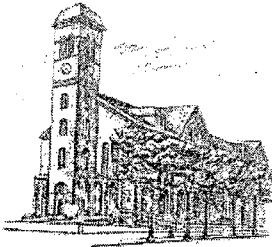


06-1331-CD
Edgar English vs Rev. Donald Trautman

2006-1331-CD
Edgar English vs Donald Trautman



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**

August 17, 2007

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

FILED
AUG 17 2007

Recd
William A. Shaw
Prothonotary/Clerk of Courts

Re: Edgar L. English

Vs.

Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of
Erie, Pennsylvania
No. 06-1331-CD
Superior Court No. 1292 WDA 2007

Dear Prothonotary:

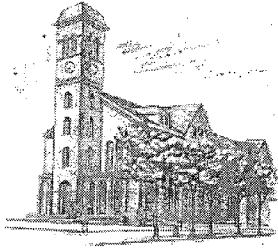
Enclosed you will find the above referenced complete record appealed to your
office. Transcripts will be forwarded upon filing in my office.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Please sign below and return in the enclosed self-addressed stamped envelope:

I received the above-referenced case on _____.



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

August 17, 2007

COPY

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

Re: Edgar L. English

Vs.

Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of
Erie, Pennsylvania
No. 06-1331-CD
Superior Court No. 1292 WDA 2007

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your
office. Transcripts will be forwarded upon filing in my office.

Sincerely,

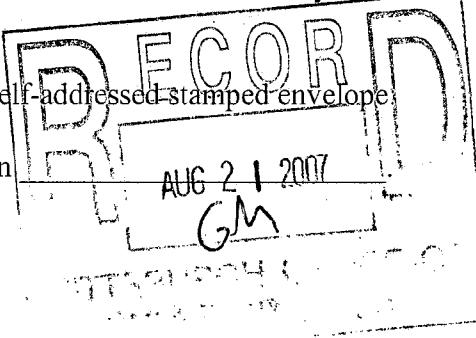
William A. Shaw
Prothonotary/Clerk of Courts

Please sign below and return in the enclosed self-addressed stamped envelope

FILED

AUG 23 2007

I received the above-referenced case on



William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 23 2007

William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1292 WDA 2007

Page 1 of 3

July 16, 2007

06-1331-CD



Edgar L. English, Appellant

v.

Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie, Pennsylvania.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: July 16, 2007 Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Ejectment

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: July 30, 2007

Next Event Type: Original Record Received

Next Event Due Date: September 4, 2007



7/16/2007

FILED
 7/18/2007
 NOCC
 (GR)

William A. Shaw
 Prothonotary/Clerk of Courts

15

Appeal Docket Sheet**Docket Number: 1292 WDA 2007****Page 2 of 3****July 16, 2007****Superior Court of Pennsylvania****COUNSEL INFORMATION**

Appellant English, Edgar L
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Gearhart, R. Denning
 Bar No.: 26540 Law Firm:
 Address: 207 E Market Street
 Clearfield, PA 16830-2424
 Phone No.: (814)765-1581 Fax No.: (814)765-8142
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellee Trautman, Donald W.
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Hugney-Shope, Barbara J.
 Bar No.: 26274 Law Firm:
 Address: 28478 Frenchville-Karthaus Hwy
 PO Box 232
 Frenchville, PA 16836-0232
 Phone No.: (814)263-7357 Fax No.: (814)263-7357
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
7/5/07	Notice of Appeal	60.00	60.00	2007SPRWD000839

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: June 5, 2007

Date Documents Received: July 16, 2007

Order Type: Order Entered

Judge: Cherry, Paul E.
 Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: July 5, 2007

OTN:

Lower Court Docket No.: No. 2006-1331-CD

ORIGINAL RECORD CONTENTS

Appeal Docket Sheet

Docket Number: 1292 WDA 2007

Page 3 of 3

July 16, 2007

Superior Court of Pennsylvania



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

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
July 16, 2007	Notice of Appeal Filed	Appellant	English, Edgar L
July 16, 2007	Docketing Statement Exited (Civil)		Western District Filing Office

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

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

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

06-1331-CD

Edgar L. English

VS.

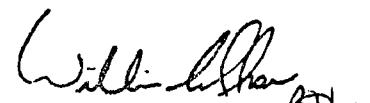
*Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie,
Pennsylvania*

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

The documents compromising the record have been numbered from **No. 1 to No. 16**, 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 compromising the document.

The date on which the record had been transmitted to the Appellate Court is

August 17, 2007.



Prothonotary/Clerk of Courts

(seal)

Date: 08/17/2007

Time: 09:33 AM

Page 1 of 2

Cuyahoga County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01331-CD

Current Judge: Paul E. Cherry

Edgar L. English vs. Donald W. Trautman

Civil Other

Date	Judge
08/21/2006	New Case Filed. Filing: Complaint in Ejectment Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1915202 Dated: 08/21/2006 Amount: \$85.00 (Check) 5 CC Atty Gearhart.
09/06/2006	Sheriff Return, August 22, 2006, Sheriff of Erie Co. was deputized. August 30, 2006 at 4:00 pm Served the within Complaint in Ejectment on Most Reverend Donald W. Trautman, Bishop of The Roman Catholic Diocese of Erie. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Gearhart \$31.00 Erie Co costs pd by Gearhart \$58.00
09/22/2006	Entry of Appearance, filed. Please enter my appearance as attorney of record for The Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Dioceses of Erie, Pennsylvania, defendant in the above-captioned action, filed by s/ Barbara J. Hugney-Shope Esq. 3CC Atty Shope.
10/30/2006	Answer to Complaint in Ejectment and New Matter, filed by s/ Barbara J. Hugney-Shope Esq. 7CC Atty Shope.
11/29/2006	Certificate of Readiness for Non-Jury Trial, filed by s/ R. Denning Gearhart, Esquire. 2CC to Atty. Answer to New Matter, filed by s/ R. Denning Gearhart Esq. 3CC Atty.
01/24/2007	Order, NOW, this 24th day of Jan, 2007, following Pre-Trial Conference, Ordered that: A view of the subject area shall be held at 9:00 a.m. Trial in this matter is scheduled for April 19, 2007, in Courtroom 2 following view. (see original). By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Gearhart, Hugney-Shope
04/20/2007	Order, NOW, this 19th day of April, 2007, following nonjury civil trial, it is the Paul E. Cherry Order of this Court that counsel provide the Court with briefs by no later than May 21, 2007. By The court, /s/ Paul E. Cherry, Judge. 1CC Attys: Gearhart, Shope
06/06/2007	Opinion and Order: NOW, this 5th day of June, 2007, it is Ordered that Judgment be entered in favor of the Defendant and that Defendant's request for attorney fees be Denied. By The Court, /s/ Paul E. Cherry, Judge.
06/26/2007	Motion For Reconsideration, filed by s/ R. Denning Gearhart Esq. 4CC Atty Gearhart. Order AND NOW, this 25th day of June 2007, upon consideration of the Motion for Reconsideration, it is the ORDER of this Court that Argument on the same is scheduled for the 29th day of June 2007 at 1:00 p.m. in Courtroom #2. Fifteen (15) minutes has been allotted for this Argument. BY THE COURT: /s/ Paul E. Cherry, Judge. 4CC Atty Gearhart.
06/27/2007	Certificate of Service, filed. Served a certified copy of the Motion for Reconsideration filed in the above captioned action on the Defendant through Defendant's attorney Barbara Hugney-Shope Esq., by faxing a copy of said documents on June 26, 2007, filed by s/ R. Denning Gearhart Esq. NO CC.
07/05/2007	Filing: Notice of Appeal Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1919667 Dated: 07/05/2007 Amount: \$45.00 (Check) filed by s/R. Denning Gearhart, Esq. One CC and check for \$60.00 to Superior Court Six CC Attorney Gearhart

Date: 08/17/2007

Time: 09:33 AM

Page 2 of 2

Jefferson County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01331-CD

Current Judge: Paul E. Cherry

Edgar L. English vs. Donald W. Trautman

Civil Other

Date	Judge
07/10/2007	Order, this 9th day of July, 2007, the Court having been notified of Appeal to the Superior Court of Pennsylvania, it is Ordered that Appellant file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty: Gearhart, Shope
07/17/2007	Concise Statement of MattersAppealed, filed by s/ R. Denning Gearhart, Esquire. 5CC Atty. Gearhart
07/18/2007	Appeal Docket Sheet, 1292 WDA 2007, filed. No CC
08/17/2007	August 17, 2007, Mailed Appeal to Superior Court. August 17, 2007, Letters, Re: Notification of mailing appeal mailed to R. Denning Gearhart, Esq. and Barbara J. Hugney-Shope, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).

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

AUG 17 2007

Attest.

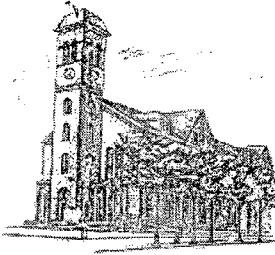
William L. Hause
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 06-1331-CD
Edgar L. English
VS.

Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie, Pennsylvania

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	08/21/06	Complaint in Ejectment	16
02	09/06/06	Sheriff Return	37
03	09/22/06	Entry of Appearance	02
04	10/30/06	Answer to Complaint in Ejectment and New Matter	13
05	11/29/06	Certificate of Readiness for Non-Jury Trial	02
06	11/29/06	Answer to New Matter	04
07	01/24/07	Order, Re: view of the subject area scheduled; trial scheduled	01
08	04/20/07	Order, Re: briefs to be submitted	01
09	06/06/07	Opinion and Order	03
10	06/26/07	Motion for Reconsideration and Order scheduling argument	04
11	06/27/07	Certificate of Service	02
12	07/05/07	Notice of Appeal	08
13	07/10/07	Order, Re: appellant to file concise statement of matters complained of on appeal	01
14	07/17/07	Concise Statement of MattersAppealed	04
15	07/18/07	Appeal Docket Sheet, Superior Court No. 1292 WDA 2007	03
16	08/17/07	Letters, Re: Notification of mailing appeal mailed to R. Denning Gearhart, Esq. and Barbara J. Hugney-Shope, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	04



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

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

R. Denning Gearhart, Esq.
207 East Market Street
Clearfield, PA 16830

Barbara J. Hugney-Shope, Esq.
PO Box 232
Frenchville, PA 16836

Edgar L. English
Vs.
Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie,
Pennsylvania

Court No. 06-1331-CD; Superior Court No. 1292 WDA 2007

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on August 17, 2007. The transcripts will be forwarded once they are filed.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 06-1331-CD
Edgar L. English
VS.

Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie, Pennsylvania

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
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11	06/27/07	Certificate of Service	02
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13	07/10/07	Order, Re: appellant to file concise statement of matters complained of on appeal	01
14	07/17/07	Concise Statement of MattersAppealed	04
15	07/18/07	Appeal Docket Sheet, Superior Court No. 1292 WDA 2007	03

Civil Other

Date	Judge
08/21/2006	New Case Filed.
	Filing: Complaint in Ejectment Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1915202 Dated: 08/21/2006 Amount: \$85.00 (Check) 5 CC Atty Gearhart.
09/06/2006	Sheriff Return, August 22, 2006, Sheriff of Erie Co. was deputized. August 30, 2006 at 4:00 pm Served the within Complaint in Ejectment on Most Reverend Donald W. Trautman, Bishop of The Roman Catholic Diocese of Erie. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Gearhart \$31.00 Erie Co costs pd by Gearhart \$58.00
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06/27/2007	Certificate of Service, filed. Served a certified copy of the Motion for Reconsideration filed in the above captioned action on the Defendant through Defendant's attorney Barbara Hugney-Shope Esq., by faxing a copy of said documents on June 26, 2007, filed by s/ R. Denning Gearhart Esq. NO CC.
07/05/2007	Filing: Notice of Appeal Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1919667 Dated: 07/05/2007 Amount: \$45.00 (Check) filed by s/R. Denning Gearhart, Esq. One CC and check for \$60.00 to Superior Court Six CC Attorney Gearhart

Date: 08/16/2007

Time: 03:41 PM

Page 2 of 2

Allegheny County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2006-01331-CD

Current Judge: Paul E. Cherry

Edgar L. English vs. Donald W. Trautman

Civil Other

Date		Judge
07/10/2007	Order, this 9th day of July, 2007, the Court having been notified of Appeal to the Superior Court of Pennsylvania, it is Ordered that Appellant file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Gearhart, Shope	Paul E. Cherry
07/17/2007	Concise Statement of MattersAppealed, filed by s/ R. Denning Gearhart, Esquire. 5CC Atty. Gearhart	Paul E. Cherry
07/18/2007	Appeal Docket Sheet, 1292 WDA 2007, filed. No CC	Paul E. Cherry

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

AUG 16 2007

Attest.

William E. Cherry
Prothonotary/
Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1292 WDA 2007

Page 1 of 3

July 16, 2007



06-1331-CD

Edgar L. English, Appellant

v.

Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie, Pennsylvania.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: July 16, 2007

Awaiting Original Record

Journal Number:

Case Category: Civil

Case Type:

Ejectment

Consolidated Docket Nos.:

Related Docket Nos.:

COPY

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: July 30, 2007

Next Event Type: Original Record Received

Next Event Due Date: September 4, 2007

FILED
M 10 5 2007
JUL 18 2007
NO CC
GK

William 3023 Shaw
Prothonotary/Clerk of Courts



Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1292 WDA 2007

Page 2 of 3

July 16, 2007



COUNSEL INFORMATION

Appellant English, Edgar L

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Gearhart, R. Denning

Bar No.: 26540 Law Firm:

Address: 207 E Market Street
Clearfield, PA 16830-2424

Phone No.: (814)765-1581 Fax No.: (814)765-8142

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Trautman, Donald W.

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Hugney-Shope, Barbara J.

Bar No.: 26274 Law Firm:

Address: 28478 Frenchville-Karthaus Hwy
PO Box 232
Frenchville, PA 16836-0232

Phone No.: (814)263-7357 Fax No.: (814)263-7357

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
7/5/07	Notice of Appeal	60.00	60.00	2007SPRWD000839

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of OrderAppealed From: June 5, 2007

Judicial District: 46

Date Documents Received: July 16, 2007

Date Notice of Appeal Filed: July 5, 2007

Order Type: Order Entered

OTN:

Judge: Cherry, Paul E.
Judge

Lower Court Docket No.: No. 2006-1331-CD

ORIGINAL RECORD CONTENTS

Appeal Docket Sheet

Docket Number: 1292 WDA 2007

Page 3 of 3

July 16, 2007

Superior Court of Pennsylvania



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

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
July 16, 2007	Notice of Appeal Filed	Appellant	English, Edgar L
July 16, 2007	Docketing Statement Exited (Civil)		Western District Filing Office

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

EDGAR L. ENGLISH, :
Plaintiff :
Vs. : No. 2006-1331-CD
:
MOST REVEREND DONALD W. :
TRAUTMAN, BISHOP OF THE :
ROMAN CATHOLIC DIOCESE OF :
ERIE, PENNSYLVANIA, :
Defendant :
:

CASE NUMBER: No. 2006-1331-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: **CONCISE STATEMENT OF MATTERS APPEALED**

FILED ON BEHALF OF: Edgar L. English, Appellant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. No. 26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED 500
07/17/07 Atty Gearhart
JUL 17 2007
(GR)

William A. Shaw
Prothonotary/Clerk of Courts

#14

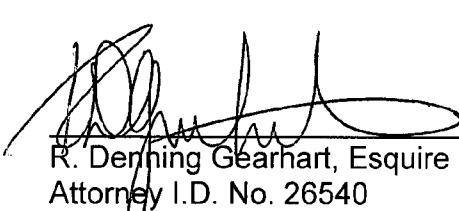
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

EDGAR L. ENGLISH, :
Plaintiff :
Vs. : No. 2006-1331-CD
:
MOST REVEREND DONALD W. :
TRAUTMAN, BISHOP OF THE :
ROMAN CATHOLIC DIOCESE OF :
ERIE, PENNSYLVANIA, :
Defendant :
:

CONCISE STATEMENT OF MATTERS APPEALED

NOW comes R. Denning Gearhart, attorney for Edgar L. English, Appellant in the above matter that has been appealed to the Superior Court, who responds to the Order of the Court of Common Pleas for Concise Statement of the Matters Complained of on Appeal pursuant to R.A.P. 1925(b) as follows:

1. That the Lower Court erred in disallowing any reference to The Caldwell Atlas as evidence of the alleged right of way.
2. That the Lower Court erred by failing to give full credibility and value to a map found in the file of the Estate of Fredrick Nebel that was properly filed with the Register of Wills of Clearfield County.
3. Such other matters that may become apparent and appear following transcription of the record.



R. Denning Gearhart, Esquire
Attorney I.D. No. 26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

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

EDGAR L. ENGLISH : NO. 06-1331-CD
V. :
MOST REVEREND DONALD W. :
TROUTMAN, BISHOP OF THE ROMAN :
CATHOLIC DIOCESE OF ERIE, :
PENNSYLVANIA :

ORDER

AND NOW, this 9th day of July, 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 fourteen (14) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY,
JUDGE

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

JUL 10 2007

Attest.



William A. Cherry
Prothonotary/
Clerk of Courts

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

EDGAR L. ENGLISH,
Plaintiff

Vs.

