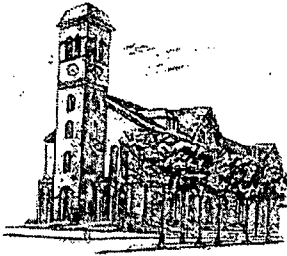


05-1801-CD
Rosemary Callahan al vs Clara

Rosemary Callahan al vs Clara Callahan al
05-1801-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

COPY

December 20, 2007

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

Re: Rosemary Callahan and Charles D. Little
Vs.

Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband
No. 05-1801-CD
Superior Court No. 2066 WDA 2007

Dear Prothonotary:

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

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED
019:216/34
DEC 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

Rosemary Callahan and Charles D. Little

Vs.

Case No. 2005-01801-CD

Clara M. Callahan, a/k/a Clara M. Clark,
and Bernard Clark, her husband

RECEIVED

DEC 21 2007

PITTSBURGH OFFICE OF
SUPERIOR COURT

CERTIFICATE OF CONTENTS

NOW, this 20th day of December, 2007, 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, Prothonotary

Record, Etc. Received:

Date:

12/21/07

Diane Smith - Clerk

(Signature & Title)

FILED

DEC 24 2007

William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Docket Number: 2066 WDA 2007

Superior Court of Pennsylvania

Page 1 of 4

November 20, 2007



Rosemary Callahan and Charles D. Little

V.

05-1801-CD

Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband, Appellants

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: November 20, 2007

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

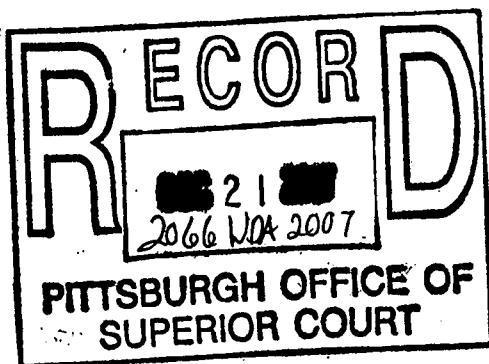
SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: December 4, 2007

Next Event Type: Original Record Received

Next Event Due Date: January 14, 2008



Record
1 Trans.
1 Exhibit

FILED
NOV 26 2007

William A. Shaw
Prothonotary/Clerk of Courts

GK

#35

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:

05-1801-CD

Rosemary Callahan and Charles D. Little

VS.

Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband

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

The documents comprising the record have been numbered from **No. 1 to No. 37**, 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 December 20, 2007.


Prothonotary/Clerk of Courts

(seal)

Civil Other

Date		Judge
11/17/2005	New Case Filed.	No Judge
	Filing: Civil Complaint Paid by: Mason, David C. (attorney for Callahan, Rosemary) Receipt number: 1911330 Dated: 11/17/2005 Amount: \$85.00 (Check) 3 cert. to Atty. 3CC Atty Mason.	No Judge
	Petition for Preliminary Injunction, with Order, filed by Atty. Mason 4 Cert. to Atty.	John K. Reilly Jr.
	Rule to Show Cause, filed. 4 Cert. to Atty. Mason, NOW, this 17th day of November, 2005. Argument to be heard on Nov. 22nd at 10:00 AM	John K. Reilly Jr.
11/30/2005	Entry of Appearance, on behalf of Clara M. Callahan and Bernard Clark by s/John R. Carfley, Esq. One CC Attorney Carfley	No Judge
	Preliminary Objections filed in Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in the Nature of a Motion for a More Specific Pleading or as a Motion to Strike Certain Averments due to their Impertinent Nature. In the Alternative, Said Motion should be Viewed as a Motion to Dismiss/Motion to Strike said Pleadings as Defective or for Failure to State a Claim upon which Relief might be Granted, filed by s/John R. Carfley, Esq. No CC	No Judge
01/13/2006	Order, NOW, this 12th day of Jan., 2006, Ordered that argument on Defs.' Preliminary Objections filed in Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in the nature of a Motion for a more Specific Pleading or as a motion to Strike Certain Averments Due to Their Impertinent Nature filed in the above matter has been scheduled for the 24th day of Feb., 2006, at 1:30 p.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
03/01/2006	Order AND NOW, this 24th day of February, 2006, this being the date for argument of Defendants' Preliminary Objections in opposition to Plaintiffs' Petition to Preliminary Injunction; upon presentation of issues before the Court, it is the ORDER of this Court that Preliminary Objections concerning the survey be and is hereby dismissed. Further, the Preliminary Objection be and is hereby granted and counsel for Plaintiffs shall amend their complaint for a more specific pleading with regard to Paragraph 9 of the Petition for Preliminary Injunction. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Attys: Mason and Carfley.	Paul E. Cherry
08/21/2006	Rule, Now, this 21st day of August, 2006, upon consideration of the Plaintiffs' Complaint, and Petition for Preliminary Injunction, it is Ordered that Defendants appear and show cause, if any, why the relief prayed for in the plaintiffs' Motion should not be granted, said argument to be heard before the Court on the 7th day of Sept., 2006, at 9:00 a.m. in Courtroom 1. The Defendants shall file an answer to the Complaint within 20 days of service upon the Defendants. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Mason	Fredric Joseph Ammerman
	Motion to Reschedule Hearing on Preliminary Injunction, filed by s/ David C. Mason Esq. 3CC Mason.	Paul E. Cherry
08/22/2006	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Motion to Reschedule Hearing on Preliminary Injunction filed in the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry

Civil Other

Date		Judge
08/22/2006	Order, NOW, this 22nd day of August, 2006, hearing on Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction is rescheduled from Sept. 7 at 9:00 a.m. to Set. 7, 2006 at 11:00 a.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason, Carfley	Paul E. Cherry
09/11/2006	Order, Hearing on Plaintiff's Motion on Preliminary Injunction is cancelled. Parties shall submit to the Court a signed Stipulation within 10 days of this date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
09/13/2006	Petition For Preliminary Injunction, The parties, by the signatures of their counsel, stipulate and agree to the entry of an Order of Court granting the relief prayed for in the Petition for Preliminary Injunction. Signed, David C. Mason, Esquire, and John R. Carfley, Esquire. This stipulation is adopted by the Court as an Order of Court, and a hearing on the merits is scheduled for the 12th day of Dec., 2006 @ 9:00 a.m. By The Court, /s/ Paul E. Cherry, Judge. 1 CC Attys: Mason, Carfley	Paul E. Cherry
12/13/2006	Order, filed Cert. copies to Atty. Mason & Carfley NOW, this 11th day of December, 2006, RE: Hearing on Merits of Plaintiff's Complaint shall be continued until the 19th day of March, 2007	Paul E. Cherry
01/03/2007	Petition for Sanctions, filed by s/David C. Mason, Esq. Three CC Attorney Mason	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Petition for Sanctions filed by the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
01/09/2007	Order, NOW, this 5th day of Jan. 2007, upon consideration of the Petition for Sanctions, it is Ordered: A rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions within twenty days of service upon the Defendants. An evidentiary hearing on disputed issues of material fact shall be held on March 19, 2007, in Courtroom No. 2 at 9:00 a.m. Notice of the entry of this Order shall be provided to all parties by the Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Mason	Paul E. Cherry
01/30/2007	Order, NOW, this 29th day of Jan., 2007, upon consideration of the Petition for Sanctions, it is Ordered: a rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions on or before Feb. 2, 2007. An Evidentiary hearing on disputed issues of material fact shall be held on Feb. 2, 2007, in Courtroom No. 2, at 11:00 a.m. By the Court, /s/ Paul E. Cherry, Judge. 1CC Atty. Mason	Paul E. Cherry
02/01/2007	Answer To Petition For Sanctions, filed by s/ John R. Carfley, Esquire. 2CC to Atty. Carfley	Paul E. Cherry
03/09/2007	Defendants' Answer, New Matter, And Couterclaim to Plaintiff's Complaint, filed by s/ John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
	Answer To Preliminary Injunction, filed by s/John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
03/19/2007	Plaintiffs' Reply to New Matter and Answer to Counter-Claim, filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Reply to New Matter and Answer to Counter-Claim filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry

Civil Other

Date		Judge
03/21/2007	Order, NOW, this 19th day of March, 2007, following hearing, it is Ordered that counsel provide the Court with proposed findings of fact, conclusions of law an appropriate brief within no more than 30 days from today's date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
05/21/2007	Answer to Plaintiff's Objections to Defendant's Proposed Conclusions of Law, filed by s/ John R. Carfley Esq. 3CC Atty Carfley.	Paul E. Cherry
06/06/2007	Opinion and Order: NOW, this 5th day of June, 2007, after review of the briefs submitted by the parties, it is Ordered: The defendants, their heirs and assigns, are forever barred from asserting any right, title or interest inconsistent therewith, and (see original). Defendants must pay \$1,500 to Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, J. Carfley; 1CC Law Library, D. Mikesell	Paul E. Cherry
06/15/2007	Defendants' Motion for Reconsideration and Request for Production of Transcript, filed by s/ John R. Carfley, Esquire. 3CC Atty. Carfley	Paul E. Cherry
06/21/2007	Rule Returnable, NOW, this 21st day of June, 2006, upon consideration of Defendant's Motion for Reconsideration and Request for Production of Transcript, it is Ordered that Rule is issued upon the Plaintiffs to appear and show cause why the relief requested should not be granted. Rule made returnable for Hearing the 9th of August, 2007, at 2:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge.	Paul E. Cherry
06/25/2007	Order, June 22, 2007, it is Ordered that the Motion filed by the Defendants requesting reconsideration will act as a supersedeas to the filing of an appeal and that the Defendants' requirement to file the Notice of Appeal within 30 days of the filing of the Court's Opinion as normally required, is hereby stayed. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: J. Carfley, Mason	Paul E. Cherry
08/13/2007	Order, this 9th day of August, 2007, following argument on Motion for Reconsideration, it is Ordered that counsel for the Plaintiffs provide the Court with appropriate brief by no later than August 31, 2007. Defense counsel shall have no more than 5 days thereafter to respond in kind. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason	Paul E. Cherry
08/16/2007	Notice, Re: Transcript to be filed, s/Thomas D. Snyder, RPR	Paul E. Cherry
	Transcript of Proceedings, Hearing on the Merits of Plaintiffs' Complaint and Plaintiffs' Petition for Sanctions, held on March 19, 2007, filed.	Paul E. Cherry
08/31/2007	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Memorandum in Response to Defendants' Motion for Reconsideration filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. 1CC Atty.	Paul E. Cherry
10/17/2007	Order, this 17th day of Oct., 2007, it is Ordered that Defendant's Motion for Reconsideration shall be Denied. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
11/15/2007	Filing: Appeal to High Court Paid by: Carfley, John R. (attorney for Callahan, Clara M.) Receipt number: 1921476 Dated: 11/15/2007 Amount: \$45.00 (Check) Filed by s/ John R. Carfley, Esquire. 1CC Atty. Carfley, 1CC to Superior Court with \$60.00 check	Paul E. Cherry
11/21/2007	Order, this 21st day of Nov., 2007, it is Ordered that Appellant file a concise statement of the matters complained of on Appeal no later than 21 days herefrom. By The Court, /s/ Paul E. Cherry, Judge. CC to Attys Mason & Carfley	Paul E. Cherry
11/26/2007	Appeal Docket Sheet, filed. 2066 WDA 2007	Paul E. Cherry

✓ Date: 12/20/2007

Time: 09:32 AM

Page 4 of 4



User: BHUDSON

ROA Report

Case: 2005-01801-CD

Current Judge: Paul E. Cherry

Rosemary Callahan, Charles D. Little vs. Clara M. Callahan, Bernard Clark

Civil Other

Date		Judge
12/12/2007	Defendants' Concise Statement of Matters Complained of On Appeal, filed by s/ John R. Carfley, Esquire. 3CC Atty. Carfley	Paul E. Cherry
12/20/2007	December 20, 2007, Mailed Appeal to Superior Court. December 20, 2007, Letters, Re: Notification of mailing appeal mailed to David C. Mason, Esq. and John R. Carfley, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Paul E. Cherry

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

DEC 20 2007

Attest.

A handwritten signature in black ink, likely belonging to the Prothonotary.

William A. B.
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-1801-CD

Rosemary Callahan and Charles D. Little

VS.

Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	11/17/05	Civil Complaint	07
02	11/17/05	Petition for Preliminary Injunction with Order	15
03	11/17/05	Rule to Show Cause	03
04	11/30/05	Entry of Appearance	01
05	11/30/05	Preliminary Objections filed in Opposition to Plaintiff's Petition for Preliminary Injunction and Civil Complaint in the Nature of a Motion for a More Specific Pleading or as a Motion to Strike Certain Averments due to their Impertinent Nature. In the alternative, said Motion should be viewed as a Motion to Dismiss/Motion to Strike said Pleadings as Defective or for Failure to State a Claim upon which Relief might be granted.	05
06	01/13/06	Order, Re: argument scheduled on Defendant's Preliminary Objections	02
07	03/01/06	Order, Re: Preliminary Objections	02
08	08/21/06	Motion to Reschedule Hearing on Preliminary Injunction with Rule	08
09	08/22/06	Certificate of Service, Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction	02
10	08/22/06	Order, Re: hearing on Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction rescheduled	01
11	09/11/06	Order, Re: hearing on Plaintiff's Motion on Preliminary Injunction cancelled; parties shall submit signed stipulation	01
12	09/13/06	Petition for Preliminary Injunction/Stipulation	02
13	12/13/06	Order, Re: hearing on merits of Plaintiff's Complaint	01
14	01/03/07	Petition for Sanctions with Order scheduling hearing filed January 9, 2007	19
15	01/03/07	Certificate of Service, Plaintiff's Petition for Sanctions	02
16	01/30/07	Order, Re: hearing on Petition for Sanctions scheduled	03
17	02/01/07	Answer to Petition for Sanctions	06
18	03/09/07	Defendants' Answer, New Matter, and Counterclaim to Plaintiff's Complaint	13
19	03/09/07	Answer to Preliminary Injunction	08
20	03/19/07	Plaintiffs' Reply to New Matter and Answer to Counter-Claim	05
21	03/19/07	Certificate of Service, Plaintiffs' Reply to New Matter and Answer to Counter-Claim	02
22	03/21/07	Order, Re: counsel to provide Court with proposed findings of fact, conclusions of law, and an appropriate brief	01
23	05/21/07	Answer to Plaintiff's Objections to Defendant's Proposed Conclusions of Law	05
24	06/06/07	Opinion and Order	07
25	06/15/07	Defendant's Motion for Reconsideration and Request for Production of Transcript	06
26	06/21/07	Rule Returnable, hearing scheduled on Defendant's Motion for Reconsideration and Request for Production of Transcript	01
27	06/25/07	Order, Re: Motion filed by Defendants requesting reconsideration will act as a supersedeas to the filing of an appeal	01
28	08/13/07	Order, Re: following argument on Motion for Reconsideration, brief to be submitted	01
29	08/16/07	Notice, Re: Transcript to be filed	01
30	08/16/07	Transcript of Proceedings, Hearing on the Merits of Plaintiffs' Complaint and Plaintiffs' Petition for Sanctions held March 19, 2007	Separate Cover
31	08/31/07	Certificate of Service, Plaintiffs' Memorandum in Response to Defendants' Motion for Reconsideration	02
32	10/17/07	Order, Re: Defendant's Motion for Reconsideration Denied	01
33	11/15/07	Appeal to High Court	06
34	11/21/07	Order, Re: Appellant to file concise statement	01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

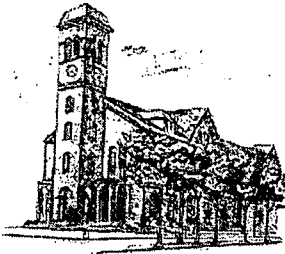
No. 05-1801-CD

Rosemary Callahan and Charles D. Little

VS.

Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
35	11/26/07	Appeal Docket Sheet, 2066 WDA 2007	04
36	12/12/07	Defendants' Concise Statement of Matters Complained of on Appeal	05
37	12/20/07	Letters, Re: Notification of mailing appeal mailed to David C. Mason, Esq. and John R. Carfley, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	07



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

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Administrative Assistant

David S. Ammerman
Solicitor

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COPY

Paul E. Cherry, Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

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

John R. Carfley, Esq.
222 Presquisle Street
Philipsburg, PA 16866

Rosemary Callahan and Charles D. Little
Vs.
Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband

Court No. 05-1801-CD; Superior Court No. 2066 WDA 2007

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on December 20, 2007.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED
DEC 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

#37

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-1801-CD

Rosemary Callahan and Charles D. Little

VS.

Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband

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06	01/13/06	Order, Re: argument scheduled on Defendant's Preliminary Objections	02
07	03/01/06	Order, Re: Preliminary Objections	02
08	08/21/06	Motion to Reschedule Hearing on Preliminary Injunction with Rule	08
09	08/22/06	Certificate of Service, Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction	02
10	08/22/06	Order, Re: hearing on Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction rescheduled	01
11	09/11/06	Order, Re: hearing on Plaintiff's Motion on Preliminary Injunction cancelled; parties shall submit signed stipulation	01
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31	08/31/07	Certificate of Service, Plaintiffs' Memorandum in Response to Defendants' Motion for Reconsideration	02
32	10/17/07	Order, Re: Defendant's Motion for Reconsideration Denied	01
33	11/15/07	Appeal to High Court	06
34	11/21/07	Order, Re: Appellant to file concise statement	01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-1801-CD

Rosemary Callahan and Charles D. Little

VS.

Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband

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Civil Other

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	Petition for Preliminary Injunction, with Order, filed by Atty. Mason 4 Cert. to Atty.	John K. Reilly Jr.
	Rule to Show Cause, filed. 4 Cert. to Atty. Mason, NOW, this 17th day of November, 2005. Argument to be heard on Nov. 22nd at 10:00 AM	John K. Reilly Jr.
11/30/2005	Entry of Appearance, on behalf of Clara M. Callahan and Bernard Clark by s/John R. Carfley, Esq. One CC Attorney Carfley	No Judge
	Preliminary Objections filed in Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in the Nature of a Motion for a More Specific Pleading or as a Motion to Strike Certain Averments due to their Impertinent Nature. In the Alternative, Said Motion should be Viewed as a Motion to Dismiss/Motion to Strike said Pleadings as Defective or for Failure to State a Claim upon which Relief might be Granted, filed by s/John R. Carfley, Esq. No CC	No Judge
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08/21/2006	Rule, Now, this 21st day of August, 2006, upon consideration of the Plaintiffs' Complaint, and Petition for Preliminary Injunction, it is Ordered that Defendants appear and show cause, if any, why the relief prayed for in the plaintiffs' Motion should not be granted, said argument to be heard before the Court on the 7th day of Sept., 2006, at 9:00 a.m. in Courtroom 1. The Defendants shall file an answer to the Complaint within 20 days of service upon the Defendants. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Mason	Fredric Joseph Ammerman
	Motion to Reschedule Hearing on Preliminary Injunction, filed by s/ David C. Mason Esq. 3CC Mason.	Paul E. Cherry
08/22/2006	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Motion to Reschedule Hearing on Preliminary Injunction filed in the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry

Civil Other

Date		Judge
08/22/2006	Order, NOW, this 22nd day of August, 2006, hearing on Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction is rescheduled from Sept. 7 at 9:00 a.m. to Sept. 7, 2006 at 11:00 a.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason, Carfley	Paul E. Cherry
09/11/2006	Order, Hearing on Plaintiff's Motion on Preliminary Injunction is cancelled. Parties shall submit to the Court a signed Stipulation within 10 days of this date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
09/13/2006	Petition For Preliminary Injunction, The parties, by the signatures of their counsel, stipulate and agree to the entry of an Order of Court granting the relief prayed for in the Petition for Preliminary Injunction. Signed, David C. Mason, Esquire, and John R. Carfley, Esquire. This stipulation is adopted by the Court as an Order of Court, and a hearing on the merits is scheduled for the 12th day of Dec., 2006 @ 9:00 a.m. By The Court, /s/ Paul E. Cherry, Judge. 1 CC Attys: Mason, Carfley	Paul E. Cherry
12/13/2006	Order, filed Cert. copies to Atty. Mason & Carfley NOW, this 11th day of December, 2006, RE: Hearing on Merits of Plaintiff's Complaint shall be continued until the 19th day of March, 2007	Paul E. Cherry
01/03/2007	Petition for Sanctions, filed by s/David C. Mason, Esq. Three CC Attorney Mason	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Petition for Sanctions filed by the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
01/09/2007	Order, NOW, this 5th day of Jan. 2007, upon consideration of the Petition for Sanctions, it is Ordered: A rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions within twenty days of service upon the Defendants. An evidentiary hearing on disputed issues of material fact shall be held on March 19, 2007, in Courtroom No. 2 at 9:00 a.m. Notice of the entry of this Order shall be provided to all parties by the Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Mason	Paul E. Cherry
01/30/2007	Order, NOW, this 29th day of Jan., 2007, upon consideration of the Petition for Sanctions, it is Ordered: a rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions on or before Feb. 2, 2007. An Evidentiary hearing on disputed issues of material fact shall be held on Feb. 2, 2007, in Courtroom No. 2, at 11:00 a.m. By the Court, /s/ Paul E. Cherry, Judge. 1CC Atty. Mason	Paul E. Cherry
02/01/2007	Answer To Petition For Sanctions, filed by s/ John R. Carfley, Esquire. 2CC to Atty. Carfley	Paul E. Cherry
03/09/2007	Defendants' Answer, New Matter, And Counterclaim to Plaintiff's Complaint, filed by s/ John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
	Answer To Preliminary Injunction, filed by s/John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
03/19/2007	Plaintiffs' Reply to New Matter and Answer to Counter-Claim, filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Reply to New Matter and Answer to Counter-Claim filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry

Civil Other

Date		Judge
03/21/2007	Order, NOW, this 19th day of March, 2007, following hearing, it is Ordered that counsel provide the Court with proposed findings of fact, conclusions of law an appropriate brief within no more than 30 days from today's date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
05/21/2007	Answer to Plaintiff's Objections to Defendant's Proposed Conclusions of Law, filed by s/ John R. Carfley Esq. 3CC Atty Carfley.	Paul E. Cherry
06/06/2007	Opinion and Order: NOW, this 5th day of June, 2007, after review of the briefs submitted by the parties, it is Ordered: The defendants, their heirs and assigns, are forever barred from asserting any right, title or interest inconsistent therewith, and (see original). Defendants must pay \$1,500 to Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, J. Carfley; 1CC Law Library, D. Mikesell	Paul E. Cherry
06/15/2007	Defendants' Motion for Reconsideration and Request for Production of Transcript, filed by s/ John R. Carfley, Esquire. 3CC Atty. Carfley	Paul E. Cherry
06/21/2007	Rule Returnable, NOW, this 21st day of June, 2006, upon consideration of Defendant's Motion for Reconsideration and Request for Production of Transcript, it is Ordered that Rule is issued upon the Plaintiffs to appear and show cause why the relief requested should not be granted. Rule made returnable for Hearing the 9th of August, 2007, at 2:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge.	Paul E. Cherry
06/25/2007	Order, June 22, 2007, it is Ordered that the Motion filed by the Defendants requesting reconsideration will act as a supersedeas to the filing of an appeal and that the Defendants' requirement to file the Notice of Appeal within 30 days of the filing of the Court's Opinion as normally required, is hereby stayed. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: J. Carfley, Mason	Paul E. Cherry
08/13/2007	Order, this 9th day of August, 2007, following argument on Motion for Reconsideration, it is Ordered that counsel for the Plaintiffs provide the Court with appropriate brief by no later than August 31, 2007. Defense counsel shall have no more than 5 days thereafter to respond in kind. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason	Paul E. Cherry
08/16/2007	Notice, Re: Transcript to be filed, s/Thomas D. Snyder, RPR Transcript of Proceedings, Hearing on the Merits of Plaintiffs' Complaint and Plaintiffs' Petition for Sanctions, held on March 19, 2007, filed.	Paul E. Cherry Paul E. Cherry
08/31/2007	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Memorandum in Response to Defendants' Motion for Reconsideration filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. 1CC Atty.	Paul E. Cherry
10/17/2007	Order, this 17th day of Oct., 2007, it is Ordered that Defendant's Motion for Reconsideration shall be Denied. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
11/15/2007	Filing: Appeal to High Court Paid by: Carfley, John R. (attorney for Callahan, Clara M.) Receipt number: 1921476 Dated: 11/15/2007 Amount: \$45.00 (Check) Filed by s/ John R. Carfley, Esquire. 1CC Atty. Carfley, 1CC to Superior Court with \$60.00 check	Paul E. Cherry
11/21/2007	Order, this 21st day of Nov., 2007, it is Ordered that Appellant file a concise statement of the matters complained of on Appeal no later than 21 days herefrom. By The Court, /s/ Paul E. Cherry, Judge. CC to Attys Mason & Carfley	Paul E. Cherry
11/26/2007	Appeal Docket Sheet, filed. 2066 WDA 2007	Paul E. Cherry

Date: 12/20/2007

Time: 09:21 AM

Page 4 of 4

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2005-01801-CD

Current Judge: Paul E. Cherry

Rosemary Callahan, Charles D. Little vs. Clara M. Callahan, Bernard Clark

Civil Other

Date

Judge

12/12/2007

Defendants' Concise Statement of Matters Complained of On Appeal, filed by s/ John R. Carfley, Esquire. 3CC Atty. Carfley Paul E. Cherry

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

DEC 20 2007

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

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

ROSEMARY CALLAHAN, and
CHARLES D. LITTLE,

Plaintiffs,

-vs-

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants.

No. 05-1801-CD

Type of Pleading:

Defendants' Concise Statement of Matters
Complained of On Appeal

Filed on Behalf of Defendants

Attorney for Defendants:

John R. Carfley, Esquire
P.O. Box 249
Philipsburg, PA 16866
(814) 342-5581

FILED 3cc
DEC 12 2007
William A. Shaw
Prothonotary/Clerk of Courts
Atty Carfley
CK

#79

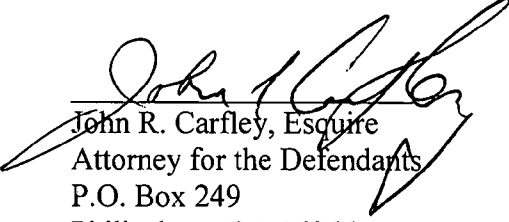
1. The Court erred in finding that the shared driveway is the only means for accessing the Plaintiffs' property since testimony established that for several years prior to this action the Plaintiffs used a second unpaved dirt driveway to a parking area behind/south of the house.
2. The Court erred in finding that an easement by necessity exists when as previously stated an alternative unpaved dirt driveway existed that led to a parking area behind/south of the Plaintiffs' home and provided full access.
3. The Court erred in finding that the Plaintiffs' are unable to construct another usable driveway to access their home because of the topography and terrain of the land when

the testimony established that the Plaintiffs previously accessed their property from the aforementioned alternative driveway which led to the rear of the home.

4. The Court erred in failing to apply the Statute of Frauds and the written description in the deed of transfer from the Defendants to the Plaintiffs, thus limiting the encroachment allowable by the Plaintiffs to any easement of necessity found by the Court to exist.
5. The Court erred in barring the Defendants any right, title or interest in the rectangular eighty-five foot by thirty-five foot area across from the front of the Plaintiffs' home, since the Plaintiffs have not established right and/or title to this parcel by adverse possession by deed of transfer or conveyance or by a genuine easement by necessity.
6. The Court abused its discretion by violating the Pennsylvania Eminent Domain Code and committed a de facto taking in barring the Defendants any right, title or interest in the rectangular eighty-five foot by thirty-five foot area across from the front of the Plaintiffs' home.
7. The Court abused its discretion and violated the Pennsylvania Eminent Domain Code by committing a de facto taking of the Defendants' property without just compensation for their loss.
8. The Court erred in finding that the Plaintiffs' are the rightful owners or have any claim to ownership of the personal items left by Defendant Clara Clark in the Plaintiffs' residence after she moved out of the home.
9. The Court abused its discretion and violated Pennsylvania law and protocol in transferring title to several handguns formerly owned by Mr. George Callahan, without performing the necessary and proper background checks and transfer procedures.

