 80 perches. Being all the surface of all this certain lot of ground.

RESERVATION the same as in Deed of Oscar A. Johnson and wife to John Sandstrom, Jr. and wife, recorded in Clearfield, October 4, 1917 in Deed Book No. 223, page 132.

BEING the same premises as were conveyed to the Grantor herein by deed of Helen Brolin, Widow, dated the 31st day of March, 1965 and recorded in Clearfield County Deed Book 514, page 406.

PLEASE SEE ATTACHED SHEET

THE EIGHTH THEREOF: BEGINNING at a post on line of lands of Joseph Ollinger, thence by said lands North eighty-four degrees (84) West seven hundred thirty-eight (738) feet to a post by a public road, thence by said road North five (5) degrees East sixteen hundred and seventy (1670) feet more or less to a post corner of lands of John Zizone, thence by said lands South eighty-four (84) degrees East nine hundred and sixty (960) feet to a post, thence by a private road South fourteen (14) degrees West two hundred eighty nine (289) feet to a post, thence by same South seventy (70) degrees West forty-five (45) feet to a post, thence by same South eleven and one-half (11 1/2) degrees West thirteen hundred and seventy-four (1374) feet more or less to post and place of beginning. Containing thirty-two (32) acres more or less.

THE NINTH THEREOF: BEGINNING at a post on line of lands of Herman Beats Estate, thence by same South five (5) degrees West seven-hundred and sixty-one (761) feet more or less to corner of lands of Joseph Ollinger, thence by said lands North eighty-four (84) degrees West ten hundred eighty two (1082) feet more or less to a post, thence North nineteen and one half (19 1/2) degrees East seven hundred eighty-one (781) feet more or less to a post, thence south eighty-four degrees East nine hundred and one (901) feet more or less to post and point of beginning. Containing (17) acres and fifty (50) perches more or less.

EXCEPTING AND RESERVING from above recited tract all of the oil and gas that is or may be underlying the same with the right to enter at any time and remove the same and the right of way into the said tracts for the purpose of removing same without liability to the surface owners.

BEING the same two (2) parcels of land as were conveyed to the Grantor herein by deed of Martin M. Gavlack Et Al dated the 27th day of July, 1963 and recorded in Clearfield County Deed Book 503, page 384.

For the purpose of complying with the Act No. 431 approved July 17, 1957, the following clause is included:

"THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE 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."

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Together with all and singular the improvements, ways, streets, alleys, passages, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of the party of the first part, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof,

To Have and to Hold the said lot or piece of ground above described, with the messuage or tenement thereon erected unto the said party of the second part, its, his, her or their heirs, executors, administrators, successors and assigns forever.

AND the said party of the first part hereby does and will warrant **SPECIALLY** the property hereby conveyed.

In Witness Whereof, the said party of the first part has hereunto caused its corporate seal to be affixed, and attested this 27th day of October A.D. one thousand nine hundred and Seventy-five.

RIVER HILL COAL COMPANY, INC.

By *V. Hoover Rydberg* President.

Attest: *Mrs. Dorothy A. Hile* Secretary.

(Corporate Seal)

COMMONWEALTH OF PENNSYLVANIA,

COUNTY OF CLEARFIELD

SS.

On this, the 27th day of October, 1975,

before me Dorothy H. Hile, the undersigned officer, personally appeared

V. Hoover Rydberg, who acknowledged himself to be the

Vice President of RIVER HILL COAL COMPANY, INC., a corporation,

and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

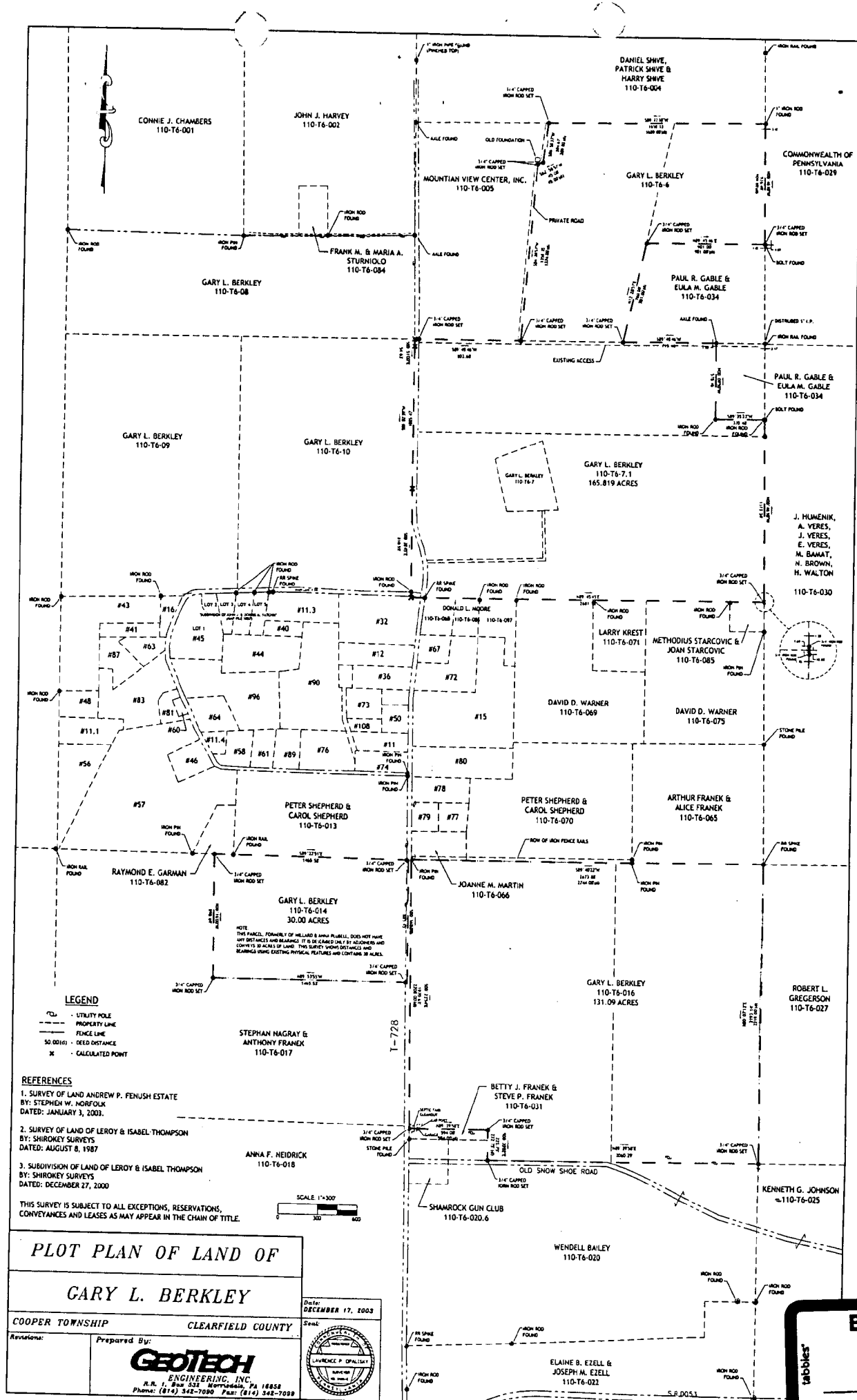
In witness whereof, I hereunto set my hand and official seal.