No. 2006-1331-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a true and correct copy of the attached and foregoing Concise Statement of the Matters Complained by depositing such copy in the United States Mail postage pre-paid and addressed as follows:

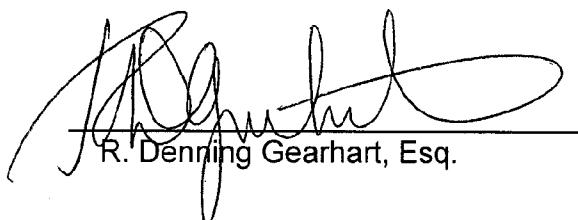
Hon. Paul E. Cherry
Judge's Chambers
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Clearfield County Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Barbara Hugney Shope, Esq.
28478 Frenchville-Karthaus Hwy.
P. O. Box 232
Frenchville, PA 16836

Clearfield County Court Reporter
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Dated: July 17, 2007



R. Denning Gearhart, Esq.

Leave over margin

William A. Shaw
Prothonotary/Clerk of Courts

JUL 17 2001

FILED

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

14

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

EDGAR L. ENGLISH : NO. 06-1331-CD
:
V. :
:
MOST REVEREND DONALD W. :
TROUTMAN, BISHOP OF THE ROMAN :
CATHOLIC DIOCESE OF ERIE, :
PENNSYLVANIA :
:

ORDER

AND NOW, this 9th day of July, 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 fourteen (14) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
07/09/2007
JUL 10 2007

William A. Shaw
Prothonotary/Clerk of Courts
2cc Attns: Gearhart
Shape
x13

FILED

JUL 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/10/07

You are responsible for serving all appropriate parties.
 The Prothonotary's office has provided services to the following parties:
 Plaintiff(s) Plaintiff(s) Attorney Other
 Defendant(s) Defendant(s) Attorney
 Special Instructions

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

EDGAR L. ENGLISH, Plaintiff
Vs. No. 2006-1331-CD
MOST REVEREND DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, PENNSYLVANIA, Defendant

CASE NUMBER: No. 2006-1331-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: NOTICE OF APPEAL

FILED ON BEHALF OF: Edgar L. English, Appellant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. No. 26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED *ICC Atty*
07/32/07
JUL 05 2007 Atty pd 4500

BS
William A. Shaw ICC & Check for
Prothonotary/Clerk of Courts \$60.00 to
Superior Court

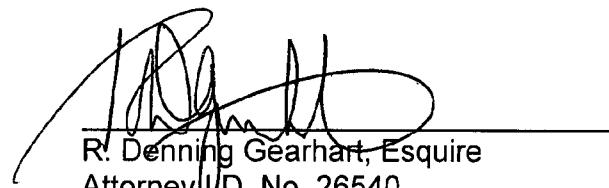
#12

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

EDGAR L. ENGLISH, :
Plaintiff :
Vs. : No. 2006-1331-CD
:
MOST REVEREND DONALD W. :
TRAUTMAN, BISHOP OF THE :
ROMAN CATHOLIC DIOCESE OF :
ERIE, PENNSYLVANIA, :
Defendant :
:

NOTICE OF APPEAL

Notice is hereby given that Appellant, Edgar L. English, hereby appeals to the Superior Court of Pennsylvania from the Order entered in this matter on the 5th day of June, 2007. This order has been entered in the docket as evidenced by the attached copy of the docket entry.



R. Denning Gearhart, Esquire
Attorney I.D. No. 26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

Dated: July 5, 2007

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

EDGAR L. ENGLISH

v.

NO. 06-1331-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA

OPINION

Plaintiff, Edgar L. English, initiated this action by the filing of a Complaint in Ejectment on August 21, 2006. On October 30, 2006, Defendant, Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie, Pennsylvania, filed an Answer to said Complaint and New Matter. Plaintiff, Edgar L. English, filed an Answer to New Matter on November 29, 2006. Following Non-Jury Trial on the matter, this Court hereby enters an Order finding in favor of the Defendant.

The Plaintiff acquired two (2) parcels of unimproved land in Cooper Township, Clearfield County, Pennsylvania, on September 23, 2000 adjacent to the Defendant's property. Plaintiff is requesting access through the St. Severin's Cemetery to the property that he purchased. In support of his right of access through Defendant's land, Plaintiff has raised three (3) theories:

I. That the right-of-way or easement in question was granted by the Partition of the property pursuant to an Order of the Orphan's Court of Clearfield County circa 1896.

II. That the Plaintiff and/or his predecessors in title have created an easement by prescription and are entitled to its use.

III. That no other easement exists to allow access to the Plaintiff's property which was once part of a larger tract which included the Defendant's property.

On Plaintiff's first theory, the exhibits presented at trial (including testimony from Plaintiff's own witness qualified as an abstractor of deeds) failed to provide any evidence that a pre-existing easement or right of way had been granted. Moreover, at the time of the partition of the land, the Heirs of Frederick Nebel lacked any authority to grant a right-of-way or easement through any land other than land owned by Frederick Nebel at the time of his death.

In order to sustain the Plaintiff's claim of easement by prescription, the Plaintiff must show continuous, open, visible, notorious and hostile use of the way for a period of twenty-one (21) years or more. See Koresko v. Farley, 844 A.2d 607, (Pa.Cmwth. 2004) appeal denied 857 A.2d 680, 579 PA. 706, certiorari denied 125 S.Ct. 967, 160 L.Ed.2d 899; Sobien v. Mullin, 783 A.2d 796 (Pa.Super. 2001). Plaintiff has only owned the property since 2000 and represented at trial that he was aware that his land was landlocked when he purchased it. The Plaintiff failed to call any witnesses to establish that any of his predecessors in title had satisfied these requirements and , therefore, the Plaintiff did not meet his burden of showing an easement by prescription.

Finally, the courts have found an easement may arise by implication when a parcel of land conveyed is so situated that access to it from the public highway can be had only by passing over the remaining land of the grantor. The grantee is then entitled to a "way of necessity" over the grantor's land. In Phillippi v. Knotter, 748 A.2d 757, 760 (Pa.Super. 2000), the Court citing Graff v. Scanlan, 673 A.2d 1028, 1032 (Pa.Cmwth. 1996) sets forth the three (3) fundamental requirements for an easement by necessity to arise as follows:

1. The titles to the alleged dominant and servient properties must have been held by one person.
2. This unity of title must have been severed by a conveyance of one of the tracts.
3. The easement must be necessary in order for the owner of the dominant tenement to use his land, with the necessity existing both at the time of severance of title and at the time of the exercise of the easement."

The Plaintiff's abstractor represented the parcel of land now owned by Plaintiff as being part of a larger piece, originally containing twenty-four (24) acres bounded by a public road; therefore, the necessity did not exist at the time of the partition. The Plaintiff's property was acquired by his predecessors several years prior to the partition, a necessity did not exist at the time of the partition because the property of which Plaintiff's parcel was a part was bounded by a public road. Plaintiff has failed to meet the burden of proof that would sustain an easement through the land of the Defendant.

ORDER

AND NOW, this 5th day of June, 2007, it is the ORDER of this Court that Judgment be entered in favor of the DEFENDANT and that Defendant's request for attorney fees be DENIED.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY,

JUDGE

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

JUN 06 2007

Attest.

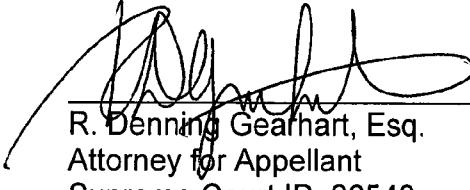
William L. Williams
Prothonotary/
Clerk of Courts

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

EDGAR L. ENGLISH, :
Plaintiff :
Vs. : No. 2006-1331-CD
:
MOST REVEREND DONALD W. :
TRAUTMAN, BISHOP OF THE :
ROMAN CATHOLIC DIOCESE OF :
ERIE, PENNSYLVANIA, :
Defendant :
:

ORDER FOR TRANSCRIPT

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



R. Denning Gearhart, Esq.
Attorney for Appellant
Supreme Court ID: 26540
207 East Market Street
Clearfield, PA 16830
814-765-1581

Dated: July 5, 2007

Date: 07/05/2007

Time: 02:04 PM

Page 1 of 1

Clearfield County Court of Common Pleas

ROA Report

Case: 2006-01331-CD

Current Judge: Paul E. Cherry

Edgar L. English vs. Donald W. Trautman

User: BHUDSON

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

JUL 05 2007

Civil Other

Date	Attest. Judge	Prothonotary/ Clerk of Courts
08/21/2006	New Case Filed. Filing: Complaint in Ejectment Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1915202 Dated: 08/21/2006 Amount: \$85.00 (Check) 5 CC Atty Gearhart.	No Judge
09/06/2006	Sheriff Return, August 22, 2006, Sheriff of Erie Co. was deputized. August 30, 2006 at 4:00 pm Served the within Complaint in Ejectment on Most Reverend Donald W. Trautman, Bishop of The Roman Catholic Diocese of Erie. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Gearhart \$31.00 Erie Co costs pd by Gearhart \$58.00	No Judge
09/21/2006	Entry of Appearance, filed. Please enter my appearance as attorney of record for The Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Dioceses of Erie, Pennsylvania, defendant in the above-captioned action, filed by s/ Barbara J. Hugney-Shope Esq. 3CC Atty Shope.	No Judge
10/30/2006	Answer to Complaint in Ejectment and New Matter, filed by s/ Barbara J. Hugney-Shope Esq. 7CC Atty Shope.	No Judge
11/29/2006	Certificate of Readiness for Non-Jury Trial, filed by s/ R. Denning Gearhart, Esquire. 2CC to Atty. Answer to New Matter, filed by s/ R. Denning Gearhart Esq. 3CC Atty.	No Judge
01/24/2007	Order, NOW, this 24th day of Jan, 2007, following Pre-Trial Conference, Ordered that: A view of the subject area shall be held at 9:00 a.m. Trial in this matter is scheduled for April 19, 2007, in Courtroom 2 following view. (see original). By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Gearhart, Hugney-Shope	Paul E. Cherry
04/20/2007	Order, NOW, this 19th day of April, 2007, following nonjury civil trial, it is the Paul E. Cherry Order of this Court that counsel provide the Court with briefs by no later than May 21, 2007. By The court, /s/ Paul E. Cherry, Judge. 1CC Attys: Gearhart, Shope	
06/06/2007	Opinion and Order: NOW, this 5th day of June, 2007, it is Ordered that Judgment be entered in favor of the Defendant and that Defendant's request for attorney fees be Denied. By The Court, /s/ Paul E. Cherry, Judge.	Paul E. Cherry
06/26/2007	Motion For Reconsideration, filed by s/ R. Denning Gearhart Esq. 4CC Atty Gearhart. Order AND NOW, this 25th day of June 2007, upon consideration of the Motion for Reconsideration, it is the ORDER of this Court that Argument on the same is scheduled for the 29th day of June 2007 at 1:00 p.m. in Courtroom #2. Fifteen (15) minutes has been allotted for this Argument. BY THE COURT: /s/ Paul E. Cherry, Judge. 4CC Atty Gearhart.	Paul E. Cherry
06/27/2007	Certificate of Service, filed. Served a certified copy of the Motion for Reconsideration filed in the above captioned action on the Defendant through Defendant's attorney Barbara Hugney-Shope Esq., by faxing a copy of said documents on June 26, 2007, filed by s/ R. Denning Gearhart Esq. NO CC.	Paul E. Cherry

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

EDGAR L. ENGLISH,
Plaintiff
Vs.

No. 2006-1331-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

CERTIFICATE OF SERVICE

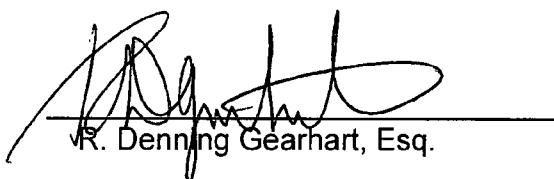
This is to certify that the undersigned has on this date served a true and correct copy of the attached and foregoing Notice of Appeal by depositing such copy in the United States Mail postage pre-paid and addressed as follows:

Hon. Paul E. Cherry
Judge's Chambers
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Clearfield County Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Barbara Hugney Shope, Esq.
28478 Frenchville-Karthaus Hwy.
P. O. Box 232
Frenchville, PA 16836

Clearfield County Court Reporter
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830



R. Denning Gearhart, Esq.

Dated: July 5, 2007

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 2006-1331-CD

EDGAR L. ENGLISH

vs.

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA

NOTICE OF APPEAL, ORDER FOR
TRANSCRIPT & CERTIFICATE OF
SERVICE

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

William A. Shaw
Prothonotary/Clerk of Courts

JUL 05 2007

FILED

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

EDGAR L. ENGLISH,
Plaintiff

vs. : No. 2006-1331 -CD

MOST REVEREND DONALD W. :
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

CASE NUMBER: No. 2006-1331-CD

TYPE OF CASE: Civil/Ejectment Action

TYPE OF PLEADING: CERTIFICATE OF SERVICE

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
814-765-1581

FILED NO
010-4864
JUN 27 2007
WM

William A. Shaw
Prothonotary/Clerk of Courts

111

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

EDGAR L. ENGLISH,
Plaintiff

vs.

No. 2006-1331-CD

MOST REVEREND DONALD W. :
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE,
Defendant

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of the Motion for Reconsideration filed in the above captioned action on the Defendant through Defendant's attorney by faxing a copy of said documents to Defendant's attorney on June 26, 2007, at 11:09 A.M., and by depositing such documents in the United States Mail postage prepaid and addressed as follows:

Barbara Hugney Shope, Esq.
28478 Frenchville-Karthaus Highway
P. O. Box 232
Frenchville, PA 16836

By:

R. Denning Gearhart, Esq.
Attorney for Plaintiff

Dated: June 26, 2007

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

EDGAR L. ENGLISH,
Plaintiff

vs.

No. 2006-1331-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

CASE NUMBER: No. 2006-1331-CD

TYPE OF PLEADING: **MOTION FOR RECONSIDERATION**

FILED ON BEHALF OF: Plaintiff

COUNSEL FOR RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court ID#: 26540
207 East Market Street
Clearfield, PA 16830
814-765-1581

FILED
09:35 AM
JUN 26 2007
Atty Gearhart
4cc
W.A. Shaw
Prothonotary/Clerk of Courts
#10

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

EDGAR L. ENGLISH,
Plaintiff
Vs. : No. 06-1331-CD
MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

MOTION FOR RECONSIDERATION

AND NOW comes the Plaintiff, by and through his attorney, R. Denning Gearhart, Esq., who files the following:

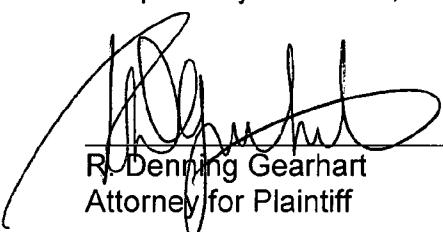
1. A Complaint in Ejectment was filed to the above caption.
2. By Order of Court dated June 5, 2007, Plaintiff's prayer was denied.
3. Because counsel for the Plaintiff failed to file a Brief (though given the opportunity to do so), the Court did so without the benefit of Plaintiff's argument.
4. However, the law is still the law, and the Court erred in its interpretation of the law for the following reasons:
 - (a) The Court did not give sufficient weight, if any, to the evidence presented by the Plaintiff regarding a map filed of record with the papers for the Fredrick Nebel Estate.
 - (b) The titles to both parcels in question are from this Estate. Accordingly, the map showing the partition of the Nebel Estate realty (including the parcels *sub Juris*) – filed with the Clearfield County Register of Wills – should have been considered by

the Court as evidence of any roadways shown on that map. McAndrews v. Spencer, 447 Pa. 268; 290 A.2d 258; (1972).

(c) Further, at trial, the Court disallowed any reference to The Caldwell Atlas. In doing so, it prevented the Plaintiff from proving that the parcels in question were part of the lands of the Nebel Estate. The Court's failure to consider this historical document (which the witness was prepared to testify is extensively and commonly used by title abstractors in Pennsylvania – indeed, she would have testified that as a former employee of Francis and Edie McDermott, she knew The Caldwell Atlas was frequently relied upon to abstract titles for His Honor when he was in private practice) runs contrary to the Superior Court's recognition of its relevance in defining the placement of right of ways. In Capozzi v Cummins, 191 Pa. Super. 500, 159 A.2d. 536 (1960), Pennsylvania's Superior Court specifically enumerated The Caldwell Atlas as evidence of the existence and location of the easement at controversy before it.

WHEREFORE, Plaintiff prays your Honorable Court to reconsider its Decision of June 5, 2007, and to find for the Plaintiff. In the alternative, Plaintiff prays your Honorable Court to reconsider its Order and issue an Order rescheduling the Trial in the above case so as to allow evidence of the above mentioned maps.

Respectfully submitted,



R. Denning Gearhart
Attorney for Plaintiff

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

EDGAR L. ENGLISH,
Plaintiff

v.

NO. 2006-1331-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF ERIE,
Defendant

ORDER

AND NOW, this 25th day of June, 2007, upon
consideration of the Motion for Reconsideration, it is the ORDER of this Court that
Argument on the same is scheduled for the 29th day of June, 2007, at
1:00 o'clock P.M., in Courtroom No. 2, of the Clearfield County,
Pennsylvania.

Fifteen (15) minutes has been allotted for this Argument.

BY THE COURT

Paul E. Cherry

JUDGE

FILED
019:35 AM
JUN 26 2007 Atty Gearhart
William A. Shaw
Prothonotary/Clerk of Courts

#10

FILED

JUN 26 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/26/07

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:

2
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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 2006-1331-CD

EDGAR L. ENGLISH, Plaintiff

vs.

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,

Defendant

MOTION FOR RECONSIDERATION

William A. Shaw
Prothonotary/Clerk of Courts

FILED
JUN 26 2007

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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

EDGAR L. ENGLISH

V.

