

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

WALLACE S. SMEAL and
JONELLE S. SMEAL, husband and wife,
Plaintiffs

vs.

C. SHELIA WISOR,
Defendant

No. 2006 - 2093- C.D.

COMPLAINT

Filed on behalf of:
Plaintiffs, Wallace S. Smeal
and Jonelle S. Smeal

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

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

FILED

DEC 15 2006

3cc
Atty Ryan
Atty pd. 85.00

William A. Shaw
Prothonotary/Clerk of Courts

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NOTICE

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Market & Second Street
Clearfield, PA 16830
(814) 765-2641, ext. 1300

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COMPLAINT

NOW COMES, Wallace S. Smeal and Jonelle S. Smeal, husband and wife, and by their Attorneys, Belin, Kubista & Ryan, file their Complaint and aver as follows:

1. Plaintiffs are Wallace S. Smeal and Jonelle S. Smeal, husband and wife, adult individuals residing at 458 Pinetop Road, Woodland, Clearfield County, Pennsylvania, 16881.
2. Defendant is C. Shelia Wisor, an adult individual, residing at 410 Pinetop Road, Woodland, Clearfield County, Pennsylvania, 16881.
3. The property which is the subject of this action is described as follows:

Beginning at a point between the concrete and paved surfaces within the 60 foot right-of-way of Pennsylvania State Route 2029, also known as Pinetop Road, said point being North five (5°) degrees zero (00') minutes zero (00'') seconds East fifteen and sixty-four hundredths (15.64) feet from the centerline of said Pinetop Road, said point being on the boundary line between C. Shelia Wisor, as was conveyed by deed book 512, page 32, and Wallace S. Smeal and Jonelle S. Smeal, as was conveyed by deed book 1313, page 582, said point being the southern most corner of the land herein described and running:

Thence by a line between the concrete and paved surfaces within the 60 foot right-of-way of Pinetop Road the following courses and distances:

 1. North fifty-five (55°) degrees twenty-two (22') minutes five (05') seconds West a distance of seven and two hundredths (7.02) feet;
 2. thence North ten (10°) degrees twenty-two (22') minutes two (02'') seconds East a distance of four and eighty-three hundredths (4.83) feet;

3. South eighty-nine (89°) degrees seventeen (17') minutes twenty-eight (28'') seconds East a distance of zero and forty-eight hundredths (0.48) feet;
4. North eight (08°) degrees two (02°) minutes fifty-six (56'') seconds East a distance of twenty-six and two hundredths (26.02) feet, by a line between the concrete curb and 6" x 6" timber retaining wall through the sixty (60) foot right-of-way of Pinetop Road and through lands of C. Shelia Wisor to a point;

Thence North seven (07°) degrees thirty-seven (37') minutes twenty-six (26'') seconds East a distance of thirty-two and seventy-nine hundredths (32.79) feet, through lands of C. Shelia Wisor, by a line between the concrete curb and 6" x 6" timber retaining wall, to a point;

Thence North eight (08°) degrees thirty-six (36') minutes nine (09'') seconds East a distance of twenty-three and ninety-nine hundredths (23.99) feet, through and along the same to a point at the end of the concrete driveway;

Thence South eighty-four (84°) degrees thirteen (13') minutes forty-one (41'') seconds East a distance of zero and seventy-eight hundredths (0.78) feet, along the edge of concrete and through lands of C. Shelia Wisor to a point on the common boundary line between C. Shelia Wisor and Wallace S. and Jonelle S. Smeal;

Thence South five (05°) degrees zero (00') minutes zero (00'') seconds West a distance of ninety and ninety-eight hundredths (90.98) feet, along the common boundary line between C. Shelia Wisor and Wallace S. and Jonelle S. Smeal to a point between the concrete and paved surfaces and place of beginning.

Together with and subject to covenants, easements and restrictions of record.

Containing two hundred ninety-two (292) square feet total, minus ninety-seven (97) square feet for the right-of-way of Pinetop Road, leaving one hundred ninety-five (195) square feet net as shown on the map prepared by Curry and Associates dated November 28, 2006. Being a part of lands conveyed to C. Shelia Wisor by deed book 512, page 32.

Further being the same premises as depicted on the Survey Map prepared by David J. Thorp, PLS, dated November 28, 2006, a copy of which is attached hereto as Exhibit "A".

4. The property, which is described in Paragraph 3, is believed and therefore averred to be part of the same premises conveyed to Thomas I. Wisor and Defendant C. Shelia Wisor, husband and wife, by deed of Thomas I. Wisor and C. Shelia Wisor, his wife, dated

November 28, 1964, and recorded at Clearfield County in Deed Book 512, Page 32, and further being part of the same premises conveyed to Thomas I. Wisor by deed of Lloyd Duttry and Maida Duttry, his wife, dated November 1, 1957, and recorded at Clearfield County in Deed Book 463, Page 224.