10. The Defendants reserve the right to file additional exceptions to the Court's decision in the Appellate Court upon further review of the trial transcript and the relevant testimony.

Respectfully submitted,


John R. Carfley, Esquire
Attorney for the Defendants
P.O. Box 249
Philipsburg, PA 16866
(814) 342-5581

Dated: December 12, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

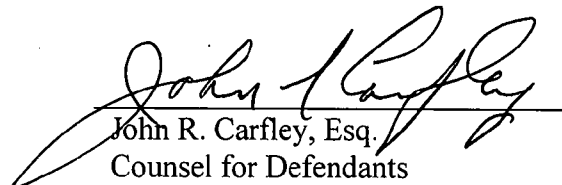
CERTIFICATE OF SERVICE

I do certify that I made service of the foregoing Concise Statement of Matters
Complained of on Appeal upon the following, by depositing a copy of the same in the
United States Mail, postage prepaid, on the 12th day of December, 2007, to the address
listed below:

David C. Mason, Esq.
P. O. Box 28
407 N. Front Street
Philipsburg, PA 16866

and by hand delivery on December 12, 2007 to the following:

Honorable Paul E. Cherry
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830


John R. Carfley, Esq.
Counsel for Defendants
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

Appeal Docket Sheet

Docket Number: 2066 WDA 2007

Page 1 of 4

November 20, 2007

Superior Court of Pennsylvania



Rosemary Callahan and Charles D. Little

V.

05-1801-CD

Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband, Appellants

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: November 20, 2007

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: December 4, 2007

Next Event Type: Original Record Received

Next Event Due Date: January 14, 2008

COPY
FILED
NOV 26 2007

William A. Shaw
Prothonotary/Clerk of Courts

GK

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 2066 WDA 2007

Page 2 of 4

November 20, 2007



COUNSEL INFORMATION

Appellant Callahan, Clara M

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Carfley, John R.

Bar No.: 17621 Law Firm:

Address: 222 Presqueisle Street

PO Box 249

Philipsburg, PA 16866

Phone No.: (814)342-5581 Fax No.: (814)342-1127

Receive Mail: Yes

E-Mail Address: bjn1956@hotmail.com

Receive E-Mail: No

Appellant Clark, Bernard

Pro Se: Appoint Counsel Status:

IFP Status:

Appellant Attorney Information:

Attorney: Carfley, John R.

Bar No.: 17621 Law Firm:

Address: 222 Presqueisle Street

PO Box 249

Philipsburg, PA 16866

Phone No.: (814)342-5581 Fax No.: (814)342-1127

Receive Mail: No

E-Mail Address: bjn1956@hotmail.com

Receive E-Mail: No

Appellee Callahan, Rosemary

Pro Se: Appoint Counsel Status:

IFP Status:

Appellee Attorney Information:

Attorney: Mason, David Charles

Bar No.: 39180 Law Firm:

Address: 409 N Front Street

PO Box 28

Philipsburg, PA 16866

Phone No.: (814)342-2240 Fax No.: (814)342-5318

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Little, Charles D.

Pro Se: Appoint Counsel Status:

IFP Status:

11/20/2007

Appeal Docket Sheet

Docket Number: 2066 WDA 2007

Page 3 of 4

November 20, 2007

Superior Court of Pennsylvania



Appellee Attorney Information:

Attorney: Mason, David Charles

Bar No.: 39180

Law Firm:

Address: 409 N Front Street

PO Box 28

Philipsburg, PA 16866

Phone No.: (814)342-2240

Fax No.: (814)342-5318

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
11/15/07	Notice of Appeal	60.00	60.00	2007SPRWD001425

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: October 17, 2007

Judicial District: 46

Date Documents Received: November 20, 2007

Date Notice of Appeal Filed: November 15, 2007

Order Type: Order Entered

OTN:

Judge: Cherry, Paul E.
Judge

Lower Court Docket No.: No. 05-1801-CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
November 20, 2007	Notice of Appeal Filed	Appellant	Callahan, Clara M
November 20, 2007	Docketing Statement Exited (Civil)		

Western District Filing Office

Appeal Docket Sheet

Docket Number: 2066 WDA 2007

Page 4 of 4

November 20, 2007



Superior Court of Pennsylvania



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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE

V.

CLARA M. CALLAHAN a/k/a
CLARA M. CLARK and BERNARD
CLARK

NO. 05-1801-CD

FILED

NOV 21 2007

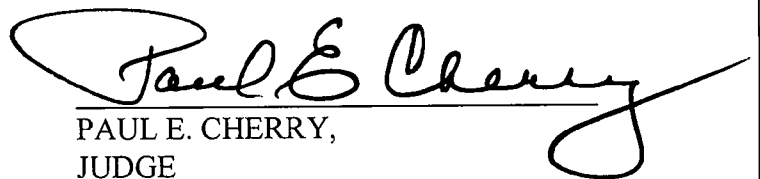
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William A. Shaw
Prothonotary/Clerk of Courts
CERT TO App's
Mason
+
Carley
(6K)

ORDER

AND NOW, this 21st day of November, 2007, the 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. It is the further ORDER of this Court that the Statement shall be filed of record and shall be served upon the Judge pursuant to paragraph (b)(1).

Any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

#34

FILED

NOV 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11-21-07

☒ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s)

☐ Defendant(s)

☒ Plaintiff(s) Attorney

☒ Defendant(s) Attorney

☐ Other

Special Instructions:

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

ROSEMARY CALLAHAN, and
CHARLES D. LITTLE,

Plaintiffs,

-vs-

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants.

No. 05-1801-CD

Type of Pleading:

Notice of Appeal to Superior Court of
Pennsylvania

Filed on Behalf of: Defendants

Attorney for Defendants:

John R. Carfley, Esquire
P.O. Box 249
Philipsburg, PA 16866
(814) 342-5581
I. D. No. 17621

FILED

0/2:32/34
NOV 15 2007

William A. Shaw
Prothonotary/Clerk of Courts

Att. pd. 45.00
1 cc Att. Carfley
1 cc to Superior Ct.
With \$60.00
check

(6k) #33

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

ROSEMARY CALLAHAN, and
CHARLES D. LITTLE,

Plaintiffs,

-vs-

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants.

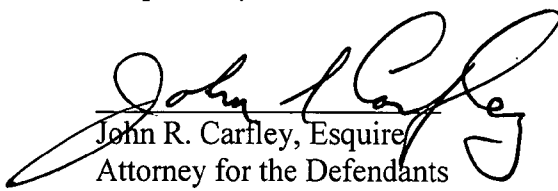
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: No. 05-1801-CD
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NOTICE OF APPEAL

TO THE PROTHONOTARY:

Notice is hereby given that Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband, Defendants above named, hereby appeal to the Superior Court of Pennsylvania, pursuant to Pennsylvania Rule of Appellate Procedure 311(a)(6) from the Order entered in this matter on the 17th day of October, 2007 denying Defendant's Motion for Reconsideration. This Order has been entered in the docket as evidenced by the attached copy of the docket entries.

Respectfully submitted,


John R. Carley, Esquire
Attorney for the Defendants
P.O. Box 249
Philipsburg, PA 16866
(814) 342-5581

Dated: November 15, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and	:	
CHARLES D. LITTLE,	:	
Plaintiffs	:	
	:	
vs.	:	No. 05-1801-CD
	:	
CLARA M. CALLAHAN, a/k/a	:	
CLARA M. CLARK and BERNARD	:	
CLARK, her husband,	:	
Defendants	:	

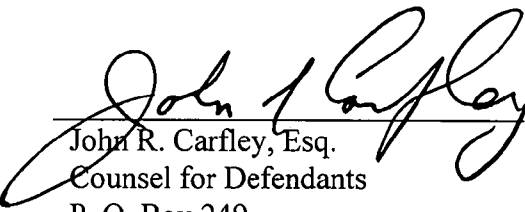
CERTIFICATE OF SERVICE

I do certify that I made service of the foregoing Notice of Appeal upon the following, by depositing a copy of the same in the United States Mail, postage prepaid, on the 15th day of November, 2007, to the address listed below:

David C. Mason, Esq.
Attorney for Plaintiffs
P. O. Box 28
407 N. Front Street
Philipsburg, PA 16866

David Meholic
Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

Honorable Paul E. Cherry
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830


John R. Carfley, Esq.
Counsel for Defendants
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

Date: 10/29/2007

Time: 02:39 PM

Page 1 of 3

Clerk of Field County Court of Common Pleas

ROA Report

Case: 2005-01801-CD

Current Judge: Paul E. Cherry

Rosemary Callahan, Charles D. Little vs. Clara M. Callahan, Bernard Clark

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

OCT 29 2007

Civil Other

Attest.

William A. Cherry
Prothonotary/
Clerk of Courts

Date		Judge
11/17/2005	New Case Filed.	No Judge
	Filing: Civil Complaint Paid by: Mason, David C. (attorney for Callahan, Rosemary) Receipt number: 1911330 Dated: 11/17/2005 Amount: \$85.00 (Check) 3 cert. to Atty. 3CC Atty Mason.	No Judge
	Petition for Preliminary Injunction, with Order, filed by Atty. Mason 4 Cert. to Atty.	John K. Reilly Jr.
	Rule to Show Cause, filed. 4 Cert. to Atty. Mason, NOW, this 17th day of November, 2005. Argument to be heard on Nov. 22nd at 10:00 AM	John K. Reilly Jr.
11/30/2005	Entry of Appearance, on behalf of Clara M. Callahan and Bernard Clark by s/John R. Carfley, Esq. One CC Attorney Carfley	No Judge
	Preliminary Objections filed in Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in the Nature of a Motion for a More Specific Pleading or as a Motion to Strike Certain Averments due to their Impertinent Nature. In the Alternative, Said Motion should be Viewed as a Motion to Dismiss/Motion to Strike said Pleadings as Defective or for Failure to State a Claim upon which Relief might be Granted, filed by s/John R. Carfley, Esq. No CC	No Judge
01/13/2006	Order, NOW, this 12th day of Jan., 2006, Ordered that argument on Defs.' Preliminary Objections filed in Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in the nature of a Motion for a more Specific Pleading or as a motion to Strike Certain Averments Due to Their Impertinent Nature filed in the above matter has been scheduled for the 24th day of Feb., 2006, at 1:30 p.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
03/01/2006	Order AND NOW, this 24th day of February, 2006, this being the date for argument of Defendants' Preliminary Objections in opposition to Plaintiffs' Petition to Preliminary Injunction; upon presentation of issues before the Court, it is the ORDER of this Court that Preliminary Objections concerning the survey be and is hereby dismissed. Further, the Preliminary Objection be and is hereby granted and counsel for Plaintiffs shall amend their complaint for a more specific pleading with regard to Paragraph 9 of the Petition for Preliminary Injunction. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Attys: Mason and Carfley.	Paul E. Cherry
08/21/2006	Rule, Now, this 21st day of August, 2006, upon consideration of the Plaintiffs' Complaint, and Petition for Preliminary Injunction, it is Ordered that Defendants appear and show cause, if any, why the relief prayed for in the plaintiffs' Motion should not be granted, said argument to be heard before the Court on the 7th day of Sept., 2006, at 9:00 a.m. in Courtroom 1. The Defendants shall file an answer to the Complaint within 20 days of service upon the Defendants. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Mason	Fredric Joseph Ammerman
	Motion to Reschedule Hearing on Preliminary Injunction, filed by s/ David C. Mason Esq. 3CC Mason.	Paul E. Cherry
08/22/2006	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Motion to Reschedule Hearing on Preliminary Injunction filed in the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry

Civil Other

Date		Judge
08/22/2006	Order, NOW, this 22nd day of August, 2006, hearing on Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction is rescheduled from Sept. 7 at 9:00 a.m. to Set. 7, 2006 at 11:00 a.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason, Carfley	Paul E. Cherry
09/11/2006	Order, Hearing on Plaintiff's Motion on Preliminary Injunction is cancelled. Parties shall submit to the Court a signed Stipulation within 10 days of this date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
09/13/2006	Petition For Preliminary Injunction, The parties, by the signatures of their counsel, stipulate and agree to the entry of an Order of Court granting the relief prayed for in the Petition for Preliminary Injunction. Signed, David C. Mason, Esquire, and John R. Carfley, Esquire. This stipulation is adopted by the Court as an Order of Court, and a hearing on the merits is scheduled for the 12th day of Dec., 2006 @ 9:00 a.m. By The Court, /s/ Paul E. Cherry, Judge. 1 CC Attys: Mason, Carfley	Paul E. Cherry
12/13/2006	Order, filed Cert. copies to Atty. Mason & Carfley NOW, this 11th day of December, 2006, RE: Hearing on Merits of Plaintiff's Complaint shall be continued until the 19th day of March, 2007	Paul E. Cherry
01/03/2007	Petition for Sanctions, filed by s/David C. Mason, Esq. Three CC Attorney Mason	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Petition for Sanctions filed by the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
01/09/2007	Order, NOW, this 5th day of Jan. 2007, upon consideration of the Petition for Sanctions, it is Ordered: A rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions within twenty days of service upon the Defendants. An evidentiary hearing on disputed issues of material fact shall be held on March 19, 2007, in Courtroom No. 2 at 9:00 a.m. Notice of the entry of this Order shall be provided to all parties by the Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Mason	Paul E. Cherry
01/30/2007	Order, NOW, this 29th day of Jan., 2007, upon consideration of the Petition for Sanctions, it is Ordered: a rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions on or before Feb. 2, 2007. An Evidentiary hearing on disputed issues of material fact shall be held on Feb. 2, 2007, in Courtroom No. 2, at 11:00 a.m. By the Court, /s/ Paul E. Cherry, Judge. 1CC Atty. Mason	Paul E. Cherry
02/01/2007	Answer To Petition For Sanctions, filed by s/ John R. Carfley, Esquire. 2CC to Atty. Carfley	Paul E. Cherry
03/09/2007	Defendants' Answer, New Matter, And Couterclaim to Plaintiff's Complaint, filed by s/ John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
	Answer To Preliminary Injunction, filed by s/John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
03/19/2007	Plaintiffs' Reply to New Matter and Answer to Counter-Claim, filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Reply to New Matter and Answer to Counter-Claim filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry

Case: 2005-01801-CD

Current Judge: Paul E. Cherry

Rosemary Callahan, Charles D. Little vs. Clara M. Callahan, Bernard Clark

Civil Other

Date		Judge
03/21/2007	Order, NOW, this 19th day of March, 2007, following hearing, it is Ordered that counsel provide the Court with proposed findings of fact, conclusions of law an appropriate brief within no more than 30 days from today's date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
05/21/2007	Answer to Plaintiff's Objections to Defendant's Proposed Conclusions of Law, filed by s/ John R. Carfley Esq. 3CC Atty Carfley.	Paul E. Cherry
06/06/2007	Opinion and Order: NOW, this 5th day of June, 2007, after review of the briefs submitted by the parties, it is Ordered: The defendants, their heirs and assigns, are forever barred from asserting any right, title or interest inconsistent therewith, and (see original). Defendants must pay \$1,500 to Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, J. Carfley; 1CC Law Library, D. Mikesell	Paul E. Cherry
06/15/2007	Defendants' Motion for Reconsideration and Request for Production of Transcript, filed by s/ John R. Carfley, Esquire. 3CC Atty. Carfley	Paul E. Cherry
06/21/2007	Rule Returnable, NOW, this 21st day of June, 2006, upon consideration of Defendant's Motion for Reconsideration and Request for Production of Transcript, it is Ordered that Rule is issued upon the Plaintiffs to appear and show cause why the relief requested should not be granted. Rule made returnable for Hearing the 9th of August, 2007, at 2:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge.	Paul E. Cherry
06/25/2007	Order, June 22, 2007, it is Ordered that the Motion filed by the Defendants requesting reconsideration will act as a supersedeas to the filing of an appeal and that the Defendants' requirement to file the Notice of Appeal within 30 days of the filing of the Court's Opinion as normally required, is hereby stayed. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: J. Carfley, Mason	Paul E. Cherry
08/13/2007	Order, this 9th day of August, 2007, following argument on Motion for Reconsideration, it is Ordered that counsel for the Plaintiffs provide the Court with appropriate brief by no later than August 31, 2007. Defense counsel shall have no more than 5 days thereafter to respond in kind. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason	Paul E. Cherry
08/16/2007	Notice, Re: Transcript to be filed, s/Thomas D. Snyder, RPR	Paul E. Cherry
	Transcript of Proceedings, Hearing on the Merits of Plaintiffs' Complaint and Plaintiffs' Petition for Sanctions, held on March 19, 2007, filed.	Paul E. Cherry
08/31/2007	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Memorandum in Response to Defendants' Motion for Reconsideration filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. 1CC Atty.	Paul E. Cherry
10/17/2007	Order, this 17th day of Oct., 2007, it is Ordered that Defendant's Motion for Reconsideration shall be Denied. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry

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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE
Plaintiffs

NO. 05-1801-CD

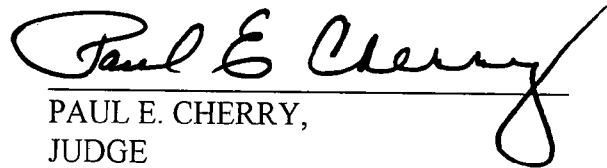
V.

CLARA M. CALLAHAN a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

ORDER

AND NOW, this 17th day of October, 2007, following argument on Defendant's Motion for Reconsideration and the timely receipt of Memorandums by both parties and upon consideration of same; the Court being satisfied that it fully and correctly analyzed and applied the law to easements by necessity and applied the facts accurately to that law, it is the ORDER of this Court that Defendant's Motion for Reconsideration shall be and is hereby DENIED.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

OCT 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

(GK)

132

FILED

OCT 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/17/07

☐ You are responsible for serving all appropriate parties.

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

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

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

FILED

AUG 31 2007

W/ 10:15/10
William A. Shaw
Prothonotary/Clerk of Courts

1 cent to Attc

*
* TYPE OF PLEADING:
* CERTIFICATE OF SERVICE
*

*
* FILED ON BEHALF OF:
* Plaintiffs
*

*
* COUNSEL OF RECORD FOR THIS
* PARTY:

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

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
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CERTIFICATE OF SERVICE

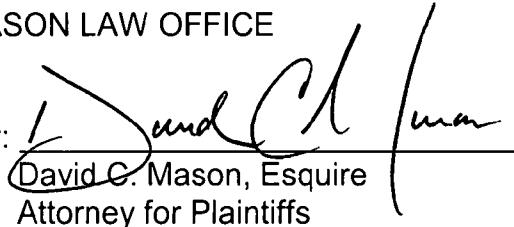
I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' MEMORANDUM IN RESPONSE TO DEFENDANTS' MOTION FOR RECONSIDERATION filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

John Carfley, Esquire
P.O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866
(Attorney for Defendants)

MASON LAW OFFICE

DATED: August 29, 2007

By:


David C. Mason, Esquire
Attorney for Plaintiffs

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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE

-vs-

No. 05-1801-CD

CLARA M. CALLAHAN a/k/a
CLARA M. CLARK, and
BERNARD CLARK, her husband

N O T I C E

In accordance with the Rules of Appellate Procedure, Rule 1922, Notice is hereby given that if no objections are made to the text of the transcript within five (5) days after such notice, the transcript in the above-captioned matter will become part of the record upon being filed in the Prothonotary's office.

August 9, 2007

Date

Thomas D. Snyder

Thomas D. Snyder, RPR
Official Court Reporter

FILED

AUG 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

#29

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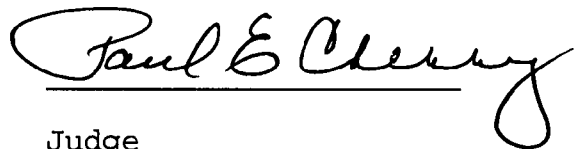
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ROSEMARY CALLAHAN and :
CHARLES D. LITTLE :
VS. : NO. 05-1801-CD
CLARA M. CALLAHAN, a/k/a :
CLARA M. CLARK, and :
BERNARD CLARK, her husband :

O R D E R

AND NOW, this 9th day of August, 2007, following argument on Motion for Reconsideration, with the Court noting Defense counsel has supplied the Court with their brief this date, it is the ORDER of this Court that counsel for the Plaintiffs provide the Court with appropriate brief by no later than August 31, 2007. Defense counsel shall have no more than five (5) days thereafter to respond in kind.

BY THE COURT,



Judge

FILED

01/10/10/2007
AUG 13 2007

ICC Atty's:
Mason
Carfley

William A. Shaw
Prothonotary/Clerk of Courts

CK

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FILED

AUG 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/13/07

☐ You are responsible for serving all appropriate parties.

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

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

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

ORDER

The Court has been advised by defense counsel that the Defendants have requested the production of a transcript through the Court Reporter's Office and that all matters precedent to the transcript being reproduced have been met; the Court is further satisfied that the transcript will not be reproduced in sufficient time to argue the Defendants' Motion for Reconsideration prior to the expiration of the time in which to file a Notice of Appeal to the Pennsylvania Superior Court. This Court intends to retain jurisdiction over this matter and all issues pertaining thereto, so it is the Order of this Court that the Motion filed by the Defendants requesting reconsideration will act as a supersedeas to the filing of an appeal and that the Defendants' requirement to file the Notice of Appeal within thirty (30) days of the filing of the Court's Opinion as normally required, is hereby stayed.

BY THE COURT,

June 22, 2007

Paul E. Cherry

FILED
JUN 25 2007

2 cc Atty's:
J. Carley
Mason

William A. Shaw
Prothonotary/Clerk of Courts

(60)

#27

FILED

JUN 25 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/25/07

☐ You are responsible for serving all appropriate parties.

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

☐ 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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

V.

NO. 05-1801-CD

CLARA M. CALLAHAN a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

FILED

JUN 21 2007

(62)

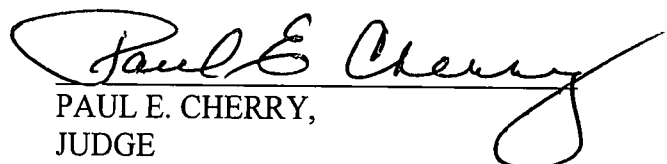
William A. Shaw
Prothonotary/Clerk of Courts

RULE RETURNABLE

AND NOW, this 21st day of June, 2006, upon consideration of Defendant's Motion for Reconsideration and Request for Production of Transcript, it is the ORDER of this Court that Rule is issued upon the Plaintiffs to appear and show cause why the relief requested therein should not be granted.

Rule made returnable for Hearing the 9th day of August, 2007, at 2:30 o'clock P. M., Clearfield County Courthouse, Courtroom No. 2.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

JUN 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6-21-07

☒ You are responsible for serving all appropriate parties.

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

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

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

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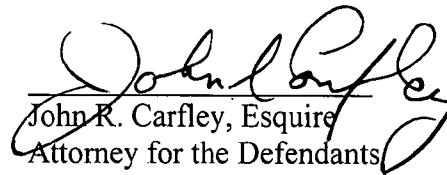
1. The Court erred in finding that the shared driveway is the only means for accessing the Plaintiffs' property since testimony established that for several years prior to this action the Plaintiffs used a second unpaved dirt driveway to a parking area behind/south of the house.
2. The Court erred in finding that an easement by necessity exists when as previously stated an alternative unpaved dirt driveway existed that led to a parking area behind/south of the Plaintiffs' home and provided full access.

3. The Court erred in finding that the Plaintiffs' are unable to construct another usable driveway to access their home because of the topography and terrain of the land when the testimony established that the Plaintiffs previously accessed their property from the aforementioned alternative driveway which led to the rear of the home.
4. The Court erred in failing to apply the Statute of Frauds and the written description in the deed of transfer from the Defendants to the Plaintiffs and limiting the encroachment allowable by the Plaintiffs to an easement of necessity.
5. The Court erred in barring the Defendants any right, title or interest in the rectangular eighty-five foot by thirty-five foot area across from the front of the Plaintiffs' home, since the Plaintiffs have not established right and/or title to this parcel by adverse possession or by a genuine easement by necessity.
6. The Court abused its discretion by violating the Pennsylvania Eminent Domain Code and committing a de facto taking in barring the Defendants any right, title or interest in the rectangular eighty-five foot by thirty-five foot area across from the front of the Plaintiffs' home.
7. The Court abused its discretion and violated the Pennsylvania Eminent Domain Code by committing a de facto taking of the Defendants' property without just compensation for their loss.
8. The Court erred in finding that the Plaintiffs' are the rightful owners or have any claim to ownership of the personal items left by Defendant Clara Clark in the Plaintiffs' residence after she moved out of the home.
9. The Court abused its discretion and violated Pennsylvania law and protocol in transferring title to several handguns formerly owned by Mr. George Callahan, without performing the necessary and proper background checks and transfer procedures.

10. The Defendants' reserve the right to file additional exceptions to the Court's decision upon the receipt of the trial transcript and review of the relevant testimony.

WHEREFORE, the Defendants Clara M. Clark and Bernard Clark, husband and wife, request this Honorable Court grant the foregoing Motion for Reconsideration or in the alternative order a new trial whereby the issues raised in Defendants' Exceptions can be further addressed.

Respectfully submitted,


John R. Carfley, Esquire
Attorney for the Defendants

P.O. Box 249
Philipsburg, PA 16866

(814) 342-5581

Dated: June 14, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

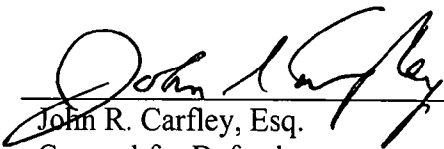
No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

CERTIFICATE OF SERVICE

I do certify that I made service of the foregoing Motion for Reconsideration upon the following, by depositing a copy of the same in the United States Mail, postage prepaid, on the 15th day of June, 2007, to the address listed below:

David C. Mason, Esq.
P. O. Box 28
407 N. Front Street
Philipsburg, PA 16866


John R. Carfley, Esq.
Counsel for Defendants
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

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No. 05-1801-CD

ORDER

AND NOW, this _____ day of _____, 2007, it is hereby Ordered
and Decreed that the transcript of the trial held on March 19, 2007 in the above captioned
matter be transcribed.

BY THE COURT,

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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs,

No. 05-1801-CD

v.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

FILED 2cc Atty's:
0/9-27-01 mason
JUN 06 2007 J. Caskey

William A. Shaw
Prothonotary/Clerk of Courts 100: Law Library
D. Mikesell

OPINION

Clara M. Clark, formerly Clara M. Callahan (hereafter Defendant) and her late husband, George Callahan (hereafter Mr. Callahan), gifted a portion of a parcel of land to their daughter Rosemary Callahan (hereafter Plaintiff) by deed dated October 18, 2000. Plaintiff then transferred the land to herself and her husband, Charles D. Little (hereafter Mr. Little or Plaintiffs when used collectively with Rosemary Callahan). Plaintiff and Mr. Little then built a house on said property. Defendant and Mr. Callahan lived in this residence with Plaintiff and Mr. Little until their own house was finished. Mr. Callahan has since passed away and Defendant remarried Bernard Clark (hereafter Mr. Clark or Defendants when used collectively with Clara Clark).