NO. 06-1331-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA

FILED
07/23/2007
JUN 06 2007

ICC Attns:
Gearhart
Shape

ICC:Law Library
William A. Shaw D. M. Kessell
Prothonotary/Clerk of Courts (without memo)

OPINION

Plaintiff, Edgar L. English, initiated this action by the filing of a Complaint in Ejectment on August 21, 2006. On October 30, 2006, Defendant, Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie, Pennsylvania, filed an Answer to said Complaint and New Matter. Plaintiff, Edgar L. English, filed an Answer to New Matter on November 29, 2006. Following Non-Jury Trial on the matter, this Court hereby enters an Order finding in favor of the Defendant.

The Plaintiff acquired two (2) parcels of unimproved land in Cooper Township, Clearfield County, Pennsylvania, on September 23, 2000 adjacent to the Defendant's property. Plaintiff is requesting access through the St. Severin's Cemetery to the property that he purchased. In support of his right of access through Defendant's land, Plaintiff has raised three (3) theories:

- I. That the right-of-way or easement in question was granted by the Partition of the property pursuant to an Order of the Orphan's Court of Clearfield County circa 1896.
- II. That the Plaintiff and/or his predecessors in title have created an easement by prescription and are entitled to its use.
- III. That no other easement exists to allow access to the Plaintiff's property which was once part of a larger tract which included the Defendant's property.

On Plaintiff's first theory, the exhibits presented at trial (including testimony from Plaintiff's own witness qualified as an abstractor of deeds) failed to provide any evidence that a pre-existing easement or right of way had been granted. Moreover, at the time of the partition of the land, the Heirs of Frederick Nebel lacked any authority to grant a right-of-way or easement through any land other than land owned by Frederick Nebel at the time of his death.

In order to sustain the Plaintiff's claim of easement by prescription, the Plaintiff must show continuous, open, visible, notorious and hostile use of the way for a period of twenty-one (21) years or more. See Koresko v. Farley, 844 A.2d 607, (Pa.Cmwlth. 2004) appeal denied 857 A.2d 680, 579 PA. 706, certiorari denied 125 S.Ct. 967, 160 L.Ed.2d 899; Sobien v. Mullin, 783 A.2d 796 (Pa.Super. 2001). Plaintiff has only owned the property since 2000 and represented at trial that he was aware that his land was landlocked when he purchased it. The Plaintiff failed to call any witnesses to establish that any of his predecessors in title had satisfied these requirements and, therefore, the Plaintiff did not meet his burden of showing an easement by prescription.

Finally, the courts have found an easement may arise by implication when a parcel of land conveyed is so situated that access to it from the public highway can be had only by passing over the remaining land of the grantor. The grantee is then entitled to a "way of necessity" over the grantor's land. In Phillippi v. Knotter, 748 A.2d 757, 760 (Pa.Super. 2000), the Court citing Graff v. Scanlan, 673 A.2d 1028, 1032 (Pa.Cmwlth. 1996) sets forth the three (3) fundamental requirements for an easement by necessity to arise as follows:

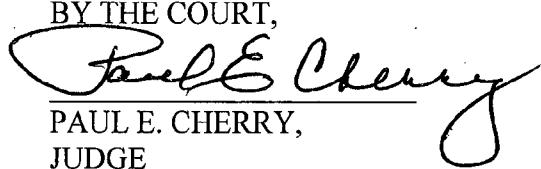
1. The titles to the alleged dominant and servient properties must have been held by one person.
2. This unity of title must have been severed by a conveyance of one of the tracts.
3. The easement must be necessary in order for the owner of the dominant tenement to use his land, with the necessity existing both at the time of severance of title and at the time of the exercise of the easement."

The Plaintiff's abstractor represented the parcel of land now owned by Plaintiff as being part of a larger piece, originally containing twenty-four (24) acres bounded by a public road; therefore, the necessity did not exist at the time of the partition. The Plaintiff's property was acquired by his predecessors several years prior to the partition, a necessity did not exist at the time of the partition because the property of which Plaintiff's parcel was a part was bounded by a public road. Plaintiff has failed to meet the burden of proof that would sustain an easement through the land of the Defendant.

ORDER

AND NOW, this 5th day of June, 2007, it is the ORDER of this Court that Judgment be entered in favor of the DEFENDANT and that Defendant's request for attorney fees be DENIED.

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

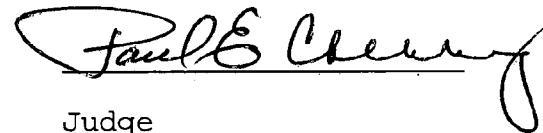
CIVIL DIVISION

EDGAR L. ENGLISH :
VS. : NO. 06-1331-CD
MOST REVEREND DONALD W. :
TROUTMAN, BISHOP OF THE ROMAN :
CATHOLIC DIOCESE OF ERIE, :
PENNSYLVANIA :

O R D E R

AND NOW, this 19th day of April, 2007, following nonjury civil trial, it is the ORDER of this Court that counsel provide the Court with briefs by no later than Monday, May 21, 2007.

BY THE COURT,


Judge

FILED

04/20/2007 10:45 AM
APR 20 2007 Gearhart
Shope

William A. Shaw
Prothonotary/Clerk of Courts

(6K)

(#8)

FILED

APR 20 2007

Probate/Orphan's Court
William A. Sharrow

DATE: 4/20/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Attorney Other
 Plaintiff(s) Defendant(s) Attorney
 Defendant(s) Defendant(s)
 Special Instructions:

UP

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

EDGAR L. ENGLISH

NO. 06-1331-CD

V.

MOST REVEREND DONALD W.
TROUTMAN, BISHOP OF THE ROMAN
CATHOLIC DIOCESE OF ERIE,
PENNSYLVANIA

ORDER

AND NOW, this 24th day of January, 2007, following Pre-Trial Conference, it is
the ORDER of this Court as follows:

1. A view of the subject area shall be held at 9:00 A.M.
2. Trial in this matter is scheduled for April 19, 2007, in Courtroom No. 2 of
the Clearfield County Courthouse, Clearfield, Pennsylvania following
view.
3. The deadline for providing any and all outstanding discovery shall be by
and no later than fifteen (15) days from today's date.
4. The deadline for submitting any and all Motions shall be by and no later
than thirty (30) days prior to the commencement of trial.
5. The parties shall mark all exhibits for trial prior to trial to speed
introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
01/31/2007 2CC
JAN 24 2007 Atty Geashaw
Hegney-Shape
William A. Shaw
Prothonotary/Clerk of Courts
6W

#7

FILED

JAN 24 2007

*William A. Shaw
Prothonotary/Clerk of Courts*

DATE: 1/24/07

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

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

EDGAR L. ENGLISH,
Plaintiff

vs. : No. 2006-1331 -CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

CASE NUMBER: No. 2006-1331-CD

TYPE OF CASE: Civil/Ejectment Action

TYPE OF PLEADING: ANSWER TO NEW MATTER

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
814-765-1581

FILED

NOV 29 2006
0/3:30 (LJ)
William A. Shaw
Prothonotary/Clerk of Courts

3 case to Att'y

#10

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

EDGAR L. ENGLISH,
Plaintiff

vs. : No. 2006-1331-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

A N S W E R TO NEW MATTER

AND NOW, comes EDGAR L. ENGLISH, Plaintiff, by and through his attorney, R. Denning Gearhart, who avers as follows:

27. No answer required.
28. Denied for reasons set forth in the Complaint.
29. Admitted as to the state of the law. However, as is argued in the Complaint, the road alleged existed before the cemetery.
30. Denied. Not relevant to a complaint for easement by conveyance, prescription or necessity.
31. Admitted that a Complaint was filed prior to this one. However, it is denied that all of the same claims were set forth. Further, it was agreed by the parties that the absence of the Bishop for the Diocese as a named Defendant was a flaw, and it was agreed by the parties, together with the Hon. Paul E. Cherry that the original Complaint would be dismissed so as to allow a Complaint to be properly filed.

32. Denied. Plaintiff sets forth in great detail in his Complaint the basis for his claim. He has further offered to accept access over that already given to Unilec which would be convenient for all. However, the Defendant has refused the same and has instead relied on some unsubstantiated lore that once upon a time a right-of-way existed over another parcel of property.

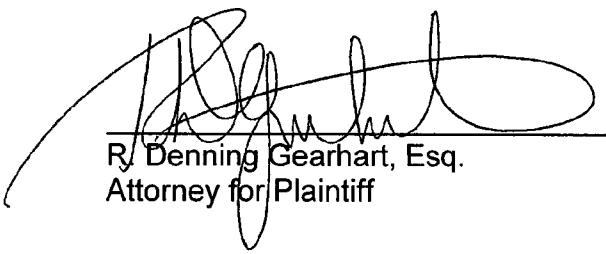
33. Denied for reasons set forth in the Complaint.

34. Denied for reasons set forth in the Complaint.

35. This is a demand that requires no answer, but to the extent that it does, it is denied.

WHEREFORE, Plaintiff respectfully requests your Honorable Court to dismiss the New Matter.

Respectfully submitted,



R. Denning Gearhart, Esq.
Attorney for Plaintiff

AFFIDAVIT

R. DENNING GEARHART, being duly sworn according to law, deposes and says that he is the agent of the Plaintiff, EDGAR L. ENGLISH, that said Plaintiff cannot make the verification to the foregoing Answer because he was not present on the day and date this Answer was filed, and further, that the Plaintiff would not be available until after the day of the filing of this Answer, and that the facts set forth in the foregoing Answer are based on information provided to Counsel by the Plaintiff and based partially upon personal knowledge of the Plaintiff's Attorney. However, the Plaintiff verified this information to R. DENNING GEARHART, his counsel, fully aware of the penalties of false statements under 18 Pa. C.S.A., section 4904, relating to unsworn falsification to authorities.



R. Denning Gearhart

Sworn to and subscribed
before me this 29 day
of November, 2006.

Kathleen A. Ricotta
Notary Public

Commonwealth of Pennsylvania
NOTARIAL SEAL
KATHLEEN A. RICOTTA, Notary Public
Clearfield Boro., County of Clearfield
My Commission Expires June 15, 2009

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 2006-1331-CD

EDGAR L. ENGLISH,
Plaintiff

vs.

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE ROMAN
CATHOLIC DIOCESE OF ERIE,
PENNSYLVANIA,
Defendant

ANSWER TO NEW MATTER

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

PROSECUTOR
MILLER, A. SHERIFF
Court Clerk
NOV 29 2006
EEL

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

EDGAR L. ENGLISH,
Plaintiff

vs. : No. 2006-1331-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

CASE NUMBER: No. 2006-1331-CD

TYPE OF PLEADING: PRAECIPE TO LIST FOR NON-JURY TRIAL

FILED ON BEHALF OF: Plaintiff

COUNSEL FOR RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court ID#: 26540
207 East Market Street
Clearfield, PA 16830
814-765-1581

FILED

NOV 29 2006

0 3:30

William A. Shew

Prothonotary/Clerk of Courts

2 COPY TO ATTY

#5

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

EDGAR L. ENGLISH,
Plaintiff

Vs. : No. 06-1331-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

PRAECIPE TO LIST FOR NON-JURY TRIAL

TO THE PROTHONOTARY:

Please place the above-captioned matter on the next List for Non-Jury
Trial. In support thereof I certify the following:

1. There are no Motions outstanding.
2. Discovery has been completed and the case is ready for trial.
3. The case is to be a Non-Jury Trial.
4. Notice of the Praeclipe has been given to opposing counsel.
5. The time for trial is estimated at One (1) days.


R. Denning Gearhart
Attorney for Plaintiff

Date: November 29, 2006

CR

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 2006-1331-CJ

EDGAR L. ENGLISH,
Plaintiff

vs.

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
Defendant

PRAECTICE TO LIST FOR NON-JURY
TRIAL

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

William A. Shaw
Prothonotary/Clerk of Courts

NOV 29 2006

FILED

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

EDGAR L. ENGLISH,
Plaintiff

vs.

**MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,**
Defendant.

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* NO. 06-1331-CD
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*
* Type of Case: CIVIL/EJECTMENT ACTION
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*
*
* Type of Pleading: ANSWER TO COMPLAINT
* IN EJECTMENT AND NEW MATTER
*
*
* Filed on behalf of: DEFENDANT,
* MOST REVEREND DONALD W. TRAUTMAN,
* BISHOP OF THE ROMAN CATHOLIC DIOCESE
* OF ERIE, PENNSYLVANIA
*
* Counsel of Record of this Party:
* BARBARA J. HUGNEY-SHOPE, ESQUIRE
*
* Supreme Court I. D. No. 26274
* 23 North Second Street
* Clearfield, PA 16830
* (814) 765-5155

FILED 7CC
06/4/06 Atty Shaw
OCT 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

#4

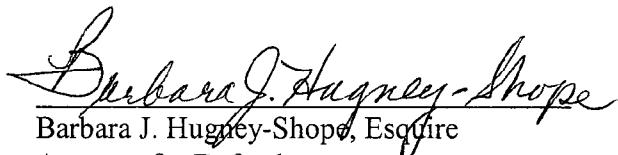
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

EDGAR L. ENGLISH, *
Plaintiff *
*
vs. * NO. 06-1331-CD
*
MOST REVEREND DONALD W. *
TRAUTMAN, BISHOP OF THE ROMAN*
CATHOLIC DIOCESE OF ERIE, *
PENNSYLVANIA *
Defendant *

NOTICE TO PLEAD

TO: **EDGAR L. ENGLISH**
c/o R. Denning Gearhart, Esquire
215 East Locust Street
Clearfield, PA 16830

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


Barbara J. Hugney-Shoppe, Esquire
Attorney for Defendant
23 North Second Street
Clearfield, PA 16830
(814) 765-5155

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

EDGAR L. ENGLISH,	*
Plaintiff,	*
	*
vs.	* NO. 06-1331-CD
	*
MOST REVEREND DONALD W.	*
TRAUTMAN, BISHOP OF THE ROMAN*	
CATHOLIC DIOCESE OF ERIE,	*
PENNSYLVANIA	*
Defendant.	*

ANSWER

AND NOW, comes the Defendant, who by and through his attorney, BARBARA J. HUGNEY-SHOPE, ESQUIRE, files the following Answer to Plaintiff's Complaint in Ejectment and avers as follows:

1. Admitted.
2. Admitted.
3. Denied in part. It is denied that the property of Defendant is the servient tenement of the easement for the benefit of property owned by the Plaintiff. In further answer, it is specifically denied that any easement exists or was ever granted or reserved through any part of the lands owned by the Defendant for access to the property of the Plaintiff.
4. Admitted.
5. (a) Admitted.

- (b) Admitted.
- (c) Admitted.
- (d) Admitted.
- (e) Admitted. In further answer, this was a portion of the property owned by Lars Josephson, et ux., who had acquired all of Purpart No. 1 of the Frederick Nebel lands, part of which bounded the public road and provided access for the property owned by Plaintiff's predecessors in title and entitled Plaintiff's predecessors in title to an easement through their land by necessity to the land acquired by Plaintiff.
- (f) Admitted.
- (g) Admitted.
- (h) Admitted.
- (i) Admitted.
- (j) Admitted.
- (k) Admitted. In further answer, the deed for property of the Defendant was acquired in 1851 and 1855, from Francis Roopley, et ux., and Frederick Nebel, et ux., without any reservation for any access in the deeds to other lands of Frederick Nebel since these other lands, including a portion of Purpart No. 1, out of which Plaintiff's land was derived, bordered the public road.

6. (a) Admitted.

(b) Admitted.

(c) Admitted.

(d) Admitted. In further answer, when said property was further subdivided by Lars Josephson and Maria Josephson, it is believed and averred that they would or should have provided a right-of-way through the remaining parcel of land that was bounded by the public road.

(e) Admitted.

(f) Admitted.

(g) Admitted.

(h) Admitted.

7. Admitted. In further answer, the deeds for property of the Defendant was acquired in 1851 and 1855, from Francis Roopley, et ux., and Frederick Nebel, et ux., without any reservation of any access to other land of Frederick Nebel because a large portion of the residue of his land bordered the public road.

8. Admitted.

9. Denied. It is denied that the map shows the outline of a road through lands then owned by the Benedictine Society. On the contrary, the Benedictine Society owned the property prior to the partition of the Estate of Frederick Nebel property and

no right-of-way was ever granted by Defendant's predecessors in title to property in Purparts #1 and #5.

10. Denied. Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief to the truth of this averment and strict proof thereof is demanded at trial.

11. Admitted. In further answer, the map in the Caldwell Atlas fails to indicate distances to determine whether said house is located as claimed by Plaintiff and clearly only shows a public road. Furthermore, the house represented as owned by Mrs. C. Nebel is believed to have been sold by Catharine Nebel as Administratrix of the Estate of Frederick Nebel, by deed dated January 1, 1873 and recorded in Deed Book 15, page 158.

12. (a) Admitted.

(b) Admitted.

13. Admitted.

14. Denied as stated. It is denied that a map shows a road right-of-way across lands owned by the Benedictine Society. On the contrary, the purported road indicates that access was obtained from the southern portion of Purpart #1 and the northern portion of the Benedictine Society; however, none of the deeds for this subdivision grant any right-of-way, nor was there any Deed of Record or Agreement from the Benedictine Society granting any type of right-of-way through, across or along the

border of their land.

15. Denied as stated. It is denied that any road or right-of-way formally existed in any Deed or other instrument of record; therefore, there was no necessity to formally close a right that did not exist. On the contrary, Plaintiff bases his claim on a map dated April 22 and April 23 of 1886, without any documentation that said dotted line was anything more than a consensual access that would have expired upon the division of the Frederick Nebel property. Furthermore, Clearfield County assessment records fail to indicate that any building existed on the land of Frederick Nebel after 1885.