Mrs. Dorothy A. Hile
MRS. DOROTHY A. HILE, Notary Public
Clearfield, Clearfield Co., Pa.
My Commission Expires Dec. 3, 1978

I *W U Hilt* hereby certify that the residence of the within named Grantee

is: Kylertown, Pennsylvania

Entered of Record *Oct 25* 1975, 3:48 *Cecil A. Gussner* Recorder



GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

:
: 582
: NO.: 2005- ~~882~~ - CD

:
: CIVIL ACTION - LAW

:
: ACTION TO QUIET TITLE

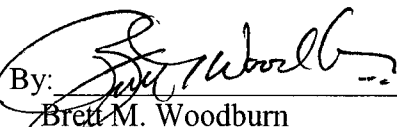
NOTICE TO PLEAD

To: Harry and Dorothy Shive
321 Summit Road
Drifting, PA 16834

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Complaint
within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

CALDWELL & KEARNS

By: 
Brett M. Woodburn
Attorney I.D. #81786
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Dated: 4/18/2005

04-668/86893

FILED

APR 22 2005

M/11:45/2
William A. Shaw
Prothonotary

3 CENT TO ATT

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

:
:
: NO.:

:
:
: CIVIL ACTION - LAW

:
:
: ACTION TO QUIET TITLE

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

David S. Meholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

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

: NO.:
:
:

: CIVIL ACTION - LAW
:
:

: ACTION TO QUIET TITLE

AVISO

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

David S. Meholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

GARY L. BERKLEY,
Plaintiff

v.

HARRY J. SHIVE and
DOROTHY L. SHIVE, husband
and wife,
Defendant

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
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: NO.:

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: ACTION TO QUIET TITLE

COMPLAINT UPON AN ACTION TO QUIET TITLE

AND NOW, comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Complaint Upon an Action to Quiet Title; and in support thereof, avers as follows:

1. The Plaintiff, Gary L. Berkley, ("Plaintiff"), is an adult individual currently residing at 147 Loop Road, West Decatur, Clearfield County, Pennsylvania, 16878.

2. The Defendants, Harry J. Shive and Dorothy L. Shive, husband and wife, ("Defendants") are adult individuals currently residing at 321 Summit Road, Drifting, Clearfield County, Pennsylvania 16834.

3. The Plaintiff acquired title to a parcel of land, Parcel No. 110-T6-6, by deed located in Cooper Township, Clearfield County, Pennsylvania, such Deed being dated September 16, 2003, and recorded in the Recorder of Deeds office of Clearfield County on September 26, 2003. Said parcel is contained in said Deed as being "The Third Thereof" and "The Fourth Thereof" and is described as follows:

The Third Thereof:

BEGINNING at a post on line of lands of Joseph Olinger; thence by said lands North, eighty-four degrees West, seven hundred thirty-eight (738) feet of a post; thence by private road, North, eleven and one half degrees East, thirteen hundred and seventy-four (1374) feet more or less to a post; thence by same North, seventy degrees East, forty-five (45) feet to a post; thence by same, North, fourteen degrees East, Two Hundred and Eighty-nine (289) feet to a post; thence by lands of John Zezony, South, eighty-four degrees East, nine hundred and sixty-six (966) feet more or less to a post; thence South, nineteen and one-half degrees West, Seventeen Hundred and Sixteen (1716) feet more or less to a post; and place of beginning. CONTAINING thirty-four (34) acres and ninety (90) perches, more or less

The Fourth Thereof:

BEGINNING at a post on the line of lands of John Zezony; thence by same, South 84 degrees, East, six hundred and ninety-three (693) feet, more or less to a post; thence by lands of the Herman Beates Estate, North 5 degrees West, nine hundred and nine (909) feet more or less to a post; thence North 84 degrees West, nine hundred and one (901) feet more or less to a post; thence North, 19 ½ degrees East, nine hundred and thirty-five (935) feet more or less to a post and place of beginning. CONTAINING 16 acres and 100 perches more or less.

A true and correct copy of the Deed is attached hereto as Exhibit "A" and incorporated herein by reference.