5. For a period in excess of twenty-one (21) years, the Plaintiffs and their predecessors in title have been in open, exclusive, hostile, adverse and actual possession of the property described at Paragraph 3 herein above. For at least the said twenty-one (21) year period, the said property has been distinctly part of the driveway to the premises owned by Plaintiffs, who acquired title to same by deed of Walter J. Wagner and Sarah B. Wagner, his wife, dated November 14, 1989. Walter J. Wagner and Sarah B. Wagner, his wife, acquired title to said premises by deed of George W. Smeal and Forshia Smeal, his wife, by deed dated November 10, 1969, and recorded at Clearfield County Deed Book 555, page 575, and by deed of Robert Shimmel and Irene Shimmel, his wife, dated July 1, 1970, and recorded at Clearfield County Deed Book 562, page 365.

6. Plaintiffs believe and therefore aver that the Defendant makes claim to the premises adverse to Plaintiffs' title.

7. Defendant's claim is wholly without right and constitutes a cloud on the Plaintiffs' title, which Plaintiffs desire to remove.

8. Plaintiffs, through themselves and their predecessors in title, have adversely held the above described property commencing in at least 1969 and said adverse possession has continued through the present time.

9. Plaintiffs' adverse possession of this property, through themselves and their predecessors in title, has been adverse to all interest which the Defendant may have in the said property.

10. In the alternative, Plaintiffs have acquired title to the said property in that the parties and their predecessors in title have established a consentable boundary, which is and has been clearly visible on the premises and which in fact has established by the Defendant's construction of a retaining wall separating her driveway from the driveway serving the property owned by Plaintiffs, the latter of which includes the area described above at Paragraph 3.

11. In the alternative, Plaintiffs through their use of the said property, have established an exclusive easement by prescription and/or an exclusive easement by necessity over the said property, which use may not be obstructed or otherwise interfered with by the Defendant or any other person.

WHEREFORE, Plaintiffs pray as follows:

1. That Defendant and all persons claiming under her be required to set forth the nature of her claim to the real property described herein above;

2. For a decree of this Court determining all adverse claims of Defendant and all persons claiming under her;

3. For said decree to declare and adjudge that Plaintiffs own absolutely and are entitled to the quiet and peaceful possession of the said property as against the Defendant and all persons claiming under her, that Defendant and all persons claiming under her have no estate, right, title, lien or interest in or to the said property or any part thereof, and that title to said property be quieted in Plaintiffs against all claims of Defendant and all persons claiming under her;

4. For said decree to permanently enjoin Defendant and all persons claiming under her from asserting any right, title, lien or interest in or to the said property or any part thereof adverse to Plaintiffs;

5. In the alternative, that the Court find the existence of a consentable boundary, which clearly separates the property of Plaintiffs from the property of Defendant and which provides to Plaintiffs the property described herein at Paragraph 3;

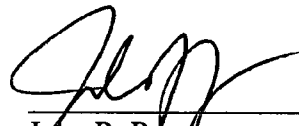
6. In the alternative, that the Court find that an exclusive easement for the benefit of Plaintiffs exist on and over the said premises;

7. For an injunction to issue, temporarily and then permanently, preventing Defendant from interfering or in any manner obstructing the use of the said property by the Plaintiffs;

8. For costs of this action;

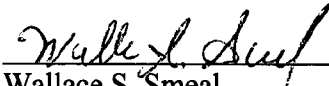
9. For such other relief as the Court deems just and proper, including but not limited to an award of counsel fees for the Defendant's arbitrary, capricious and bad faith refusal to recognize Plaintiffs' claims to ownership and/or exclusive use of the said property.


BELIN, KUBISTA & RYAN

A handwritten signature in dark ink, appearing to read 'John R. Ryan', is written over a horizontal line.

John R. Ryan
Attorney for Plaintiffs

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


Wallace S. Smeal


Jonelle S. Smeal

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vs.

C. SHELIA WISOR,
Defendant

No. 2006 – 2093 – C.D.

PRAECIPE TO DISCONTINUE

Filed on behalf of
Plaintiffs, WALLACE S. SMEAL and
JONELLE S. SMEAL

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN, KUBISTA & RYAN
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
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FILED 3CC03 Certificates
01318204 to Atty Ryan
FEB 23 2007 (6K)

William A. Shaw
Prothonotary/Clerk of Courts

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PRAECIPE TO DISCONTINUE

TO THE PROTHONTARY:

Please mark the above captioned action discontinued.

BELIN, KUBISTA & RYAN



John R. Ryan
Attorney for Plaintiff

Date: 2/23/07

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Wallace S. Smeal
Jonelle S. Smeal

Vs.
C. Sheila Wisor

No. 2006-02093-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 23, 2007, marked:

Discontinued

Record costs in the sum of \$85.00 have been paid in full by John R. Ryan, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 23rd day of February A.D. 2007.



William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102250
NO: 06-2093-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: WALLACE S. SMEAL and JONELLE S. SMEAL
vs.
DEFENDANT: C. SHELIA WISOR

SHERIFF RETURN

NOW, December 28, 2006 AT 10:14 AM SERVED THE WITHIN COMPLAINT ON C. SHELIA WISOR
DEFENDANT AT 470 PINETOP ROAD, WOODLAND, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO
C. SHELIA WISOR, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE
KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / DEHAVEN

FILED
013:0034
MAR 13 2007
William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	BELIN	22774	10.00
SHERIFF HAWKINS	BELIN	22774	22.84

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,

Chester A. Hawkins
by Marley Harris

Chester A. Hawkins
Sheriff