16. Denied. It is denied that there was any right-of-way indicated on the map found in the Assessment Office as attached to Plaintiff's Complaint as Exhibit "C". On the contrary, Defendant has attached to this Answer the latest assessment map marked Defendant's Exhibit "I" clearly showing that no right-of-way exists through the land of the Defendant.

17. Denied. Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief to the truth of this averment and strict proof thereof is demanded at trial.

18. Denied. It is denied that any access through the property owned by the Defendant represents the only access to property owned by Plaintiff. On the contrary, access to the property of the Defendant can be acquired from adjacent property owners;

more particularly, Plaintiff's predecessors in title or their successors or assigns, who retained a portion of Purpart #1 bounding the public road. The access attempted to be acquired by the Plaintiff is through the center of a cemetery, which is clearly not part of the "access roads or lanes" that are shown on any of the maps provided by Plaintiff.

Furthermore, in the Commonwealth of Pennsylvania, 9 P.S., § 8 provides that it is unlawful "to open any street, lane, alley ... through any burial ground or cemetery" without the consent of the owner or person controlling the premises.

19. Denied. It is denied that Plaintiff or his predecessors in title, have used any access through the cemetery for any continuous or uninterrupted period. On the contrary, a visit to Defendant's land will show that there is no access through the cemetery to land of the Plaintiff

20. Denied. It is denied that Plaintiff's property is without access to any other roads except for the use of Defendant's land. On the contrary, Plaintiff's predecessor in title, specifically, Joseph Schnell owned all of Purpart No. 1 of the Frederick Nebel Estate which he subdivided, creating the two (2) parcels owned by Plaintiff and retaining the residue that had access to the public road clearly creating a "way of necessity" for land of Plaintiff through the residue of land of Joseph Schnell.

COUNT – I

21. No response required.

22. Denied. It is denied that any right-of-way or easement was granted by the

Partition of the property by Frederick Nebel found in the Estate File No. 755 mentioned above. On the contrary, the Benedictine Society acquired their property in 1855, according to the records provided by Plaintiff in his Complaint and the Partition for the property Frederick Nebel took place in 1888; therefore, neither Frederick Nebel, nor his heirs or assigns had any authority or right to grant any right-of-way or easement through property they did not own and there is no record that any permission or reservation in any deeds from Frederick Nebel, his heirs or assigns was ever reserved when the property was sold to the Benedictine Society in 1851 and 1855.

COUNT – II

23. No response required.

24. Denied. It is denied that Plaintiff and/or his predecessors in title have created an easement by prescription and are entitled to its use. On the contrary, neither Plaintiff nor his predecessors in title have used the road in the cemetery for access to the property of the Plaintiff.

COUNT – III

25. No response required.

26. Denied. It is denied that no other easement exists to allow access to the Plaintiff's property or that Defendant's property was included in the larger tract of which Plaintiff's land was a part. On the contrary, Defendant's property was owned by Francis Roopley and Frederick Nebel and was conveyed in 1851 and 1855 to

Defendant's predecessors in title while the property of which Plaintiff's was a part was not sold by the Heirs of Frederick Nebel until 1885.

WHEREFORE, Defendant respectfully requests that your Plaintiff's Complaint be dismissed and that Plaintiff be ordered to pay Defendant's reasonable counsel fees.

NEW MATTER

27. The averments set forth in Defendant's Answer to paragraphs one (1) through twenty-six (26) are incorporated herein as though set forth in full.

28. Plaintiff does not have any claim for an easement over land of Defendant by either any alleged easement or any other prescriptive right.

29. It has long been the law of this Commonwealth that "it shall not be lawful to open any street, lane, alley or public road, through any burial ground or cemetery without the consent of the property owner".

30. Neither Defendant nor his predecessors in title have ever given consent to either Plaintiff nor any of his predecessors in title for an easement through the cemetery to his property.

31. Plaintiff filed a previous Complaint in Clearfield County, to Number 02-659-CD, setting forth the same claims which were subsequently withdrawn by the Plaintiff.

32. It is believed that Plaintiff filed his complaint without any basis the first time and with this second filing has caused Defendant to unreasonably incur legal fees

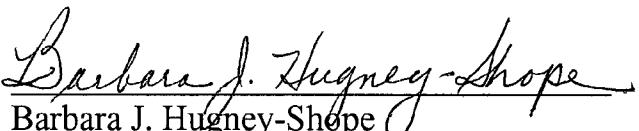
in order to defend this action.

33. Defendant believes and avers that Plaintiff was fully aware that this property was landlocked when he purchased it and that he would have to proceed by requesting a board of view to obtain access.

34. Plaintiff, rather than proceeding as required by law to secure an easement, attempts to obtain access by claiming a non-existent easement when he knows full well, that no such easement existed.

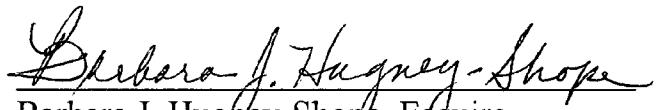
35. Defendant respectfully requests that Plaintiff be required to reimburse Defendant for reasonable attorneys' fees.

WHEREFORE, Defendant respectfully requests your Honorable Court to grant Defendant's New Matter and enter an Order requiring Plaintiff to pay Defendant's reasonable counsel fees.


Barbara J. Hugney-Shope
Attorney for Defendant

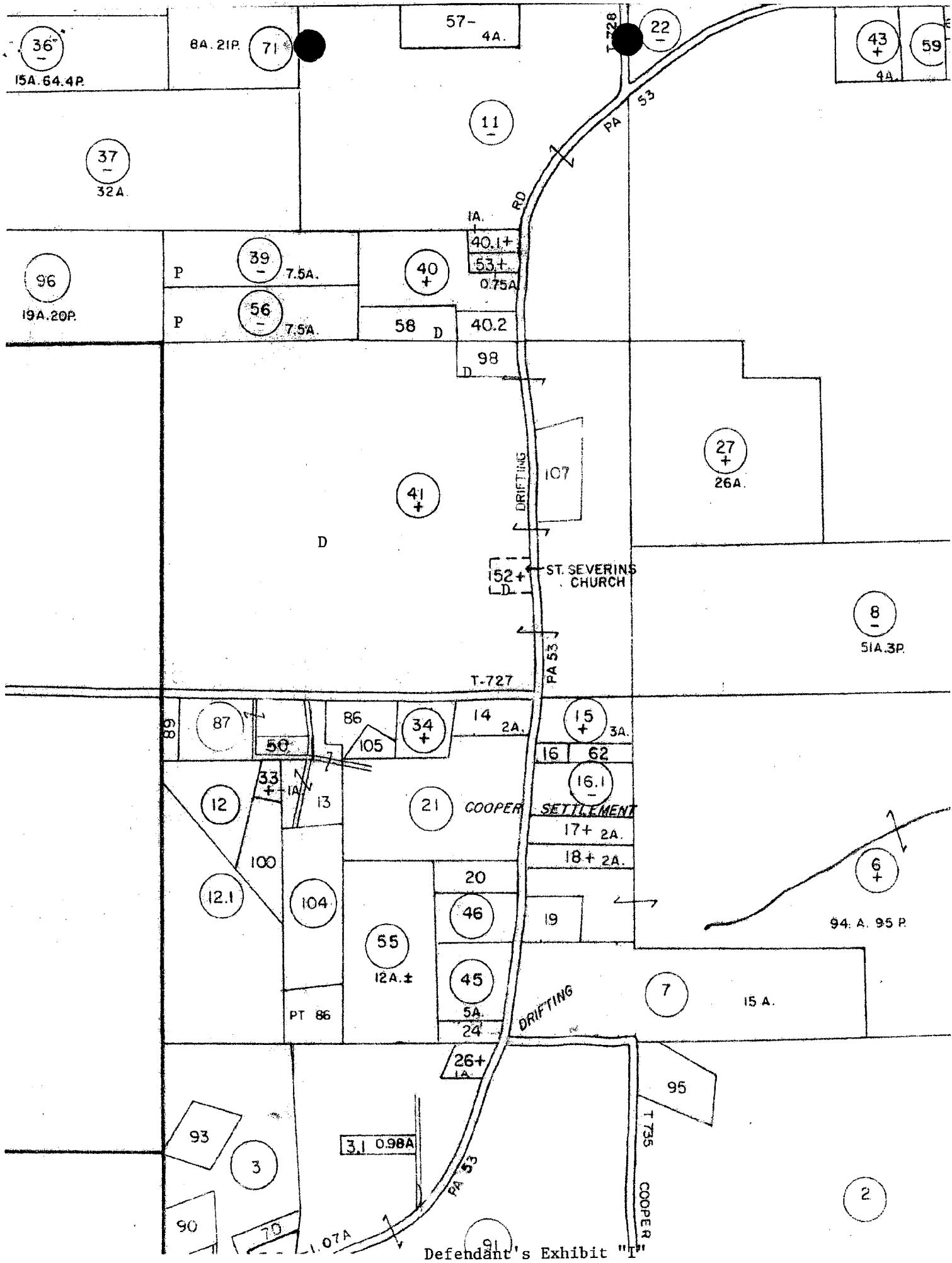
VERIFICATION

I, BARBARA J. HUGNEY-SHOPE, ESQUIRE, Attorney for THE MOST REVEREND DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, PENNSYLVANIA, Defendant, state that I am acquainted with the facts set forth in the foregoing Answer and New Matter, and that the same are true and correct to the best of my knowledge, information and belief. I further state that this Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities, and in furtherance of judicial expedience because the client is unavailable to execute a Verification in time to file this pleading, I am making this verification in order to expedite the pleading. A Verification executed by the Respondent will be filed if requested.



Barbara J. Hugney-Shope
Barbara J. Hugney-Shope, Esquire

Dated: October 30, 2006



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

EDGAR L. ENGLISH,
Plaintiff

vs.

**MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,**
Defendant

*
*
*
* NO. 06-1331-CD
*

* Type of Case: CIVIL

* Type of Pleading: ENTRY OF APPEARANCE

* Filed on behalf of: DEFENDANT,
* MOST REVEREND DONALD W.
* TRAUTMAN, BISHOP OF THE ROMAN
* CATHOLIC DIOCESE OF ERIE,
* PENNSYLVANIA

* Counsel of Record for DEFENDANT,
* BARBARA J. HUGNEY-SHOPE, ESQ.
* Supreme Court I. D. No. 26274
* 23 North Second Street
* Clearfield, PA 16830
* (814) 765-5155

FILED 3cc
010-13-01 Atty Shope
SEP 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

#3

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

**EDGAR L. ENGLISH,
PLAINTIFF**

vs.

**MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA,
DEFENDANT**

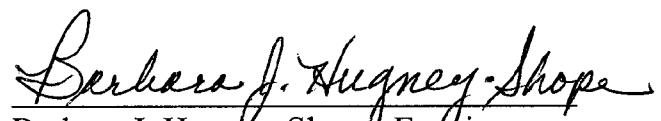
*
*
*
* NO. 06-1331-CD
*

* Type of Case: CIVIL

ENTRY OF APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Please enter my appearance as attorney of record for THE MOST REVEREND
DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF
ERIE, PENNSYLVANIA, Defendant in the above-captioned action.


Barbara J. Hugney-Shope, Esquire
23 North Second Street
Clearfield, PA 16830
(814) 765-5155

Dated: September 22, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101838
NO: 06-1331-CD
SERVICE # 1 OF 1
COMPLAINT IN EJECTMENT

PLAINTIFF: EDGAR L. ENGLISH
vs.
DEFENDANT: MOST REVEREND DONALD W. TRAUTMAN

SHERIFF RETURN

NOW, August 22, 2006, SHERIFF OF ERIE CO. COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT IN EJECTMENT ON MOST REVEREND DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE.

NOW, August 30, 2006 AT 4:00 PM SERVED THE WITHIN COMPLAINT IN EJECTMENT ON MOST REVEREND DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, DEFENDANT. THE RETURN OF ERIE CO. COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED
92:52 AM
SEP 06 2006

William A. Shaw
Prothonotary/Clerk of Courts

42

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101838
NO: 06-1331-CD
SERVICES 1
COMPLAINT IN EJECTMENT

PLAINTIFF: EDGAR L. ENGLISH
VS.
DEFENDANT: MOST REVEREND DONALD W. TRAUTMAN

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	GEARHART	8435	10.00
SHERIFF HAWKINS	GEARHART	8435	21.00
ERIE CO.	GEARHART	8436	58.00

Sworn to Before Me This

So Answers,

____ Day of _____ 2006


Chester A. Hawkins
Sheriff

SHERIFF'S RETURN - REGULAR

CASE NO: 2005-01331

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF ERIEEDGAR L ENGLISH

VS

MOST REV DONALD W TRAUTMANSGT. KEN STAFAF, Deputy Sheriff of ERIE

County, Pennsylvania, who being duly sworn according to law,
says, the within COMPLAINT IN EJECMENT was served upon
TRAUTMAN DONALD W, MOST REV the
DEFENDANT, at 1600:00 Hour, on the 30th day of August, 2006
at QUINN FIRM 2222 WEST GRANDVIEW BLVD.
ERIE, PA 16506 by handing to
MAGGIE MERRITT, PERSON IN CHARGE

a true and attested copy of COMPLAINT IN EJECMENT together withand at the same time directing Her attention to the contents thereof.

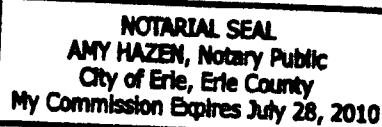
So Answers:

Sheriff's Costs:

Docketing	.00
Service	.00
Affidavit	.00
Surcharge	.00
	.00
	.00
	00/00/0000

Bob Merski
Bob Merski, Sheriff of Erie County
By Ken Stafa
Deputy Sheriff

Sworn and Subscribed to before

me this 31st day ofAugust A.D.Amy Hazen
Notary



**Sheriff's Office
Clearfield County**

CHESTER A. HAWKINS
SHERIFF

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986

FAX (814) 765-5915

ROBERT SNYDER

CHIEF DEPUTY

MARILYN HAMM

DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

KAREN BAUGHMAN
CLERK TYPIST

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 101838

TERM & NO. 06-1331-CD

EDGAR L. ENGLISH

COMPLAINT IN EJECTMENT

VS.

MOST REVEREND DONALD W. TRAUTMAN

SERVE BY: 09/20/06

MAKE REFUND PAYABLE TO R. Denning Gearhart, Esq..

SERVE: MOST REVEREND DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE

ADDRESS: 429 EAST GRANDVIEW BLVD., PO BOX 10397, ERIE, PA 16514

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF ERIE CO. COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, August 22, 2006.

RESPECTFULLY,

A handwritten signature in black ink, appearing to read "Chester A. Hawkins".

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

RECEIPT FOR PAYMENT

=====

Erie County Pennsylvania
140 West Sixth St - 4th Floor
Erie, PA 16501-1077

Receipt Date 08/24/2006
Receipt Time 12:18:31
Receipt No. 185558

EDGAR L ENGLISH (VS) MOST REV DONALD W TRAUTMAN

Case Number 2005-01331 M
Service Info
Remarks PD BY R DENNING GEARHART
K.C.

Total Check...	+	58.00	Number ..	8436
Total Cash....	+	.00		
Cash Out.....	-	<hr/> .00		
Receipt total.	=	58.00		

----- Distribution Of Payment -----

Transaction Description	Payment Amount	
SHERIFF FEES	58.00	TREASURER OF ERIE COUNTY
	<hr/> 58.00	

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

EDGAR L. ENGLISH,
Plaintiff

vs.

No. 2006- 1331 -CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF ERIE,
PENNSYLVANIA,
Defendant

CASE NUMBER: No. 2006- -CD

TYPE OF CASE: Civil/Ejectment Action

TYPE OF PLEADING: COMPLAINT IN EJECTMENT

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
814-765-1581

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

AUG 21 2006

Attest.

William L. Bissell
Prothonotary/
Clerk of Courts

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

EDGAR L. ENGLISH,
Plaintiff

vs.

No. 2006- -CD

MOST REVEREND DONALD W.
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PENNSYLVANIA,
Defendant

NOTICE TO DEFEND

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

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

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

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

EDGAR L. ENGLISH, :
Plaintiff :
vs. : No. 2006-CD
MOST REVEREND DONALD W. :
TRAUTMAN, BISHOP OF THE :
ROMAN CATHOLIC DIOCESE OF ERIE, :
PENNSYLVANIA, :
Defendant :
:

COMPLAINT IN EJECTMENT

AND NOW, comes Plaintiff, by and through his attorney, R. Denning Gearhart, Esq., who avers as follows:

1. That Plaintiff, EDGAR L. ENGLISH, is an adult individual, residing at 115 Laurel Hill Drive, Philipsburg, Centre County, Pennsylvania 16866.
2. That the Defendant is the MOST REVEREND DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, PENNSYLVANIA, with the office of the Vicar General situate at 429 East Grandview Blvd., P. O. Box 10397, Erie, Pennsylvania 16514-0397.
3. That the Defendant named in Item 2 above maintains a church known as St. Severin Catholic Church, Drifting, Clearfield County, Pennsylvania. As such, the Defendant is the owner and possessor of a certain parcel of property located in Cooper Township, Clearfield County, Pennsylvania, and adjoining the property of the Plaintiff. The property of the Defendant is the servient tenement of the easement which is the subject of this suit.

4. That the Plaintiff is the owner of a piece of property situate in Cooper Township, Clearfield County, Pennsylvania, purchased from Marvin E. Dawkins and Gertrude G. Dawkins, his wife, by deed dated September 23, 2000, and recorded in the Office of the Recorder of Deeds of Clearfield County at Instrument No. 200014410, and identified as Clearfield County Tax Map # 110-T07-000-56, and Clearfield County Tax Map #110-T07-000-39.