Mr. Callahan hired a single excavator to do the foundations and construct a common driveway. This common driveway leads to the homes of both the Plaintiffs and the Defendants from a private land on the land of others. The Plaintiffs have a garage and the door to that garage faces this common driveway. At all times during the construction of the home and driveway, Defendant and Mr. Callahan knew about the location of the home, the garage and the driveway. Additionally, they knew that the driveway was the sole means of accessing the

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property. During the construction of the house, the garage, and the driveway, neither the Defendant nor Mr. Callahan objected to the location of these items. Later, Plaintiffs built a front porch onto their house. Defendant loaned money to Plaintiffs for the construction of the porch. Defendant and Plaintiffs entered into a Stipulation and Agreement for entry of an Order of Court requiring the preservation of the status quo. This Stipulation provided that neither party would obstruct the driveway. Despite this Stipulation, Defendants have obstructed the driveway by the erection of a plank walkway, held in place by rebars that extend above the planking.

Additionally, Plaintiffs are in possession of some personalty that was left in their house after Defendant moved.

DISCUSSION

Preliminarily the Court will note that there is not an express easement in this case. When the Defendant and Mr. Callahan conveyed the property to the Plaintiffs they did not create an easement at that time. Therefore, if any easement is to be found, it will be an easement by implication.

There are two different easements by implication. Further, the Supreme Court has noted “that easements by implied reservation are to be distinguished from easements that are implied on the grounds of necessity.” *Daddona v. Thorpe*, 749 A.2d 475, 481 (Pa.Super. 2000) citing *Burns Mfg. Co., Inc. v. Boehm*, 356 A.2d 763, 767 (Pa. 1976). The *Burns* Court added this explanation in a footnote “easements by implied reservation are to be distinguished from easements that are implied on the grounds of necessity. A right of way by necessity may be implied when after severance from adjoining property, a piece of land is without access to a public highway.” *Id.* Easements by implied necessity can arise only upon a showing of “reasonable necessity”, and is not dependent upon a prior use of the land in an open, continuous,

and permanent manner. *Id.* Contrarily, easements by implied reservation are based upon the theory that “continuous use of a permanent right-of-way gives rise to the implication that the parties intended that such use would continue, notwithstanding the absence of the necessity for the use.” *Id.*

The traditional test requires that three things to be shown before a Court can find that an easement has been created by implication. The Court has described the three requirements as follows:

first, a separation of title; second, that, before the separation takes place, the use which gives rise to the easement, shall have been so long continued, and so obvious or manifest, as to show that it was meant to be permanent; and third, that the easement shall be necessary to the beneficial enjoyment of the land granted or retained. To these three, another essential element is sometimes added, -that the servitude shall be continuous and self-acting, as distinguished from discontinuous and used only from time to time.

Mann-Hoff v. Boyer, 604 A.2d 703, 707 (Pa.Super.1992) citations omitted.

Further, the Court has stated “an ordinary right-of-way, such as a road, a path or an alley, is continuous.” *Burns Mfg. Co., Inc. v. Boehm*, 356 A.2d 763, (Pa. 1976). In this state, the traditional test co-exists with the Restatement test that “emphasizes a balancing approach, designed to ascertain the actual or implied intention of the parties. No single factor under the Restatement approach is dispositive.” *Daddona v. Thorpe*, 749 A.2d 475, 481 (Pa.Super. 2000) citations omitted. Finally, under the Restatement “the general requirement for the creation of such an easement by implication is: (1) the land must have been in single ownership, and (2) by reason of the circumstances under which a conveyance of part of it is made, the law will imply an easement of necessity.” *Hanna v. Hanna*, 57 Pa. D.&C.2d 80, 89 (1971).

Here, the land that the Plaintiffs own was once part of a larger lot owned by the Defendant and Mr. Callahan. Although the common driveway was not built until after the severance of the lots, it cannot be said that the Defendant and Mr. Callahan were unaware of the

plans to build a shared driveway for the properties. Mr. Callahan selected the excavator who made the plans and laid the driveway. The Defendant and Mr. Callahan were aware that the house and garage were oriented to accommodate the shared driveway. Further, the Defendant and Mr. Callahan lived with the Plaintiffs for a period of time before their home was completed and had ample opportunity to see how the Plaintiffs used the driveway and that their garage was accessible only from the shared driveway.

Although the driveway was not used continuously before the separation of the lots as is required by the traditional test, it is necessary for the Plaintiffs to use it to access their property.

The Court in *Hanna v. Hanna* stated:

if the land can be used without an easement but cannot be used without disproportionate effort and expense, an easement may still be implied in favor of either the conveyor or the conveyee on the basis of the necessity alone without reference to prior use. If the necessity of an easement is such that without it land cannot be effectively used, nothing less than explicit language in the conveyance negating the creation of an easement will prevent its implication.
Hanna v. Hanna, 57 Pa. D. & C.2d 80, 89-90 (1971).

Here, the Plaintiffs are unable to construct another usable driveway to access their home because of the topography and the terrain of the land. Again, there is no explicit language in the deed between the Defendant and the Plaintiffs either creating or forbidding an easement.

Therefore, because the easement is necessary to reach the home of the Plaintiffs, the Defendant and Mr. Callahan hired a single excavator to plan the driveway, and the Defendant and Mr. Callahan were aware of the location of the garage at the time Plaintiffs were constructing their house, the Plaintiffs shall have an easement. It shall be an unrestricted easement for ingress, egress and regress over, across and through the lands of the Defendants twenty feet wide, ten feet on either side of the center-line of the existing earthen cartway, commencing at the western boundary line of the Defendants' lands. Defendants, their heirs and

assigns, are forever barred from asserting any right, title or interest inconsistent therewith, and further, the Defendants are prohibited from slandering, impugning, protesting or contesting the right, title and interest of the Plaintiffs in and to the use, possession, and enjoyment of the Plaintiffs to this right-of-way easement, and shall not construct or place, or cause to be constructed or placed upon the easement or right-of-way any barrier, barricade, item, article or obstruction which would interfere in anyway with the rights of the Plaintiffs.

Additionally, Defendant knew of the construction by the Plaintiffs of the home, the garage, and the deck, and she and Mr. Clark are prohibited from denying the Plaintiffs the right to the reasonable use of these lands for any proper purpose appurtenant to the use of the home, garage, and deck, an area consisting of a rectangle being eighty-five feet wide (across the front of the house) and thirty-five feet deep from the house. Therefore, Defendants are forever barred from asserting any right, title or interest in and to any of the lands consisting of this rectangle of land in front of the Plaintiffs' home.

Defendant abandoned the items of personalty that she left behind in the Plaintiffs' house when she moved out of the residence five years ago. Therefore, Plaintiffs are the owners of the personalty identified by Defendants in their counter-claim, and the Defendants shall have no right, claim or interest in and to any of the aforementioned items. Judgment is entered in favor of the Plaintiffs and against the Defendants on Defendants' counter-claim.

Finally, Defendants willfully and intentionally violated an Order of this Court by erecting obstructions on the driveway, causing the Plaintiffs to incur legal fees of \$1,500.00, for which the Defendants must repay the Plaintiffs. Therefore, Judgment is entered in favor of Plaintiffs, and against Defendants, jointly and severally, in the amount of \$1,500.00.

Based upon the foregoing, the Court enters the following.

ORDER

NOW, this 5th day of June, 2007, after review of the briefs submitted by the parties, this Court HEREBY ORDERS the following:

1. The Defendants, their heirs and assigns, are forever barred from asserting any right, title or interest inconsistent therewith, and further, the Defendants are prohibited from slandering, impugning, protesting, or contesting the right, title and interest of the Plaintiffs, their heirs and assigns, in and to the use, possession, and enjoyment of the Plaintiffs, their heirs and assigns, to this right-of-way easement, and shall not construct or place, or cause to be constructed or placed upon the easement or right-of-way any barrier, barricade, item, article or obstruction which would interfere in anyway with the rights of the Plaintiffs.

2. The Defendants, their heirs and assigns, are forever barred from asserting any right, title or interest in and to any of the area of land consisting of a rectangle being eight-five feet wide (across the front of the house) and thirty-five feet deep from the house.

3. The Plaintiffs are the owners of the personalty identified by Defendants in the Defendants' Answer, New Matter, and Counter-claim to Plaintiffs' Complaint, and the Defendants shall have no right, claim or interest in and to any of those items identified in Exhibit B of that pleading.

4. Defendants must pay \$1,500 to Plaintiffs this amount represents the legal fees the Plaintiffs incurred after Defendants erected obstructions on the driveway in violation of an Order of this Court.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED

JUN 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/6/07

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

No. 05-1801-CD

Type of Pleading: Answer to
Plaintiffs' Objections to
Defendants' Proposed
Conclusions of Law

Filed on behalf: Defendants

Attorney for Defendants:
John R. Carfley, Esq.
Counsel for Defendants
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

FILED 3CC
019:06301 Atty
MAY 21 2007
W.A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and	:	
CHARLES D. LITTLE,	:	
Plaintiffs	:	
	:	
vs.	:	No. 05-1801-CD
	:	
CLARA M. CALLAHAN, a/k/a	:	
CLARA M. CLARK and BERNARD	:	
CLARK, her husband,	:	
Defendants	:	

ANSWER TO PLAINTIFFS' OBJECTION TO
DEFENDANTS' PROPOSED PETITION FOR SANCTIONS

AND NOW comes the Defendants, Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband, who by and through their attorney, John R. Carfley, Esq., file this Answer to the Plaintiffs' objections to Defendants' Proposed Conclusions of Law and in support thereof, aver as follows:

1. Admitted.
2. Admitted.
3. It is admitted that the Statute of Frauds is an affirmative defense, however, it is averred that in this particular case, the need to raise this defense and assert it as an affirmative objection and/or defense to the claim made by the Plaintiffs only came about as a result of the trial testimony that was presented by the Plaintiffs who, during the course of direct and cross-examination, asserted a claim for additional land in fee rather

than as an easement and still only after the presentment of testimony and witnesses at the time of trial; in effect this limited the ability of the Defendants to be made aware of this assertion and to assert the defense until post-trial motions were asserted and the Conclusions of Law and Proposed Findings of Fact were requested by the Court to be addressed in this subsequent proceeding.

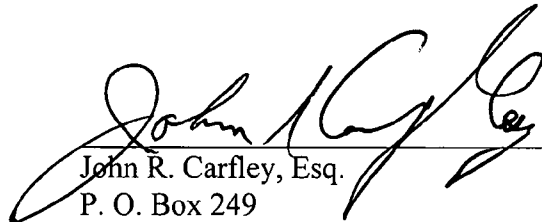
4. It is averred that the Statute of Frauds is properly pled in this particular case as part of Defendants' Proposed Conclusions of Law for those reasons more fully set forth hereinabove in paragraph 3, the averments of which are incorporated herein by reference as fully as though set forth at length.

5. It is denied that Defendant did not raise the Statute of Frauds as New Matter and therefore waived this defense for those reasons more fully set forth herein. The averments of the preceding paragraphs are therefore incorporated by reference as fully as though set forth at length.

6. It is admitted that Proposed Conclusion of Law 7, 8 and 9 raise the defense of the Dead Man's Act (hereinafter "DMA").

7. It is denied that no objection was made at trial to the introduction of this testimony based on the fact that the testimony violated the DMA and Defendants assert the trial transcript which contains the testimony of the attending witnesses is proof posture of Defendants proper utilization of objections to assert the DMA and all other pertinent rules of hearsay evidence. It is denied that no objections were made at time of trial and Defendants demand that the trial transcript be reviewed in order to determine the proper assertion of this objection in an appropriate and reasonable fashion.

8. While it is admitted that the Defendants or any other party cannot be heard to raise an objection if not properly preserved at the time of trial, it is averred that the trial transcript would confirm that the Defendants, through their counsel, properly raised the defense of the DMA in several appropriate stages of the proceeding when said objection was required, which objection was properly noted by the Court and was duly entered in the trial transcript as part of the relevant argument for this proceeding.


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

Dated: May 18, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

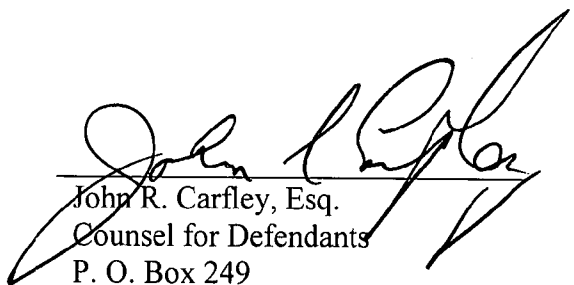
No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

CERTIFICATE OF SERVICE

I do certify that I made service of the foregoing Answer to Plaintiffs' Objection to Defendants' Proposed Conclusions of Law upon the following, by delivering a copy of the same by hand delivery on the 21st day of May, 2007, at the address listed below:

David C. Mason, Esq.
P. O. Box 28
407 N. Front Street
Philipsburg, PA 16866


John R. Carfley, Esq.
Counsel for Defendants
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

CA

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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE

-VS-

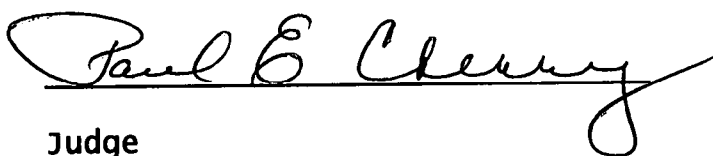
No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK, and
BERNARD CLARK, her husband :

O R D E R

AND NOW, this 19th day of March, 2007, following hearing, it is the ORDER of this Court that counsel provide the Court with proposed findings of fact, conclusions of law and appropriate brief within no more than thirty (30) days from today's date.

BY THE COURT,



Judge

FILED
019:34871
MAR 21 2007
William A. Shaw
Prothonotary/Clerk of Courts
Mason
Carfley
60

#22

FILED

MAR 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE 3/21/07

___ You are responsible for serving all appropriate parties.

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

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

___ Defendant(s) X Defendant(s) Attorney

___ Special Instructions:

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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CERTIFICATE OF SERVICE

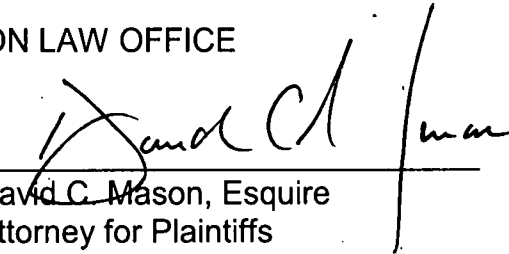
I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' REPLY TO NEW MATTER AND ANSWER TO COUNTER-CLAIM filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

John Carfley, Esquire
P.O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866
(Attorney for Defendants)

DATED: 3-16-7

MASON LAW OFFICE

By:


David C. Mason, Esquire
Attorney for Plaintiffs

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*

* No.

05-1801-CD

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* TYPE OF PLEADING: PLAINTIFFS' REPLY
* TO NEW MATTER AND ANSWER TO
* COUNTER-CLAIM
*

* FILED ON BEHALF OF:
* PLAINTIFFS
*

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

FILED 3cc
018:47/Att Atty Mason
MAR 19 2007

William A. Shaw
Prothonotary/Clerk of Courts

#20

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05 - 1801 - CD
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**PLAINTIFFS' REPLY TO NEW MATTER AND
ANSWER TO COUNTER-CLAIM**

AND NOW, come the Plaintiffs, **ROSEMARY CALLAHAN** and **CHARLES D. LITTLE**, by and through their attorney, **DAVID C. MASON, ESQUIRE**, and make the following Reply to New Matter and Answer to Counter-Claim, and in support thereof aver as follows:

REPLY TO NEW MATTER

19. - 24. Admitted.

25. Admitted in part and Denied in Part. It is admitted that there exists adjacent to the lands of the Defendants a 10 foot wide access corridor which is on lands owned by neither of the parties, but utilized by both Plaintiffs and Defendants. It is further admitted that this access corridor runs the length of the Defendants' lands, but it is denied that it

runs the length of Plaintiffs' lands. By way of further Answer, Plaintiffs are uncertain what part, if any, of this access corridor is on lands of the Defendants'.

26. Denied. The assertion that there are two driveways off this access corridor is denied and strict proof of this averment is demanded at the time of trial. To the contrary, there is but one driveway off this adjacent access corridor.

27. Denied. The averment contained in this paragraph is denied and strict proof is demanded of this assertion in that the Plaintiffs' deny that they ever ceased using, or did not use the driveway which is the subject of Plaintiffs' civil action.

28. Denied. It is denied that the Plaintiffs travel on their own driveway at a high rate of speed, causing damage to the surface which needs repaired. Strict proof to the contrary, to the extent deemed relevant, is demanded at the time of trial.

29. Denied. It is denied that the Plaintiffs park several cars off the driveway, or that they encourage their friends and visitors to do so, creating a eye-sore. Strict proof to the contrary, to the extent deemed relevant, is demanded at the time of trial.

30. Denied. Plaintiffs are uncertain who, if anyone, conducted a resurvey of the lands. To the extent Exhibit A to Defendants' Answer is a writing, the same speaks for itself and no response is necessary. To the extent a response is necessary, and the same has been deemed not provided, the averments of the paragraph are denied and strict proof to the contrary, to the extent deemed relevant, is demanded at the time of trial.

31. Admitted. It is admitted that Defendant Bernard Clark has placed posts, gravel and fencing on the driveway, which is on lands owned by Defendants, but the same has been done in violation of a stipulation and order of court prohibiting the placement of such obstructions.

ANSWER TO COUNTER-CLAIM

Plaintiffs' reassert and incorporate herein all assertions in their Complaint and Reply to New Matter.

32. No response is necessary.

33. Denied. It is denied that this disagreement leading to the filing of a civil action was precipitated by Plaintiffs. To the contrary, at all times material and relevant hereto, Plaintiffs have been willing to abide by and restore the *status quo ante* regarding the use and utilization of the lands adjoining the two residences. By way of further Answer, Plaintiffs assert that it was Defendant Bernard Clark who first blocked and obstructed the driveway, engaging in self-help several times, both before and after the filing of a civil action, and in defiance of an Order of Court declaring that the parties shall not engage in acts which resulted in obstructing the driveway.

34. Admitted in Part and Denied in Part. While it is admitted that the Plaintiffs acquired the ownership of their lands by virtue of a deed from the parents of Plaintiff Rosemary Callahan, any attempt to incorporate the terms of a treatise on conveyancing is denied, as the same would constitute a conclusion of law, not an averment of fact.

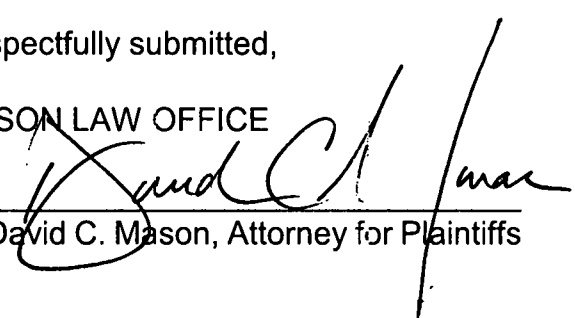
35. The statement contained in this paragraph is a conclusion of law, not an averment of fact. No response is necessary or required.

36. The statement contained in this paragraph is a conclusion of law, not an averment of fact. No response is necessary or required.

WHEREFORE, Plaintiffs pray for the entry of an Order of Court dismissing Defendants' Counter-Claim, and entering judgment in favor of Plaintiffs and against Defendants, granting the Plaintiffs the relief sought in their Complaint.

Respectfully submitted,

MASON LAW OFFICE

By: 

David C. Mason, Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

No. 05-1801-CD

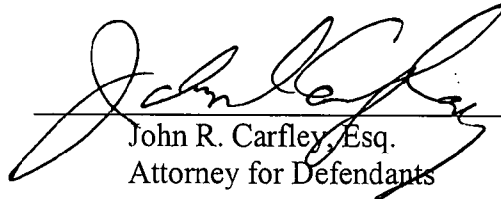
CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

NOTICE

You have been sued in Court. If you wish to defend against the matters set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and an Order may be entered against you by the Court without further notice for the relief requested by the Petitioner. You may lose money or property or other rights important to you.

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

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


John R. Carfley, Esq.
Attorney for Defendants

FILED 2CC
9/11/07
MAR 09 2007
Carfley
William A. Shaw
Prothonotary/Clerk of Courts


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and	:	
CHARLES D. LITTLE,	:	
Plaintiffs	:	
	:	
vs.	:	No. 05-1801-CD
	:	
CLARA M. CALLAHAN, a/k/a	:	
CLARA M. CLARK and BERNARD	:	
CLARK, her husband,	:	
Defendants	:	

ANSWER TO PRELIMINARY INJUNCTION

AND NOW comes the Defendants, Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband, who by and through their attorney, John R. Carfley, Esq., answers the Petition of Plaintiffs for a Preliminary Injunction pursuant to Pa. R.C.P. 1531 and in support thereof, avers as follows:

1. Admitted.
2. Admitted.
3. It is admitted that a Complaint against the Defendants was filed with the Prothonotary and a copy is attached to the Petition for Preliminary Injunction as Exhibit "A". It is denied that the Complaint in equity was filed on the date of this Petition; the fax and/or filing of said pleading being within the sole control and discretion of the Plaintiff and proof thereof is demanded at time of trial.
4. It is denied that the Defendants have embarked on any course of conduct designed to prevent the Plaintiffs from using or exiting their property by means of a

driveway which they own or have any claim under any equitable principles. By way of further answer, it is averred that the Defendants are the sole owners of the said driveway as well as the sole legal owners of other property upon which Plaintiffs' porch, garage and other structures encroach and insofar as relevant, proof of the Plaintiffs' right to construct the said improvements and/or the legal title under which they claim an ability to do so is demanded at time of trial.

5. Denied. It is denied that the driveway described in this paragraph is the sole means of vehicular access to the Plaintiffs' land in that there is a ten (10') foot wide right of way described in their deed which provides access to the Plaintiffs' property to the rear of their dwelling.

6. It is denied that the Defendants have at any time placed obstacles across the property so as to act as a permanent obstruction which would prevent the Plaintiffs from having access to their home and other structures.

7. It is denied that any driveway servicing Plaintiffs' home was constructed with the knowledge and consent of George Callahan and Clara Callahan Clark or with the idea that the right of way would remain constant and provide access to a garage area to be utilized by the Plaintiffs. By way of further answer, it is averred that proof of any such knowledge and consent on the part of George Callahan will be unavailable or inadmissible at time of trial. Since George Callahan is now deceased, his testimony is barred by the rules of hearsay evidence which provide no hearsay exception to allow its introduction and is further barred by the Dead Man's Statute which disallows the introduction of such testimony on the basis of that evidentiary rule.

8. It is denied that any words or actions expressed by the Defendants induced the Plaintiff to construct her home in a specific location. In fact, the said location of the dwelling is such that it encroaches upon land owned by the Defendants and is specifically described in the deed of conveyance which outlines the Defendants' residuary tract.

9. It is denied that the said Clara Callahan Clark can be shown to suffer from any type of mental disorders and insofar as relevant, proof thereof is demanded at time of trial. To the extent that the Defendant, Clara Callahan Clark suffers from any mental disorder or paranoid schizophrenic disorder, major depression, senile dementia, manic depressive disorder or any other serious mental ailment, she would be incapable of granting authority to her daughter and her paramour to construct the dwelling in the configuration cited by the Plaintiffs herein. Insofar as these facts are true and correct, proof thereof is demanded at time of trial. The Plaintiffs' reliance upon the authority of an incompetent without the existence of a Power of Attorney or Guardianship would disallow these individuals from constructing their home, garage and/or other outbuildings without approval of the father, who is now deceased, thus negating the express or implied authority of the Plaintiffs' to act in a specific manner when it deals with the construction of the residence and other outbuildings as cited.

10. Denied. On the contrary it is averred that Defendants are without knowledge sufficient to form a belief as to the truth or relevancy of this statement and insofar as the same may impact upon this litigation or be relevant to the facts of this case, proof thereof is demanded at time of trial.

11. Denied. On the contrary, it is averred that paragraph 11 states a conclusion of law to which no response is required.

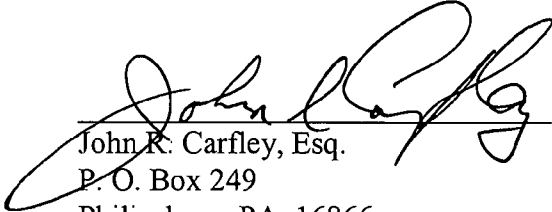
12. It is denied that the Plaintiffs will suffer great injury and irreparable harm and insofar as relevant, proof thereof is demanded at the time of trial. It is believed and therefore averred, that Plaintiffs' Complaint suffers from the lack of any supporting affidavit and/or sworn information which references those facts stating the basis for alleging the existence of the great injury and irreparable harm which may occur permitting the prayer of Plaintiffs' Complaint to be granted at the conclusion of this trial or supporting any action by the Court in accepting this pleading when unsupported by such affidavits. .

13. It is denied that the Plaintiffs will suffer great injury and irreparable harm and insofar as relevant, proof thereof is demanded at the time of trial by supporting affidavit. It is believed and therefore averred, that Plaintiffs' Complaint suffers from the lack of any reinforcing affidavit and/or information pertinent to confirming the basis for alleging the implementation of great injury and irreparable harm if the prayer of the Complaint is to be granted at the conclusion of this trial.

14. It is denied that the Plaintiffs have any right to opening this driveway at the location specified on the basis of the proof set forth in this Complaint or without exercising self help in the forceful interference with the Defendants' property rights which are clearly outlined on the map affixed to Defendants' Answer, New Matter and Counterclaim.

15. It is denied that the Plaintiffs will suffer great injury and irreparable harm and insofar as relevant, proof thereof is demanded at the time of trial.

WHEREFORE, Defendants pray your Honorable Court to deny the issuance of a Preliminary Injunction or to in any other way restrict the use of the Defendants' property in a manner consistent with their ownership thereof.


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

Dated: March 9, 2007

VERIFICATION

I hereby verify that the statements made in this instrument 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.

Clara M Callahan

Clara M. Callahan

Clara M Clark

a/k/a Clara M. Clark

Bernard M Clark

Bernard Clark

Dated: 3/9/07

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

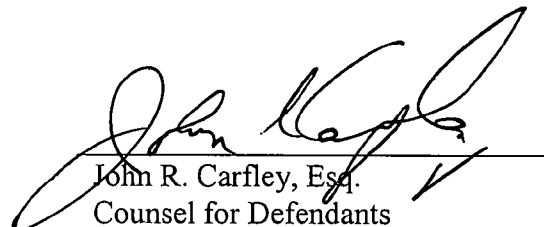
No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

CERTIFICATE OF SERVICE

I do certify that I made service of the foregoing Answer to Preliminary Injunction upon the following attorney of record for the Plaintiffs, by depositing a copy of the same in the United States mail, postage prepaid, on the 9th day of March, 2007, at the address listed below:

David C. Mason, Esq.
P. O. Box 28
407 N. Front Street
Philipsburg, PA 16866


John R. Carfley, Esq.
Counsel for Defendants
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

No. 05-1801-CD

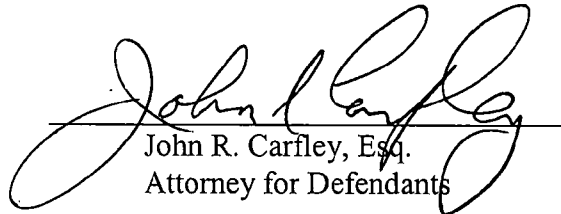
CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

NOTICE

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


John R. Carfley, Esq.
Attorney for Defendants

FILED
01/18/07
MAR 09 2007

2cc
Atty Carfley
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

#18

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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs,

-vs-

CLARA M. CALLAHAN a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants.