4. The Defendant, Harry J. Shive, who purportedly later conveyed an unrecorded interest to his wife, Defendant Dorothy L. Shive, acquired title to a parcel of land, Parcel No. 110-T6-004, by deed located in Cooper Township, Clearfield County, Pennsylvania, such Deed being dated October 19, 1989, and recorded in the Recorder of Deeds office of Clearfield County on October 19, 1989, in Record Book 1309, Page 202. *A true and correct copy of Defendants' Deed is attached hereto as Exhibit "B" and incorporated herein by reference.*

5. A dispute exists between Plaintiff and Defendants regarding the boundary line between the parties property.

6. Both parties also border property owned by Mountain View Center, Inc., known as Parcel No. 110-T6-005, which was acquired by deed dated October 27, 1975, said deed being recorded in the Clearfield County Recorder of Deeds Office on October 28, 1975, in Record Book 709, Page 162. *A true and correct copy of Mountain View Center, Inc.'s, Deed is attached hereto as Exhibit "C" and incorporated herein by reference.*

6. On or about December 17, 2003, Plaintiff ordered a survey to be conducted of the subject properties in order to determine the actual boundary lines between the parties property. *A true and correct copy of said survey is attached hereto as Exhibit "D" and incorporated herein by reference.*

7. As a result of said survey, it was determined that the private road, which purportedly represented the boundary line between the properties, was wholly within the property owned by Plaintiff.

8. Defendants claim an interest and a stake in said property adverse to Plaintiff, with regard to the private road, which Defendants purport is contained wholly or partially within their property.

9. Defendants' claim is without any right whatsoever, and Defendants have no right, estate, title, lien or interest in or to the property, or any part thereof.

10. As a result of the above, a dispute exists as to the boundary lines between the parties' properties.

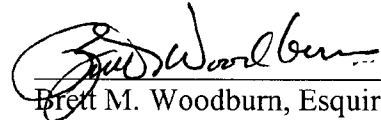
11. Plaintiff respectfully requests that this Court forever determine all rights, liens, title, or interest in the land and determine the validity or discharge of all documents, obligations or deeds affecting any right, lien, title or interest in said land.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an Order forever barring the Defendants from asserting any right, title, or interest in and to the subject property inconsistent with the interest or claim of ownership of the subject property by the Plaintiff herein, and further enjoining the Defendants from denying, impeaching or in any other way attacking Plaintiff's unencumbered ownership interest in the subject property.

Respectfully submitted,

CALDWELL & KEARNS

By:



Brett M. Woodburn, Esquire

Attorney I.D. # 81789

Douglas L. Cassel, Esquire

Attorney I.D. # 92895

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Attorney for the Plaintiff

Date: 04/18/2005

VERIFICATION

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

By: Gary L. Berkley
Gary L. Berkley



Superior Court of Pennsylvania
Western District

Karen Reid Bramblett, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
(412) 565-7592
www.superior.court.state.pa.us

CERTIFICATE OF REMITTAL/REMAND OF RECORD

TO: Mr. Shaw
Prothonotary

RE: Berkley, G. v. Shive, H.
160 WDA 2010
Trial Court: Clearfield County Court of Common Pleas
Trial Court Docket No: 2005-582-CD

FILED

JUN 23 2011

William A. Shaw
Prothonotary/Clerk of Courts

Copy to Supreme Court

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572 is the entire record for the above matter.

Original Record contents:

Item	Filed Date	Description
Original Record	March 10, 2010	1 Part
Transcripts	March 10, 2010	83
Exhibits	March 10, 2010	11 Parts 10 was

Additional Item(s): Certified Copy Superior Court Judgment Order and Opinion.

Remand/Remittal Date: 06/21/2011

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need not acknowledge receipt.

Very truly yours,

Eleanor R. Valecko

Eleanor R. Valecko
Deputy Prothonotary

/bbc

Enclosure

cc: The Honorable Fredric J. Ammerman, President Judge
F. Cortez Bell III, Esq.
Brett M. Woodburn, Esq.

Berkley, G. v. Shive, H.
160 WDA 2010

Letter to: Mr. William A. Shaw

Acknowledgement of Certificate of Remittal/Remand of Record (to be returned):



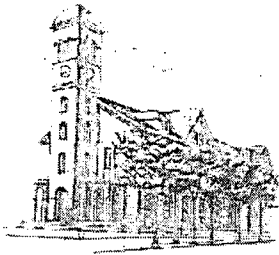
Signature

6-23-11

Date

Printed Name

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan, 2014
Clearfield Co., Clearfield, PA



Clearfield County Office of the Prothonotary and Clerk of Courts

COPY

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

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

Brett M. Woodburn, Esq.
3631 North Front Street
Harrisburg, PA 17110

F. Cortez Bell, III, Esq.
318 E. Locust Street
Clearfield, PA 16830

Gary L. Berkley
Vs.

Harry J. Shive, Dorothy L. Shive, Daniel A. Shive,
Colleen J. Shive, Patrick L. Shive, and Jo Ellen Shive

Court No. 2005-582-CD; Superior Court No. 160 WDA 2010

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on March 9, 2010.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Date: 3/9/2010