5. That Tax Map #110-T07-000-56 has the following chain of title:

(a) That the former owners, Marvin E. Dawkins and Gertrude G. Dawkins, became owners of this property by virtue of a deed from Michael James Zetts, dated August 15, 1984, and recorded in the Office of the Recorder of Deeds of Clearfield County, in Deed Book Vol. 977, Page 379.

(b) That Michael James Zetts purchased this property from the Clearfield County Commissioners at a private sale, being property formerly assessed in the name of Michael Zetts, and sold by Decree dated December 10, 1951, under proceeding filed to No. 459 November Term, 1951.

(c) That by Deed from the Treasurer's of Clearfield County to the Commissioner's of Clearfield County, dated April 24, 1950, the property assessed in the name of Michael Zetts, situate in Cooper Township, Clearfield County, Pennsylvania, was sold to the County. Said deed was recorded on January 25, 1952, and was recorded in Clearfield County Deed Book Vol. 361, Page 546.

(d) That Michael Zetts was deeded this property by deed from Martin E. Swanson, single, dated December 11, 1939, and recorded on December 15, 1939, in Clearfield County Deed Book Vol. 326, Page 150.

(e) That Martin E. Swanson was vested in this property by deed from Lars Josephson and Maria Josephson, his wife, dated July 12, 1932, and recorded on November 5, 1932, in Clearfield County Deed Book Vol. 305, Page 98.

(f) That Lars Josephson and Maria Josephson acquired a larger piece of property from Joseph Schnell by deed dated April 15, 1912, and recorded in Clearfield County Deed Book Vol. 191, Page 167.

(g) That Joseph Schnell acquired a piece of property from John Schnell and Mary A. Schnell by deed dated June 5, 1902, and recorded in Clearfield County Deed Book Vol. 129, Page 210.

(h) That John Schnell acquired said property by deed from Joseph Schnell, dated July 13, 1898, and recorded in Clearfield County Deed Book Vol. 100, Page 279.

(i) That Joseph Schnell acquired a piece of property consisting of twenty-four acres and twenty-five perches from Josephine Raymond and A. W. Raymond, her husband, dated February 17, 1896, and recorded in Clearfield County Deed Book Vol. 91, Page 185. This deed indicates that this property is Purpart Number 1 of the Frederick Nebel Estate. (Clearfield County Estate File No. 755)

(j) That Josephine Raymond acquired said property through an Assignment of Deed, from A. D. Johnson, said Assignment being dated the (blank) day of (blank), 1887, and recorded in Clearfield County Deed Book Vol. 80, Page 177.

(k) That said A. D. Johnson acquired said property through a deed from A. W. Raymond, Trustee of the Estate of Frederick K. Nebel, dated September 29, 1887, and recorded in Clearfield County Deed Book Vol. 80, Page 173.

6. That Tax Map #110-T07-000-39 has the following chain of title:

(a) That the former owner, Marvin E. Dawkins, obtained this property by deed from Michael James Zetts dated August 15, 1984, and recorded in Clearfield County Deed Book Vol. 977, Page 381.

(b) Michael James Zetts obtained this property, together with his wife, Lorraine Zetts, by deed from Andrew J. Zetts and Georgia V. Zetts, his wife, dated December 20, 1951, and recorded in Clearfield County Deed Book Vol. 418, Page 160.

(c) That Andrew J. Zetts acquired this property from Martin E. Swanson by deed dated December 11, 1939, and recorded in Clearfield County Deed Book Vol. 326, Page 149.

(d) That Martin E. Swanson acquired this property as part of a larger piece of property from Lars Josephson and Maria Josephson by deed dated July 12, 1932, and recorded in Clearfield County Deed Book Vol. 305, Page 98.

(e) That Lars Josephson and Maria Josephson acquired the larger piece of property from Joseph Schnell by deed dated April 15, 1912, and recorded in Clearfield

County Deed Book Vol. 191, Page 167.

(f) That Joseph Schnell acquired a piece of property from John Schnell and Mary A. Schnell by deed dated June 5, 1902, and recorded in Clearfield County Deed Book Vol. 129, Page 210.

(g) That John Schnell acquired said property by deed from Joseph Schnell, dated July 13, 1898, and recorded in Clearfield County Deed Book Vol. 100, Page 279.

(h) That Joseph Schnell acquired a piece of property consisting of twenty-four acres and twenty-five perches from Josephine Raymond and A. W. Raymond, her husband, by deed dated February 17, 1896, and recorded in Clearfield County Deed Book Vol. 91, Page 185. This deed indicates that this property is Purpart Number 1 of the Fredrick Nebel Estate. (Clearfield County Estate File No. 755)

That Josephine Raymond acquired said property through an Assignment of Deed, from A.D. Johnson, said Assignment being dated the (blank) day of (blank), 1887, and recorded in Clearfield County Deed Book Vol. 80, Page 173.

7. That the Deed mentioned in Items 5(i) and 6(h) above also indicates that A. W. Raymond, Trustee of the Estate of Frederick Nebel in pursuance of an Order of the Orphans Court of Clearfield County sold this property at Public sale by Deed dated September 29, 1889, to H. D. Johnson, which said deed is recorded in the Recorder's Office of Clearfield County in Deed Book Vol. 80, Page 173. And the said H. D. Johnson and Sophie Johnson, his wife, by Assignment on said Deed recorded in Deed Book Vol. 80, Page 177, conveyed the property to Josephine Raymond.

8. That the Order of the Orphans Court in the Estate of Frederick Nebel can be found in the records of the Office of the Register of Wills of Clearfield County, at Estate File No. 775. That the Order of Court authorizes the partition of this property into six (6) equal parts. That a map of said division of said properties can be found in the records of the Estate of Frederick Nebel at the file number stated above. A copy of said map is attached hereto as Exhibit "A".

9. Said Map shows the outline of a road through the lands then owned by the Benediction Society, and thence along what was Purpart No. 1; thence through Purpart #1 to Purpart #5, where the map indicates that a house and barn existed. It is believed and, therefore, averred that the parcels owned by the Plaintiff is located in the Western portion of Purpart #1, with the aforementioned right-of-way passing through his lots.

10. By further reference, the Caldwell Atlas of 1878 shows a home North of the Catholic Church that is owned by Mrs. Nevel. It is believed that this home is the house and barn referred to in Purpart #5. A copy of the Caldwell Atlas of 1878 is attached hereto as Exhibit "B".

11. That the Defendant is the owner of two (2) pieces of property situate in Cooper Township, Clearfield County, Pennsylvania, and identified as Clearfield County Tax Map #110-T07-000-98, and Clearfield County Tax Map #110-T07-000-58.

12. That the first property owned by the Defendant is Tax Map #110-T07-000-98, and it has the following chain of title:

(a) The present deed is a deed from The Benedictine Society of Westmoreland County, Pennsylvania, to Josurah Maria Young, Roman Catholic Bishop of the Diocese of Erie Co., dated October 5, 1864, and recorded in Clearfield County Deed Book Vol. "X", at Page 29.

(b) The Benedictine Society of Westermoreland County, Pennsylvania, obtained this property by deed from Francis Rooply, and his wife, Elizabeth Rooply, and Frederick Nebel and Catharine Nebel, his wife, dated June 9, 1855, and recorded in Clearfield County Deed Book Vol. "P", Page 716.

13. That the second property owned by the Defendant is Tax Map #110-T07-000-58, and it has the following chain of title:

(a) The present deed is a deed from Francis Roopley and Elizabeth Roopley, his wife, and Frederick Nebel and Catherine Nebel, his wife, to the Right Reverend Michael O'Connor Roman Catholic Bishop of Pittsburg (spelling on deed), dated September 2, 1851, and recorded in Clearfield County Deed Book Vol. "N", Page 634.

14. As stated in Item 8 above, a map found in the Estate of Frederick Nebel shows a road or right-of-way across lands owned by the Lands of the Benediction Society, being lands identified as Clearfield Tax Parcel #110-T07-000-58 and Tax Parcel # 110-T07-000-98. (The road is indicated in yellow on Map attached as Exhibit "A".)

15. That road or right-of-way was never formally closed by Deed or other instrument of record.

16. Further, that road or right-of-way is indicated on a map found in the Assessment Office of Clearfield County, Pennsylvania, a copy of which is attached hereto as Exhibit "C", with the property of the Plaintiff identified with the letter "P", and the property of the Defendant indicated with the letter "D".

17. At one time there existed a house on the Plaintiff's property.

18. This road or right-of-way is the only access to the property owned by the Plaintiff.

19. Further, Plaintiff, or his predecessors in title, have used this road or right-of-way in a manner that was open, visible, notorious, uninterrupted and continuous for a period in excess of twenty-one (21) years.

20. That Plaintiff's property is without access to any other roads except for the use of the road or right-of-way in question.

COUNT I

21. Paragraphs one (1) through twenty (20) are incorporated herein as though set forth in full.

22. That the right-of-way or easement in question was granted by the Partition of the property by Frederick Nebel found in the Estate File No. 755 mentioned above.

WHEREFORE, Plaintiff prays your Honorable Court to find that the right-of-way or easement exists and to allow the continued use of the right-of-way or easement by the Plaintiff and to enter an Order prohibiting the Defendant from obstructing this right-of-way.

COUNT II

EASEMENT BY PRESCRIPTION

23. Paragraphs one (1) through twenty-two (22) are incorporated herein as though set forth in full.

24. Plaintiff and/or his predecessors in title have created an easement by prescription and are entitled to its use.

WHEREFORE, Plaintiff prays your Honorable Court to find that an easement exists to allow the Plaintiff continued use of the right-of-way, and to prohibit the Defendant, or its successors in title, from obstructing said easement.

COUNT III

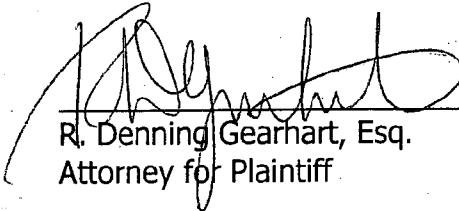
EASEMENT BY NECESSITY

25. Paragraphs one (1) through twenty-four (24) are incorporated herein as though set forth in full.

26. That no other easement exists to allow access to the Plaintiff's property which was once part of a larger tract which included the Defendant's property.

WHEREFORE, Plaintiff prays your Honorable Court to find that an easement exists to allow the Plaintiff continued use of the right-of-way, and to prohibit the Defendant, or its successors in title, from obstructing said easement.

Respectfully submitted,



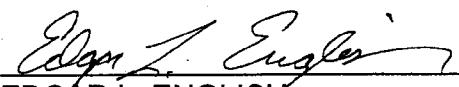
R. Denning Gearhart, Esq.
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA

SS.

COUNTY OF CLEARFIELD

Before me, the undersigned officer, a Notary Public in and for the above named State and County, personally appeared EDGAR L. ENGLISH, who being duly sworn according to law deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.


EDGAR L. ENGLISH

Sworn to and subscribed

before me, this 18

day of August, 2006.

Kathleen A. Ricotta

Notary Public

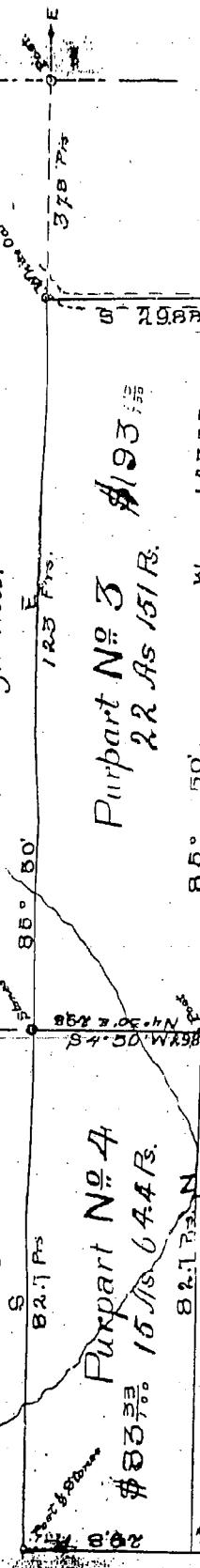
Commonwealth of Pennsylvania

NOTARIAL SEAL

KATHLEEN A. RICOTTA, Notary Public
Clearfield Boro., County of Clearfield
My Commission Expires June 15, 2009

Jacob Raymond.

605 Raymond.



Purpart No. 4
\$ 83 1/3 15 1/2 6 4/4 P.s.

Purpart No. 3
22 A. 15 1/2 P.s.

\$ 2.98 P.s.

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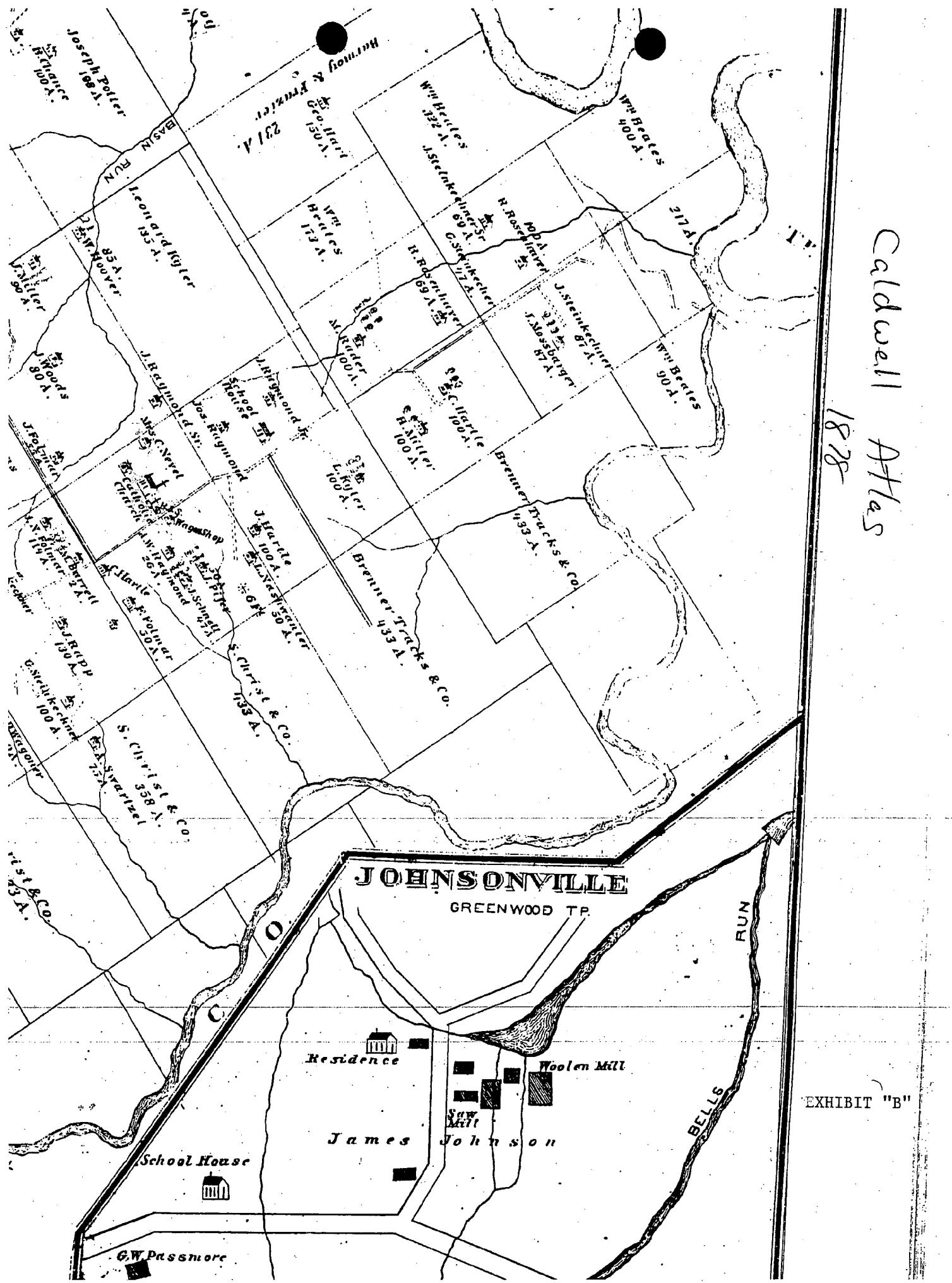
85° 50' S. Lat.