No. 05-1801-CD

**DEFENDANTS' ANSWER, NEW MATTER, AND COUNTERCLAIM TO
PLAINTIFF'S COMPLAINT**

AND NOW COMES, the Defendants, Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband, who by and through their counsel, John R. Carfley, Esquire, files this Answer, New Matter and Counterclaim to Plaintiff's Complaint and in support thereof do hereby aver the following:

1. Denied. Plaintiffs' proper address is 453 New Liberty Road, Philipsburg, Decatur Township, Pennsylvania.
2. Admitted.
3. Admitted in part. Denied in part. It is admitted that the Plaintiffs are the owners of certain premises, title to which they acquired by deed of George Callahan and Defendant Clara Callahan, following subdivision of a larger tract of land in October 2000. It is specifically denied that the said description of the property encompasses all of the structures located on the real estate, including but not limited to, the porch and gravel driveway which items are the subject in controversy in the above-captioned case. It is believed and therefore averred that said porch and driveway encroaches upon the land still owned by the Defendants. By way of further answer, please reference Defendants' New Matter and Counterclaim attached hereto.
4. Admitted.
5. Admitted.
6. Admitted.

7. Admitted. During the period in question, there were times when the parties identified in paragraph 7 of the said Complaint lived together in the home of George and Clara Callahan, now Clara Clark.
8. Admitted in part. Denied in part. It is admitted that Defendant Clara Callahan was able to see that area of the property where construction was ongoing on the home built for/by Rosemary Callahan. It is specifically denied that Defendant Clara Callahan was able to exercise any control and/or dominion over the construction of the house, garage and/or driveway providing access to the home being constructed by Rosemary Callahan or that said Clara Clark observed the construction as it progressed, but insofar as that fact may be relevant to this proceeding, proof thereof is demanded at time of trial. Insofar as George Callahan's power of observation at or about this time, Defendant Clara Clark is also without knowledge sufficient to form a belief as to the truth of said averments and insofar as relevant, proof thereof is demanded at time of trial. By way of further answer, it is averred that neither of the Defendants had any way of determining whether the home, garage and driveway being built by Plaintiff were within the boundaries of the property deeded to her following the sub-division of the property. By way of further answer, it is averred that the Plaintiffs and the Defendants were provided with copies of the mapping which projected the general description of the property transferred to the Plaintiffs and the property retained as the residue by the Defendants and therefore were responsible for advising those individuals involved in the construction of the dwellings and outbuildings, including, but not limited to, porches, steps, garages, driveways, entranceways and other door openings prior to undertaking the construction of this residential property. To that extent, the said Plaintiffs are responsible for any encroachment upon property still retained as a residue by the Defendants and are therefore unable to assert any legal title to property now owned by the Defendants upon which the Plaintiffs may have constructed structures on property which they do not own at the present time.
9. Admitted.
10. Admitted. By way of further answer, it is averred that said property upon which the Defendants erected the double wide manufactured home constitutes part of the residue of the property which was owned by Clara Callahan Clark and from which Rosemary Callahan's property was conveyed as hereinabove specified.
11. Admitted in part. Denied in part. It is admitted that there was no objection to the construction of the home, garage, and/or driveway of Plaintiffs' home. It is specifically denied, however, that there was a need to challenge and/or discuss the location of the homes since the issues which now confront the Court were not brought to the attention of the Defendants as the true owners of the property at the time of the construction. By way of further answer, it is averred that Defendants, at or about the time of the construction of the Callahan structure, had no way of determining that there was an encroachment on their residuary parcel, nor was there any reason for them to believe that

the daughter was engaged in a course of conduct which would ultimately result in an encroachment of lands which they lawfully owned and make claim of title to.

12. Denied. It is denied that Bernard Clark interfered with the Plaintiffs' use of the driveway by the erection of posts, fences and parking an automobile in the driveway. By way of further answer, it is averred that the driveway in question is located exclusively upon the property owned by Defendants Clara Callahan Clark and Bernard Clark which is the residue which followed the subdivision in 2000. Therefore, these parties have every right to utilize the property in any way they see fit within their legal ownership rights.
13. Denied. It is specifically denied the Defendants have undertaken actions designed to interfere with the Plaintiffs' use of their property. By way of further answer, it is averred that Defendants actions have been undertaken with the specific goal of preventing trespass upon the Defendants' lands by the Plaintiffs as well as other members of the general public.
14. Admitted. It is admitted that the driveway specified in this suit is located on land belonging to the Defendants as outlined in the survey maps constituting a part of this suit and attached hereto as Exhibit "A" and incorporated as part of Defendants' New Matter and Counterclaim.
15. Admitted.
16. Denied. It is specifically denied that the Plaintiffs own the area of land upon which their driveway, porch, stairs and dog fence have been erected or that they are in any way entitled to lands which are lawfully in the possession of the Defendants and which constitutes the residue of the Callahan tract and which constitute the residue of the Callahan tract.
17. It is admitted that despite repeated requests and transmittal of significant legal documents proving ownership of the premises by the Defendants named herein, Plaintiffs have refused and continue to refuse to remove the described encroachments, consisting of posts, fence, and automobiles together with the porch, stairs and other garage way entrance from property lawfully owned by the Defendants as a result of the subdivision and transmittal of deeds by the various parties.

WHEREFORE, Defendants pray that this Honorable Court enter an Order in favor of the Defendants Clara Callahan, a/k/a Clara Clark and Bernard Clark, her husband, for possession of the real property described herein and to allow Defendants full use of the properties belonging to them and specified in their deed outlining the residuary of their property.

NEW MATTER

18. Paragraphs 1-17 are incorporated by reference as if fully set forth herein.
19. On or about August 12, 2000, in preparation for a proposed subdivision of the property owned by George Callahan and Defendant Clara Callahan, a survey of said property was conducted by Nicholas Shirokey, P.L.S. and a drawing of said property was completed with proposed boundaries by P.R. Mondock, A.L.S.
20. On August 14, 2000, the Clearfield County Planning Commission approved the subdivision of the aforementioned property, after a subsequent approval of plan by the Decatur Township Planning Commission and Decatur Township Supervisors, which organizations also approved the location of the subdivision.
21. On September 13th, 2000, the map of the approved subdivision was recorded in the Office of the Recorder of Deeds of Clearfield County and assigned Instrument #: 200013505.
22. On or about October 18th, 2000, a general warranty deed was signed and executed conveying the property set forth as Subdivision Lot #2 from George and Clara Callahan to their daughter Plaintiff Rosemary Callahan, said deed being recorded in the Clearfield County Office of the Recorder of Deeds at Instrument #: 200015682.
23. The remainder of the original property, outlined on the sub-division survey map as Residual of Grantor – Lot #1, remained titled to George Callahan and Defendant Clara Callahan and consisted of the remaining portion of the property originally acquired by deed recorded in the Clearfield County Office of the Recorder of Deeds at Deed Book 1835, Page 56.
24. Following the subdivision, Plaintiff Rosemary Callahan constructed a double-wide home with a single car garage and deck, generally in the eastern-most corner of her property.
25. To the North of the subdivided property and running the length of the both the Plaintiffs' and Defendants' lots is a ten (10) foot wide access right of way that has been used by and shared by the parties since the subdivision.
26. Off of the aforementioned access right of way, there are two (2) unpaved dirt driveways which provide access to the subject properties, the first of which runs in a southerly direction within the property of the Defendants near the boundary shared with the Plaintiffs. The second also runs in a southerly direction within the property of the Plaintiffs and leads to a parking area behind/south of the Plaintiffs home.

27. At some time prior to the filing of this action, Plaintiffs stopped using the dirt driveway located on their property that led from the access right of way to the parking area located behind their home and started exclusively using the driveway located within the boundaries of the Defendants.

28. Plaintiffs consistently travel up the driveway located on the Defendants land at a high rate of speed causing the gravel, applied by Defendant Bernard Clark, to spray off the driveway and create ditches and holes within the roadway which require repair.

29. In addition, Plaintiffs park several of their cars and encourage visitors to park their cars off of the driveway in the grassy portion of the Defendants land, which has caused damage to and created an eye-sore within the property.

30. On December 20, 2005, P.R. Mondock, A.L.S. completed a follow-up survey of the boundary area of the subdivision and determined that the Plaintiffs' porch, steps and driveway as well as a cyclone fence encroach within the property of the Defendants. Said survey is attached to this pleading and is marked as Exhibit "A" in support of Defendants' claim.

31. Any and all of the posts, fences, parked automobiles and gravel piles placed on the driveway by Defendant Bernard Clark to prevent Plaintiffs access to the roadway, have been and continue to be completely within the boundaries of Defendants' property.

COUNTERCLAIM

COUNT I - EJECTMENT

32. The specific averments of paragraphs 1-31 are incorporated by reference as if fully set forth at length.

33. The actions of the said Plaintiffs in this suit have resulted in the expenditure of extensive fees and costs in attempting to protect the legal and equitable rights and ownership of the said Defendants, all of which is recoupable by the Defendants and assertable against the Plaintiffs named herein.

34. Plaintiffs acquired title to the above-referenced real property by conveyance of George Callahan and Defendant, Clara Callahan, consistent with the principles of conveyancing outlined in the text Ladner on Conveyancing, the provisions of which are incorporated herein by reference as fully as though set forth at length.

35. Defendants, Clara Callahan Clark and Bernard Clark are the owners of the residue of this tract as outlined on the survey map affixed hereto and as such are entitled to bring an action of ejectment against any and all individuals whose legal rights and/or property rights are inferior to that of the Defendants herein.

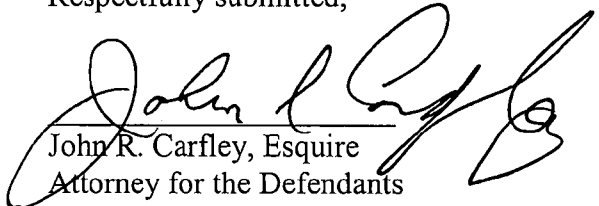
36. The ownership interest of the Defendants is superior in legal and equitable title to all individuals, including the Plaintiffs, and as a result, Defendants request that the said Plaintiffs be ordered to remove any and all encroachments which remain on the Defendants' property. In addition to said action in ejectment, Defendants have incurred counsel fees exceeding \$7,500.00 and request that the Court enter judgment against the Plaintiffs and in favor of the Defendant in an amount in excess of \$7,500 representing the legal fees and costs incurred in this matter.

WHEREFORE, Defendants request that this Honorable Court enter a judgment in favor of the Defendants and against the Plaintiffs in an amount in excess of Ten Thousand Dollars (\$10,000.00) representing the legal fees and costs incurred by the Defendants in this particular suit against the said Plaintiffs in this action, and;

WHEREFORE, Defendants request this Honorable Court to enter an Order dismissing Plaintiffs' Complaint and entering an Order ejecting the said Plaintiffs from this parcel and denying their claim of ownership of property inconsistent with that recited by the Defendants herein, and;

WHEREFORE, Defendants demand judgment against the Plaintiff in an amount in excess of \$10,000.00, complete with all applicable costs and interest and for items of personal property itemized on Exhibit "B" attached hereto as part of this proceeding which were removed from the home and storage sheds in the basement of the Defendants' home by Plaintiffs, which items were unlawfully and illegally removed.

Respectfully submitted,


John R. Carfley, Esquire
Attorney for the Defendants
P.O. Box 249
Philipsburg, PA 16866
(814) 342-5581

Dated: March 9, 2007

VERIFICATION

I hereby verify that the statements made in this instrument 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.

Clara M Callahan
Clara M. Callahan

Clara M Clark
a/k/a Clara M. Clark

Bernard M Clark
Bernard Clark

Dated: 3/9/07

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

CERTIFICATE OF SERVICE

I do certify that I made service of the foregoing Answer, New Matter and Counterclaim to Plaintiffs' Complaint upon the following, by depositing a copy of the same in the United States mail, postage prepaid, on the 9th day of March, 2007, to Plaintiffs' attorney of record at the address listed below:

David C. Mason, Esq.
P. O. Box 28
407 N. Front Street
Philipsburg, PA 16866

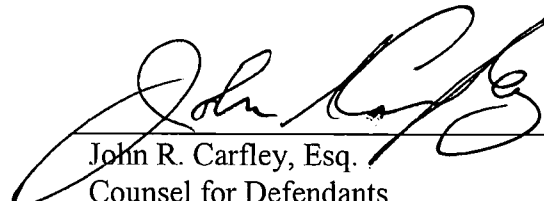
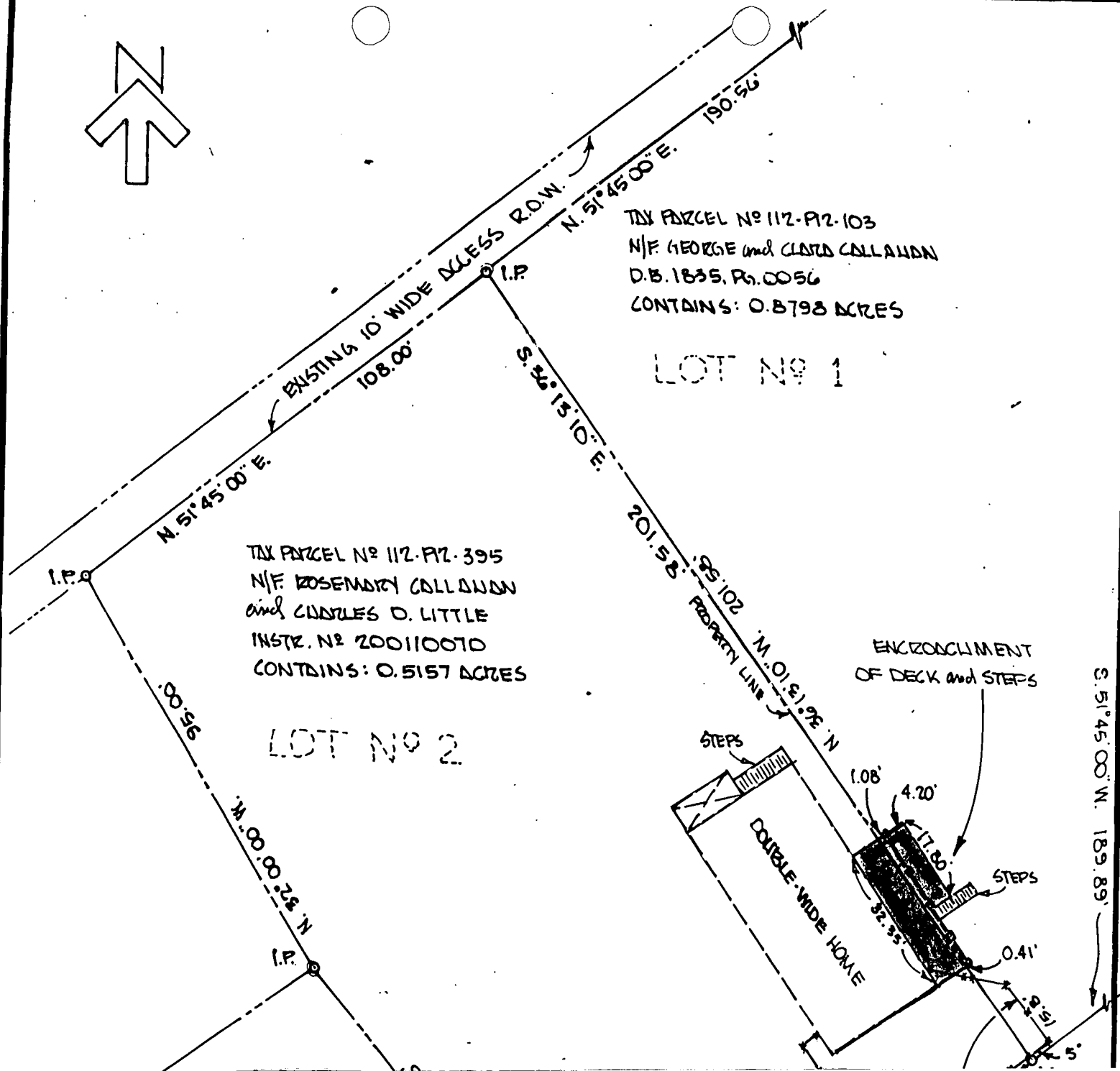
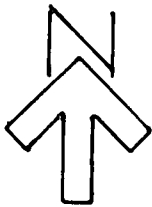

John R. Carfley, Esq.
Counsel for Defendants
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

EXHIBIT "A"



TAX PARCEL N° 112-P12-103
N/F GEORGE and CLARA COLLARD
D.B. 1835, P. 0056
CONTAINS: 0.8798 ACRES

LOT N° 1

TAX PARCEL N° 112-P12-395
N/F ROSEMARY COLLARD
and CHARLES D. LITTLE
INSTR. N° 200110070
CONTAINS: 0.5157 ACRES

LOT N° 2

ENCROACHMENT
OF DECK and STEPS

STEPS

DOUBLE-WIDE HOME

STEPS

S. 51° 45' 00" W. 189.89'

EXHIBIT “B”

EXHIBIT "B"

1. 8' x 12' shed
2. Tools (all kinds)
3. Generator
4. Drill press
5. Deer head
6. Mig welder
7. Electric sander
8. Floor jack and creeper
9. 308 Winchester (164589 A)
10. 22 Rifle
11. Magnum – 3507 – 227793
12. Browning rifle

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

FILED

03:24 P.M. 6K

FEB 01 2007

William A. Shaw
Prothonotary/Clerk of Courts

2 CC TO

AMY CARFLEY

(GR)

ANSWER TO PETITION FOR SANCTIONS

AND NOW comes the Defendants, Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband, who by and through their attorney, John R. Carfley, Esq., file this Answer to the Plaintiffs' Petition for Sanctions and in support thereof, aver as follows:

1. It is admitted that the Plaintiffs have filed a Complaint and Petition for Preliminary Injunction with regard to the use of a driveway servicing certain lands located in Clearfield County, Pennsylvania. It is further admitted that this driveway travels over, across and through other lands of the Defendants, which is owned by the Defendants by virtue of the ownership rights acquired by the Defendants in their previous deeds in their chain of title.

2. It is admitted that pursuant to a Stipulation and Order dated September 3, 2006, the parties agreed that neither Plaintiffs nor Defendants should block the driveway or place obstacles on the driveway or otherwise prohibit the free and uninterrupted use of the driveway pending a full hearing on the merits of Plaintiffs' Complaint in March,

#17

2007. By way of further answer, it is averred that the Defendants, in response to certain adverse actions of the Plaintiffs, undertook various acts to place obstructions in the driveway which resulted in clear and obstructive use of the driveway to the point where it inhibited the quiet enjoyment of the Defendants in the use of their structure, driveway, garage, porch and other facilities.

3. Admitted. Provided that each of the parties ceased and desisted from any adverse action which would serve to hamper the other parties' quiet enjoyment and use of its own ownership interest and rights.

4. It is admitted that on or about December 11, 2006 the Defendants constructed a minor obstruction to the driveway which is depicted on photographs 1 through 4 included as Exhibit "A" in Plaintiffs' Petition for Sanctions in order to allow the Defendants to cross the area utilized by the Defendants as a driveway without creating a muddied area which would carry in to the home of Defendants and onto the carpeting and other furniture within the structure and property owned by Defendants. It is denied that this minor obstruction construed in the pictures in any way prevented the Plaintiffs from utilizing that area of the driveway projected in photographs 1 through 4 as shown in their Petition for Sanctions, nor was it the intent of the Defendants in so doing their construction.

5. It is admitted that the Plaintiffs and the Defendants attempted to amicably resolve this dispute between the parties and that the letter attached to the Petition for Sanctions as Exhibit "B" was addressed by Plaintiffs' counsel, but counsel for the Defendants responded to that offer and submitted a counter-offer, all of which is set forth in those two counter-offers of January 2, 2007 and January 16, 2007, attached hereto as

Exhibit "A" and "B". Moreover, a counter-offer of settlement projected by Defendants which the Plaintiffs would be granted was free of charge in an area allowing them to use the back porch of their property, the cellar wall of the premises and other portions of the driveway and superstructure in a manner consistent with the ownership interests of the Defendants.

6. While counsel did not respond to the letter of December 21, 2006 in writing, counsel did discuss the possibility of reaching an amicable agreement with the Plaintiffs orally through their counsel consistent with those terms hereinabove set forth at a time at or near December 20, 2006 and reduced those terms to letters hereinabove enclosed as Exhibits "A" and "B".

7. It is denied that the Defendants constructed further obstructions in December which prohibited the Plaintiffs, as shown in photographs 5 and 6 as Exhibit "C" in Plaintiffs' Petition for Sanctions from utilizing the roadway to access their property in a reasonable fashion.

8. Denied. The obstruction shown in the photo in no way resulted in any type of dangerous or obstructive obstacles and insofar as relevant, proof thereof is demanded at time of trial.

9. Denied. On the contrary it is averred that after reasonable investigation, Defendants are without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant, proof thereof is demanded at time of trial. It is further denied that this obstruction, such as it is, is in any way unsafe for the purposes or intents and insofar as relevant, proof thereof is demanded at time of trial.

10. Denied. On the contrary, it is averred that the employment history of the Plaintiffs are unknown to the Defendants and insofar as relevant, proof thereof is demanded at time of trial. It is specifically averred, however, that the use of the roadway in the manner contemplated is in any way disruptive of the Plaintiffs' use of the roadway, their home or any of the other structures to the point where their employment history is jeopardized.

11. Admitted.

12. Denied. On the contrary it is averred that the Defendants engaged in self-help on prior occasions as evidenced by the photographs as set forth in Exhibit "E" and "F" or in any other way violated the Stipulation, Order and content of the Court's Order of September 13, 2006 or that the items depicted in those photographs in any way violated the intent of the Court and/or the parties in dealing with the current situation.

13. It is denied that the Defendants have repeatedly and maliciously engage in self-help in order to obstruct the existent roadway. By way of further answer, it is averred that the Defendants have at all times attempted only to exercise their right to their proper ownership interests and have in no way attempted to preclude the Plaintiffs from use of property rightfully theirs. Proof thereof is demanded at time of trial.

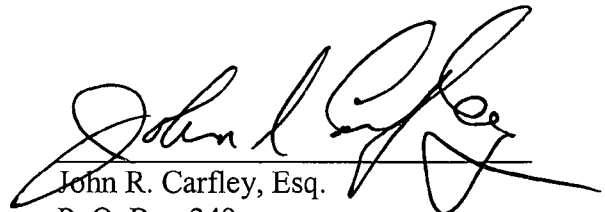
14. It is denied that the Court must intervene and punish the Defendants for unlawful behavior in order to enforce the Court's Order or that violations will occur in the future if both parties are distinctly ordered to utilize property only owned by them in their respective rights under the Land Development Code in a civil and lawful manner.

15. It is denied that the Plaintiffs have failed to resort to self-help. Rather, on many occasions, they have utilized obstructions to the driveway, have thrown ashes and

mud in and about the area of the entrance way to the Defendants' home, and have otherwise made it inconvenient for the Defendants to utilize the pathway from their motor vehicle to their front door without tracking debris from the driveway throughout the house, all for no legitimate or necessary purpose, having received a reasonable offer to settle the situation with the Plaintiffs without the need to proceed to expensive and time-consuming litigation.

16. It is denied that the Plaintiffs have been frustrated, missed work and incurred expenses related to legal fees to address these violations of the Court's Order and insofar as relevant, proof thereof is demanded at time of trial.

WHEREFORE, Defendants pray your Honorable Court to enter an Order dismissing any Sanctions sought by the Plaintiffs against the Defendants for willful, malicious and vexatious conduct or in any other way to allocate Plaintiffs' legal fees and other out-of-pocket expenses as a means of preventing the Defendants from such further action.

A handwritten signature in black ink, appearing to read "John R. Carfley", is written over a horizontal line.

John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

Dated: February 1, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

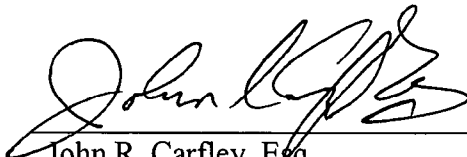
No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

CERTIFICATE OF SERVICE

I do certify that I made service of the foregoing Answer to Plaintiffs' Petition for Sanctions upon the following, by delivering a copy of the same by facsimile transmission on the 1st day of February, 2007, at the address listed below:

David C. Mason, Esq.
P. O. Box 28
407 N. Front Street
Philipsburg, PA 16866


John R. Carfley, Esq.
Counsel for Defendants
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

CA

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*ORDER

AND NOW, this 29th day of January, 2007, upon consideration of the forgoing Petition for Sanctions, it is hereby ordered that:

(1) a rule is issued upon Defendants, Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband, to show cause why the Plaintiffs, Rosemary Callahan and Charles D. Little, are not entitled to the relief requested;

(2) the Defendants shall file an answer to the Petition for Sanctions on or before February 2, 2007;

(3) the Petition shall be decided under Pa. R. C.P. No. 206.7;

(4) an evidentiary hearing on disputed issues of material fact shall be held on February 2, 2007, in Courtroom No. 2, of the Clearfield County Courthouse, Clearfield, Pennsylvania, at 11:00am.

(5) notice of the entry of this Order shall be provided to all parties by the Plaintiffs.

BY THE COURT:

Paul E. Cherry
J.

FILED ICC Atty
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JAN 30 2007
(60)

William A. Shaw
Prothonotary/Clerk of Courts

#160

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

VS.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

ORDER

AND NOW, this _____ day of _____, 2007, upon consideration of the forgoing Petition for Sanctions, it is hereby ordered that:

(1) a rule is issued upon Defendants, Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband, to show cause why the Plaintiffs, Rosemary Callahan and Charles D. Little, are not entitled to the relief requested;

(2) the Defendants shall file an answer to the Petition for Sanctions on or before February 2, 2007;

(3) the Petition shall be decided under Pa. R. C.P. No. 206.7;

(4) an evidentiary hearing on disputed issues of material fact shall be held on **February 2, 2007**, in Courtroom No. _____, of the Clearfield County Courthouse, Clearfield, Pennsylvania, at **11:00am**.

(5) notice of the entry of this Order shall be provided to all parties by the Plaintiffs.

BY THE COURT:

J.

DAVID C. MASON

Attorney at Law

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

January 29, 2007

Office of the Prothonotary
Clearfield County Courthouse
230 East Market Street
P.O. Box 549
Clearfield, PA 16830

In RE: Rosemary Callahan, et al v. Clara M. Callahan, et al
No. 05-1801-CD

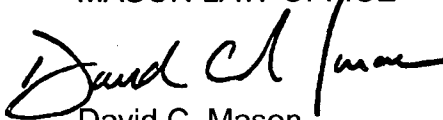
Dear Sir or Madam:

Enclosed please find for filing an original and two (2) copies of an Order scheduling a hearing for Friday, February 2, 2007, in the above matter.

Thank you.