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:22 PM

ROA Report

Page 1 of 3

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

Civil Other

Date		Judge
1/22/2005	New Case Filed.	No Judge
	Filing: Quiet Title Action Paid by: Caldwell & Kearns Receipt number: 1899916 Dated: 04/22/2005 Amount: \$95.00 (Check) 3 Cert. to Atty.	No Judge
1/4/2005	Praeipie to Attach Exhibits "A", "B", "C" and "D" To Complaint. filed by s/ Brett M. Woodburn, Esquire. No CC	No Judge
1/16/2005	Preliminary Objections to Plaintiff's Complaint, filed by s/ F. Cortez Bell, III, Esquire. 5CC to Atty	No Judge
	Praeipie For Entry of Appearance, filed on behalf of Defendants Harry J. Shive and Dorothy L. Shive, by s/ F. Cortez Bell, III, Esquire. 1CC to Atty	No Judge
1/20/2005	Affidavit Pursuant To Pennsylvania Rule of Civil Rule Procedure 1066, filed by s/ Brett M. Woodburn, Esquire. 2CC atty Woodburn	No Judge
1/22/2005	Praeipie To Withdraw Affidavit, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty	Fredric Joseph Ammerman
	Order, this 21st day of June, 2005, it is ordered as follows: (see original). /s/ Fredric J. Ammerman, Pres. Judge. 2CC atty. Woodburn	Fredric Joseph Ammerman
7/14/2005	Order, filed. 2 cert. to Atty. Bell w/memo NOW, this 13th day of July, 2005. Re: Argument has been scheduled for the 12th day of August.	Fredric Joseph Ammerman
7/18/2005	Certificate of Service, July 18, 2005, Copy of Scheduling Order dated July 13, 2005 served upon Brett M. Woodburn, Esq. Filed By F. Cortez Bell, III, Esq. No CC.	Fredric Joseph Ammerman
7/28/2005	Amended Complaint Upon an Action To Quiet Title, Filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman
1/2/2005	Praeipie To Substitute Verification, filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman
0/10/2005	Acceptance of Service, filed. I, F. Cortez Bell III, Esquire, do hereby accept service of and acknowledge receipt of a filed copy of the Amended Complaint in the above captioned case on behalf of each of the Defendants set forth in the caption above, filed by s/ F. Cortez Bell III Esq. 3CC atty Bell	Fredric Joseph Ammerman
1/9/2005	Answer, New Matter and Counterclaim, filed by s/ F. Cortez Bell Esq. 2CC Atty Bell.	Fredric Joseph Ammerman
1/8/2006	Reply to New Matter and Counterclaim, filed by s/ Brett M. Woodburn Esq. No CC.	Fredric Joseph Ammerman
7/27/2006	Plaintiff's Motion to Compel Discovery, filed by s/ Brett M. Woodburn Esq. 2CC Atty.	Fredric Joseph Ammerman
7/31/2006	Order, NOW, this 28th day of July, 2006, upon consideration of Plaintiff's Motion to Compel Answers to Discovery, said Motion is Granted, Defs. are ordered to answer the Plaintiff's First Set of Interrogatories and First Request for Production of Documents in full, within 30 days of the date of this Order, or suffer sanctions. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Woodburn	Fredric Joseph Ammerman
0/27/2008	Plaintiff's Motion to Compel Discovery, filed by s/ Karen W. Miller, Esquire. 1CC Atty. Miller	Fredric Joseph Ammerman
0/29/2008	Order, this 28th day of Oct., 2008, plaintiff's Motion to Compel Answers to Discovery is GRANTED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty.	Fredric Joseph Ammerman

Civil Other

Date		Judge
11/25/2008	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Request for Production of Documents upon Mr. Brett M. Woodburn Esq. by United States Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
	Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Interrogatories upon Mr. Brett M. Woodburn Esq by United State Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman
3/20/2009	Certificate of Readiness for Non-Jury Trial, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
3/23/2009	Order, this 23rd day of March, 2009, a pre-trial conference shall be held April 24, 2009 at 1:30 p.m. in Judges Chambers. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. Cc to Attys: Woodburn & Bell w/form	Fredric Joseph Ammerman
4/16/2009	Motion For Continuance, filed by s/ Gary L. Berkley, Plaintiff. 2CC Atty.	Fredric Joseph Ammerman
4/17/2009	Order, this 16th day of April, 2009, upon consideration of the within Motion of Plaintiff, Gary L. Berkley, it is Ordered that the matter is continued until the 22nd day of July, 2009, at 1:30 p.m. in Judges Chambers. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Wood	Fredric Joseph Ammerman
4/20/2009	Motion For Continuance, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman
4/21/2009	Order of Court, AND NOW, this 21st day of April 2009, upon consideration of the within Motion to Plaintiff, it is hereby Ordered that the above-referenced matter is continued until Wednesday the 22nd day of July 2009 at 1:30 pm in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty.	Fredric Joseph Ammerman
7/23/2009	Order, this 23rd day of July, 2009, a Civil Bench Trial is scheduled for the 29th day of Oct., 2009 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Woodburn, Bell	Fredric Joseph Ammerman
10/28/2009	Answer to New Matter to Counterclaim, filed by s/ F. Cortez Bell III Esq. 4CC Atty Bell.	Fredric Joseph Ammerman
11/2/2009	Order, AND NOW, this 29th day of October, 2009, following the completion of the taking of testimony in civil nonjury trial, Order that counsel have no more than 30 days from this date to submit appropriate brief to the Court. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Woodburn Five CC Attorney Bell	Fredric Joseph Ammerman
11/30/2009	Transcript of Proceedings, filed. Testimony of Gary L. Thorp, held Oct. 29, 2009 before Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman
2/21/2009	Opinion and Order, NOW, this 21st day of Dec., 2009, consistent with the Court's Opinion, it is Ordered: 1. The boundry line between the properties belonging to the parties is determined to be the boundary set by Gary L. Thorp, PLS, in his survey dated April 5, 2004 (revised July 30, 2004). 2. The Defendants' Counterclaim is DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Woodburn, Bell 1CC D. Mikesell; Law Library (without memo)	Fredric Joseph Ammerman
2/31/2009	Post-Trial Motion, RE: (Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman
	Post-Trial Motion, RE: Undisputed Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman

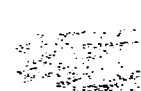
Civil Other

Date		Judge
1/5/2010	Order, this 4th day of Jan., 2010, the Plaintiff's Post-Trial Motion filed Dec. 31, 2009 and the Post-Trial Motion in the form of a Motion to Exclude or Strike Testimony, also filed Dec. 31, 2009 are hereby Dismissed. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Woodburn, Bell	Fredric Joseph Ammerman
1/20/2010	Filing: Appeal to High Court Paid by: Caldwell & Kearns Receipt number: 1933070 Dated: 1/21/2010 Amount: \$50.00 (Check) For: Berkley, Gary L. (plaintiff) Cert. to Superior Court with \$73.50 Check and cert. to Atty.	Fredric Joseph Ammerman
	Request for Transcript, filed by Atty. Woodburn 1 Cert. to Atty.	Fredric Joseph Ammerman
	Proof of Service of Notice of Appeal, filed by Atty. Woodburn 1 Cert. to Atty.	Fredric Joseph Ammerman
	Served copy of Notice of Appeal, Request for Transcript and Proof of Service upon Atty. Bell, Judge Ammerman, T. Snyder and District C/A/	
1/21/2010	Order, this 21st day of Jan., 2010, the Court having been notified of Appeal to the Superior Court of PA, it is Ordered that Appellant file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 1CC Attys: Woodburn, F. Bell	Fredric Joseph Ammerman
1/1/2010	Appeal Docket Sheet from Superior Court, filed.	Fredric Joseph Ammerman
	Docket Number 160 WDA 2010	
1/10/2010	Plaintiff Appellant's Concise Statement of Matters Complained of on Appeal, filed by s/ Brett M. Woodburn Esq. 2CC Atty Woodburn.	Fredric Joseph Ammerman
1/24/2010	Transcript of Proceedings, Civil Non-Jury Trial, held before Honorable President Judge Fredric J. Ammerman, October 29, 2009, filed.	Fredric Joseph Ammerman

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

MAR 09 2010

Attest.



William A. Shive
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-582-CD

Gary L. Berkley

Vs.

**Harry J. Shive and Dorothy L. Shive,
Daniel A. Shive and Colleen J. Shive,
Patrick L. Shive and Jo Ellen Shive**

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	04/22/05	Quiet Title Complaint	08
02	05/04/05	Praeipe to Attach Exhibits, "A," "B," "C," and "D" to Complaint	14
03	06/16/05	Preliminary Objections to Plaintiff's Complaint	07
04	06/16/05	Praeipe for Entry of Appearance	03
05	06/20/05	Affidavit Pursuant to Pennsylvania Rule of Civil Procedure 1066	30
06	06/22/05	Praeipe to Withdraw Affidavit	03
07	06/22/05	Order, Re: filing of an answer	01
08	07/14/05	Order, Re: Argument scheduled	02
09	07/18/05	Certificate of Service	02
10	07/28/05	Amended Complaint upon an Action to Quiet Title	31
11	09/02/05	Praeipe to Substitute Verification	03
12	10/10/05	Acceptance of Service	03
13	11/09/05	Answer, New Matter, and Counterclaim	31
14	02/08/06	Reply to New Matter and Counterclaim	10
15	07/27/06	Plaintiff's Motion to Compel Discovery with Order filed July 31, 2006	04
16	10/27/08	Plaintiff's Motion to Compel Discovery	03
17	10/29/08	Order, Re: Plaintiff's Motion to Compel Answers to Discovery is Granted	02
18	11/25/08	Certificate of Service	02
19	11/25/08	Certificate of Service	02
20	03/20/09	Certificate of Readiness for Non-Jury Trial	07
21	03/23/09	Order, Re: Pre-trial conference scheduled	02
22	04/16/09	Motion for Continuance with Order filed April 17, 2009, continuing matter	05
23	04/20/09	Motion for Continuance	05
24	04/21/09	Order, Re: matter continued	01
25	07/23/09	Order, Re: Civil Bench Trial scheduled	01
26	10/28/09	Answer to New Matter to Counterclaim	07
27	11/02/09	Order, Re: briefs to be submitted	01
28	11/30/09	Transcript of Proceedings, Testimony of Gary L. Thorp, held October 29, 2009, before Honorable President Judge Fredric J. Ammerman	Separate Cover
29	12/21/09	Opinion and Order	15
30	12/31/09	Post-Trial Motion, Re: Facts	06
31	12/31/09	Post-Trial Motion, Re: Undisputed Facts	14
32	01/05/10	Order, Re: Post-Trial Motions Dismissed	01
33	01/20/10	Notice of Appeal to High Court	06
34	01/20/10	Request for Transcript	01
35	01/20/10	Proof of Service of Notice of Appeal	02
36	01/21/10	Order, Re: Concise statement to be filed	01
37	02/01/10	Appeal Docket Sheet, 160 WDA 2010	04
38	02/10/10	Plaintiff Appellant's Concise Statement of Matters Complained of on Appeal	04
39	02/24/10	Transcript of Proceedings, Civil Non-Jury Trial, held before Honorable President Judge Fredric J. Ammerman, October 29, 2009	Separate Cover

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-582-CD

Gary L. Berkley

Vs.

**Harry J. Shive and Dorothy L. Shive,
Daniel A. Shive and Colleen J. Shive,
Patrick L. Shive and Jo Ellen Shive**

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19	11/25/08	Certificate of Service	02
20	03/20/09	Certificate of Readiness for Non-Jury Trial	07
21	03/23/09	Order, Re: Pre-trial conference scheduled	02
22	04/16/09	Motion for Continuance with Order filed April 17, 2009, continuing matter	05
23	04/20/09	Motion for Continuance	05
24	04/21/09	Order, Re: matter continued	01
25	07/23/09	Order, Re: Civil Bench Trial scheduled	01
26	10/28/09	Answer to New Matter to Counterclaim	07
27	11/02/09	Order, Re: briefs to be submitted	01
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30	12/31/09	Post-Trial Motion, Re: Facts	06
31	12/31/09	Post-Trial Motion, Re: Undisputed Facts	14
32	01/05/10	Order, Re: Post-Trial Motions Dismissed	01
33	01/20/10	Notice of Appeal to High Court	06
34	01/20/10	Request for Transcript	01
35	01/20/10	Proof of Service of Notice of Appeal	02
36	01/21/10	Order, Re: Concise statement to be filed	01
37	02/01/10	Appeal Docket Sheet, 160 WDA 2010	04