Caldwell Atlas

881

JOHNSONVILLE

EXHIBIT "B"



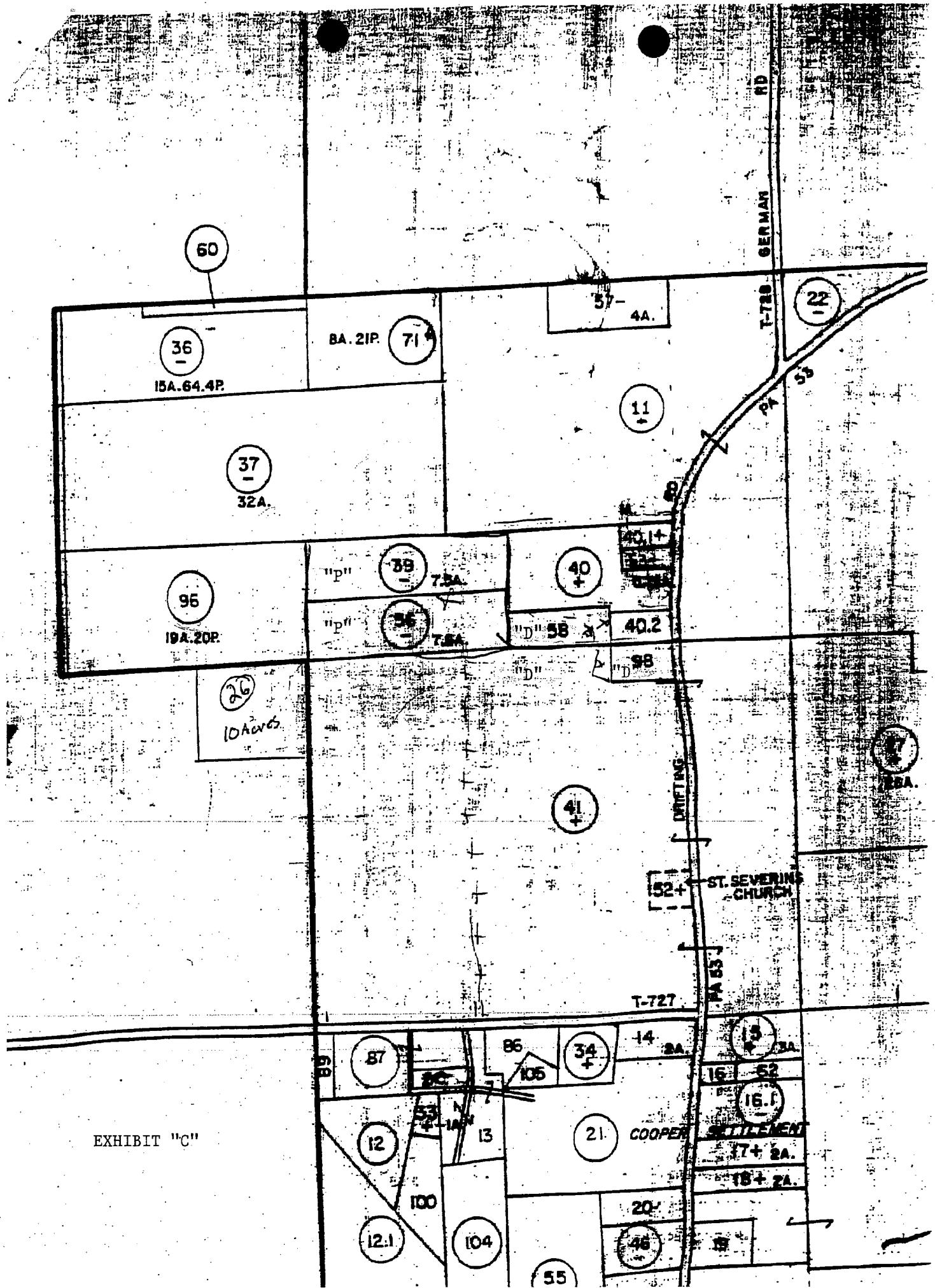


EXHIBIT "C"

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

EDGAR L. ENGLISH,
Plaintiff

vs. No. 2006-1331 -CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF ERIE,
PENNSYLVANIA,
Defendant

CASE NUMBER: No. 2006 -CD

TYPE OF CASE: Civil/Ejectment Action

TYPE OF PLEADING: COMPLAINT IN EJECTMENT

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
814-765-1581

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

AUG 21 2006

Attest.

William J. Scherzer
Prothonotary/
Clerk of Courts

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

EDGAR L. ENGLISH,
Plaintiff

vs.

No. 2006-

-CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF ERIE,
PENNSYLVANIA,
Defendant

NOTICE TO DEFEND

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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's Office
Clearfield County Courthouse
Clearfield, PA 16830
814-765-2641

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

EDGAR L. ENGLISH,
Plaintiff

vs. : No. 2006- -CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF ERIE,
PENNSYLVANIA,
Defendant

COMPLAINT IN EJECTMENT

AND NOW, comes Plaintiff, by and through his attorney, R. Denning Gearhart, Esq., who avers as follows:

1. That Plaintiff, EDGAR L. ENGLISH, is an adult individual, residing at 115 Laurel Hill Drive, Philipsburg, Centre County, Pennsylvania 16866.
2. That the Defendant is the MOST REVEREND DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, PENNSYLVANIA, with the office of the Vicar General situate at 429 East Grandview Blvd., P. O. Box 10397, Erie, Pennsylvania 16514-0397.
3. That the Defendant named in Item 2 above maintains a church known as St. Severin Catholic Church, Drifting, Clearfield County, Pennsylvania. As such, the Defendant is the owner and possessor of a certain parcel of property located in Cooper Township, Clearfield County, Pennsylvania, and adjoining the property of the Plaintiff. The property of the Defendant is the servient tenement of the easement which is the subject of this suit.

4. That the Plaintiff is the owner of a piece of property situate in Cooper Township, Clearfield County, Pennsylvania, purchased from Marvin E. Dawkins and Gertrude G. Dawkins, his wife, by deed dated September 23, 2000, and recorded in the Office of the Recorder of Deeds of Clearfield County at Instrument No. 200014410, and identified as Clearfield County Tax Map # 110-T07-000-56, and Clearfield County Tax Map #110-T07-000-39.

5. That Tax Map #110-T07-000-56 has the following chain of title:

(a) That the former owners, Marvin E. Dawkins and Gertrude G. Dawkins, became owners of this property by virtue of a deed from Michael James Zetts, dated August 15, 1984, and recorded in the Office of the Recorder of Deeds of Clearfield County, in Deed Book Vol. 977, Page 379.

(b) That Michael James Zetts purchased this property from the Clearfield County Commissioners at a private sale, being property formerly assessed in the name of Michael Zetts, and sold by Decree dated December 10, 1951, under proceeding filed to No. 459 November Term, 1951.

(c) That by Deed from the Treasurer's of Clearfield County to the Commissioner's of Clearfield County, dated April 24, 1950, the property assessed in the name of Michael Zetts, situate in Cooper Township, Clearfield County, Pennsylvania, was sold to the County. Said deed was recorded on January 25, 1952, and was recorded in Clearfield County Deed Book Vol. 361, Page 546.

(d) That Michael Zetts was deeded this property by deed from Martin E. Swanson, single, dated December 11, 1939, and recorded on December 15, 1939, in Clearfield County Deed Book Vol. 326, Page 150.

(e) That Martin E. Swanson was vested in this property by deed from Lars Josephson and Maria Josephson, his wife, dated July 12, 1932, and recorded on November 5, 1932, in Clearfield County Deed Book Vol. 305, Page 98.

(f) That Lars Josephson and Maria Josephson acquired a larger piece of property from Joseph Schnell by deed dated April 15, 1912, and recorded in Clearfield County Deed Book Vol. 191, Page 167.

(g) That Joseph Schnell acquired a piece of property from John Schnell and Mary A. Schnell by deed dated June 5, 1902, and recorded in Clearfield County Deed Book Vol. 129, Page 210.

(h) That John Schnell acquired said property by deed from Joseph Schnell, dated July 13, 1898, and recorded in Clearfield County Deed Book Vol. 100, Page 279.

(i) That Joseph Schnell acquired a piece of property consisting of twenty-four acres and twenty-five perches from Josephine Raymond and A. W. Raymond, her husband, dated February 17, 1896, and recorded in Clearfield County Deed Book Vol. 91, Page 185. This deed indicates that this property is Purpart Number 1 of the Frederick Nebel Estate. (Clearfield County Estate File No. 755)

(j) That Josephine Raymond acquired said property through an Assignment of Deed, from A. D. Johnson, said Assignment being dated the (blank) day of (blank), 1887, and recorded in Clearfield County Deed Book Vol. 80, Page 177.

(k) That said A. D. Johnson acquired said property through a deed from A. W. Raymond, Trustee of the Estate of Frederick K. Nebel, dated September 29, 1887, and recorded in Clearfield County Deed Book Vol. 80, Page 173.

6. That Tax Map #110-T07-000-39 has the following chain of title:

(a) That the former owner, Marvin E. Dawkins, obtained this property by deed from Michael James Zetts dated August 15, 1984, and recorded in Clearfield County Deed Book Vol. 977, Page 381.

(b) Michael James Zetts obtained this property, together with his wife, Lorraine Zetts, by deed from Andrew J. Zetts and Georgia V. Zetts, his wife, dated December 20, 1951, and recorded in Clearfield County Deed Book Vol. 418, Page 160.

(c) That Andrew J. Zetts acquired this property from Martin E. Swanson by deed dated December 11, 1939, and recorded in Clearfield County Deed Book Vol. 326, Page 149.

(d) That Martin E. Swanson acquired this property as part of a larger piece of property from Lars Josephson and Maria Josephson by deed dated July 12, 1932, and recorded in Clearfield County Deed Book Vol. 305, Page 98.

(e) That Lars Josephson and Maria Josephson acquired the larger piece of property from Joseph Schnell by deed dated April 15, 1912, and recorded in Clearfield

County Deed Book Vol. 191, Page 167.

(f) That Joseph Schnell acquired a piece of property from John Schnell and Mary A. Schnell by deed dated June 5, 1902, and recorded in Clearfield County Deed Book Vol. 129, Page 210.

(g) That John Schnell acquired said property by deed from Joseph Schnell, dated July 13, 1898, and recorded in Clearfield County Deed Book Vol. 100, Page 279.

(h) That Joseph Schnell acquired a piece of property consisting of twenty-four acres and twenty-five perches from Josephine Raymond and A. W. Raymond, her husband, by deed dated February 17, 1896, and recorded in Clearfield County Deed Book Vol. 91, Page 185. This deed indicates that this property is Purpart Number 1 of the Fredrick Nebel Estate. (Clearfield County Estate File No. 755)

That Josephine Raymond acquired said property through an Assignment of Deed, from A.D. Johnson, said Assignment being dated the (blank) day of (blank), 1887, and recorded in Clearfield County Deed Book Vol. 80, Page 173.

7. That the Deed mentioned in Items 5(i) and 6(h) above also indicates that A. W. Raymond, Trustee of the Estate of Frederick Nebel in pursuance of an Order of the Orphans Court of Clearfield County sold this property at Public sale by Deed dated September 29, 1889, to H. D. Johnson, which said deed is recorded in the Recorder's Office of Clearfield County in Deed Book Vol. 80, Page 173. And the said H. D. Johnson and Sophie Johnson, his wife, by Assignment on said Deed recorded in Deed Book Vol. 80, Page 177, conveyed the property to Josephine Raymond.

8. That the Order of the Orphans Court in the Estate of Frederick Nebel can be found in the records of the Office of the Register of Wills of Clearfield County, at Estate File No. 775. That the Order of Court authorizes the partition of this property into six (6) equal parts. That a map of said division of said properties can be found in the records of the Estate of Frederick Nebel at the file number stated above. A copy of said map is attached hereto as Exhibit "A".

9. Said Map shows the outline of a road through the lands then owned by the Benediction Society, and thence along what was Purpart No. 1; thence through Purpart #1 to Purpart #5, where the map indicates that a house and barn existed. It is believed and, therefore, averred that the parcels owned by the Plaintiff is located in the Western portion of Purpart #1, with the aforementioned right-of-way passing through his lots.

10. By further reference, the Caldwell Atlas of 1878 shows a home North of the Catholic Church that is owned by Mrs. Nevel. It is believed that this home is the house and barn referred to in Purpart #5. A copy of the Caldwell Atlas of 1878 is attached hereto as Exhibit "B".

11. That the Defendant is the owner of two (2) pieces of property situate in Cooper Township, Clearfield County, Pennsylvania, and identified as Clearfield County Tax Map #110-T07-000-98, and Clearfield County Tax Map #110-T07-000-58.

12. That the first property owned by the Defendant is Tax Map #110-T07-000-98, and it has the following chain of title:

(a) The present deed is a deed from The Benedictine Society of Westmoreland County, Pennsylvania, to Josurah Maria Young, Roman Catholic Bishop of the Diocese of Erie Co., dated October 5, 1864, and recorded in Clearfield County Deed Book Vol. "X", at Page 29.

(b) The Benedictine Society of Westermoreland County, Pennsylvania, obtained this property by deed from Francis Rooply, and his wife, Elizabeth Rooply, and Frederick Nebel and Catharine Nebel, his wife, dated June 9, 1855, and recorded in Clearfield County Deed Book Vol. "P", Page 716.

13. That the second property owned by the Defendant is Tax Map #110-T07-000-58, and it has the following chain of title:

(a) The present deed is a deed from Francis Roopley and Elizabeth Roopley, his wife, and Frederick Nebel and Catherine Nebel, his wife, to the Right Reverend Michael O'Connor Roman Catholic Bishop of Pittsburg (spelling on deed), dated September 2, 1851, and recorded in Clearfield County Deed Book Vol. "N", Page 634.

14. As stated in Item 8 above, a map found in the Estate of Frederick Nebel shows a road or right-of-way across lands owned by the Lands of the Benediction Society, being lands identified as Clearfield Tax Parcel #110-T07-000-58 and Tax Parcel # 110-T07-000-98. (The road is indicated in yellow on Map attached as Exhibit "A".)

15. That road or right-of-way was never formally closed by Deed or other instrument of record.

16. Further, that road or right-of-way is indicated on a map found in the Assessment Office of Clearfield County, Pennsylvania, a copy of which is attached hereto as Exhibit "C", with the property of the Plaintiff identified with the letter "P", and the property of the Defendant indicated with the letter "D".

17. At one time there existed a house on the Plaintiff's property.

18. This road or right-of-way is the only access to the property owned by the Plaintiff.

19. Further, Plaintiff, or his predecessors in title, have used this road or right-of-way in a manner that was open, visible, notorious, uninterrupted and continuous for a period in excess of twenty-one (21) years.

20. That Plaintiff's property is without access to any other roads except for the use of the road or right-of-way in question.

COUNT I

21. Paragraphs one (1) through twenty (20) are incorporated herein as though set forth in full.

22. That the right-of-way or easement in question was granted by the Partition of the property by Frederick Nebel found in the Estate File No. 755 mentioned above.

WHEREFORE, Plaintiff prays your Honorable Court to find that the right-of-way or easement exists and to allow the continued use of the right-of-way or easement by the Plaintiff and to enter an Order prohibiting the Defendant from obstructing this right-of-way.

COUNT II

EASEMENT BY PRESCRIPTION

23. Paragraphs one (1) through twenty-two (22) are incorporated herein as though set forth in full.

24. Plaintiff and/or his predecessors in title have created an easement by prescription and are entitled to its use.

WHEREFORE, Plaintiff prays your Honorable Court to find that an easement exists to allow the Plaintiff continued use of the right-of-way, and to prohibit the Defendant, or its successors in title, from obstructing said easement.

COUNT III

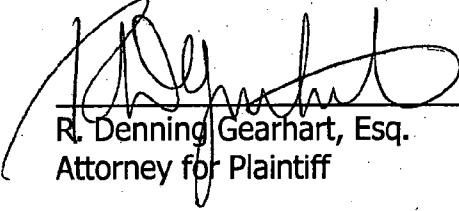
EASEMENT BY NECESSITY

25. Paragraphs one (1) through twenty-four (24) are incorporated herein as though set forth in full.

26. That no other easement exists to allow access to the Plaintiff's property which was once part of a larger tract which included the Defendant's property.

WHEREFORE, Plaintiff prays your Honorable Court to find that an easement exists to allow the Plaintiff continued use of the right-of-way, and to prohibit the Defendant, or its successors in title, from obstructing said easement.

Respectfully submitted,



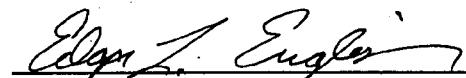
R. Denning Gearhart, Esq.
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA

SS.

COUNTY OF CLEARFIELD

Before me, the undersigned officer, a Notary Public in and for the above named State and County, personally appeared EDGAR L. ENGLISH, who being duly sworn according to law deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.



EDGAR L. ENGLISH

Sworn to and subscribed

before me, this 18

day of August, 2006.

Kathleen A. Ricotta

Notary Public

Commonwealth of Pennsylvania

NOTARIAL SEAL

KATHLEEN A. RICOTTA, Notary Public
Clearfield Boro., County of Clearfield
My Commission Expires June 15, 2009

Caldwell Address

2281

JOHNSONVILLE

GREENWOOD, JR.