Very truly yours,

MASON LAW OFFICE


David C. Mason

DCM/kla
Enclosures

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*

* No. 05-1801-CD

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* TYPE OF PLEADING: CERTIFICATE
* OF SERVICE

*

*

* FILED ON BEHALF OF: Plaintiffs

*

* ATTORNEY FOR PLAINTIFFS:

* David C. Mason, Esquire

* I.D. No. 39180

* MASON LAW OFFICE

* P.O. Box 28

* Philipsburg, PA 16866

* (814) 342-2240

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Atty Mason
(12)

William A. Shaw
Prothonotary/Clerk of Courts

(12)

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

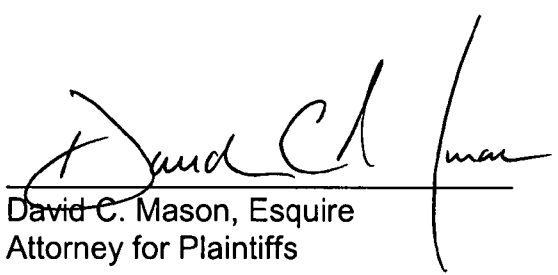
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CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' PETITION FOR SANCTIONS filed in the above captioned action on the following by depositing the same in the U. S. Mail, postage prepaid and addressed as follows:

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

DATED: 1/3/2007



David C. Mason, Esquire
Attorney for Plaintiffs

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No. 05-1801-CD
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01/11/07/60/Att
JAN 09 2007 mason

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 5th day of January, 2007, upon consideration of the forgoing Petition for Sanctions, it is hereby ordered that:

(1) a rule is issued upon Defendants, Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband, to show cause why the Plaintiffs, Rosemary Callahan and Charles D. Little, are not entitled to the relief requested;

(2) the Defendants shall file an answer to the Petition for Sanctions within twenty (20) days of service upon the Defendants;

(3) the Petition shall be decided under Pa. R. C.P. No. 206.7;

(4) an evidentiary hearing on disputed issues of material fact shall be held on March 19, 2007, in Courtroom No. 2, of the Clearfield County Courthouse, Clearfield, Pennsylvania. 9:00 A.M.

(5) notice of the entry of this Order shall be provided to all parties by the Plaintiffs.

BY THE COURT:

Paul E. Cherry
J.

#14

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

*
* TYPE OF PLEADING: PETITION FOR
* SANCTIONS
*

*
* FILED ON BEHALF OF: Plaintiffs
*

* ATTORNEY FOR PLAINTIFFS:

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

FILED 3cc
0/3:33/61 Att'y Mason
JAN 03 2007
William A. Shaw
Prothonotary/Clerk of Courts

#14

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No. 05-1801-CD
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PETITION FOR SANCTIONS

AND NOW come the Plaintiffs Rosemary Callahan and Charles D. Little, by and through their attorney, David C. Mason, Esquire, and files this Petition For Sanctions, and in support thereof aver as follows:

1. Plaintiffs have filed a Complaint and Petition for Preliminary Injunction with regard to the use of a driveway servicing their lands, which driveway travels over, across and through lands of the Defendants.

2. Pursuant to a Stipulation and Order dated September 13, 2006, the parties agreed that "... neither Plaintiffs nor Defendants shall block the driveway, place obstacles on the driveway, or otherwise prohibit the free and uninterrupted use of the driveway ... " pending a full hearing on the merits of Plaintiffs' Complaint.

3. A hearing on the merits was scheduled for December 12, 2006, but pursuant to Order of Court dated December 11, 2006, a hearing on Plaintiffs' Complaint is scheduled for the 19th day of March, 2007. The same Order continued the effect of the September

13, 2006, Order.

4. Within a week of the December 11, 2006, Order, Defendants constructed an obstruction on the driveway as evidenced by the photocopies of photographs numbers 1 through 4, included as Exhibit "A" hereto.

5. Plaintiffs attempted to amicably resolve this matter among the parties. Attached as Exhibit "B" is a copy of a letter dated December 21, 2006, to defense counsel.

6. Defense counsel did not respond to the letter of December 21, 2006.

7. By the end of December, further obstructions were placed on the driveway as evidenced by photographs numbered 5 and 6, photocopies of which are attached hereto as Exhibit "C".

8. This obstruction is an unsafe barrier as evidenced in photograph number 7, a photocopy of which is attached as Exhibit "D", which evidences the rebar placed on the driveway.

9. Plaintiffs would be unable to clear the driveway of snow with a snow plow.

10. Both Plaintiffs are employed and the loss of income occasioned by their inability to travel on this driveway would cause immediate harm.

11. The Stipulation and Order of September 13, 2006, states that "neither party would prohibit the free and uninterrupted use of the driveway for access".

12. Defendants have engaged in self-help on prior occasions as evidenced by the copies of photographs attached as follows:

A. See copies of photographs from the fall of 2005, attached as Exhibit "E".

B. See copies of photographs from July 17, 2006, attached as Exhibit "F".

13. Defendants have repeatedly and maliciously engaged in self-help to obstruct the

driveway and hinder Plaintiffs' access to their residence in violation of the Stipulation and Order of September 13, 2006.

14. Unless the Court intervenes and punishes the Defendants for unlawful behavior, these violations of the Court's Order will likely continue.

15. Plaintiffs have not resorted to self-help, but have engaged the services of the attorney to address these violations of the Court Order in a civil and lawful manner.

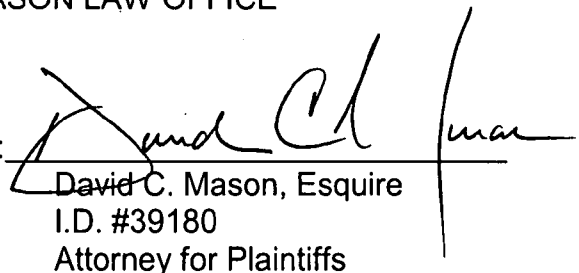
16. Plaintiffs have been frustrated, have missed work, and have incurred expenses related to legal fees to address the violations of the Court's Order.

WHEREFORE, Plaintiffs pray your Honorable Court for the entry of an Order sanctioning Defendants for their willful, malicious and vexatious violation of the Court's Order of September 13, 2006, and to schedule a hearing for the purpose of taking testimony to assess damages for Plaintiffs' legal fees and other out-of-pocket expenses, together with a penal sum to discourage further violations of the Court's Orders.

Respectfully submitted,

MASON LAW OFFICE

By:


David C. Mason, Esquire
I.D. #39180
Attorney for Plaintiffs

VERIFICATION

I do hereby verify that the facts set forth in the foregoing **PETITION FOR SANCTIONS** are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

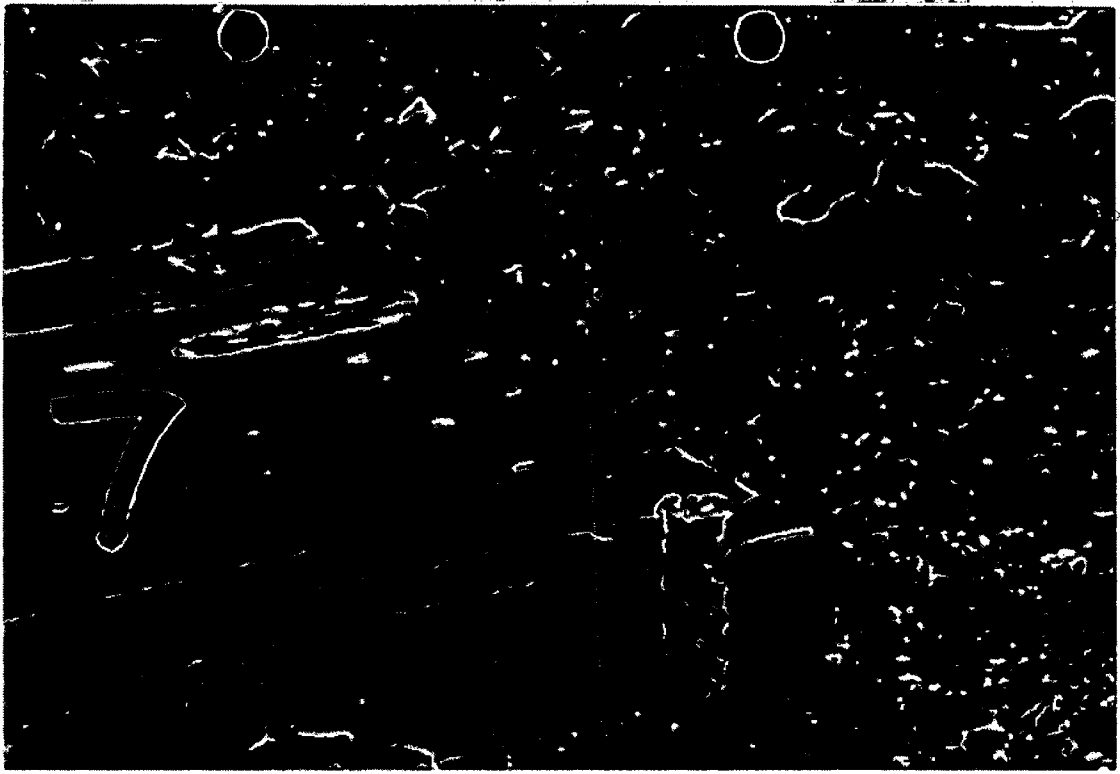
DATED: *January 3rd, 2007*

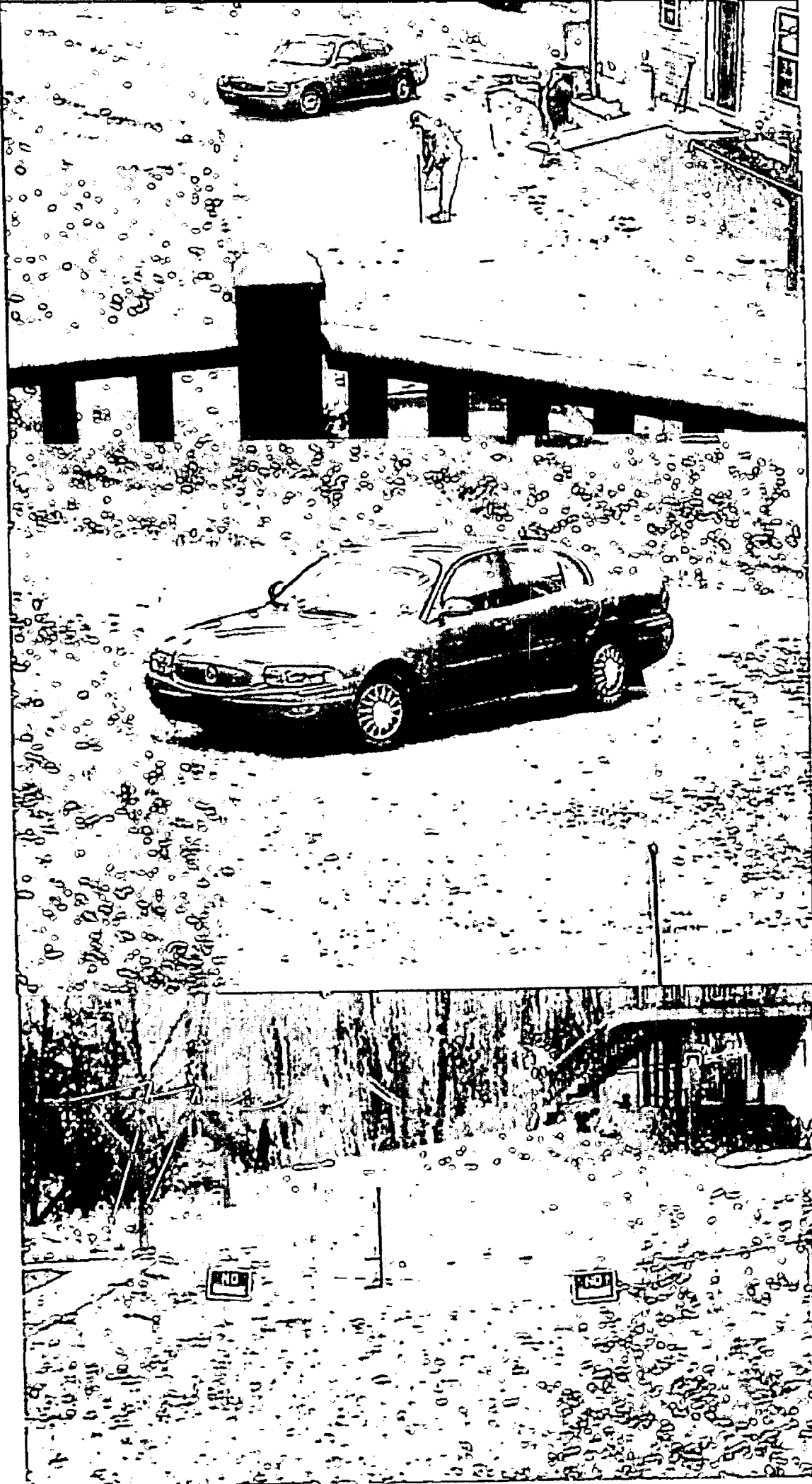
Rosemary Callahan

Rosemary Callahan

Exhibit A

Exhibit B







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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

V.

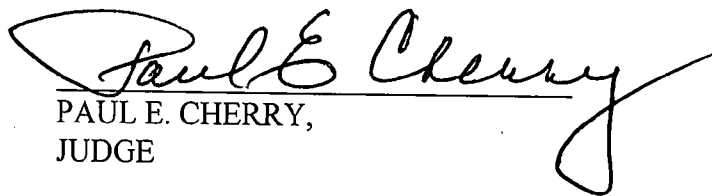
CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

NO. 05-1801-CD

ORDER

AND NOW, this 11th day of December, 2006, counsel for both parties having requested a continuance of the hearing scheduled for December 12, 2006 and the Court being in agreement with the same, it is the ORDER of this Court that Hearing on the Merits of Plaintiff's Complaint shall be and is hereby continued until the 19th day of March, 2006, at 9:00 A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania. Pending Hearing on the Merits, the Order of Court entered of record on September 13, 2006 shall continue to be in full force and effect.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

EW
FILED
Dec
01/16/07
DEC 12 2006

William A. Shaw
Prothonotary/Clerk of Courts

#13

FILED

DEC 12 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/12/06

☐ 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:

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No.
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05-1801-CD

FILED
09/13/06
SEP 13 2006
William A. Shaw
Prothonotary/Clerk of Courts
rec'd
Mason
Carley
EW

PETITION FOR PRELIMINARY INJUNCTION

AND NOW come the Plaintiffs Rosemary Callahan and Charles D. Little, by and through their attorney, David C. Mason, Esquire, and the Defendants, Clara M. Callahan a/k/a/ Clara M. Clark, and Bernard Clark, her husband, by and through their attorney, John R. Carley, Esquire, and represents and avers to the Court, in prayer for the entry of an order:

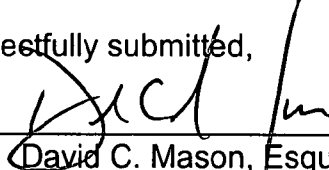
The parties, by the signatures of their counsel, stipulate and agree to the entry of an Order of Court granting the relief prayed for in the Petition for Preliminary Injunction, and **neither** Plaintiffs nor Defendants shall block the driveway, place obstacles on the driveway, or otherwise prohibit the free and uninterrupted use of the driveway for access to either residence and the remainder of the property pending a full hearing on the merits of Plaintiffs' Complaint.

This Agreement as stipulated by the Defendants shall in no way prejudice any rights and/or claims that the Defendants may assert by way of defense or as an affirmative claim in this matter.

#12

This Order shall remain in full force and effect until further hearing and decision by the Court.

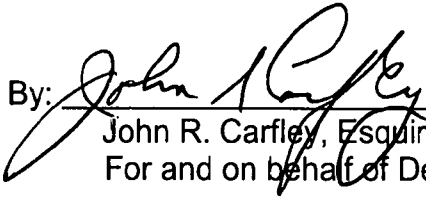
Respectfully submitted,

By: 

David C. Mason, Esquire

I.D. #39180

For and on behalf of Plaintiffs

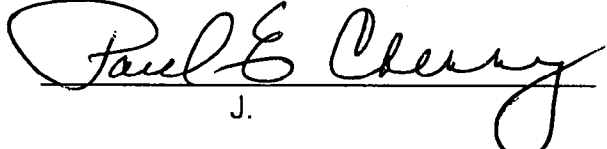
By: 

John R. Carley, Esquire

For and on behalf of Defendants

This stipulation is adopted by the Court as an ORDER of Court, and a hearing on the merits is scheduled for the 12th day of December, 2006 @ 9:00 A.M.

BY THE COURT:


J.

FILED

SEP 13 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/13/06

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

CA

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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

V.

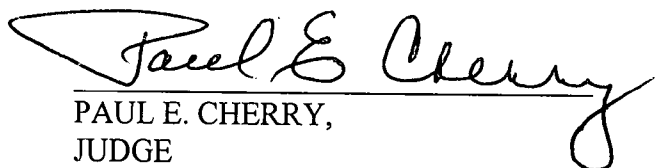
NO. 05-1801-CD

CLARA M. CALLAHAN, a/k/a CLARA
M. CLARK and BERNARDO CLARK,
her husband,
Defendants

ORDER

AND NOW, this 7th day of September, 2006, the Court having been advised by counsel that an agreement has been reached with regard to this matter, it is the ORDER of this Court that Hearing on Plaintiff's Motion on Preliminary Injunction scheduled for this date, be and is hereby cancelled. It is the further ORDER of this Court that the parties shall submit to the Court a signed Stipulation within ten (10) days of this date.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
09/07/06 Sec. Anys.
SEP 11 2006 Mason
William A. Shaw Carley
Prothonotary/Clerk of Courts (6)

(11)

DATE: 9/11/06

☐ 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:

FILED

SEP 11 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE

vs.

No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband

ORDER

AND NOW, this 22nd day of August, 2006, it is the ORDER of the
Court that hearing on Plaintiff's Motion to Reschedule Hearing on Preliminary
Injunction is hereby rescheduled from September 7, 2006 at 9:00 A.M to **Thursday,**
September 7, 2006 at 11:00 A.M. in Courtroom No. 2, Clearfield County
Courthouse, Clearfield, PA.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED
014/0001
AUG 22 2006

1cc Atty's:
Mason
Castley

William A. Shaw
Prothonotary/Clerk of Courts

#10

FILED

AUG 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE 8/22/06

____ 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:

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

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* TYPE OF PLEADING: CERTIFICATE
* OF SERVICE
*

*
* FILED ON BEHALF OF: Plaintiffs
*

* ATTORNEY FOR PLAINTIFFS:
* David C. Mason, Esquire
* I.D. No. 39180
* MASON LAW OFFICE
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

FILED NO CC
110:3781
AUG 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

#9

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

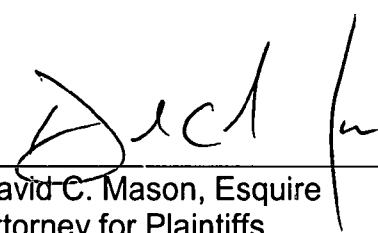
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CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' MOTION TO RESCHEDULE HEARING ON PRELIMINARY INJUNCTION filed in the above captioned action on the following by depositing the same in the U. S. Mail, postage prepaid and addressed as follows:

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

DATED: 8/21/06



David C. Mason, Esquire
Attorney for Plaintiffs

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

RULE TO SHOW CAUSE

AND NOW, this 21 day of August, 2006, upon consideration of the Plaintiffs' Complaint, and Petition for Preliminary Injunction, and Motion to Reschedule Hearing on Preliminary Injunction, it is hereby ORDERED and DECREED that:

(1) Defendants appear and show cause, if any there be, why the relief prayed for in the Plaintiffs' Motion should not be granted, said argument to be heard before the Court on the 7th day of September, 2006, at 9:00 o'clock A. m., in Courtroom # 1, at Clearfield, Pennsylvania.

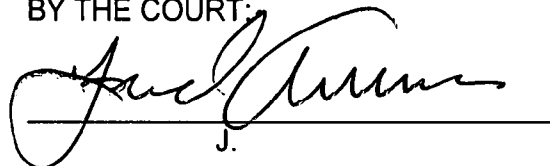
(2) the Defendants shall file an answer to the Complaint within twenty (20) days of service upon the Defendants;

(3) The Complaint shall be decided under Pa. R. C.P. No. 206.7;

(4) notice of the entry of this Order shall be provided to all parties by the Plaintiffs.

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

BY THE COURT:


J.

FILED

0110:0130
AUG 21 2006

BCC
Amy Mason

CR

William A. Shaw
Prothonotary/Clerk of Courts

88

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No. 05-1801-CD
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* TYPE OF PLEADING: MOTION TO
* RESCHEDULE HEARING ON
* PRELIMINARY INJUNCTION
*
* FILED ON BEHALF OF: Plaintiffs
*
* ATTORNEY FOR PLAINTIFFS:
* David C. Mason, Esquire
* I.D. No. 39180
* MASON LAW OFFICE
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240

FILED 3cc
07/10/07/01 Atty Mason
AUG 21 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No. 05-1801-CD
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MOTION TO RESCHEDULE HEARING
ON PRELIMINARY INJUNCTION

AND NOW come the Plaintiffs Rosemary Callahan and Charles D. Little, by and through their attorney, David C. Mason, Esquire, and files this Motion to Reschedule Hearing on Preliminary Injunction, and in support thereof aver as follows:

1. Plaintiffs have filed a Complaint to the above term and number seeking ejectment of Defendants from premises in Decatur Township, Clearfield County, Pennsylvania.
2. Part of the premises subject to Plaintiffs' action is the driveway which serves as an access road for the Plaintiffs to their home.
3. Plaintiffs have previously filed a Petition for Preliminary Injunction, and a Rule to Show Cause was issued for November 22, 2005.
4. The road in question remained open since November 22, 2005, while the parties discussed a possible resolution.
5. In June and July of 2006, counsel for the parties exchanged correspondence which contained proposals for resolution of this disagreement.

6. Suddenly and without warning, on or about July 17, 2006, the Defendants filled the driveway with limestone and parked automobiles, thus preventing the Plaintiffs from accessing their home. Three photographs attached hereto depict the blocked driveway.

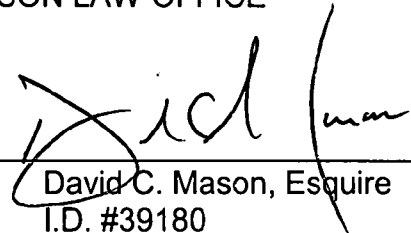
7. This condition has existed for a period in excess of thirty (30) days and Defendants have given no indication that they intend to remove the limestone and automobiles and restore the status quo.

8. Plaintiffs have been denied vehicular access to their garage, and this lack of access has served a particular hardship on Plaintiffs.

WHEREFORE, Plaintiffs pray your Honorable Court for the issuance of a Rule Returnable directing the Defendants to appear and show cause why the relief prayed for in the Petition for Preliminary Injunction should not be granted.

Respectfully submitted,

MASON LAW OFFICE

By: 

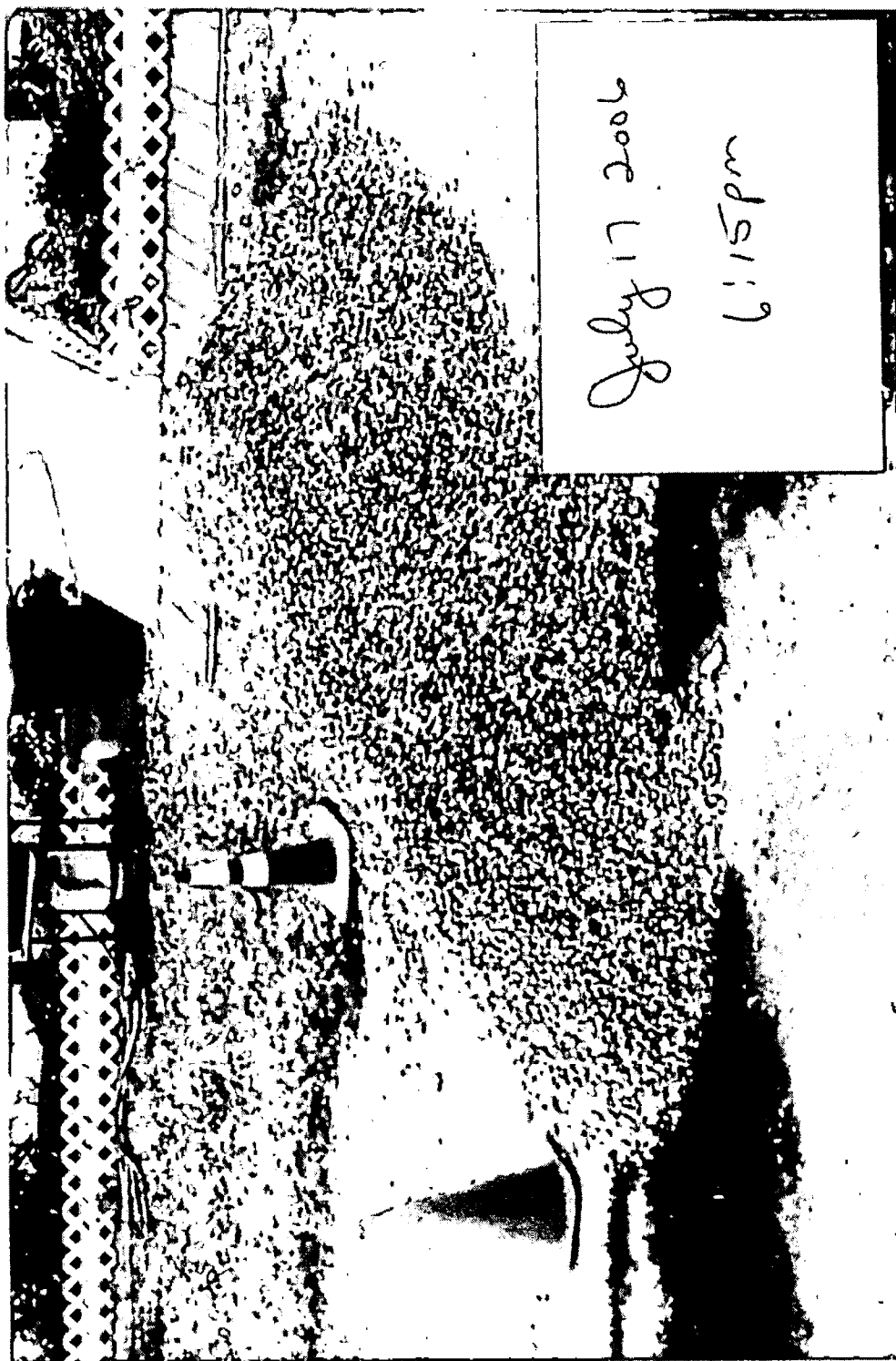
David C. Mason, Esquire
I.D. #39180
Attorney for Plaintiffs

VERIFICATION

I do hereby verify that the facts set forth in the foregoing **MOTION TO RESCHEDULE HEARING ON PRELIMINARY INJUNCTION** are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