OK

Date: 2/8/2010

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:43 AM

ROA Report

Page 1 of 3

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

Civil Other

Date		Judge	
4/22/2005	New Case Filed.	No Judge	8
	① Filing: Quiet Title Action Paid by: Caldwell & Kearns Receipt number: 1899916 Dated: 04/22/2005 Amount: \$95.00 (Check) 3 Cert. to Atty.	No Judge	8
5/4/2005	② Praecipe to Attach Exhibits "A", "B", "C" and "D" To Complaint. filed by s/ Brett M. Woodburn, Esquire. No CC	No Judge	14
6/16/2005	③ Preliminary Objections to Plaintiff's Complaint, filed by s/ F. Cortez Bell, III, Esquire. 5CC to Atty	No Judge	7
	④ Praecipe For Entry of Appearance, filed on behalf of Defendants Harry J. Shive and Dorothy L. Shive, by s/ F. Cortez Bell, III, Esquire. 1CC to Atty	No Judge	3
6/20/2005	⑤ Affidavit Pursuant To Pennsylvania Rule of Civil Rule Procedure 1066, filed by s/ Brett M. Woodburn, Esquire. 2CC atty Woodburn	No Judge	30
6/22/2005	⑥ Praecipe To Withdraw Affidavit, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty	Fredric Joseph Ammerman	3
	⑦ Order, this 21st day of June, 2005, it is ordered as follows: (see original). /s/ Fredric J. Ammerman, Pres. Judge. 2CC atty. Woodburn	Fredric Joseph Ammerman	1
7/14/2005	⑧ Order, filed. 2 cert. to Atty. Bell w/memo NOW, this 13th day of July, 2005. Re: Argument has been scheduled for the 12th day of August.	Fredric Joseph Ammerman	2
7/18/2005	⑨ Certificate of Service, July 18, 2005, Copy of Scheduling Order dated July 13, 2005 served upon Brett M. Woodburn, Esq. Filed By F. Cortez Bell, III, Esq. No CC.	Fredric Joseph Ammerman	2
7/28/2005	⑩ Amended Complaint Upon an Action To Quiet Title, Filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman	3/
9/2/2005	⑪ Praecipe To Substitute Verification, filed by s/ Brett M. Woodburn, Esquire. No CC	Fredric Joseph Ammerman	3
10/10/2005	⑫ Acceptance of Service, filed. I, F. Cortez Bell III, Esquire, do hereby accept service of and acknowledge receipt of a filed copy of the Amended Complaint in the above captioned case on behalf of each of the Defendants set forth in the caption above, filed by s/ F. Cortez Bell III Esq. 3CC atty Bell	Fredric Joseph Ammerman	3
11/9/2005	⑬ Answer, New Matter and Counterclaim, filed by s/ F. Cortez Bell Esq. 2CC Atty Bell.	Fredric Joseph Ammerman	3/
2/8/2006	⑭ Reply to New Matter and Counterclaim, filed by s/ Brett M. Woodburn Esq. No CC.	Fredric Joseph Ammerman	10
7/27/2006	⑮ Plaintiff's Motion to Compel Discovery, filed by s/ Brett M. Woodburn Esq. 2CC Atty.	Fredric Joseph Ammerman	3 3
7/31/2006	Order, NOW, this 28th day of July, 2006, upon consideration of Plaintiff's Motion to Compel Answers to Discovery, said Motion is Granted, Defs. are ordered to answer the Plaintiff's First Set of Interrogatories and First Request for Production of Documents in full, within 30 days of the date of this Order, or suffer sanctions. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Woodburn	Fredric Joseph Ammerman	1
10/27/2008	⑯ Plaintiff's Motion to Compel Discovery, filed by s/ Karen W. Miller, Esquire. 1CC Atty. Miller	Fredric Joseph Ammerman	3
10/29/2008	⑰ Order, this 28th day of Oct., 2008, plaintiff's Motion to Compel Answers to Discovery is GRANTED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty.	Fredric Joseph Ammerman	2

Civil Other

Date		Judge	
11/25/2008	(18) Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Request for Production of Documents upon Mr. Brett M. Woodburn Esq. by United States Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman	2
	(19) Certificate of Service, filed. This November 25, 2008 a copy of the foregoing Answer to Interrogatories upon Mr. Brett M. Woodburn Esq by United State Postal Service Express Mail, filed by s/ F. Cortez Bell III Esq. 2CC Atty Bell	Fredric Joseph Ammerman	2
3/20/2009	(20) Certificate of Readiness for Non-Jury Trial, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman	7
3/23/2009	(21) Order, this 23rd day of March, 2009, a pre-trial conference shall be held April 24, 2009 at 1:30 p.m. in Judges Chambers. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. Cc to Attys: Woodburn & Bell w/form	Fredric Joseph Ammerman	2
4/16/2009	(22) Motion For Continuance, filed by s/ Gary L. Berkley, Plaintiff. 2CC Atty.	Fredric Joseph Ammerman	4
4/17/2009	(23) Order, this 16th day of April, 2009, upon consideration of the within Motion of Plaintiff, Gary L. Berkley, it is Ordered that the matter is continued until the 22nd day of July, 2009, at 1:30 p.m. in Judges Chambers. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Wood	Fredric Joseph Ammerman	1
4/20/2009	(24) Motion For Continuance, filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Fredric Joseph Ammerman	6
4/21/2009	(25) Order of Court, AND NOW, this 21st day of April 2009, upon consideration of the within Motion to Plaintiff, it is hereby Ordered that the above-referenced matter is continued until Wednesday the 22nd day of July 2009 at 1:30 pm in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty.	Fredric Joseph Ammerman	1
7/23/2009	(26) Order, this 23rd day of July, 2009, a Civil Bench Trial is scheduled for the 29th day of Oct., 2009 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Woodburn, Bell	Fredric Joseph Ammerman	1
10/28/2009	(27) Answer to New Matter to Counterclaim, filed by s/ F. Cortez Bell III Esq. 4CC Atty Bell.	Fredric Joseph Ammerman	7
11/2/2009	(28) Order, AND NOW, this 29th day of October, 2009, following the completion of the taking of testimony in civil nonjury trial, Order that counsel have no more than 30 days from this date to submit appropriate brief to the Court. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Woodburn Five CC Attorney Bell	Fredric Joseph Ammerman	1
11/30/2009	(29) Transcript of Proceedings, filed. Testimony of Gary L. Thorp, held Oct. 29, 2009 before Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman	
12/21/2009	(30) Opinion and Order, NOW, this 21st day of Dec., 2009, consistent with the Court's Opinion, it is Ordered: 1. The boundry line between the properties belonging to the parties is determined to be the boundary set by Gary L. Thorp, PLS, in his survey dated April 5, 2004 (revised July 30, 2004). 2. The Defendants' Counterclaim is DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Woodburn, Bell 1CC D. Mikesell; Law Library (without memo)	Fredric Joseph Ammerman	15
12/31/2009	(31) Post-Trial Motion, RE: (Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman	6 3 4
	(32) Post-Trial Motion, RE: Undisputed Facts) filed by Atty. Woodburn 2 Cert. to Atty.	Fredric Joseph Ammerman	14 5