KÜNSTLICH

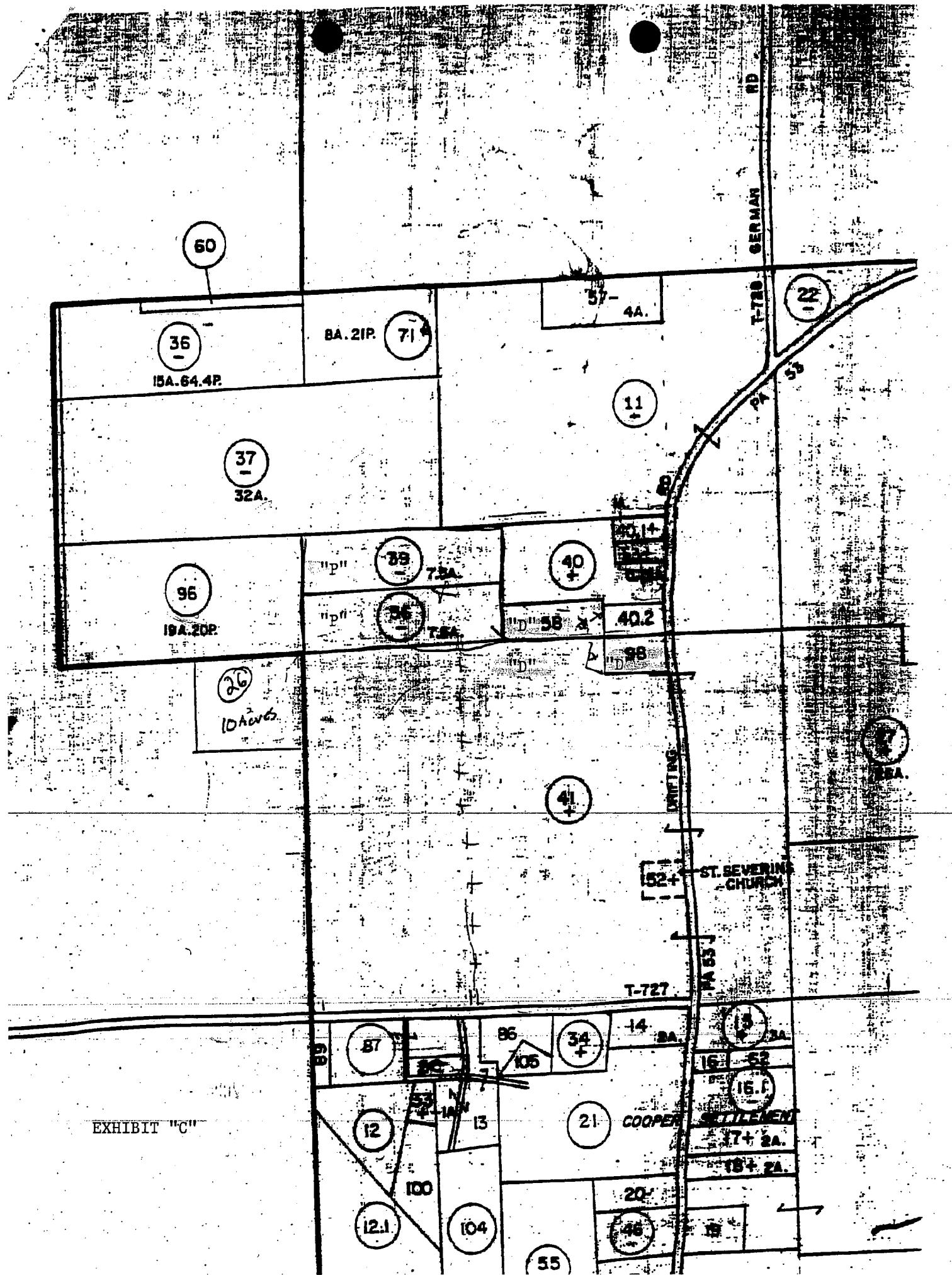
Woolen Mill

Johns on

School House

- G.W. Passmore

EXHIBIT "B"



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

EDGAR L. ENGLISH,
Plaintiff

vs.

No. 2006- 1331 -CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF ERIE,
PENNSYLVANIA,
Defendant

CASE NUMBER: No. 2006- -CD

TYPE OF CASE: Civil/Ejectment Action

TYPE OF PLEADING: COMPLAINT IN EJECTMENT

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
814-765-1581

FILED 500
08/21/06 Atty Gearhart
AUG 21 2006
Atty pd. 85.00
William A. Shaw
Prothonotary/Clerk of Courts

#F1

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

EDGAR L. ENGLISH,
Plaintiff

vs. : No. 2006- -CD

MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF ERIE,
PENNSYLVANIA,
Defendant

NOTICE TO DEFEND

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

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

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

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

EDGAR L. ENGLISH, :
Plaintiff :
vs. : No. 2006- -CD
MOST REVEREND DONALD W. :
TRAUTMAN, BISHOP OF THE :
ROMAN CATHOLIC DIOCESE OF ERIE, :
PENNSYLVANIA, :
Defendant :

COMPLAINT IN EJECTMENT

AND NOW, comes Plaintiff, by and through his attorney, R. Denning Gearhart, Esq., who avers as follows:

1. That Plaintiff, EDGAR L. ENGLISH, is an adult individual, residing at 115 Laurel Hill Drive, Philipsburg, Centre County, Pennsylvania 16866.
2. That the Defendant is the MOST REVEREND DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, PENNSYLVANIA, with the office of the Vicar General situate at 429 East Grandview Blvd., P. O. Box 10397, Erie, Pennsylvania 16514-0397.
3. That the Defendant named in Item 2 above maintains a church known as St. Severin Catholic Church, Drifting, Clearfield County, Pennsylvania. As such, the Defendant is the owner and possessor of a certain parcel of property located in Cooper Township, Clearfield County, Pennsylvania, and adjoining the property of the Plaintiff. The property of the Defendant is the servient tenement of the easement which is the subject of this suit.

4. That the Plaintiff is the owner of a piece of property situate in Cooper Township, Clearfield County, Pennsylvania, purchased from Marvin E. Dawkins and Gertrude G. Dawkins, his wife, by deed dated September 23, 2000, and recorded in the Office of the Recorder of Deeds of Clearfield County at Instrument No. 200014410, and identified as Clearfield County Tax Map # 110-T07-000-56, and Clearfield County Tax Map #110-T07-000-39.

5. That Tax Map #110-T07-000-56 has the following chain of title:

(a) That the former owners, Marvin E. Dawkins and Gertrude G. Dawkins, became owners of this property by virtue of a deed from Michael James Zetts, dated August 15, 1984, and recorded in the Office of the Recorder of Deeds of Clearfield County, in Deed Book Vol. 977, Page 379.

(b) That Michael James Zetts purchased this property from the Clearfield County Commissioners at a private sale, being property formerly assessed in the name of Michael Zetts, and sold by Decree dated December 10, 1951, under proceeding filed to No. 459 November Term, 1951.

(c) That by Deed from the Treasurer's of Clearfield County to the Commissioner's of Clearfield County, dated April 24, 1950, the property assessed in the name of Michael Zetts, situate in Cooper Township, Clearfield County, Pennsylvania, was sold to the County. Said deed was recorded on January 25, 1952, and was recorded in Clearfield County Deed Book Vol. 361, Page 546.

(d) That Michael Zetts was deeded this property by deed from Martin E. Swanson, single, dated December 11, 1939, and recorded on December 15, 1939, in Clearfield County Deed Book Vol. 326, Page 150.

(e) That Martin E. Swanson was vested in this property by deed from Lars Josephson and Maria Josephson, his wife, dated July 12, 1932, and recorded on November 5, 1932, in Clearfield County Deed Book Vol. 305, Page 98.

(f) That Lars Josephson and Maria Josephson acquired a larger piece of property from Joseph Schnell by deed dated April 15, 1912, and recorded in Clearfield County Deed Book Vol. 191, Page 167.

(g) That Joseph Schnell acquired a piece of property from John Schnell and Mary A. Schnell by deed dated June 5, 1902, and recorded in Clearfield County Deed Book Vol. 129, Page 210.

(h) That John Schnell acquired said property by deed from Joseph Schnell, dated July 13, 1898, and recorded in Clearfield County Deed Book Vol. 100, Page 279.

(i) That Joseph Schnell acquired a piece of property consisting of twenty-four acres and twenty-five perches from Josephine Raymond and A. W. Raymond, her husband, dated February 17, 1896, and recorded in Clearfield County Deed Book Vol. 91, Page 185. This deed indicates that this property is Purpart Number 1 of the Frederick Nebel Estate. (Clearfield County Estate File No. 755)

(j) That Josephine Raymond acquired said property through an Assignment of Deed, from A. D. Johnson, said Assignment being dated the (blank) day of (blank), 1887, and recorded in Clearfield County Deed Book Vol. 80, Page 177.

(k) That said A. D. Johnson acquired said property through a deed from A. W. Raymond, Trustee of the Estate of Frederick K. Nebel, dated September 29, 1887, and recorded in Clearfield County Deed Book Vol. 80, Page 173.

6. That Tax Map #110-T07-000-39 has the following chain of title:

(a) That the former owner, Marvin E. Dawkins, obtained this property by deed from Michael James Zetts dated August 15, 1984, and recorded in Clearfield County Deed Book Vol. 977, Page 381.

(b) Michael James Zetts obtained this property, together with his wife, Lorraine Zetts, by deed from Andrew J. Zetts and Georgia V. Zetts, his wife, dated December 20, 1951, and recorded in Clearfield County Deed Book Vol. 418, Page 160.

(c) That Andrew J. Zetts acquired this property from Martin E. Swanson by deed dated December 11, 1939, and recorded in Clearfield County Deed Book Vol. 326, Page 149.

(d) That Martin E. Swanson acquired this property as part of a larger piece of property from Lars Josephson and Maria Josephson by deed dated July 12, 1932, and recorded in Clearfield County Deed Book Vol. 305, Page 98.

(e) That Lars Josephson and Maria Josephson acquired the larger piece of property from Joseph Schnell by deed dated April 15, 1912, and recorded in Clearfield

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(g) That John Schnell acquired said property by deed from Joseph Schnell, dated July 13, 1898, and recorded in Clearfield County Deed Book Vol. 100, Page 279.

(h) That Joseph Schnell acquired a piece of property consisting of twenty-four acres and twenty-five perches from Josephine Raymond and A. W. Raymond, her husband, by deed dated February 17, 1896, and recorded in Clearfield County Deed Book Vol. 91, Page 185. This deed indicates that this property is Purpart Number 1 of the Fredrick Nebel Estate. (Clearfield County Estate File No. 755)

That Josephine Raymond acquired said property through an Assignment of Deed, from A.D. Johnson, said Assignment being dated the (blank) day of (blank), 1887, and recorded in Clearfield County Deed Book Vol. 80, Page 173.

7. That the Deed mentioned in Items 5(i) and 6(h) above also indicates that A. W. Raymond, Trustee of the Estate of Frederick Nebel in pursuance of an Order of the Orphans Court of Clearfield County sold this property at Public sale by Deed dated September 29, 1889, to H. D. Johnson, which said deed is recorded in the Recorder's Office of Clearfield County in Deed Book Vol. 80, Page 173. And the said H. D. Johnson and Sophie Johnson, his wife, by Assignment on said Deed recorded in Deed Book Vol. 80, Page 177, conveyed the property to Josephine Raymond.

8. That the Order of the Orphans Court in the Estate of Frederick Nebel can be found in the records of the Office of the Register of Wills of Clearfield County, at Estate File No. 775. That the Order of Court authorizes the partition of this property into six (6) equal parts. That a map of said division of said properties can be found in the records of the Estate of Frederick Nebel at the file number stated above. A copy of said map is attached hereto as Exhibit "A".

9. Said Map shows the outline of a road through the lands then owned by the Benediction Society, and thence along what was Purpart No. 1; thence through Purpart #1 to Purpart #5, where the map indicates that a house and barn existed. It is believed and, therefore, averred that the parcels owned by the Plaintiff is located in the Western portion of Purpart #1, with the aforementioned right-of-way passing through his lots.

10. By further reference, the Caldwell Atlas of 1878 shows a home North of the Catholic Church that is owned by Mrs. Nevel. It is believed that this home is the house and barn referred to in Purpart #5. A copy of the Caldwell Atlas of 1878 is attached hereto as Exhibit "B".

11. That the Defendant is the owner of two (2) pieces of property situate in Cooper Township, Clearfield County, Pennsylvania, and identified as Clearfield County Tax Map #110-T07-000-98, and Clearfield County Tax Map #110-T07-000-58.

12. That the first property owned by the Defendant is Tax Map #110-T07-000-98, and it has the following chain of title:

(a) The present deed is a deed from The Benedictine Society of Westmoreland County, Pennsylvania, to Josurah Maria Young, Roman Catholic Bishop of the Diocese of Erie Co., dated October 5, 1864, and recorded in Clearfield County Deed Book Vol. "X", at Page 29.

(b) The Benedictine Society of Westermoreland County, Pennsylvania, obtained this property by deed from Francis Rooply, and his wife, Elizabeth Rooply, and Frederick Nebel and Catharine Nebel, his wife, dated June 9, 1855, and recorded in Clearfield County Deed Book Vol. "P", Page 716.

13. That the second property owned by the Defendant is Tax Map #110-T07-000-58, and it has the following chain of title:

(a) The present deed is a deed from Francis Roopley and Elizabeth Roopley, his wife, and Frederick Nebel and Catherine Nebel, his wife, to the Right Reverend Michael O'Connor Roman Catholic Bishop of Pittsburg (spelling on deed), dated September 2, 1851, and recorded in Clearfield County Deed Book Vol. "N", Page 634.

14. As stated in Item 8 above, a map found in the Estate of Frederick Nebel shows a road or right-of-way across lands owned by the Lands of the Benediction Society, being lands identified as Clearfield Tax Parcel #110-T07-000-58 and Tax Parcel # 110-T07-000-98. (The road is indicated in yellow on Map attached as Exhibit "A".)

15. That road or right-of-way was never formally closed by Deed or other instrument of record.

16. Further, that road or right-of-way is indicated on a map found in the Assessment Office of Clearfield County, Pennsylvania, a copy of which is attached hereto as Exhibit "C", with the property of the Plaintiff identified with the letter "P", and the property of the Defendant indicated with the letter "D".

17. At one time there existed a house on the Plaintiff's property.

18. This road or right-of-way is the only access to the property owned by the Plaintiff.

19. Further, Plaintiff, or his predecessors in title, have used this road or right-of-way in a manner that was open, visible, notorious, uninterrupted and continuous for a period in excess of twenty-one (21) years.

20. That Plaintiff's property is without access to any other roads except for the use of the road or right-of-way in question.

COUNT I

21. Paragraphs one (1) through twenty (20) are incorporated herein as though set forth in full.

22. That the right-of-way or easement in question was granted by the Partition of the property by Frederick Nebel found in the Estate File No. 755 mentioned above.

WHEREFORE, Plaintiff prays your Honorable Court to find that the right-of-way or easement exists and to allow the continued use of the right-of-way or easement by the Plaintiff and to enter an Order prohibiting the Defendant from obstructing this right-of-way.

COUNT II

EASEMENT BY PRESCRIPTION

23. Paragraphs one (1) through twenty-two (22) are incorporated herein as though set forth in full.

24. Plaintiff and/or his predecessors in title have created an easement by prescription and are entitled to its use.

WHEREFORE, Plaintiff prays your Honorable Court to find that an easement exists to allow the Plaintiff continued use of the right-of-way, and to prohibit the Defendant, or its successors in title, from obstructing said easement.

COUNT III

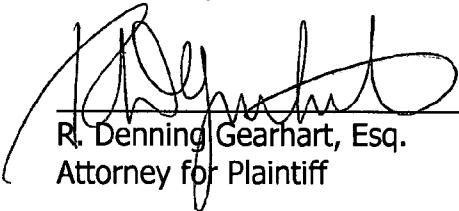
EASEMENT BY NECESSITY

25. Paragraphs one (1) through twenty-four (24) are incorporated herein as though set forth in full.

26. That no other easement exists to allow access to the Plaintiff's property which was once part of a larger tract which included the Defendant's property.

WHEREFORE, Plaintiff prays your Honorable Court to find that an easement exists to allow the Plaintiff continued use of the right-of-way, and to prohibit the Defendant, or its successors in title, from obstructing said easement.

Respectfully submitted,



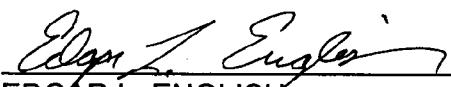
R. Denning Gearhart, Esq.
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA

: SS.

COUNTY OF CLEARFIELD

Before me, the undersigned officer, a Notary Public in and for the above named State and County, personally appeared EDGAR L. ENGLISH, who being duly sworn according to law deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.


EDGAR L. ENGLISH

Sworn to and subscribed

before me, this 18

day of August, 2006.