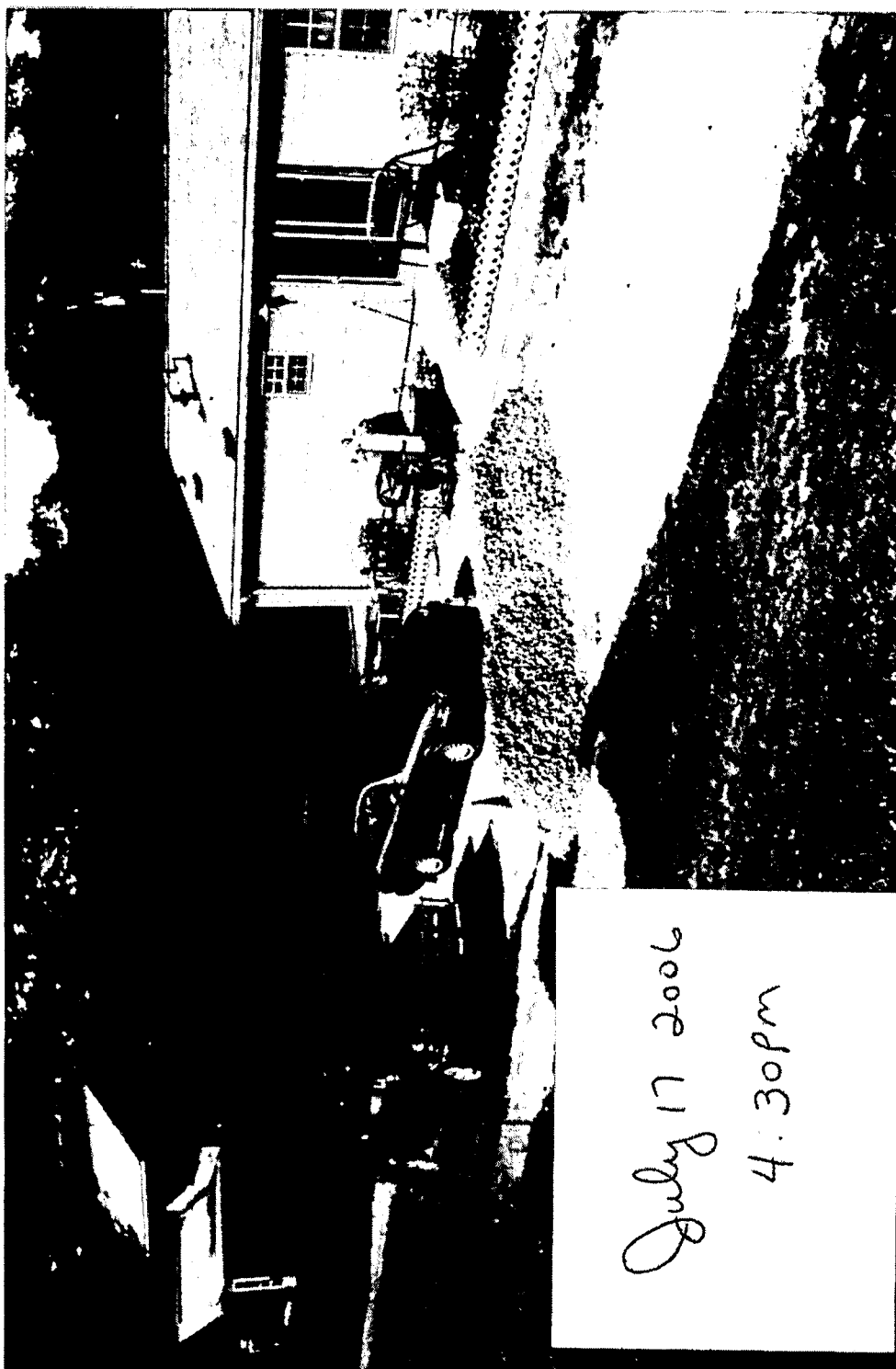
DATED: 8/21/2006

Rosemary Galli

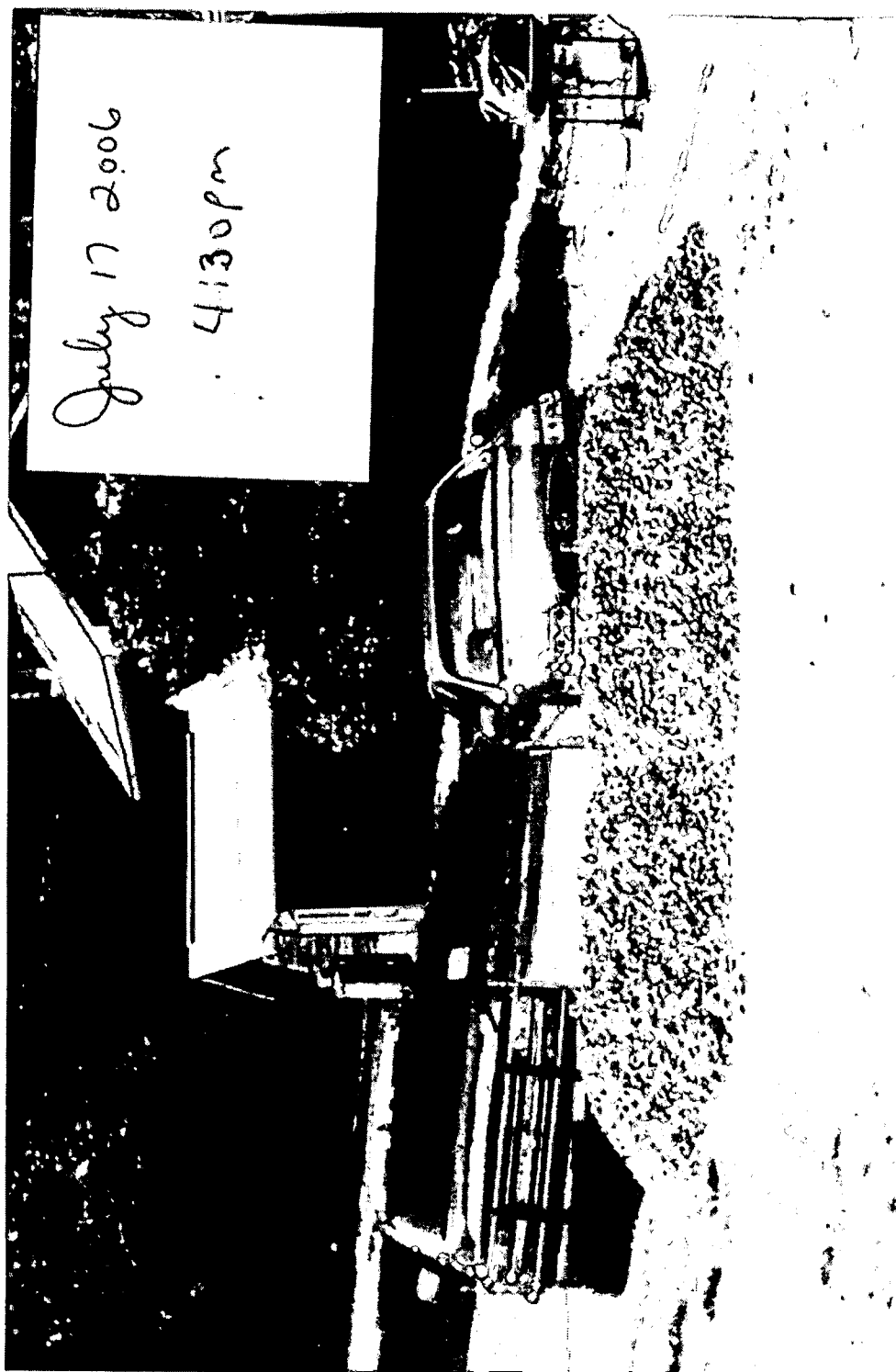


July 17 2006

6:15pm



July 17 2006
4:30pm



July 17 2006

4:30pm

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

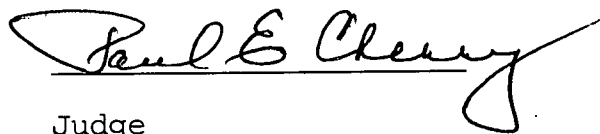
ROSEMARY CALLAHAN and :
CHARLES D. LITTLE :
VS. : NO. 05-1801-CD
CLARA M. CALLAHAN, a/k/a :
CLARA M. CLARK and BERNARD CLARK:

O R D E R

AND NOW, this 24th day of February, 2006, this being the date set for argument of Defendants' Preliminary Objections in Opposition to Plaintiffs' Petition for Preliminary Injunction; upon presentation of issues before the Court, it is the ORDER of this Court that Preliminary Objections concerning the survey be and is hereby dismissed.

Further, the Preliminary Objection be and is hereby granted and counsel for Plaintiffs shall amend their complaint for a more specific pleading with regard to Paragraph 9 of the Petition for Preliminary Injunction.

BY THE COURT,



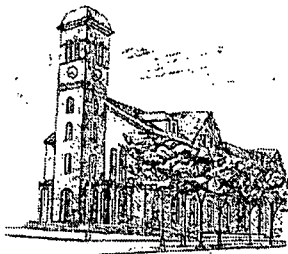
Judge

FILED

012-3854
MAR 01 2006

2cc Atty's.
Mason
Cassley
(lm)

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 3/1/06

_____ You are responsible for serving all appropriate parties.

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

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

vs.

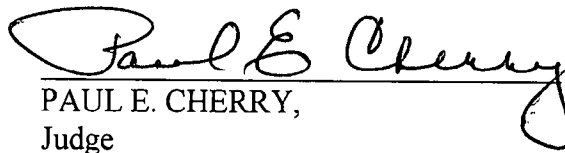
No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

ORDER

AND NOW, this 12th day of January, 2006, it is the
ORDER of the Court that argument on Defendants' Preliminary Objections filed in
Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in
the Nature of a Motion for a More Specific Pleading or as a Motion to Strike
Certain Averments Due to Their Impertinent Nature filed in the above matter has
been scheduled for the 24th day of February, 2006, at 1:30
P.M, in Courtroom No. 2, Clearfield County Courthouse, Clearfield,
PA.

BY THE COURT:


PAUL E. CHERRY,
Judge

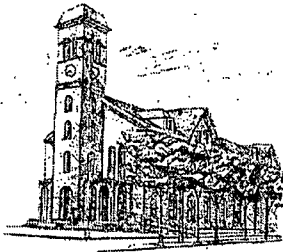
FILED

JAN 13 2006

William A. Shaw
Prothonotary/Clerk of Courts

Phys: Mason
Carley

#10



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 11/13/06

_____ You are responsible for serving all appropriate parties.

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

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

FILED No cc

012:36BL
NOV 30 2005

William A. Shaw
Prothonotary/Clerk of Courts

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

PRELIMINARY OBJECTIONS FILED IN OPPOSITION TO PLAINTIFFS'
PETITION FOR PRELIMINARY INJUNCTION AND CIVIL COMPLAINT IN THE
NATURE OF A MOTION FOR A MORE SPECIFIC PLEADING OR AS A MOTION
TO STRIKE CERTAIN AVERMENTS DUE TO THEIR IMPERTINENT NATURE.
IN THE ALTERNATIVE, SAID MOTION SHOULD BE VIEWED AS A MOTION TO
DISMISS/MOTION TO STRIKE SAID PLEADINGS AS DEFECTIVE OR FOR
FAILURE TO STATE A CLAIM UPON WHICH RELIEF MIGHT BE GRANTED.

AND NOW come the Defendants, Clara M. Callahan, a/k/a Clara M. Clark and
Bernard Clark, her husband, who by and through their attorney, John R. Carfley, Esq., set
forth a claim to produce certain documents or to dismiss and/or strike various parts of the
Plaintiffs' Petition for Preliminary Injunction and Civil Complaint and in support thereof
avers as follows:

1. The Defendants are Clara M. Callahan, a/k/a Clara M. Clark and her
husband, Bernard Clark, adult individuals currently residing at 457 New Liberty Road,
Philipsburg, Decatur Township, Clearfield County, Pennsylvania.
2. On or about the 17th day of November, 2005, Plaintiffs Rosemary
Callahan and Charles D. Little filed a Petition for Preliminary Injunction attaching as

(#5)

Exhibit "A" a Complaint filed contemporaneously therewith by the Plaintiffs in Clearfield County on November 17, 2005.

3. The said Complaint, at Paragraph 15, alleges that a recent survey of the premises owned by Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, is attached to that pleading revealing an encroachment of the Plaintiffs' porch, stairs and dog fence. A copy of the said survey, however, is not attached to the pleading as specified.

4. Plaintiffs, in Paragraph 4, also reference a driveway located within the confines of the Defendants' property, and discussed the use of the driveway as a sole means of vehicular access to the Plaintiffs' land and home in Decatur Township.

5. The said driveway is, however, not physically located on any survey map to which the Defendants have access. No survey map is attached to the Complaint as specified in Plaintiffs' pleading, nor is there any other way in which to identify and/or determine the physical location of the driveway and/or whether it is located on the property of the Plaintiffs or the property of the Defendants.

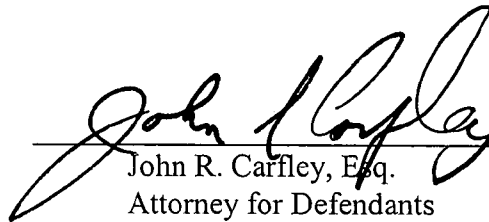
6. Rule 1019 (i) of the Pennsylvania Rules of Civil Procedure requires that when any claim or defense is based upon a writing, the pleader shall attach a copy of the writing or any material part thereof to the pleading, or if the writing, or a copy thereof, is not accessible to the pleader, it is sufficient to so state together with the reason why the document is missing. The pleader must also set forth the substance of the writing in order to comply with the Rule.

improperly acquired from unknown sources who are determined to embarrass and undermine the character of the Defendant without basis and/or cause.

12. In the absence of any supporting factual averments or documents to confirm the existence of the medical disorders cited, this paragraph of the Complaint should be stricken, or the entire Complaint should be set aside or dismissed, for failure to state a cause of action upon which relief could be granted.

13. It is believed and therefore averred, that the Plaintiffs have an adequate remedy at law, that irreparable harm has neither been pled within the Complaint or the Petition or by affidavit as required by the Pennsylvania Rules of Civil Procedure, nor shall irreparable harm occur if the matter is first litigated based on the assertions of those claims and causes of action set forth in the Civil Complaint filed contemporaneously with the Petition for Preliminary Injunction.

WHEREFORE, Defendants request that Plaintiffs be compelled to produce the survey map specified in their Complaint setting forth in detail the location of the porches, stairs, dog fence and roadway or in default thereof, to dismiss Plaintiffs' Civil Complaint and Petition for Injunction for failure to state a claim upon which relief might be granted and to further strike Paragraph 9 of Plaintiffs' Petition because of the scandalous, defamatory, impertinent and derogatory nature of the statements which were asserted without basis and/or factual support or justification.


John R. Carfley, Esq.
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

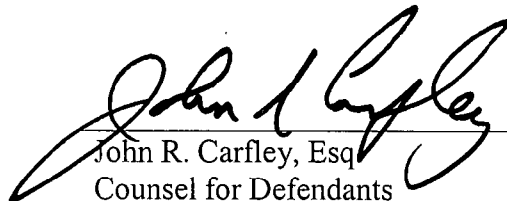
No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

CERTIFICATE OF SERVICE

I do certify that I made service of the foregoing Motion to Strike, or in the Alternative, Preliminary Objections to Certain Provisions of Plaintiffs' Petition for Preliminary Injunction and Civil Complaint upon the following, by depositing the same in the United States mail, postage prepaid, this 30th day of November, 2005, addressed as follows:

David C. Mason, Esq.
P. O. Box 28
Philipsburg, PA 16866



John R. Carfley, Esq.
Counsel for Defendants
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,
Plaintiffs

vs.

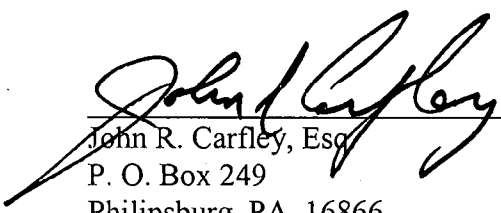
No. 05-1801-CD

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,
Defendants

ENTRY OF APPEARANCE

To the Prothonotary:

Please enter my appearance on behalf of Clara M. Callahan, a/k/a Clara M. Clark
and Bernard Clark, Defendants, in the above captioned matter.


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

Dated: November 30, 2005

FILED

011236
NOV 30 2005

William A. Shaw
Prothonotary/Clerk of Courts

ice
Amy Carfley

#4

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No.

CD - 05 - 1801

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* TYPE OF PLEADING: RULE TO SHOW
* CAUSE

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* FILED ON BEHALF OF:
* PLAINTIFF

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* ATTORNEY FOR PLAINTIFF:

*

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

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FILED

NOV 17 2005

011:55/0
William A. Shaw

Prothonotary/Clerk of Courts

4 CENT TO ATT

23

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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RULE TO SHOW CAUSE

AND NOW, this 17th day of November, 2005, upon consideration of the Plaintiffs' Complaint and Petition for Preliminary Injunction, it is hereby ORDERED and DECREED that:

(1) Defendants appear and show cause, if any there be, why the relief prayed for in the Plaintiffs' Motion should not be granted, said argument to be heard before the Court on the 22nd day of November, 2005, at 10:00 o'clock a. m., in Courtroom # 2, at Clearfield, Pennsylvania.

(2) the Defendants shall file an answer to the Complaint within twenty (20) days of service upon the Defendants;

(3) The Complaint shall be decided under Pa. R. C.P. No. 206.7;

(4) notice of the entry of this Order shall be provided to all parties by the Plaintiffs.

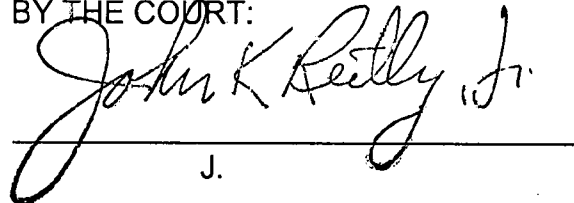
NOTICE TO DEFEND AND CLAIM RIGHTS

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. 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. A judgment may also be entered against you for any other claim or relief requested in these papers by the Plaintiffs. You may lose money or property or other rights important to you.

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

BY THE COURT:


J.

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

VS.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

* No.

05-1801-C.D

* TYPE OF PLEADING: PETITION FOR
* PRELIMINARY INJUNCTION

* FILED ON BEHALF OF:
* PLAINTIFF

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

FILED

NOV 17 2005

William A. Shaw

Prothonotary/Clerk of Courts

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

VS.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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ORDER

AND NOW, this 17th day of November, 2005, upon consideration of the Plaintiffs' verified Complaint, it is hereby ordered that:

(1) a rule is hereby issued upon Defendants, Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband, to Show Cause why the Plaintiffs, Rosemary Callahan and Charles D. Little, are not entitled to the relief requested;

(2) the Defendants shall file an answer to the Complaint within twenty (20) days of service upon the Defendants;

(3) The Complaint shall be decided under Pa. R. C.P. No. 206.7;

(4) notice of the entry of this Order shall be provided to all parties by the Plaintiffs.

NOTICE TO DEFEND AND CLAIM RIGHTS

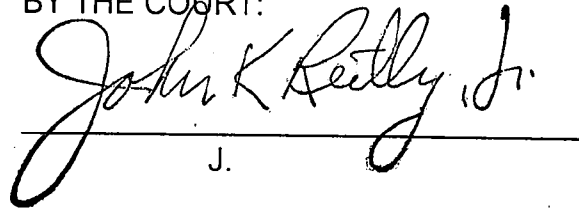
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Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

BY THE COURT:


J.

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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PETITION FOR PRELIMINARY INJUNCTION

AND NOW come the Plaintiffs Rosemary Callahan and Charles D. Little, by and through their attorney, David C. Mason, Esquire, and petitions this Court for a Preliminary Injunction pursuant to Pa. R.C.P. 1531, and in support thereof aver as follows:

1. Plaintiffs Rosemary Callahan and Charles D. Little, are individuals currently of 435 New Liberty Road, Philipsburg, Decatur Township, Clearfield County, Pennsylvania, 16866.

2. Defendants Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband, are individuals currently of 457 New Liberty Road, Philipsburg, Decatur Township, Clearfield County, Pennsylvania.

3. On the date of this Petition Plaintiffs filed a verified Complaint in Equity against Defendants with the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, a copy of which is attached as Exhibit "A".

4. Beginning in the summer of 2005, Defendants have embarked on a course of

conduct against Plaintiffs designed to prevent Plaintiffs from entering or exiting their property by means of a driveway which they have used for the past five (5) years and further depriving Plaintiffs from all of their rights to have access to their property.

5. This driveway is the sole means of vehicular access to the Plaintiffs' land and home in Decatur Township, Clearfield County, Pennsylvania.

6. The Defendants have placed obstacles across the driveway preventing Plaintiffs from having access to their home, and further, if Plaintiffs' automobiles are in the driveway or garage, Defendants' actions prevent their removal.

7. The driveway servicing Plaintiffs' home was constructed with the knowledge and consent of her parents, George Callahan (now deceased) and Clara Callahan Clark, Defendant herein.

8. Additionally, through their words and actions Plaintiff Rosemary Callahan's parents induced Rosemary to construct her home in this specific location, and with these particular features and to improve a pre-existing roadway which became Plaintiffs' driveway.

9. Based upon information and belief Plaintiff Rosemary Callahan avers that her mother Defendant Clara Callahan Clark suffers from mental disorders which may include one or more of the following: paranoid schizophrenic disorder with major depression; senile demential; manic depressive disorder. These serious mental ailments have manifested themselves in outwardly aggressive actions toward her children.

10. The parties to this action lived in relative peace until Clara Callahan married Defendant Bernard Clark in the summer of 2005.

11. Plaintiffs seek the issuance of a Preliminary Injunction in the nature of an Order directing the Defendants to unblock the driveway.

12. The Plaintiffs will suffer great injury and irreparable harm which cannot be compensated by damages if the Defendants' obstacles are allowed to remain.

13. The Plaintiffs will suffer great injury by denying or refusing the relief requested in this Preliminary Injunction than the Defendants would if the Court granted the relief.

14. Plaintiffs' right to the opening of this driveway is clear and denying the Preliminary Injunction would condone and approve Defendants' self-help in the forceful interference of Plaintiffs' property rights.

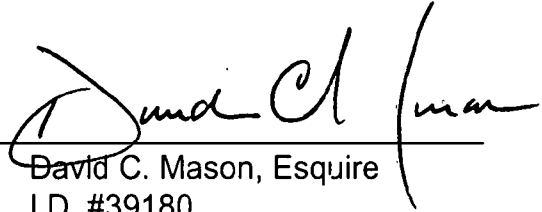
15. This requested relief is necessary in order to restore the parties to their status as it existed immediately prior to the Defendants' wrongful conduct.

WHEREFORE, Plaintiffs pray your Honorable Court for the issuance of a preliminary injunction and a Rule to show cause in the form attached to this Petition directing Defendants to remove the obstacles from the road, to cease from blocking the driveway and allow Plaintiffs access to their property.

Respectfully submitted,

MASON LAW OFFICE

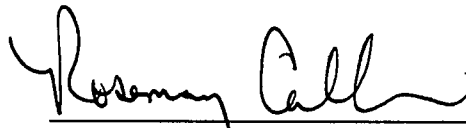
By: _____


David C. Mason, Esquire
I.D. #39180
Attorney for Plaintiffs

VERIFICATION

I hereby verify that the statements set forth in the foregoing pleading are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 11-17-05

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

Rosemary Callahan

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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TYPE OF PLEADING:
Complaint

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR THIS
PARTY:

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

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
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CLARK, her husband,

Defendants

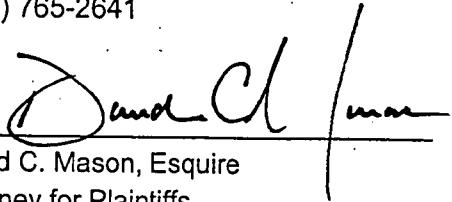
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Court Administrator
Clearfield County Courthouse
Clearfield, PA 16823
(814) 765-2641


David C. Mason, Esquire
Attorney for Plaintiffs

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
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vs.

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CLARK, her husband,

Defendants

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COMPLAINT

AND NOW, comes the Plaintiffs, **ROSEMARY CALLAHAN** and **CHARLES D. LITTLE**, by and through their attorney, **DAVID C. MASON, ESQUIRE**, and make the following Complaint against the Defendants, and in support thereof aver as follows:

1. Plaintiffs are **ROSEMARY CALLAHAN** and **CHARLES D. LITTLE**, currently of 435 New Liberty Road, Philipsburg, Decatur Township, Clearfield County, Pennsylvania, 16866.

2. Defendants are **CLARA M. CALLAHAN**, n/k/a **CLARA M. CLARK** and her husband, **BERNARD CLARK**, whose last known address was 457 New Liberty Road, Philipsburg, Decatur Township, Clearfield County, Pennsylvania, 16866.

3. Plaintiffs are the owners of premises lying and being in Decatur Township, Clearfield County, Pennsylvania, by virtue of a Deed from George Callahan and Clara Callahan, his wife, (defendant herein) dated October 18, 2000, and recorded to Instrument No. 200015682.

4. The said George R. Callahan died December 4, 2001, leaving to survive him as his widow, Clara M. Callahan.

5. The said Clara M. Callahan evidently married Bernard Clark sometime in the summer of 2005.

6. Rosemary Callahan, one of the Plaintiffs herein, is the daughter of the late George R. Callahan and Clara Callahan Clark.

7. At or about the time of the transfer of the land to Rosemary Callahan, George Callahan and Clara Callahan, parents of Rosemary Callahan, all lived in one home in Chester Hill.

8. At or about the same time George Callahan and Clara Callahan were in a position to, and in fact did watch Plaintiff Rosemary Callahan construct her home, garage and driveway.

9. Shortly after Rosemary Callahan's home was constructed, the said George Callahan and Clara Callahan lived in this home with Rosemary Callahan.

10. Thereafter, George Callahan and Clara Callahan erected a double-wide manufactured home on the land adjacent to the Rosemary Callahan home.

11. At no time during the construction of these homes was there an objection raised by George Callahan or Clara M. Callahan over the location of the Plaintiff's house, garage or driveway.

12. Following the marriage of Clara M. Callahan and Bernard Clark in the summer of 2005, the said Bernard Clark began to interfere with the Plaintiff's use of her driveway, by the erection of posts, fences, and parking an automobile in the driveway.

13. The action of Bernard Clark at the direction or with the consent of Clara Callahan now known as Clara Clark was done with the intent of preventing the said Rosemary Callahan and Charles Little from using the driveway to their home and garage.

14. The said Bernard Clark and Clara Clark have claimed that the driveway is partially on the land of the Clarks.

15. Additionally, Defendant Clara Clark has claimed that a recent survey reveals an encroachment of the Plaintiff's porch, stairs, and dog fence. A copy of said survey is attached hereto as Exhibit "A".

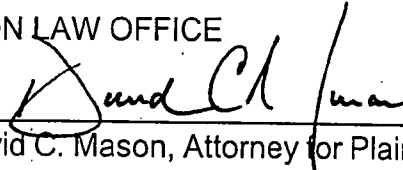
16. Defendants are without right or title to any of Plaintiff's lands and the Plaintiff is entitled to the immediate possession thereof.

17. Despite Plaintiff's repeated requests, Defendants have failed and refused and continue to refuse to remove the above described encroachments consisting of posts, fences and an automobile.

WHEREFORE, Plaintiffs pray your Honorable Court for (1) entry of a judgment in favor of Plaintiffs and against Defendants **CLARA CALLAHAN a/k/a CLARA CLARK** and **BERNARD CLARK**, her husband, for possession of the real property described herein; and for (2) entry of an Order directing Defendants to remove any and all posts, fencing, automobiles or other obstacles placed by them on the property

Respectfully submitted,

MASON LAW OFFICE

By: 

David C. Mason, Attorney for Plaintiffs

VERIFICATION

I hereby verify that the statements set forth in the foregoing pleading are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 11-17-05



Rosemary Callahan

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No. 05-1801-CD
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* TYPE OF PLEADING:
* Complaint
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* FILED ON BEHALF OF:
* Plaintiff
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* COUNSEL OF RECORD FOR THIS
* PARTY:

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

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FILED

NOV 17 2005

William A. Shaw
Prothonotary/Clerk of Courts

#1

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
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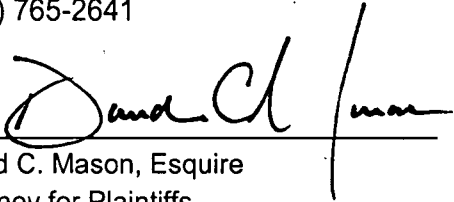
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Court Administrator
Clearfield County Courthouse
Clearfield, PA 16823
(814) 765-2641


David C. Mason, Esquire
Attorney for Plaintiffs

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
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MASON LAW OFFICE

By: David C. Mason
David C. Mason, Attorney for Plaintiffs

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DATED: 11-17-05

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Rosemary Callahan

The Superior Court of Pennsylvania
Sitting at Pittsburgh

1015 Grant Building
Pittsburgh, Pennsylvania
15219

05-1801-CD

**CERTIFICATE OF CONTENTS OF REMANDED RECORD
AND NOTICE OF REMAND**
under

PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:
Original record, one transcript, one exhibit, Superior Court Memorandum Opinion

As remanded from said court in the following matter:

Rosemary Callahan etc. v Clara M. Callahan

No. 2066 WDA 2007

Court of Common Pleas, Civil Division, Clearfield County

At No. Civil No. 05-1801-CD

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: August 26, 2008

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: August 27, 2008

William A. Shaw
(Signature & Title)

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

FILED

AUG 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

[Handwritten signature]

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J.S40023/08

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ROSEMARY CALLAHAN AND CHARLES D. LITTLE : IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellees

v.