Date: 2/2/2010

Time: 10:43 AM

Page 3 of 3

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2005-00582-CD

Current Judge: Fredric Joseph Ammerman

Gary L. Berkley vs. Harry J. Shive, et al

Civil Other

Date		Judge	
1/5/2010	Order, this 4th day of Jan., 2010, the Plaintiff's Post-Trial Motion filed Dec. 31, 2009 and the Post-Trial Motion in the form of a Motion to Exclude or Strike Testimony, also filed Dec. 31, 2009 are hereby Dismissed. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Woodburn, Bell	Fredric Joseph Ammerman	1
	(32)		
1/20/2010	Filing: Appeal to High Court Paid by: Caldwell & Kearns Receipt number: 1933070 Dated: 1/21/2010 Amount: \$50.00 (Check) For: Berkley, Gary L. (plaintiff) Cert. to Superior Court with \$73.50 Check and cert. to Atty.	Fredric Joseph Ammerman	6
	(33)		
	(34) Request for Transcript, filed by Atty. Woodburn 1 Cert. to Atty.	Fredric Joseph Ammerman	1
	(35) Proof of Service of Notice of Appeal, filed by Atty. Woodburn 1 Cert. to Atty.	Fredric Joseph Ammerman	2
	Served copy of Notice of Appeal, Request for Transcript and Proof of Service upon Atty. Bell, Judge Ammerman, T. Snyder and District C/A/		
1/21/2010	Order, this 21st day of Jan., 2010, the Court having been notified of Appeal to the Superior Court of PA, it is Ordered that Appellant file a concise statement of the matters complained of on said Appeal no later than 21 days herefrom. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 1CC Attys; Woodburn, F. Bell	Fredric Joseph Ammerman	1
	(36)		
2/1/2010	Appeal Docket Sheet from Superior Court, filed. Docket Number 160 WDA 2010	Fredric Joseph Ammerman	4
	(37)		

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

GARY L. BERKLEY, : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

Appellant

v.

HARRY J. SHIVE AND DOROTHY L.
SHIVE, HUSBAND AND WIFE, DANIEL A.
SHIVE AND COLLEEN J. SHIVE,
HUSBAND AND WIFE, PATRICK L. SHIVE,
AND JO ELLEN SHIVE, HUSBAND AND
WIFE,

Appellees

No. 160 WDA 2010

Appeal from the Order of December 21, 2009, in the Court
of Common Pleas of Clearfield County, Civil Division, at No.
2005-582-CD.

BEFORE: FORD ELLIOTT, P.J., BOWES, and FREEDBERG, JJ.

MEMORANDUM:

FILED: MARCH 1, 2011

In this action to quiet title, Gary L. Berkley appeals from the December 21, 2009 order entered following a non-jury trial. The trial court was asked to determine the parties' respective interests in a strip of land that formed the common boundary between two properties in Clearfield County, Pennsylvania. In the December 21, 2009 order, the trial court awarded the disputed land to Harry J. Shive and Dorothy L. Shive, husband and wife; Daniel A. Shive and Colleen J. Shive, husband and wife; and Patrick L. Shive and Jo Ellen Shive, husband and wife ("Appellees") and dismissed their counterclaim for a declaratory judgment. We affirm.

FILED

4 JUN 28 2011
William A. Shaw
Prothonotary/Clerk of Courts

At the outset, we observe that judgment was never entered in this matter. Instead, Appellant purports to appeal from the trial court's December 21, 2009 order disposing of his complaint to quiet title and dismissing Appellees' counterclaim for declaratory judgment. "Generally, an appeal will only be permitted from a final order unless otherwise permitted by statute or rule of court." ***Mackall v. Fleegle***, 801 A.2d 577 (Pa.Super. 2002) (quoting ***Johnston the Florist, Inc. v. TEDCO Construction Corp.***, 657 A.2d 511, 514 (1995)). However, in ***Mackall, supra***, we overlooked a similar procedural defect arising in an action to quiet title, and in the interest of judicial economy, we declined to quash the appeal. ***See also McCormick v. Northeastern Bank of Pennsylvania***, 561 A.2d 328, 330 n.1 (Pa. 1989) ("in the interests of judicial economy, we shall 'regard as done that which ought to have been done'"). Thus, mindful of our authoritative case law and the fact that the December 21, 2009 order also disposed of Appellees' counterclaim for declaratory judgment,¹ we address the instant appeal. ***See*** 42 Pa.C.S. § 7532 (declaratory judgment has force and effect of final judgment).

The following facts are relevant. On October 19, 1989, Harry Shive purchased a tract of property in Clearfield County and subsequently conveyed it to himself and his two sons, Daniel and Patrick. After

¹ We recognize that Appellees did not appeal the dismissal of their counterclaim for declaratory judgment.

purchasing the property, Mr. Shive hired Nicolas Shirokey to survey the land and to define its boundaries. A private dirt roadway parallels the southern boundary of the Shive Property and a portion of the northern border of property Appellant purchased at an estate auction on September 16, 2003. Appellant hired GeoTech Engineering, Inc. ("GeoTech") to survey his newly-acquired property and other adjoining property that he owns. Based on the GeoTech survey, which relied upon aspects of the Shirokey survey, Appellant asserted ownership of the portion of the boundary that is in dispute.