Kathleen A. Ricotta

Notary Public

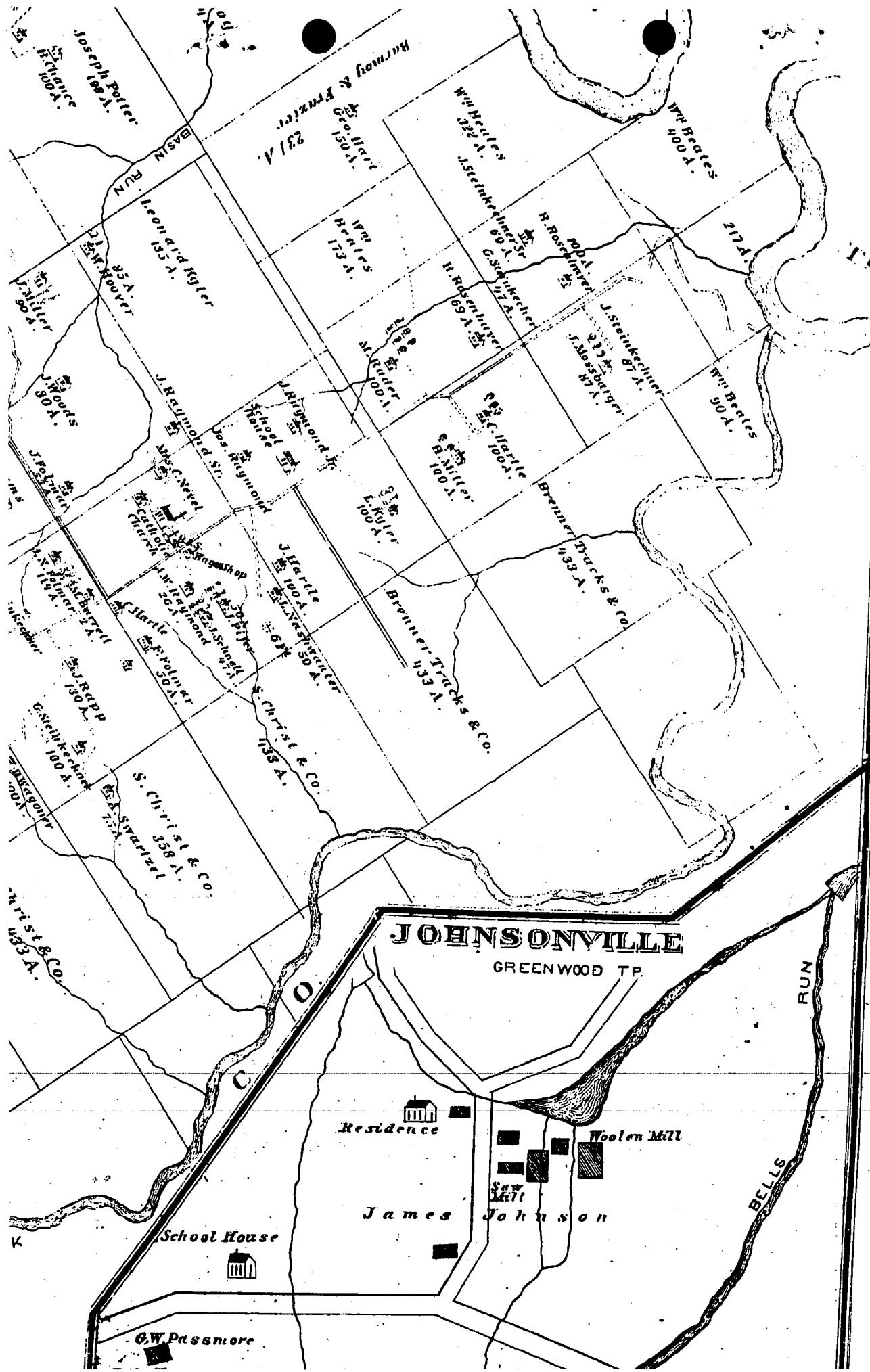
Commonwealth of Pennsylvania

NOTARIAL SEAL

KATHLEEN A. RICOTTA, Notary Public
Clearfield Boro., County of Clearfield
My Commission Expires June 15, 2009

Caldwell Atlas

1881



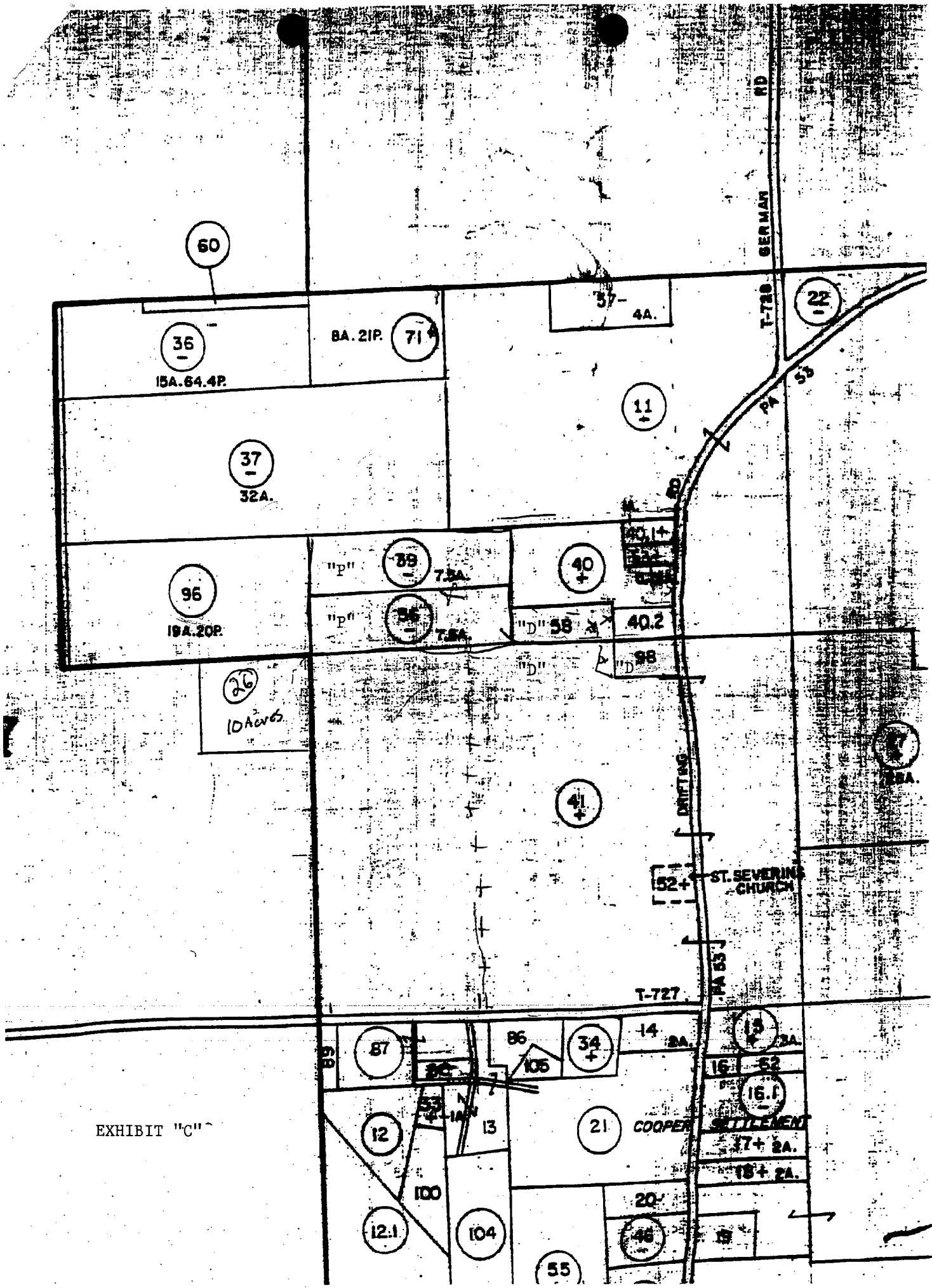


EXHIBIT "C" ^

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

EDGAR L. ENGLISH,
Plaintiff

vs.
MOST REVEREND DONALD W.
TRAUTMAN, BISHOP OF THE
ROMAN CATHOLIC DIOCESE OF ERIE,
PENNSYLVANIA,
Defendant

COMPLAINT IN EJECTMENT

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

FILED

AUG 21 2006

William A. Shaw
Prothonotary/Clerk of Courts

1292 WDA 2007

Date: 08/21/2007

Time: 09:30 AM

Page 1 of 2

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2006-01331-CD

Current Judge: Paul E. Cherry

Edgar L. English vs. Donald W. Trautman

Civil Other

Date	Judge
08/21/2006	New Case Filed. Filing: Complaint in Ejectment Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1915202 Dated: 08/21/2006 Amount: \$85.00 (Check) 5 CC Atty Gearhart.
09/06/2006	Sheriff Return, August 22, 2006, Sheriff of Erie Co. was deputized. August 30, 2006 at 4:00 pm Served the within Complaint in Ejectment on Most Reverend Donald W. Trautman, Bishop of The Roman Catholic Diocese of Erie. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Gearhart \$31.00 Erie Co costs pd by Gearhart \$58.00
09/22/2006	Entry of Appearance, filed. Please enter my appearance as attorney of record for The Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Dioceses of Erie, Pennsylvania, defendant in the above-captioned action, filed by s/ Barbara J. Hugney-Shope Esq. 3CC Atty Shope.
10/30/2006	Answer to Complaint in Ejectment and New Matter, filed by s/ Barbara J. Hugney-Shope Esq. 7CC Atty Shope.
11/29/2006	Certificate of Readiness for Non-Jury Trial, filed by s/ R. Denning Gearhart, Esquire. 2CC to Atty.
01/24/2007	Answer to New Matter, filed by s/ R. Denning Gearhart Esq. 3CC Atty. Order, NOW, this 24th day of Jan, 2007, following Pre-Trial Conference, Ordered that: A view of the subject area shall be held at 9:00 a.m. Trial of this matter is scheduled for April 19, 2007, in Courtroom 2 following view, (see original). By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Gearhart, Hugney-Shope
04/20/2007	Order, NOW, this 19th day of April, 2007, following nonjury civil trial, it is the Paul E. Cherry Order of this Court that counsel provide the Court with briefs by no later than May 21, 2007. By The court, /s/ Paul E. Cherry, Judge. 1CC Atty: Gearhart, Shope
06/06/2007	Opinion and Order: NOW, this 5th day of June, 2007, it is Ordered that Judgment be entered in favor of the Defendant and that Defendant's request for attorney fees be Denied. By The Court, /s/ Paul E. Cherry, Judge.
06/26/2007	Motion For Reconsideration, filed by s/ R. Denning Gearhart Esq. 4CC Atty Gearhart. Order AND NOW, this 25th day of June 2007, upon consideration of the Motion for Reconsideration, it is the ORDER of this Court that Argument on the same is scheduled for the 29th day of June 2007 at 1:00 p.m. in Courtroom #2. Fifteen (15) minutes has been allotted for this Argument. BY THE COURT: /s/ Paul E. Cherry, Judge. 4CC Atty Gearhart.
06/27/2007	Certificate of Service, filed. Served a certified copy of the Motion for Reconsideration filed in the above captioned action on the Defendant through Defendant's attorney Barbara Hugney-Shope Esq., by faxing a copy of said documents on June 26, 2007, filed by s/ R. Denning Gearhart Esq. NO CC.
07/05/2007	Filing: Notice of Appeal Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1919667 Dated: 07/05/2007 Amount: \$45.00 (Check) filed by s/R. Denning Gearhart, Esq. One CC and check for \$60.00 to Superior Court Six CC Attorney Gearhart

Date: 08/21/2007

Time: 09:30 AM

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Clearfield County Court of Common Pleas

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ROA Report

Case: 2006-01331-CD

Current Judge: Paul E. Cherry

Edgar L. English vs. Donald W. Trautman

Civil Other

Date	Judge
07/10/2007	Order, this 9th day of July, 2007, the Court having been notified of Appeal to the Superior Court of Pennsylvania, it is Ordered that Appellant file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty: Gearhart, Shope
07/17/2007	Concise Statement of MattersAppealed, filed by s/ R. Denning Gearhart, Esquire. 5CC Atty. Gearhart
07/18/2007	Appeal Docket Sheet, 1292 WDA 2007, filed. No CC
08/17/2007	August 17, 2007, Mailed Appeal to Superior Court. August 17, 2007, Letters, Re: Notification of mailing appeal mailed to R. Denning Gearhart, Esq. and Barbara J. Hugney-Shope, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c). Letter to Superior Court, Re: Appeal mailed August 17, 2007.
	Paul E. Cherry

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

AUG 21 2007

Attest.


William L. Hudson
Prothonotary/
Clerk of Courts

In the Superior Court of **FILED**
Pennsylvania

SEP 26 2007 *10*

4:11:50
William A. Shaw
Prothonotary/Clerk of Courts

Sitting at Pittsburgh

No. 1292

WESTERN DOCKET MISC. 2007

EDGAR ENGLISH

v.

MOST REVEREND DONALD W. TRAUTMAN, TE.
AL.

Appeal from the Order's of 6-5-2007, by the
Honorable Paul Cherry
in the Court of Common Pleas of Clearfield
County Civil Division. No. 2006-1331-CD

Certified From the Record

O R D E R

AND NOW, this *14* day of AUGUST, 2007, this Court hereby SUA

SPONTE DISMISSES this appeal as premature as post-trial motions are outstanding
and 120 days did not elapse between the filing of post-trial motions and the notice of
appeal. *See* Pa.R.A.P. 227.4; *see also Melani v. Northwest Engineering, Inc.*, 909
A.2d 404 (Pa. Super. 2006) (quashing appeal taken while post-trial motions were
pending). This dismissal is entered without prejudice to the parties to file a new appeal
once a final order is properly entered.

PER CURIAM

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at
Pittsburgh, Pa.

this

24th Day of September

2007

Eleana K. Valeck
Deputy Prothonotary

The Superior Court of Pennsylvania
Sitting at Pittsburgh

600 Grant Building
Pittsburgh, Pennsylvania
15219

FILED *(initials)*

SEP 26 2007

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

copy to S/C

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 1 PART(S), 1 CERTIFIED ORDER OF COURT.

As remanded from said court in the following matter:

IN RE: EDGAR ENGLISH V. MOST REVEREND DONALD TRAUTMAN, ET. AL.
No(s). 1292 WDA 2007

COUNTY OF COMMON PLEAS CLEARFIELD COUNTY
CIVIL COURT NO. 2006-1331-CD

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: SEPTEMBER 24, 2007

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.

Eleanor R. Valecko

DEPUTY PROTHONOTARY

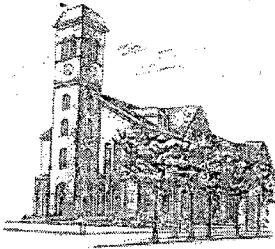
RECORD, ETC. RECEIVED:

DATE: 9-26-07

ERV

(Signature & Title)

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



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

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

R. Denning Gearhart, Esq.
207 East Market Street
Clearfield, PA 16830

Barbara J. Hugney-Shope, Esq.
PO Box 232
Frenchville, PA 16836

Edgar L. English
Vs.
Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie,
Pennsylvania

Court No. 06-1331-CD; Superior Court No. 1292 WDA 2007

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on August 17, 2007. The transcripts will be forwarded once they are filed.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 06-1331-CD
Edgar L. English
VS.

Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Diocese of Erie, Pennsylvania

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	08/21/06	Complaint in Ejectment	16
02	09/06/06	Sheriff Return	37
03	09/22/06	Entry of Appearance	02
04	10/30/06	Answer to Complaint in Ejectment and New Matter	13
05	11/29/06	Certificate of Readiness for Non-Jury Trial	02
06	11/29/06	Answer to New Matter	04
07	01/24/07	Order, Re: view of the subject area scheduled; trial scheduled	01
08	04/20/07	Order, Re: briefs to be submitted	01
09	06/06/07	Opinion and Order	03
10	06/26/07	Motion for Reconsideration and Order scheduling argument	04
11	06/27/07	Certificate of Service	02
12	07/05/07	Notice of Appeal	08
13	07/10/07	Order, Re: appellant to file concise statement of matters complained of on appeal	01
14	07/17/07	Concise Statement of MattersAppealed	04
15	07/18/07	Appeal Docket Sheet, Superior Court No. 1292 WDA 2007	03

Date: 08/16/2007

Time: 03:41 PM

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Edgar L. English vs. Donald W. Trautman

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07/05/2007	Filing: Notice of Appeal Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1919667 Dated: 07/05/2007 Amount: \$45.00 (Check) filed by s/R. Denning Gearhart, Esq. One CC and check for \$60.00 to Superior Court Six CC Attorney Gearhart

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AUG 16 2007

Attest,

William L. Hudson
Prothonotary/
Clerk of Courts

Date: 07/26/2007

Time: 09:20 AM

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Clearfield County Court of Common Pleas

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②	August 30, 2006 at 4:00 pm Served the within Complaint in Ejectment on Most Reverend Donald W. Trautman, Bishop of The Roman Catholic Diocese of Erie. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm 37
	Shff Hawkins costs pd by Gearhart \$31.00
	Erie Co costs pd by Gearhart \$58.00
③	Entry of Appearance, filed. Please enter my appearance as attorney of record for The Most Reverend Donald W. Trautman, Bishop of the Roman Catholic Dioceses of Erie, Pennsylvania, defendant in the above-captioned action, filed by s/ Barbara J. Hugney-Shope Esq. 3CC Atty Shope. No Judge
④	Answer to Complaint in Ejectment and New Matter, filed by s/ Barbara J. Hugney-Shope Esq. 7CC Atty Shope. No Judge
⑤	Certificate of Readiness for Non-Jury Trial, filed by s/ R. Denning Gearhart, Esquire. 2CC to Atty. No Judge
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⑧	Order, NOW, this 19th day of April, 2007, following nonjury civil trial, it is the Paul E. Cherry Order of this Court that counsel provide the Court with briefs by no later than May 21, 2007. By The court, /s/ Paul E. Cherry, Judge. 1CC Atty: Gearhart, Shope 1
⑨	Opinion and Order: NOW, this 5th day of June, 2007, it is Ordered that Judgment be entered in favor of the Defendant and that Defendant's request for attorney fees be Denied. By The Court, /s/ Paul E. Cherry, Judge. 3 Paul E. Cherry
⑩	Motion For Reconsideration, filed by s/ R. Denning Gearhart Esq. 4CC Atty Gearhart. 4 Paul E. Cherry
⑪	Order AND NOW, this 25th day of June 2007, upon consideration of the Motion for Reconsideration, it is the ORDER of this Court that Argument on the same is scheduled for the 29th day of June 2007 at 1:00 p.m. in Courtroom #2. Fifteen (15) minutes has been allotted for this Argument. BY THE COURT: /s/ Paul E. Cherry, Judge. 4CC Atty Gearhart. Paul E. Cherry
⑫	Certificate of Service, filed. Served a certified copy of the Motion for Reconsideration filed in the above captioned action on the Defendant through Defendant's attorney Barbara Hugney-Shope Esq., by faxing a copy of said documents on June 26, 2007, filed by s/ R. Denning Gearhart Esq. NO CC. 2
⑬	Filing: Notice of Appeal Paid by: Gearhart, R. Denning (attorney for English, Edgar L.) Receipt number: 1919667 Dated: 07/05/2007 Amount: \$45.00 (Check) filed by s/R. Denning Gearhart, Esq. One CC and check for \$60.00 to Superior Court Six CC Attorney Gearhart 8 Paul E. Cherry

Date: 07/26/2007

Time: 09:20 AM

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User: BHUDSON

Case: 2006-01331-CD

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