CLARA M. CALLAHAN, A/K/A CLARA M.
CLARK AND BERNARD CLARK, HER
HUSBAND

Appellants

No. 2066 WDA 2007

Appeal from the Order entered October 17, 2007
In the Court of Common Pleas of Clearfield County
Civil No. 05-1801-CD

FILED
m/j:0581
AUG 27 2008
William A. Shaw
Prothonotary/Clerk of Courts

BEFORE: PANELLA, KELLY and COLVILLE*, JJ.

MEMORANDUM:

FILED: July 16, 2008

The notice of appeal filed by Appellants/defendants below purports to challenge an order filed October 17, 2007, denying their motion for reconsideration in an action to determine the existence of an easement by necessity. We quash.

Appellee Rosemary Callahan is the daughter of Appellant Clara Clark and the step-daughter of Appellant Bernard Clark. Appellee and her husband, Appellee Charles D. Little, reside in a house built on property deeded to Appellee by Appellant Clara Clark and her late husband, Appellee's father, and adjacent to property occupied by Appellants. Both residences are served by a common driveway. The foundation for both homes and the driveway itself had been constructed by a contractor hired by Appellant's

*Retired Senior Judge assigned to the Superior Court.

deceased husband, George Callahan. Although the drive provides the only means of ingress to Appellees' property, Appellants have another usable connection to the public road.

Despite a Stipulation and Agreement to the effect that, pending a hearing, neither party would obstruct the driveway, Appellants planted stakes there. Although that barrier was removed, Appellant Bernard Clark erected another in July of 2006. After a hearing, Appellant Clark blocked the driveway on two more occasions, finally erecting a plank walkway held in place by rebar that projected above the planking. Appellees filed suit seeking removal of the obstruction, and after a bench trial, the court entered a judgment in Appellees' favor, directing, *inter alia*, that any impediments be removed, and finding "a right-of-way easement." (Order, 6/5/07). This appeal followed, presenting eight issues for our review. We must first determine, however, whether Appellants' claims are properly before the Court.

As Appellees point out in their Motion to Quash, judgment in this matter was entered by order of June 5, 2007. No notice of appeal was filed until October 17, 2007, which Appellants concede is beyond the 30 day appeal period established by Pa.R.C.P. 903(a). They argue, however, that their appeal is timely because, at their instigation, the trial court entered an order on June 22, 2007, in which it stated its intention "to retain jurisdiction over this matter and all issues pertaining thereto," in order to allow sufficient

time for reproduction of the transcript before argument on the reconsideration motion. (Order, 6/22/07). Such a gesture, however, cannot accomplish its purpose.

Our Supreme Court in ***Criss v. Wise***, 781 A.2d 1156, 1159 (Pa. 2001), has explained that “[i]n order to perfect an appeal, parties must strictly adhere to the statutory provisions for filing an appeal.” Moreover, “the mere filing of a petition requesting reconsideration of a final order of the trial court does not toll the normal 30-day period for appeal from the final order.” ***Cheathem v. Temple Univ. Hosp.***, 743 A.2d 518, 520 (Pa. Super. 1999) (citations omitted). Indeed, “[t]here is only one way for the trial court to toll or stay the appeal statute and thus to retain control once a petition for reconsideration has been filed. As stated in the Rules of Appellate Procedure, the 30-day period may only be tolled if the that court enters an order **expressly** granting reconsideration within 30 days of the final order.” ***Id.*** (citations and internal quotation marks omitted) (emphasis added). Even “[a] customary order and rule to show cause fixing a briefing schedule and/or hearing date, **or any other order** except for one expressly granting reconsideration, is inadequate.” ***Id.*** at 520-21 (citation omitted) (emphasis added).

In ***Overnite Transp. Co. v. Teamsters Local 107***, 779 A.2d 533 (Pa. Super. 2001), this Court addressed a situation in which the trial court, mistakenly believing a final order of civil contempt to be subject to post-trial

motions, accepted and fostered as proper the appellant's Motion for Post-Trial Relief, revoked a prior order directing that a 1925(b) statement be filed, and entered a rule returnable outside the 30 day appeal period. Our decision "not [to] penalize a party when its procedural errors are shared equally by those of the trial court," *id.* at 535-36, was reversed on appeal to the Pennsylvania Supreme Court which found that "[t]he appeal below was untimely filed and there was no showing of fraud or a breakdown in the court's operation to permit entertaining this appeal." ***Overnite Transp. Co. v. Local Union 107***, 786 A.2d 173 (Pa. 2001).

We note that exceptions for allowance of an appeal *nunc pro tunc*¹ have been made in exceptional, non-negligent circumstances. However, the exception is intended to apply "only in unique and compelling cases in which the appellant has clearly established that she attempted to file an appeal, but unforeseeable and unavoidable events precluded her from actually doing so." ***Criss, supra*** at 1160. Here, Appellants, aware of the 30 day limitation, attempted an end run around the Rules of Appellate Procedure by requesting that the court enter an order not within its authority, that is, to extend the appeal period. That the court did comply neither tolls the appeal period, nor renders final the order denying reconsideration from which the appeal lies.

¹ We also note that Appellants have made no request to this Court that the appeal be heard *nunc pro tunc*, instead insisting that the order granting *supersedeas* was effective, and that the order denying reconsideration is final and appealable.

J.S40023/08

Appellees' Motion to Quash this appeal is granted.

Judgment Entered:

Eleanor K. Valecko

Deputy Prothonotary

DATE: July 16, 2008

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

FILED

SEP 15 2008

m 12:30 PM
William A. Shaw
Prothonotary/Clerk of Courts

NO 46-1100
NOTICE TO DEPT.

* TYPE OF PLEADING:
*

* Praecipe for Entry of Judgment
*

* FILED ON BEHALF OF:
*

* Rosemary Callahan & Charles D. Little
*

* ATTORNEY FOR PLAINTIFFS:
*

* David C. Mason, Esquire
* Supreme Court ID #39180
* P.O. Box 28
* Philipsburg, PA 16866
* (814) 342-2240
*

* ATTORNEY FOR DEFENDANTS:
*

* John R. Carfley, Esquire
* Supreme Court ID #
* P. O. BOX 249
* 222 PRESQUEISLE STREET
* PHILIPSBURG, PA 16866
* (814) 342-5581

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

VS.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No. 05-1801-CD
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PRAECIPE FOR ENTRY OF JUDGMENT

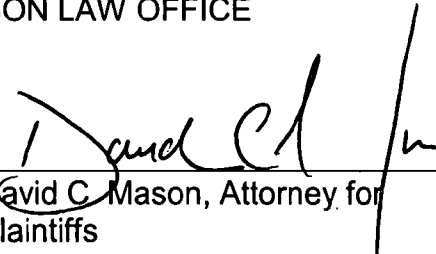
TO THE PROTHONOTARY:

Kindly enter judgment in favor of the Plaintiffs Rosemary Callahan and Charles D. Little, and against the Defendants, Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband, pursuant to an Order and Opinion dated June 5, 2007, in the amount of \$1,500.00.

MASON LAW OFFICE

DATED: 9-12-8

By:


David C. Mason, Attorney for
Plaintiffs

FILED

SEP 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

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NOTICE OF ENTRY OF JUDGMENT

Clara M. Callahan a/k/a
Clara M. Clark
157 New Liberty Road
Philipsburg, PA 16866

Pursuant to Rule 236, please be advised that the Court has entered a

_____ Order

_____ Decree

 X Judgment

_____ Opinion

1500 9-15-08

the above proceeding, and a copy thereof is enclosed.

ated:


Prothonotary

JUDICIAL BRANCH OF COMMONWEALTH OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

NOTICE OF ENTRY OF JUDGMENT

Bernard Clark
457 New Liberty Road
Philipsburg, PA 16866

ant to Rule 236, please be advised that the Court has entered a

____ Order

____ Decree

X Judgment

____ Opinion

\$1500. - 9-15-08

e above proceeding, and a copy thereof is enclosed.

ed:


Prothonotary

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

LARA M. CALLAHAN, a/k/a
LARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
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NOTICE OF ENTRY OF JUDGMENT

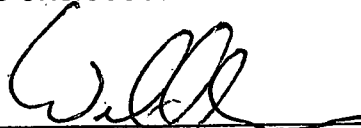
John R. Carfley, Esquire
Attorney for Clara M. Callahan
a/k/a Clara M. Clark & Bernard Clark
P.O. Box 249
Phillipsburg, PA 16866

Pursuant to Rule 236, please be advised that the Court has entered a

☐ Order
☐ Decree
☒ Judgment \$1,500.00 - 9-15-08.
☐ Opinion

of the above proceeding, and a copy thereof is enclosed.

Witnessed:


Prothonotary

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

Rosemary Callahan and Charles D. Little
Plaintiff(s)

No.: 2005-01801-CD

Real Debt: \$1,500.00

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Clara M. Callahan, a/k/a Clara M. Clark
and Bernard Clark, her husband
Defendant(s)

Entry: \$20.00

Instrument: Court Order Judgment

Date of Entry: September 15, 2008

Expires: September 15, 2013

Certified from the record this September 15, 2008

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

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

Plaintiff/Attorney

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

Rosemary Callahan and Charles D. Little
Plaintiff(s)

No.: 2005-01801-CD

Real Debt: \$1,500.00

Atty's Comm: \$

Costs: \$

Int. From: \$

Entry: \$20.00

Instrument: Court Order Judgment

Date of Entry: September 15, 2008

Expires: September 15, 2013

Vs.

Clara M. Callahan, a/k/a Clara M. Clark
and Bernard Clark, her husband
Defendant(s)

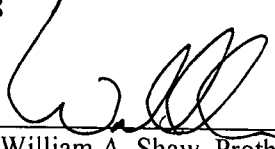
FILED

OCT 07 2008

06/12:55/1
William A. Shaw
Prothonotary/Clerk of Courts

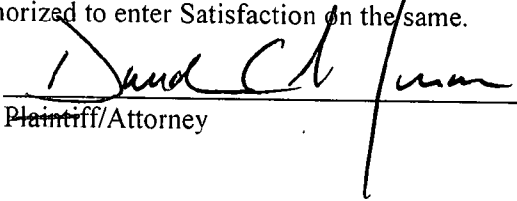
1 sent to 7. a
Att
CARLA

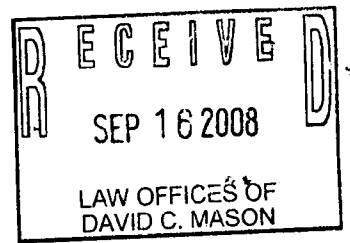
Certified from the record this September 15, 2008


William A. Shaw, Prothonotary

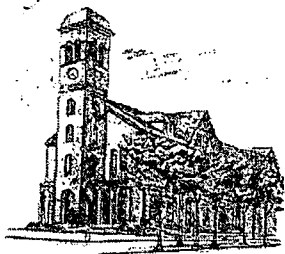
SIGN BELOW FOR SATISFACTION

Received on OCT 2, 2008 of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.


Plaintiff/Attorney



FILED
OCT 07 2008
William A. Shaw
Prothonotary/Clerk of Courts



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

Paul E. Cherry, Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

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

COPY

John R. Carfley, Esq.
222 Presquisle Street
Philipsburg, PA 16866

Rosemary Callahan and Charles D. Little
Vs.

Clara M. Callahan, a/k/a Clara M. Clark and Bernard Clark, her husband

Court No. 05-1801-CD; Superior Court No. 2066 WDA 2007

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on December 20, 2007.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-1801-CD

Rosemary Callahan and Charles D. Little

VS.

Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	11/17/05	Civil Complaint	07
02	11/17/05	Petition for Preliminary Injunction with Order	15
03	11/17/05	Rule to Show Cause	03
04	11/30/05	Entry of Appearance	01
05	11/30/05	Preliminary Objections filed in Opposition to Plaintiff's Petition for Preliminary Injunction and Civil Complaint in the Nature of a Motion for a More Specific Pleading or as a Motion to Strike Certain Averments due to their Impertinent Nature. In the alternative, said Motion should be viewed as a Motion to Dismiss/Motion to Strike said Pleadings as Defective or for Failure to State a Claim upon which Relief might be granted.	05
06	01/13/06	Order, Re: argument scheduled on Defendant's Preliminary Objections	02
07	03/01/06	Order, Re: Preliminary Objections	02
08	08/21/06	Motion to Reschedule Hearing on Preliminary Injunction with Rule	08
09	08/22/06	Certificate of Service, Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction	02
10	08/22/06	Order, Re: hearing on Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction rescheduled	01
11	09/11/06	Order, Re: hearing on Plaintiff's Motion on Preliminary Injunction cancelled; parties shall submit signed stipulation	01
12	09/13/06	Petition for Preliminary Injunction/Stipulation	02
13	12/13/06	Order, Re: hearing on merits of Plaintiff's Complaint	01
14	01/03/07	Petition for Sanctions with Order scheduling hearing filed January 9, 2007	19
15	01/03/07	Certificate of Service, Plaintiff's Petition for Sanctions	02
16	01/30/07	Order, Re: hearing on Petition for Sanctions scheduled	03
17	02/01/07	Answer to Petition for Sanctions	06
18	03/09/07	Defendants' Answer, New Matter, and Counterclaim to Plaintiff's Complaint	13
19	03/09/07	Answer to Preliminary Injunction	08
20	03/19/07	Plaintiffs' Reply to New Matter and Answer to Counter-Claim	05
21	03/19/07	Certificate of Service, Plaintiffs' Reply to New Matter and Answer to Counter-Claim	02
22	03/21/07	Order, Re: counsel to provide Court with proposed findings of fact, conclusions of law, and an appropriate brief	01
23	05/21/07	Answer to Plaintiff's Objections to Defendant's Proposed Conclusions of Law	05
24	06/06/07	Opinion and Order	07
25	06/15/07	Defendant's Motion for Reconsideration and Request for Production of Transcript	06
26	06/21/07	Rule Returnable, hearing scheduled on Defendant's Motion for Reconsideration and Request for Production of Transcript	01
27	06/25/07	Order, Re: Motion filed by Defendants requesting reconsideration will act as a supersedeas to the filing of an appeal	01
28	08/13/07	Order, Re: following argument on Motion for Reconsideration, brief to be submitted	01
29	08/16/07	Notice, Re: Transcript to be filed	01
30	08/16/07	Transcript of Proceedings, Hearing on the Merits of Plaintiffs' Complaint and Plaintiffs' Petition for Sanctions held March 19, 2007	Separate Cover
31	08/31/07	Certificate of Service, Plaintiffs' Memorandum in Response to Defendants' Motion for Reconsideration	02
32	10/17/07	Order, Re: Defendant's Motion for Reconsideration Denied	01
33	11/15/07	Appeal to High Court	06
34	11/21/07	Order, Re: Appellant to file concise statement	01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 05-1801-CD

Rosemary Callahan and Charles D. Little

VS.

Clara M. Callahan a/k/a Clara M. Clark and Bernard Clark, her husband

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
35	11/26/07	Appeal Docket Sheet, 2066 WDA 2007	04
36	12/12/07	Defendants' Concise Statement of Matters Complained of on Appeal	05

Civil Other

Date		Judge
11/17/2005	New Case Filed.	No Judge
	Filing: Civil Complaint Paid by: Mason, David C. (attorney for Callahan, Rosemary) Receipt number: 1911330 Dated: 11/17/2005 Amount: \$85.00 (Check) 3 cert. to Atty. 3CC Atty Mason.	No Judge
	Petition for Preliminary Injunction, with Order, filed by Atty. Mason 4 Cert. to Atty.	John K. Reilly Jr.
	Rule to Show Cause, filed. 4 Cert. to Atty. Mason, NOW, this 17th day of November, 2005. Argument to be heard on Nov. 22nd at 10:00 AM	John K. Reilly Jr.
11/30/2005	Entry of Appearance, on behalf of Clara M. Callahan and Bernard Clark by s/John R. Carfley, Esq. One CC Attorney Carfley	No Judge
	Preliminary Objections filed in Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in the Nature of a Motion for a More Specific Pleading or as a Motion to Strike Certain Averments due to their Impertinent Nature. In the Alternative, Said Motion should be Viewed as a Motion to Dismiss/Motion to Strike said Pleadings as Defective or for Failure to State a Claim upon which Relief might be Granted, filed by s/John R. Carfley, Esq. No CC	No Judge
01/13/2006	Order, NOW, this 12th day of Jan., 2006, Ordered that argument on Defs.' Preliminary Objections filed in Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in the nature of a Motion for a more Specific Pleading or as a motion to Strike Certain Averments Due to Their Impertinent Nature filed in the above matter has been scheduled for the 24th day of Feb., 2006, at 1:30 p.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
03/01/2006	Order AND NOW, this 24th day of February, 2006, this being the date for argument of Defendants' Preliminary Objections in opposition to Plaintiffs' Petition to Preliminary Injunction; upon presentation of issues before the Court, it is the ORDER of this Court that Preliminary Objections concerning the survey be and is hereby dismissed. Further, the Preliminary Objection be and is hereby granted and counsel for Plaintiffs shall amend their complaint for a more specific pleading with regard to Paragraph 9 of the Petition for Preliminary Injunction. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Attys: Mason and Carfley.	Paul E. Cherry
08/21/2006	Rule, Now, this 21st day of August, 2006, upon consideration of the Plaintiffs' Complaint, and Petition for Preliminary Injunction, it is Ordered that Defendants appear and show cause, if any, why the relief prayed for in the plaintiffs' Motion should not be granted, said argument to be heard before the Court on the 7th day of Sept., 2006, at 9:00 a.m. in Courtroom 1. The Defendants shall file an answer to the Complaint within 20 days of service upon the Defendants. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Mason	Fredric Joseph Ammerman
	Motion to Reschedule Hearing on Preliminary Injunction, filed by s/ David C. Mason Esq. 3CC Mason.	Paul E. Cherry
08/22/2006	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Motion to Reschedule Hearing on Preliminary Injunction filed in the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry

Civil Other

Date		Judge
08/22/2006	Order, NOW, this 22nd day of August, 2006, hearing on Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction is rescheduled from Sept. 7 at 9:00 a.m. to Set. 7, 2006 at 11:00 a.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason, Carfley	Paul E. Cherry
09/11/2006	Order, Hearing on Plaintiff's Motion on Preliminary Injunction is cancelled. Parties shall submit to the Court a signed Stipulation within 10 days of this date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
09/13/2006	Petition For Preliminary Injunction, The parties, by the signatures of their counsel, stipulate and agree to the entry of an Order of Court granting the relief prayed for in the Petition for Preliminary Injunction. Signed, David C. Mason, Esquire, and John R. Carfley, Esquire. This stipulation is adopted by the Court as an Order of Court, and a hearing on the merits is scheduled for the 12th day of Dec., 2006 @ 9:00 a.m. By The Court, /s/ Paul E. Cherry, Judge. 1 CC Attys: Mason, Carfley	Paul E. Cherry
12/13/2006	Order, filed Cert. copies to Atty. Mason & Carfley NOW, this 11th day of December, 2006, RE: Hearing on Merits of Plaintiff's Complaint shall be continued until the 19th day of March, 2007	Paul E. Cherry
01/03/2007	Petition for Sanctions, filed by s/David C. Mason, Esq. Three CC Attorney Mason	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Petition for Sanctions filed by the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
01/09/2007	Order, NOW, this 5th day of Jan. 2007, upon consideration of the Petition for Sanctions, it is Ordered: A rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions within twenty days of service upon the Defendants. An evidentiary hearing on disputed issues of material fact shall be held on March 19, 2007, in Courtroom No. 2 at 9:00 a.m. Notice of the entry of this Order shall be provided to all parties by the Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Mason	Paul E. Cherry
01/30/2007	Order, NOW, this 29th day of Jan., 2007, upon consideration of the Petition for Sanctions, it is Ordered: a rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions on or before Feb. 2, 2007. An Evidentiary hearing on disputed issues of material fact shall be held on Feb. 2, 2007, in Courtroom No. 2, at 11:00 a.m. By the Court, /s/ Paul E. Cherry, Judge. 1CC Atty. Mason	Paul E. Cherry
02/01/2007	Answer To Petition For Sanctions, filed by s/ John R. Carfley, Esquire. 2CC to Atty. Carfley	Paul E. Cherry
03/09/2007	Defendants' Answer, New Matter, And Couterclaim to Plaintiff's Complaint, filed by s/ John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
	Answer To Preliminary Injunction, filed by s/John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
03/19/2007	Plaintiffs' Reply to New Matter and Answer to Counter-Claim, filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Reply to New Matter and Answer to Counter-Claim filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry

Civil Other

Date		Judge
03/21/2007	Order, NOW, this 19th day of March, 2007, following hearing, it is Ordered that counsel provide the Court with proposed findings of fact, conclusions of law an appropriate brief within no more than 30 days from today's date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
05/21/2007	Answer to Plaintiff's Objections to Defendant's Proposed Conclusions of Law, filed by s/ John R. Carfley Esq. 3CC Atty Carfley.	Paul E. Cherry
06/06/2007	Opinion and Order: NOW, this 5th day of June, 2007, after review of the briefs submitted by the parties, it is Ordered: The defendants, their heirs and assigns, are forever barred from asserting any right, title or interest inconsistent therewith, and (see original). Defendants must pay \$1,500 to Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, J. Carfley; 1CC Law Library, D. Mikesell	Paul E. Cherry
06/15/2007	Defendants' Motion for Reconsideration and Request for Production of Transcript, filed by s/ John R. Carfley, Esquire. 3CC Atty. Carfley	Paul E. Cherry
06/21/2007	Rule Returnable, NOW, this 21st day of June, 2006, upon consideration of Defendant's Motion for Reconsideration and Request for Production of Transcript, it is Ordered that Rule is issued upon the Plaintiffs to appear and show cause why the relief requested should not be granted. Rule made returnable for Hearing the 9th of August, 2007, at 2:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge.	Paul E. Cherry
06/25/2007	Order, June 22, 2007, it is Ordered that the Motion filed by the Defendants requesting reconsideration will act as a supersedeas to the filing of an appeal and that the Defendants' requirement to file the Notice of Appeal within 30 days of the filing of the Court's Opinion as normally required, is hereby stayed. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: J. Carfley, Mason	Paul E. Cherry
08/13/2007	Order, this 9th day of August, 2007, following argument on Motion for Reconsideration, it is Ordered that counsel for the Plaintiffs provide the Court with appropriate brief by no later than August 31, 2007. Defense counsel shall have no more than 5 days thereafter to respond in kind. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason	Paul E. Cherry
08/16/2007	Notice, Re: Transcript to be filed, s/Thomas D. Snyder, RPR	Paul E. Cherry
	Transcript of Proceedings, Hearing on the Merits of Plaintiffs' Complaint and Plaintiffs' Petition for Sanctions, held on March 19, 2007, filed.	Paul E. Cherry
08/31/2007	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Memorandum in Response to Defendants' Motion for Reconsideration filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. 1CC Atty.	Paul E. Cherry
10/17/2007	Order, this 17th day of Oct., 2007, it is Ordered that Defendant's Motion for Reconsideration shall be Denied. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
11/15/2007	Filing: Appeal to High Court Paid by: Carfley, John R. (attorney for Callahan, Clara M.) Receipt number: 1921476 Dated: 11/15/2007 Amount: \$45.00 (Check) Filed by s/ John R. Carfley, Esquire. 1CC Atty. Carfley, 1CC to Superior Court with \$60.00 check	Paul E. Cherry
11/21/2007	Order, this 21st day of Nov., 2007, it is Ordered that Appellant file a concise statement of the matters complained of on Appeal no later than 21 days herefrom. By The Court, /s/ Paul E. Cherry, Judge. CC to Attys Mason & Carfley	Paul E. Cherry
11/26/2007	Appeal Docket Sheet, filed. 2066 WDA 2007	Paul E. Cherry

Date: 12/20/2007

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:21 AM

ROA Report

Page 4 of 4

Case: 2005-01801-CD

Current Judge: Paul E. Cherry

Rosemary Callahan, Charles D. Little vs. Clara M. Callahan, Bernard Clark

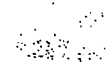
Civil Other

Date	Judge
12/12/2007	Defendants' Concise Statement of Matters Complained of On Appeal, filed Paul E. Cherry by s/ John R. Carfley, Esquire. 3CC Atty. Carfley

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

DEC 20 2007

Attest.