Prior to Appellant's purchase, Appellees used the private roadway openly to access portions of their property and land owned by the Pennsylvania Game Commission that adjoined their eastern border. However, soon after purchasing the neighboring property, Appellant erected a cement barrier across the road at the point that he believed the road overlapped the northern boundary of his property. Appellees easily circumvented the barrier and continued to use the roadway to access their property and presumably the game lands. Eventually, on February 11, 2005, Appellees provided notification to Appellant that the concrete barrier was on their property, and if Appellant did not remove it, they would. A few months later, Appellees removed the barrier.

On April 22, 2005, Appellant filed a complaint to quiet title and later filed an amended complaint in response to Appellees' preliminary objections.

On November 9, 2005, Appellees filed an answer and new matter asserting their counterclaim for equitable relief. The trial court presided over a two-day non-jury trial and it entered the above-referenced order on December 21, 2009. Appellant filed post-trial motions on the same day, which the trial court summarily dismissed on January 5, 2010. This timely appeal followed.

Appellant complied with the trial court's order directing him to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), wherein he leveled thirteen allegations of trial court error. On appeal, Appellant whittled his thirteen issues down to the five following questions that he presents for our review:

1. Is a survey that was prepared by a professionally licensed surveyor competent and valuable evidence to be considered in determining the location of a boundary line, particularly when there is not evidence that the deed was ambiguous or the survey was not properly performed?
2. May the lower court rely on the expert methodology for resolving boundary disputes when neither expert testified about that methodology?
3. Was the location of the most senior parcel that was conveyed from the parent tract identified by Plaintiff's expert within a reasonable degree of professional certainty?
4. Do the three deeds contain language sufficient to allow the lower Court to conclude that the grantor intended to convey all of the lands contained within the parent tract of land to the three grantees?

5. Is expert testimony that is based on the established standard of practice more credible than expert testimony that deviates from the established standard of practice?

Appellants brief at 4.

Our Supreme Court explained the relevant standard of review as follows:

In reviewing an action to quiet title, "an appellate court's review is limited to determining whether the findings of fact are supported by competent evidence, whether an error of law has been committed, and whether there has been a manifest abuse of discretion." **Vernon Twp. Volunteer Fire Dep't, Inc. v. Connor**, 579 Pa. 364, 855 A.2d 873, 879 (2004).

Regions Mortg., Inc. v. Muthler, 889 A.2d 39, 41 (Pa. 2005). We will not disturb the trial court's determination absent legal error or a "capricious disregard of the evidence." **Birdsboro Municipal Authority v. Reading Co. and Wilmington & Northern Railroad**, 758 A.2d 222, 225 (Pa.Super. 2000) (quoting **Moore v. Duran**, 687 A.2d 822, 827 (Pa.Super. 1996), *appeal denied*, 700 A.2d 442 (Pa. 1997)).

The burden of proof in an action to quiet title is on the plaintiff. **Cox's Inc. v. Snodgrass**, 92 A.2d 540, 541-42 (Pa. 1952). In order to prevail, the plaintiff must recover solely on the strength of his title and not upon the weakness of the defendant's title. **Albert v. Lehigh Coal & Navigation Co.**, 246 A.2d 840 (Pa. 1968); **Cox, supra** at 541-542.

A brief history of the pertinent land conveyances is warranted. Reverend William Beates was the last common owner of both Appellant's and

Appellees' property. Reverend Beates subsequently subdivided the property into four parcels. On January 22, 1855, Reverend Beates conveyed a tract of land to Christian Hartle. Approximately one year later, January 21, 1856, Reverend Beates separately conveyed one tract each to Michael Miller and John Miller.² As the law does not permit simultaneous conveyances from a parent tract of property, the Michael Miller tract is senior to the John Miller tract because the Michael Miller deed was recorded first. The chain of title for Appellees' property stems from the Michael Miller tract. The portion of Appellant's property underlying this dispute was carved from the John Miller tract.

During the non-jury hearing, Appellant presented expert testimony from Curtis Franklin McKnight, a licensed land surveyor, who has been employed by GeoTech since September 2004. Appellees presented countervailing testimony from Gary L. Thorp, a licensed surveyor and partner in Curry and Associates. After digesting the testimony and weighing the parties' evidence, the trial court accepted Mr. Thorp's expert testimony and discounted Mr. McKnight's opinion. Specifically, the trial court found, "[Mr.] Thorp[']s testimony] to be more credible and more accurate than that of Mr. McKnight." Trial Court Opinion, 12/21/09, at 6. The court was


² Reverend Beates retained the fourth parcel. His heirs conveyed that tract to John Beates in 1876, and the Pennsylvania Game Commission currently owns it. That area is not involved in this dispute.

troubled by Mr. McKnight's reliance upon the Shirokey survey because Mr. Shirokey apparently set the artificial monuments that outlined the disputed boundary. *Id.* at 7. It also noted that during Mr. Shirokey's deposition, it was revealed that Mr. Shirokey was testifying from a survey report that was prepared by Mr. McKnight's firm rather than his own knowledge and research. *Id.*; N.T., 10/12/09, at 33-35.

After a thorough review of the parties' briefs, pertinent law, and certified record, we conclude that the trial court did not commit an error of law or a capricious disregard of the evidence in resolving the boundary dispute. Accordingly, we will not disturb the court's determination. **See *Birdsboro Municipal Authority, supra*.** The Honorable Fredric J. Ammerman's well-reasoned opinion and order entered on December 21, 2009, cogently and accurately disposed of all of Appellant's issues, including why it believed that Mr. Shirokey's survey was of little use in resolving the dispute. Therefore, we affirm on the basis of that opinion and order.

Order affirmed.

Judgment Entered:


Deputy Prothonotary