William A. Shaw
Prothonotary/
Clerk of Courts

Civil Other

Date		Judge
11/17/2005	New Case Filed.	No Judge
	(1) Filing: Civil Complaint Paid by: Mason, David C. (attorney for Callahan, Rosemary) Receipt number: 1911330 Dated: 11/17/2005 Amount: \$85.00 (Check) 3 cert. to Atty. 3CC Atty Mason.	No Judge 7
	(2) Petition for Preliminary Injunction, with Order, filed by Atty. Mason 4 Cert. to Atty.	John K. Reilly Jr. 15
	(3) Rule to Show Cause, filed. 4 Cert. to Atty. Mason, NOW, this 17th day of November, 2005. Argument to be heard on Nov. 22nd at 10:00 AM	John K. Reilly Jr. 3
11/30/2005	(4) Entry of Appearance, on behalf of Clara M. Callahan and Bernard Clark by s/John R. Carfley, Esq. One CC Attorney Carfley	No Judge 1
	(5) Preliminary Objections filed in Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in the Nature of a Motion for a More Specific Pleading or as a Motion to Strike Certain Averments due to their Impertinent Nature. In the Alternative, Said Motion should be Viewed as a Motion to Dismiss/Motion to Strike said Pleadings as Defective or for Failure to State a Claim upon which Relief might be Granted, filed by s/John R. Carfley, Esq. No CC	No Judge 5
01/13/2006	(6) Order, NOW, this 12th day of Jan., 2006, Ordered that argument on Defs.' Preliminary Objections filed in Opposition to Plaintiffs' Petition for Preliminary Injunction and Civil Complaint in the nature of a Motion for a more Specific Pleading or as a motion to Strike Certain Averments Due to Their Impertinent Nature filed in the above matter has been scheduled for the 24th day of Feb., 2006, at 1:30 p.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry 2
03/01/2006	(7) Order AND NOW, this 24th day of February, 2006, this being the date for argument of Defendants' Preliminary Objections in opposition to Plaintiffs' Petition to Preliminary Injunction; upon presentation of issues before the Court, it is the ORDER of this Court that Preliminary Objections concerning the survey be and is hereby dismissed. Further, the Preliminary Objection be and is hereby granted and counsel for Plaintiffs shall amend their complaint for a more specific pleading with regard to Paragraph 9 of the Petition for Preliminary Injunction. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Attys: Mason and Carfley.	Paul E. Cherry 2
08/21/2006	(8) Rule, Now, this 21st day of August, 2006, upon consideration of the Plaintiffs' Complaint, and Petition for Preliminary Injunction, it is Ordered that Defendants appear and show cause, if any, why the relief prayed for in the plaintiffs' Motion should not be granted, said argument to be heard before the Court on the 7th day of Sept., 2006, at 9:00 a.m. in Courtroom 1. The Defendants shall file an answer to the Complaint within 20 days of service upon the Defendants. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Mason	Fredric Joseph Ammerman 8
	(9) Motion to Reschedule Hearing on Preliminary Injunction, filed by s/ David C. Mason Esq. 3CC Mason.	Paul E. Cherry
08/22/2006	(9) Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Motion to Reschedule Hearing on Preliminary Injunction filed in the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry 2

Civil Other

Date		Judge
08/22/2006	Order, NOW, this 22nd day of August, 2006, hearing on Plaintiff's Motion to Reschedule Hearing on Preliminary Injunction is rescheduled from Sept. 7 at 9:00 a.m. to Sept. 7, 2006 at 11:00 a.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason, Carfley	Paul E. Cherry
09/11/2006	Order, Hearing on Plaintiff's Motion on Preliminary Injunction is cancelled. Parties shall submit to the Court a signed Stipulation within 10 days of this date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
09/13/2006	Petition For Preliminary Injunction, The parties, by the signatures of their counsel, stipulate and agree to the entry of an Order of Court granting the relief prayed for in the Petition for Preliminary Injunction. Signed, David C. Mason, Esquire, and John R. Carfley, Esquire. This stipulation is adopted by the Court as an Order of Court, and a hearing on the merits is scheduled for the 12th day of Dec., 2006 @ 9:00 a.m. By The Court, /s/ Paul E. Cherry, Judge. 1 CC Attys: Mason, Carfley	Paul E. Cherry
12/13/2006	Order, filed Cert. copies to Atty. Mason & Carfley NOW, this 11th day of December, 2006, RE: Hearing on Merits of Plaintiff's Complaint shall be continued until the 19th day of March, 2007	Paul E. Cherry
01/03/2007	Petition for Sanctions, filed by s/David C. Mason, Esq. Three CC Attorney Mason	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Petition for Sanctions filed by the above captioned action on John R. Carfley Esq., filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
01/09/2007	Order, NOW, this 5th day of Jan. 2007, upon consideration of the Petition for Sanctions, it is Ordered: A rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions within twenty days of service upon the Defendants. An evidentiary hearing on disputed issues of material fact shall be held on March 19, 2007, in Courtroom No. 2 at 9:00 a.m. Notice of the entry of this Order shall be provided to all parties by the Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Mason	Paul E. Cherry
01/30/2007	Order, NOW, this 29th day of Jan., 2007, upon consideration of the Petition for Sanctions, it is Ordered: a rule is issued upon Defendants. The Defendants shall file an answer to the Petition for Sanctions on or before Feb. 2, 2007. An Evidentiary hearing on disputed issues of material fact shall be held on Feb. 2, 2007, in Courtroom No. 2, at 11:00 a.m. By the Court, /s/ Paul E. Cherry, Judge. 1CC Atty. Mason	Paul E. Cherry
02/01/2007	Answer To Petition For Sanctions, filed by s/ John R. Carfley, Esquire. 2CC to Atty. Carfley	Paul E. Cherry
03/09/2007	Defendants' Answer, New Matter, And Couterclaim to Plaintiffs. Complaint, filed by s/ John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
	Answer To Preliminary Injunction, filed by s/John R. Carfley, Esquire. 2CC Atty. Carfley	Paul E. Cherry
03/19/2007	Plaintiffs' Reply to New Matter and Answer to Counter-Claim, filed by s/ David C. Mason Esq. 3CC Atty Mason.	Paul E. Cherry
	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Reply to New Matter and Answer to Counter-Claim filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. No CC.	Paul E. Cherry

Date: 12/18/2007

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 01:04 PM

ROA Report

Page 3 of 4

Case: 2005-01801-CD

Current Judge: Paul E. Cherry

Rosemary Callahan, Charles D. Little vs. Clara M. Callahan, Bernard Clark

Civil Other

Date		Judge
03/21/2007	Order, NOW, this 19th day of March, 2007, following hearing, it is Ordered that counsel provide the Court with proposed findings of fact, conclusions of law an appropriate brief within no more than 30 days from today's date. 1 By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
05/21/2007	Answer to Plaintiff's Objections to Defendant's Proposed Conclusions of Law, filed by s/ John R. Carfley Esq. 3CC Atty Carfley.	Paul E. Cherry
06/06/2007	Opinion and Order: NOW, this 5th day of June, 2007, after review of the briefs submitted by the parties, it is Ordered: The defendants, their heirs and assigns, are forever barred from asserting any right, title or interest inconsistent therewith, and (see original). Defendants must pay \$1,500 to Plaintiffs. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, J. Carfley; 1CC Law Library, D. Mikesell	Paul E. Cherry
06/15/2007	Defendants' Motion for Reconsideration and Request for Production of Transcript, filed by s/ John R. Carfley, Esquire. 3CC Atty. Carfley	Paul E. Cherry
06/21/2007	Rule Returnable, NOW, this 21st day of June, 2006, upon consideration of Defendant's Motion for Reconsideration and Request for Production of Transcript, it is Ordered that Rule is issued upon the Plaintiffs to appear and show cause why the relief requested should not be granted. Rule made returnable for Hearing the 9th of August, 2007, at 2:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge.	Paul E. Cherry
06/25/2007	Order, June 22, 2007, it is Ordered that the Motion filed by the Defendants requesting reconsideration will act as a supersedeas to the filing of an appeal and that the Defendants' requirement to file the Notice of Appeal within 30 days of the filing of the Court's Opinion as normally required, is hereby stayed. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: J. Carfley, Mason	Paul E. Cherry
08/13/2007	Order, this 9th day of August, 2007, following argument on Motion for Reconsideration, it is Ordered that counsel for the Plaintiffs provide the Court with appropriate brief by no later than August 31, 2007. Defense counsel shall have no more than 5 days thereafter to respond in kind. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Mason	Paul E. Cherry
08/16/2007	Notice, Re: Transcript to be filed, s/Thomas D. Snyder, RPR Transcript of Proceedings, Hearing on the Merits of Plaintiffs' Complaint and Plaintiffs' Petition for Sanctions, held on March 19, 2007, filed.	Paul E. Cherry Paul E. Cherry
08/31/2007	Certificate of Service, filed. Served a true and correct copy of Plaintiffs' Memorandum in Response to Defendants' Motion for Reconsideration filed to the above captioned action to John Carfley Esq., filed by s/ David C. Mason Esq. 1CC Atty.	Paul E. Cherry
10/17/2007	Order, this 17th day of Oct., 2007, it is Ordered that Defendant's Motion for Reconsideration shall be Denied. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, Carfley	Paul E. Cherry
11/15/2007	Filing: Appeal to High Court Paid by: Carfley, John R. (attorney for Callahan, Clara M.) Receipt number: 1921476 Dated: 11/15/2007 Amount: \$45.00 (Check) Filed by s/ John R. Carfley, Esquire. 1CC Atty. Carfley, 1CC to Superior Court with \$60.00 check	Paul E. Cherry
11/21/2007	Order, this 21st day of Nov., 2007, it is Ordered that Appellant file a concise statement of the matters complained of on Appeal no later than 21 days herefrom. By The Court, /s/ Paul E. Cherry, Judge. CC to Attys Mason & Carfley	Paul E. Cherry
11/26/2007	Appeal Docket Sheet, filed. 2007 WDA 2007 4	Paul E. Cherry

Date: 12/18/2007

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 01:04 PM

ROA Report

Page 4 of 4

Case: 2005-01801-CD

Current Judge: Paul E. Cherry

Rosemary Callahan, Charles D. Little vs. Clara M. Callahan, Bernard Clark

Civil Other

Date

Judge

12/12/2007

Defendants' Concise Statement of Matters Complained of On Appeal, filed Paul E. Cherry
by s/ John R. Carfley, Esquire. 3CC Atty. Carfley

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

VS.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

*
* No. 05-1801-CD
*

* TYPE OF PLEADING: PLAINTIFFS' REPLY
* TO NEW MATTER AND ANSWER TO
* COUNTER-CLAIM

* FILED ON BEHALF OF:
* PLAINTIFFS

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

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

MAR 19 2007

Attest.

William E. Brown
Prothonotary/
Clerk of Courts

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No. 05 - 1801 - CD
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**PLAINTIFFS' REPLY TO NEW MATTER AND
ANSWER TO COUNTER-CLAIM**

AND NOW, come the Plaintiffs, **ROSEMARY CALLAHAN** and **CHARLES D. LITTLE**, by and through their attorney, **DAVID C. MASON, ESQUIRE**, and make the following Reply to New Matter and Answer to Counter-Claim, and in support thereof aver as follows:

REPLY TO NEW MATTER

19. - 24. Admitted.

25. Admitted in part and Denied in Part. It is admitted that there exists adjacent to the lands of the Defendants a 10 foot wide access corridor which is on lands owned by neither of the parties, but utilized by both Plaintiffs and Defendants. It is further admitted that this access corridor runs the length of the Defendants' lands, but it is denied that it

runs the length of Plaintiffs' lands. By way of further Answer, Plaintiffs are uncertain what part, if any, of this access corridor is on lands of the Defendants'.

26. Denied. The assertion that there are two driveways off this access corridor is denied and strict proof of this averment is demanded at the time of trial. To the contrary, there is but one driveway off this adjacent access corridor.

27. Denied. The averment contained in this paragraph is denied and strict proof is demanded of this assertion in that the Plaintiffs' deny that they ever ceased using, or did not use the driveway which is the subject of Plaintiffs' civil action.

28. Denied. It is denied that the Plaintiffs travel on their own driveway at a high rate of speed, causing damage to the surface which needs repaired. Strict proof to the contrary, to the extent deemed relevant, is demanded at the time of trial.

29. Denied. It is denied that the Plaintiffs park several cars off the driveway, or that they encourage their friends and visitors to do so, creating a eye-sore. Strict proof to the contrary, to the extent deemed relevant, is demanded at the time of trial.

30. Denied. Plaintiffs are uncertain who, if anyone, conducted a resurvey of the lands. To the extent Exhibit A to Defendants' Answer is a writing, the same speaks for itself and no response is necessary. To the extent a response is necessary, and the same has been deemed not provided, the averments of the paragraph are denied and strict proof to the contrary, to the extent deemed relevant, is demanded at the time of trial.

31. Admitted. It is admitted that Defendant Bernard Clark has placed posts, gravel and fencing on the driveway, which is on lands owned by Defendants, but the same has been done in violation of a stipulation and order of court prohibiting the placement of such obstructions.

ANSWER TO COUNTER-CLAIM

Plaintiffs' reassert and incorporate herein all assertions in their Complaint and Reply to New Matter.

32. No response is necessary.

33. Denied. It is denied that this disagreement leading to the filing of a civil action was precipitated by Plaintiffs. To the contrary, at all times material and relevant hereto, Plaintiffs have been willing to abide by and restore the *status quo ante* regarding the use and utilization of the lands adjoining the two residences. By way of further Answer, Plaintiffs assert that it was Defendant Bernard Clark who first blocked and obstructed the driveway, engaging in self-help several times, both before and after the filing of a civil action, and in defiance of an Order of Court declaring that the parties shall not engage in acts which resulted in obstructing the driveway.

34. Admitted in Part and Denied in Part. While it is admitted that the Plaintiffs acquired the ownership of their lands by virtue of a deed from the parents of Plaintiff Rosemary Callahan, any attempt to incorporate the terms of a treatise on conveyancing is denied, as the same would constitute a conclusion of law, not an averment of fact.

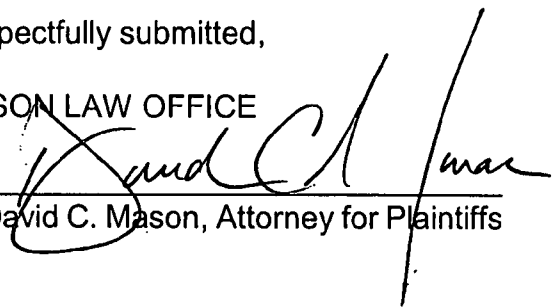
35. The statement contained in this paragraph is a conclusion of law, not an averment of fact. No response is necessary or required.

36. The statement contained in this paragraph is a conclusion of law, not an averment of fact. No response is necessary or required.

WHEREFORE, Plaintiffs pray for the entry of an Order of Court dismissing Defendants' Counter-Claim, and entering judgment in favor of Plaintiffs and against Defendants, granting the Plaintiffs the relief sought in their Complaint.

Respectfully submitted,

MASON LAW OFFICE

By: 

David C. Mason, Attorney for Plaintiffs

CIVIL ACTION - LAW

Defendants

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

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No.
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CERTIFICATE OF SERVICE

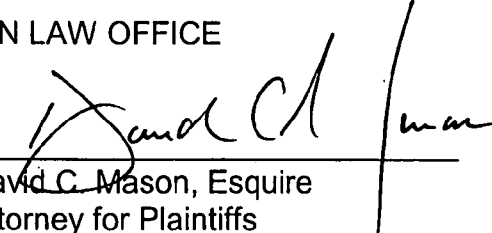
I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy
of PLAINTIFFS' REPLY TO NEW MATTER AND ANSWER TO COUNTER-CLAIM filed
to the above captioned action, by placing the same in the United States mail, postage
prepaid and addressed as follows:

John Carfley, Esquire
P.O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866
(Attorney for Defendants)

MASON LAW OFFICE

DATED: 3-16-7

By:


David C. Mason, Esquire
Attorney for Plaintiffs

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

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* No. 05-1801-CD
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* TYPE OF PLEADING: PLAINTIFFS'
* PROPOSED FINDINGS OF FACT AND
* CONCLUSIONS OF LAW
*
* FILED ON BEHALF OF: Plaintiffs
*
* ATTORNEY FOR PLAINTIFFS:
* David C. Mason, Esquire
* I.D. No. 39180
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Office

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No. 05-1801-CD
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PLAINTIFFS' PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

AND NOW, come the Plaintiffs, Rosemary Callahan and Charles D. Little individuals, by and through their counsel, David C. Mason, Esquire, and file the following Proposed Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff Rosemary Callahan is the daughter of Defendant, Clara M. Clark.
2. Defendant Clara M. Callahan, now known as Clara M. Clark, was previously married to George Callahan, who died December 4, 2001. Thereafter, Clara Callahan married Bernard Clark.
3. By deed dated October 18, 2000, George Callahan and Clara M. Callahan subdivided a parcel of land they owned in Decatur Township, Clearfield County, Pennsylvania, and gifted the same to Rosemary Callahan. Thereafter, Rosemary Callahan transferred the lands into the names of herself and her husband, Charles D. Little.

4. In the fall of 2000, Rosemary Callahan and Charles D. Little built a new home on this land and took up residence in their home with Defendant Clara M. Callahan and her late husband, George Callahan.

5. Sometime thereafter Defendant Clara M. Clark's home was completed and Clara relocated to that home.

6. A single excavating contractor was hired by George Callahan to excavate both foundations and construct a common driveway. This common driveway leads to the Plaintiffs' home from a private lane on lands of others.

7. A garage door in the Rosemary Callahan and Charles D. Little home faces this common driveway.

8. At the time of the construction of the foundations, Defendant Clara M. Callahan and her husband, George Callahan, knew of the usage of this common driveway as the sole means of access to the Callahan/Clark residence, and the placement of the garage door within this residence.

9. At the time of the construction of the Rosemary Callahan and Charles D. Little home, Defendant Clara M. Callahan and her husband George Callahan knew of the location of the construction of Plaintiffs' home, and the existence of the front door leading from the home.

10. During the construction of the Rosemary Callahan and Charles D. Little home neither Clara Callahan nor her husband George Callahan objected to the placement or location of the home, or the placement and existence of a garage door and the main entrance door leading from the Callahan/Little home to the apparent boundary line of the George Callahan and Clara M. Callahan lot.

11. The location and placement of the garage door and the main entrance door was of benefit to Rosemary Callahan and Charles D. Little, as well as to Clara M. Callahan and her husband George Callahan.

12. At the time, George Callahan suffered from ailments which ultimately resulted in his death, and the proximity of the house and the location of the points of entry and exit facilitated frequent visits and exchanges throughout the day between the parents, and their daughter, Plaintiff Rosemary Callahan.

13. At no time did either George Callahan or Clara M. Callahan object to the location of the home of the Plaintiffs, the existence of obvious points of entry and exit, or the Plaintiffs' use of the common, shared driveway constructed at the direction of all parties by a single excavating contractor selected and hired by George Callahan.

14. The topography and terrain of the lands owned by the parties prevent the Plaintiffs from constructing another usable driveway to access their home. Defendants have another driveway that leads directly from the state route to their garage, which does not involve use of the common driveway which is at issue.

15. Defendant Clara M. Clark was aware of Rosemary Callahan's intention to construct a porch off the front entrance door of her home and approved of the same by loaning her money to construct the porch, and being repaid at a later date.

16. On September 13, 2006, the parties, through their counsel, entered into a Stipulation and Agreement for entry of an Order of Court requiring the preservation of the status quo, pending a full hearing on the merits.

17. The said Stipulation and Agreement for the entry of an Order of Court provided that neither party would obstruct the driveway.

18. Despite the existence of said Order, on or about December 20, 2006, Defendants obstructed the driveway by the erection of a plank walkway, held in place by rebars which extended above the planking. This created a dangerous condition.

19. Again, on or about January 23, 2007, Defendants completely blocked travel on the driveway by the placement of a pile of limestone, three (3") inch rebars sticking out of the ground, and a barricade constructed of traffic cones and 2 x 4s with "No Trespassing" signs.

20. Plaintiffs did not engage in self-help in the removal of these obstructions, but rather sought assistance from counsel and direction from the court.

21. Plaintiffs incurred legal expenses of \$1,500.00 in response to Defendants' malicious, wilful and vexatious violation of the Stipulation and Agreement for entry of an Order of Court dated September 13, 2006.

22. Defendant Clara M. Clark moved from the Callahan/Little home in 2001 and took with her all her personalty.

23. Defendant Clara M. Clark never requested or sought a return of those items of personalty identified in her counter-claim until the summer of 2006.

24. The items of personalty listed in Defendants' counter-claim were tools, sporting goods and other items for which Defendant Clara Clark had no use or desire until the present difficulties ensued over the common driveway.

25. Plaintiffs have retained the use, possession, maintenance and enjoyment of the items gifted to them by George Callahan and Clara M. Callahan in 2001.

CONCLUSIONS OF LAW

1. Where an owner of land subjects part of it to an open, visible, permanent and continuous servitude or easement in favor of another part and then aliens either, the purchaser takes subject to the burden or the benefit as the case may be, and this is irrespective of whether or not the easement constituted a necessary right-of-way. **Bucciarelli v. DeLisa**, 547 Pa. 431, 691 A.2d 446 (1997), citing Chief Justice Stern in **Tosh v. Witts**, 381 Pa. 255, at 258, 113 A.2d 226, at 228 (1955). **Burns Manufacturing Co. V. Boehm**, 467 Pa. 307, 356 A.2d 763 (1976). **Daddona v. Thorpe**, 749 A.2d 475 (Pa. Super. 2000). **G.C.G. Mann-Hoff and Gerald P. Hoffman v. Eric D. Boyer and Susan J. Boyer**, 413 Pa. Super. 1, 604 A.2d 703 (1992).

2. In deciding whether an easement has been created by implication, the traditional test has been described as follows: Three things are regarded as essential to create an easement by implication on the severance of the unity of ownership in an estate; first, a separation of title; second, that, before the separation takes place, the use which gives rise to the easement, shall have been so long continued, and so obvious or manifest, as to show that it was meant to be permanent; and third, that the easement shall be necessary to the beneficial enjoyment of the land granted or retained. To these three, another essential element is sometimes added, that the servitude shall be continuous and self-acting, as distinguished from discontinuous and used only from time to time. **G.C.G. Mann-Hoff and Gerald P. Hoffman v. Eric D. Boyer and Susan J. Boyer**, 413 Pa. Super. 1, 604 A.2d 703 (1992).

3. An ordinary right-of-way, such as a road, a path, or an alley, is continuous.

Burns Manufacturing Company, Inc. v. BOEHM, 467 Pa. 307, 356 A.2d 763 (1976).

4. The effect of the prior use as a circumstance in implying, upon a severance of possession by conveyance, an easement results from an inference as to the intention of the parties. To draw such an inference the prior use must have been known to the parties at the time of the conveyance, or, at least, have been within the possibility of their knowledge at that time. Each party to a conveyance is bound not merely to what he intended, but also to what he might reasonably have foreseen the other party to the conveyance expected. Parties to a conveyance may, therefore, be assumed to intend the continuance of uses known to them which are in considerable degree necessary to the continued usefulness of the land. Also, they will be assumed to know and to contemplate the continuance of reasonably necessary uses which have so altered the premises as to make them apparent upon reasonably prudent investigation. **Daddona v. Thorpe**, 749 A.2d 475 (Pa. Super. 2000).

5. The general requirement for the creation of an easement by implication is: (1) the land must have been in single ownership, and (2) by reason of the circumstances under which a conveyance of part of it is made, the law will imply an easement of necessity. A way of necessity is but one of the class of easements of necessity which the law recognizes. **Hanna v. Hanna**, 57 Pa. D. & C.2d 80 (1971).

6. Even if a parcel of land can be used without an easement but cannot be used without disproportionate effort and expense, an easement may still be implied in favor of either the conveyor or the conveyee on the basis of the necessity alone without reference to prior use. If the necessity of an easement is such that without it land cannot be

effectively used, nothing less than explicit language in the conveyance negating the creation of an easement will prevent its implication. **Hanna v. Hanna**, 57 Pa. D. & C.2d 80 (1971).

7. An easement created by implication arises as an inference of the intention of the parties to a conveyance of land. The inference is drawn from the circumstances under which the conveyance was made rather than from the language of the conveyance: To draw an inference of intention from such circumstances, they must be or must be assumed to be within the knowledge of the parties. The inference drawn represents an attempt to ascribe an intention to parties who had not thought or had not bothered to put the intention into words. **Bucciarelli v. DeLisa**, 547 Pa. 431, 691 A.2d 446 (1997).

8. The Restatement of Property (3rd) - Servitudes - §2.10 – “Servitudes Created by Estoppel” provides:

If injustice can be avoided only by establishment of a servitude, the owner or occupier of land is estopped to deny the existence of a servitude burdening the land when:

(1) the owner or occupier permitted another to use that land under circumstances in which it was reasonable to foresee that the user would substantially change position, believing that the permission would not be revoked, and the user did substantially change position in reasonable reliance on that belief; or

(2)

9. Although the courts of Pennsylvania have never specifically adopted the Restatement of Property, §476, the courts often find the section useful and persuasive. **Bucciarelli v. DeLisa**, 547 Pa. 431, 691 A.2d 446 (1997).

10. The rationale for this approach has been stated in comment a to Section 476

of the **Restatement of Property**, as follows:

a. Rationale. An easement created by implication arises as an inference of the intention of the parties to a conveyance of land. The inference is drawn from the circumstances under which the conveyance was made rather than from the language of the conveyance. To draw an inference of intention from such circumstances, they must be or must be assumed to be within the knowledge of the parties. The inference drawn represents an attempt to ascribe an intention to parties who had not thought or had not bothered to put the intention into words, or perhaps more often, to parties who actually had formed no intention conscious to themselves. In the latter aspect, the implication approaches in fact, if not in theory, crediting the parties with an intention which they did not have, but which they probably would have had if they actually had foreseen what they might have foreseen from information available at the time of the conveyance.

11. The Defendant Clara Callahan Clark knew of the existence of the driveway and the necessity of its continued use by the Plaintiffs for the reasonable enjoyment of Plaintiffs' home and their conveyance of the land to the Plaintiffs without negating the existence of the driveway easement created an easement by implication on the lands of the Defendants twenty (20') feet wide, ten (10') on either side of the center line of the existing earthen cartway.

12. Defendant Clara Callahan Clark knew of the construction by her daughter of the home, the garage and the deck, and she and her husband, Bernard Clark, are prohibited from denying the Plaintiffs the right to the reasonable use of these lands for any proper purpose appurtenant to the use of the home, garage and deck, an area consisting of a rectangle being eighty-five (85') wide (across the front of the house) and thirty-five (35')

deep from the house.

13. Defendant Clara Callahan Clark and her husband George Callahan made gifts to Plaintiffs of the personal items left behind and claimed by the Defendant in her counter-claim.

14. Alternatively, Defendant Clara Callahan Clark abandoned the items of personalty left behind in the home of the Plaintiffs when she moved out of the residence five (5) years before the instant dispute arose.

15. Defendants wilfully and intentionally violated an order of this court by erecting obstructions on the driveway, causing the Plaintiffs to incur legal fees of \$1,500.00, for which the Defendants must repay the Plaintiffs.

WHEREFORE, Plaintiffs request that the Court enter an Order providing the following relief:

1. Plaintiffs, their successors and assigns, shall have an unrestricted easement for ingress, egress and regress over, across and through the lands of the Defendants twenty (20') feet wide, ten (10') feet on either side of the center line of the existing earthen cartway, commencing at the western boundary line of the Defendants lands. Defendants, their heirs and assigns, are forever barred from asserting any right, title or interest inconsistent therewith, and further, the Defendants are prohibited from slandering, impugning, protesting or contesting the right, title and interest of the Plaintiffs in and to the use, possession, and enjoyment of the Plaintiffs to this right-of way easement, and shall not construct or place, or cause to be constructed or placed upon the easement or right-of-way any barrier, barricade, item, article or obstruction which would interfere in any way with the rights of the Plaintiffs.

2. Defendants are forever barred from asserting any right, title or interest in and to any of the lands consisting of the rectangle immediately in front of Defendants' home, described as being thirty-five (35') feet wide (from the house) and eighty-five (35') long (extending from the eastern boundary of the Defendants' lands).

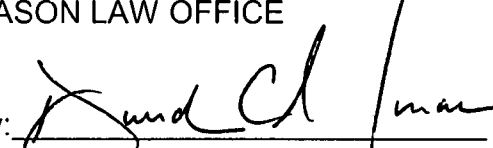
3. Plaintiffs are the owners of the personalty identified by Defendants in their counter-claim, and the Defendants shall have no right, claim or interest in and to any of the aforementioned items. Judgment is entered in favor of the Plaintiffs and against the Defendants on Defendants' counter-claim.

4. Judgment is entered in favor of Plaintiffs, and against Defendants, jointly and severally, in the amount of \$1,500.00.

Respectfully submitted,

MASON LAW OFFICE

By:


David C. Mason, Esquire
Attorney for Plaintiffs

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

CIVIL ACTION - LAW

ROSEMARY CALLAHAN and
CHARLES D. LITTLE,

Plaintiffs

vs.

CLARA M. CALLAHAN, a/k/a
CLARA M. CLARK and BERNARD
CLARK, her husband,

Defendants

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* No. 05-1801-CD

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* TYPE OF PLEADING: CERTIFICATE
* OF SERVICE

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* FILED ON BEHALF OF: Plaintiffs

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* ATTORNEY FOR PLAINTIFFS:

* David C. Mason, Esquire

* I.D. No. 39180

* MASON LAW OFFICE

* P.O. Box 28

* Philipsburg, PA 16866

* (814) 342-2240

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

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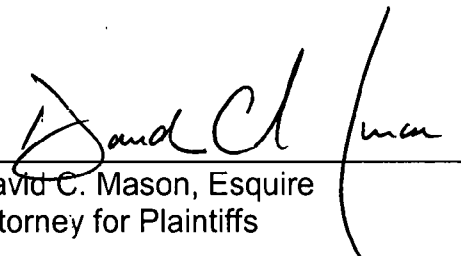
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* No. 05-1801-CD
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CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW filed in the above captioned action on the following by depositing the same in the U. S. Mail, postage prepaid and addressed as follows:

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

DATED: 5-2-7



David C. Mason, Esquire
Attorney for Plaintiffs